REAL ESTATE DIVISION MANUAL

August 2018

(Revised August 2021)

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LIST OF REVISIONS TO INDOT'S REAL ESTATE MANUAL (AUGUST 2018):

Revision No. 1 (May 2019) – Removed letting date from three Certification Letters (Certification Clear, Certification with Exceptions, and Certification – No Additional R/W Needed). Added language required by federal regulation to Certification with Exceptions Letter. Also changed language in Chapter 25 [Property Management Procedures – Clearing the Right of Way – Certifying the Right of Way Clear – INDOT Procedure] to clarify that certification letters are due to the Contracts Section by the ready for contracts (RFC) date.

Revision No. 2 (March 2020) – Added electronic signature policies to Chapter 1; added electronic signature, electronic notary, and remote notarization policies and procedures to Chapter 10.

Revision No. 3 (June 2020) – Corrections to appraising vs. valuation services added; in Chapter 1, updated INDOT Mission Statement, updated early acquisition options; in Chapter 2, added Value Analysis qualifications, updated requirements for Notice to Owner letters, updated Waiver Valuation policies; in Chapter 5, added temporary easement information to life estate section; updated policy for dealing with utility easements; in Chapter 6, modified Action Item Form – Excess Land expectations; updated environmental information; in Chapter 16, updated administrative settlement policies; in Chapter 9, updated environmental information; in Chapter 14, added relocation agent qualifications;

Revision No. 4 (August 2021) - Page 75: Removed ¶ 8 from the definition of "Fair Market Value" as it contradicts directions provided elsewhere and appears to be contrary to state and federal law. Page 78: Added more requirements to our "sketch" expectations from appraisers. Added the following sentence to 19a on page 79 to clean up inference. "Complicated Cost to Cure items are not appropriate for waiver valuations or value finding reports and will thus require a short or long form appraisal." Page 80: Eliminated the "cap" on the amount for value finding reports so that the report focuses only on whether the appraising issue is "uncomplicated" Page 87: Added a bookmark to our Policies for Off-Premise Outdoor Advertising Signs (OAS) guide to update our Appraising policies for outdoor advertising signs to reference the requirements of a State law passed a couple of years ago, Ind. Code § 8-23-20-25.6, and Indiana's trade fixture law that makes some signs "personal property" and eligible for relocation benefits. Page 135: Added a bookmark to our Policies for Off-Premise Outdoor Advertising Signs (OAS) guide to update our Buying procedures for outdoor advertising signs. Page 139, updated the "leases" section to correct/update the discussion of trade fixtures. Page 320: Updated "decent, safe, and sanitary" requirements for those with a disability (ADA Update) Page 341: added a reference to outdoor advertising signs not being eligible for business reestablishment per 49 C.F.R. § 24.2(a)(24) Page 346: Added a bookmark to our Policies for Off-Premise Outdoor Advertising Signs (OAS) guide to update outdoor advertising signs' relocation benefit rights, to mirror the federal regulations, to describe permitting requirements, and add directions to agents about notices that need to be given to sign owners.

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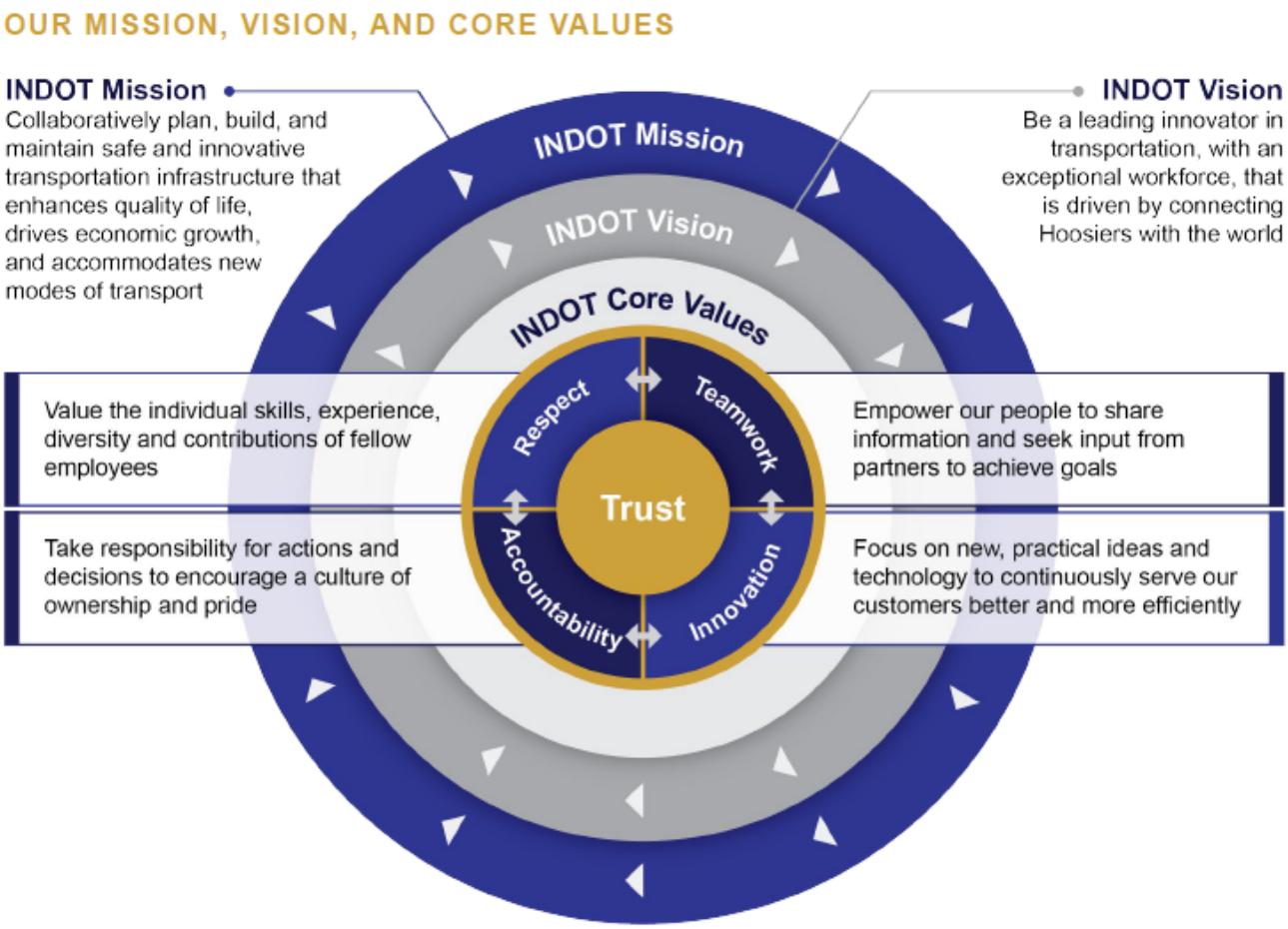

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INTRODUCTION

PURPOSE

The purpose of this manual is to ensure that the program is administered in compliance with applicable Federal and State requirements in an equitable and uniform manner to all owners and displaced persons. This is required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended (Uniform Act), the regulation titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24). The following fundamental principles must be applied:

1. To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

2. To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

3. To ensure that Agencies implement these regulations in a manner that is cost effective.

This manual is to be used not only by INDOT, but in addition, any Local Public Agency ("LPA") carrying out a project funded by a grant under title 23 of the United States Code. This manual will explain the required procedures and use of the forms, however, a basic knowledge of real estate law, title, appraisal methodology and plan reading skills are prerequisite skills expected of the Appraiser and Right of Way Agent. This manual is intended to act as both a training manual to be used in conjunction with an intensive training program and as a technical reference guide for the working Appraiser and Right of Way Agent. It is NOT to be considered an encyclopedia to the Right of Way process that will provide all the necessary skills simply by reading it. The format is arranged to address issues in the same order in which they occur throughout the Right of Way process. The Table of Contents and Index can be used to locate specific milestones and topics in the acquisition process. Many forms are now available online; those that are shown in that section's Appendix will be noted. A Glossary is also included to assist with terms used throughout the manual.

CONFLICT OF INTEREST

Accountability to the public is focused upon by many people outside the department. The Right of Way Agent and Appraiser must constantly be alert to the smallest perception that his or her activities could be questioned by the general public. Accountability starts with the individual Right of Way Agent or Appraiser and how they perform their job. When dealing with the public, honest and appropriate business practices are very important. Although the department is not operating for a profit, it is responsible for a very large amount of tax payers' dollars. Any time there is money

involved, there is the possibility of fraud, waste, abuse, or mismanagement of those funds. The Right of Way Agent must be constantly aware of the penalties of conflict of interest laws and procedures. The policy of the department follows the laws of the State and the regulations of the Federal Highway Administration. Indiana Code Section 35-44-1-3 states:

A public servant who knowingly or intentionally (1) has pecuniary interest in; or (2) derives profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

Federal Highway Administration Regulations, 23 CFR Sec. 1.33 states:

No official or employee of a State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making accepting or approving any contract or subcontract in connection with a project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for a State or government instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other governmental instrumentality, and such officer, employee or person has not participated in such acquisition for, or on behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

AN OVERVIEW OF THE PROCESS

INDOT acquires properties under the authority granted in Indiana Code (IC) 8-23-2-6 which provides for the department to "Acquire by purchase, gift, or condemnation. . ." IC 8-23-18-1 also extends INDOT's authority to acquire other governmental entities' properties. IC 8-23-7-2 authorizes INDOT to acquire properties for more specific purposes relating to highway construction. IC 8-23-8-3 authorizes INDOT to acquire land and rights for limited access highways. IC 8-23-20-20 provides for the acquisition of junkyards which cannot be adequately screened from highways.

IC 8-23-2-6 *Powers of department*
(a) The department, through the commissioner or the commissioner's designee, may do the following:
(1) Acquire by purchase, gift, or condemnation, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state, or otherwise dispose of or

encumber property to carry out its responsibilities.
(6) Perform all functions pertaining to the acquisition of property for transportation purposes, including the compromise of any claims for compensation.

The basic steps involved in an eminent domain acquisition by an Agency (INDOT or a Local Public Agency) include:

1. An Appraisal Problem Analysis, Appraisal, Review Appraisal, and possible Desk Review of the area to be acquired.

2. If applicable, the Relocation process begins at the Appraisal stage.

3. A written offer with description of the area to be acquired. The required verbiage of the offer letter is prescribed in IC 32-24-1-5.

4. The Right of Way Agent attempts to resolve any valid problems or concerns the owner may have.

5. The owner accepts or rejects the offer within a 30-day period.

6. If accepted, the Right of Way Agent prepares the necessary instruments, obtains the signatures, clears all liens and submits the parcel for review and approval.

7. Payment is made within 90 days of both the execution of the conveyance document and the Office of the Attorney General reviewing the transaction to confirm that the State is obtaining clear title; the Agency takes possession and the deed is recorded after payment is made.

8. If rejected, the parcel is forwarded to the Office of the Attorney General (or Local Public Agency) who files suit in the county of the project. The court will hear objections and issue an order of appropriation which authorizes the Agency to acquire the property through eminent domain. The court appoints appraisers who will return a report of value. The Agency posts the court appraisers award with the county clerk and has rights of possession. The owner or the Agency can file an exception to the court's appraisal and proceed to a jury trial which will establish the final value of the acquisition. The owner must return the amount withdrawn which is in excess of the jury's award (if any).

IC 32-24-1-5 states that a suit cannot be filed before 30 days after the offer is made. An exception to this rule is if the owner signs documentation that they are rejecting the offer prior to the 30 days. The Agency will pay up to $25,000 of the owner’s attorney fees if the final award exceeds the Agency’s final offer. The Agency pays the court costs which include court appraisal fees.

PRE-APPROVED BUYING RELOCATION & APPRAISING AGENTS

All procedures and policies stated within this Federal Highway Administration-approved Real Estate Division Manual and within Federal and State guidelines must be followed by:

1. Personnel of the Indiana Department of Transportation (INDOT) and fee contractors hired by INDOT or hired by private firms hired by INDOT that will be providing Right of Way services. Contractors providing services under series 12 work-types must be **pre-approved** and on INDOT's list of pre-approved Right of Way Agents.

2. Any political subdivision (Local Public Agency -LPA) must comply with INDOT's policy and procedures for Right of Way services where the project has any Federal and/or State participation in any phase of the project costs including design, acquisition, relocation and/or construction.

   a. LPA staff providing Right of Way services must be **pre-approved** by INDOT prior to performing any Right of Way services when the project has any Federal and/or State participation in any phase of the project costs including design, acquisition, relocation and/or construction.

   b. The LPA may only utilize fee contractors who are **pre-approved** by INDOT to provide Right of Way services when the project has any Federal and/or State participation in any phase of the project costs including design, acquisition, relocation and/or construction.

   c. Attorneys performing buying services are exempt from the pre-approval requirements stated in (a) and (b) above, but are still required to follow the procedures and policies stated within this manual and within Federal and State guidelines.

COORDINATION OF EFFORTS

Right of Way activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, owners and displacees receive consistent treatment and the duplication of functions is minimized.

RIGHT OF WAY TOOLS

UNIFORM ACT AND THE FHWA

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended (Uniform Act), codified in 42 USC § 4601 *et al,* and the regulation titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24) contain the benefits and protections for persons displaced by highway projects which are funded with Federal funds at any phase of the project. These documents should be a first resource for determining policy and procedure.

The Federal Highway Administration (FHWA) is responsible for development, issuance, and maintenance of the Uniform Act, providing assistance to other Federal agencies, and reporting to Congress. In addition, the FHWA provides stewardship over the construction, maintenance and preservation of the Nation's highways, bridges and tunnels. FHWA also conducts research and provides technical assistance to state and local agencies in an effort to improve safety, mobility, and livability, and to encourage innovation.

The main purpose of the Uniform Act is:

1. To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;

2. To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

3. To ensure that Agencies implement these regulations in a manner that is cost effective.

FHWA RESOURCES

The FHWA is a resource with training material and tutorials. The National Highway Institute (NHI) is a division of FHWA. The National Highway Institute works to improve the performance of the transportation industry through training. To achieve this mission, NHI provides transportation-related training in several formats including both classroom-based and online learning as well as free Web-based seminars and asynchronous training materials. This valuable tool can be found at www.nhi.fhwa.dot.gov

The following resources can be accessed through the FHWA website:

www.fhwa.dot.gov/real_estate

The **FHWA Program Development Guide (PDG)** is a practical approach to developing a Right of Way project. The PDG explains the federally-regulated requirements for Federal-aid projects in an easy-to-read, common-sense format with mini case studies to demonstrate how others have handled a variety of Right of Way problems.

The **FHWA Uniform Act Frequently Asked Questions** is invaluable for understanding key procedures, how to apply the regulations in specific situations, and how to calculate entitlements with unique variables, among other issues and questions that complicate the Right of Way process.

HISTORY AND REFERENCE

Concern for fair and equitable treatment in acquiring private property for public purposes goes back to the founding of the United States. The United States Constitution places a high value on the protection of private property. The United States Constitution expresses this philosophy in the Fifth Amendment, where "due process" and "just compensation" are required when taking private property for a "public use." The 14th Amendment to the Constitution extends to States the requirement of following due process when they acquire privately owned property. The Indiana Constitution, in Article I, Section 21, also provides that "[n]o person's property shall be taken by law, without just compensation."

The Uniform Act is contained in Title 42 U.S.C. § 4601-4655. The regulations implementing the law are contained in Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24) is located in 49 CFR Part 24. Requirements that could impact a project's eligibility for federal funding were updated and issued in 2016 and are located in 23 CFR § 710.

LAND RECORDS SYSTEM (LRS)

The Land Records System, more commonly referred to as LRS, is a web-based parcel tracking application that is integral to INDOT's Right of Way acquisitions. LRS is used by Right of Way Engineering, Appraising, Buying, Relocation, Property Management and LPA projects for data input, workflow management, timeline tracking, logging owner contact information, and reporting. It is the responsibility of every person that uses LRS to ensure that all information is entered accurately and on a timely basis.

In addition to completely filling all information fields in LRS, Right of Way Agents are required to add notes to the remarks section on a regular basis. During an active phase, remarks must be entered weekly at minimum. During a less active period such as waiting for a business displacee to be ready to claim Reestablishment, remarks must be entered monthly at minimum.

Remarks can be used to document information with a digital timestamp. For example:

1. Contacts with owner – dates, letters sent, phone conversation topics, documents provided
2. Workflow milestones
3. Documenting unusual information or exceptions for future reference

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

Uniform Standards of Professional Appraisal Practice (**USPAP**) can be considered the quality control standards applicable for real property, personal property, intangibles, and business valuation appraisal analysis and reports in the United States. Since 2006, USPAP has been updated in a 2 year cycle, which begins on January 1 of even number years. The current version of USPAP is available at www.appraisalfoundation.org.

RELOCATION ASSEMBLY MANUAL

The Relocation Assembly Manual, formerly titled the Voucher Assembly Manual, began as a guideline for submitting voucher documentation in order to generate a payment. It has since grown to also include requirements for submitting documentation for milestone meetings and pre-approvals. Each page lists all the documents that must be submitted, in order, and gives important reminders about the requirements that go with them. The checklist is to be attached to the front of every submission.

The Relocation Assembly Manual is a useful resource for preparing for milestone meetings and for submission of pre-approvals and vouchers for payments. For instance, the Residential Initial Meeting page lists every document that must be used for an Initial Meeting with a resident displacee. The Residential 90-Day Notice Pre-Approval page lists all the documents that should be prepared and pre-approved by INDOT Central Office before issuing a 90-Day Notice, and shows important requirements that must be met. The Business Professional Mover page shows everything that must be submitted along with the signed voucher that will generate a payment for the move, and lists specific requirements that must be met in order to have the voucher approved.

Right of Way Agents that are in the probation period of their pre-qualification process should submit all assemblies for **pre-approval** prior to meeting with the displacee to ensure that they have complied with Federal and INDOT requirements. Once a Right of Way Agent is notified that he or she is out of the probation period, pre-approval is required only for certain situations as specified in the Residential, Commercial, Landlord, and PPMO Relocation chapters.

The Relocation Assembly Manual is available online at the Real Estate Resources page under Relocation Forms and Other Information.

APPROVED FORMS AND DEEDS

All Right of Way projects that involve even one dollar of Federal funding at any phase of the project, whether they are sponsored by INDOT directly or by a Local Public Agency, require the use of approved forms and deeds. The most current version of the Relocation and Buying forms and deeds are available online at the Real Estate Resources page. As these forms are legal in nature, no changes should be made without approval via an INDOT Central Office Manager, who may need to consult with the Deputy Attorney General's office.

Local Public Agencies (LPAs) and their Agents should take care to modify the deeds and forms only to remove all references to "State of Indiana" and "INDOT" and replace them with the responsible Agency's identifying information.

USING UPDATED FORMS

Most forms have been updated to include form fields for ease of use and to protect the verbiage of the form. Once all the grey form fields are completed, the form can be printed for use. Each form field that holds information found elsewhere in the paperwork will update all subsequent locations for that information. For instance, updating the grey fields on the Uniform Offer on the first page will change those references on that page and the next 3 pages:

The State of Indiana, acting by and through the Indiana Department of Transportation is authorized by ~~Indiana law to obtain your property~~ or an easement across your property, for certain public purposes. The Indiana Department of Transportation needs YOUR PROPERTY or AN EASEMENT for a public highway ~~improvement known as~~ ROAD and needs to take the PROPERTY or EASEMENT as described on the attached legal description.

It is our opinion that the fair market value of the PROPERTY or EASEMENT we want to acquire from you is $0.00, and, therefore, the Indiana Department of Transportation offers you $0.00 for the above described PROPERTY or EASEMENT. You have thirty (30) days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the deed, grant or easement, and provided there are no difficulties in clearing liens or other problems with title to the land. Possession will be required thirty (30) days after you have received your payment in full.

If an LPA requests that the forms be branded differently in the header and/or footers, please complete all the form fields, then follow the instructions available at www.in.gov/indot/3260.htm, entitled "Modifying State Forms for LPA Use" to remove INDOT/State of Indiana branding.

Please be sure to "lock" the form again after modifying the branding so that all form fields will continue to function properly.

SIGNATURES

For transactional agreements, such as the acceptance of INDOT's offer or conveyance documents, any electronic signatures must comply with Indiana law, including Ind. Code 26-2-8. Parties to an electronic transaction must both agree to conduct the transaction electronically. For electronic documents that are not transactional, i.e., the document does not create an agreement between the parties, signatures included in the document do not need to be verifiable through software security procedures, however, consultants and staff should maintain careful processes to ensure that others are not using their signature on documents. Please refer to the Securing Section of the Buying Procedures Chapter for additional information.

ITAP – REAL ESTATE RESOURCES

ITAP is the INDOT Technical Applications Pathway. This is a password-protected portal to a variety of online tools such as Capital Project Funding System, (CapWise), Land Record System, (LRS), Scheduling Project Management System, (SPMS), Professional Services Contracting System, (PSCS), Electronic Records Management System, (ERMS), ProjectWise, and the Real Estate Resources page. ITAP can be found at itap.indot.in.gov and requires application and approval to gain access. The applications available through ITAP require further application and approval once access to ITAP is obtained.

QUALITY ASSURANCE

49 CFR 24.4 (a) (2),
If a Federal Agency or State Agency provides Federal financial assistance to a "person" causing displacement, such Federal or State Agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

While INDOT is ultimately responsible for ensuring that all Federal and State requirements are met for State and Local projects if even one dollar is used at any phase of the project, it is also the responsibility of every individual that is involved in Right of Way. All Right of Way agents, whether they are INDOT employees, Local Public Agency employees or consultants, must make an effort to assure the highest quality possible in every step of the process. This can be achieved through peer review, researching the Uniform Relocation Act, State laws and the INDOT Real Estate Manual for proper procedure, and consulting with INDOT Central Office Supervisors and/or Managers.

While problems with compliance can be caused by not following the regulations that are designed to ensure fair and consistent treatment, some problems actually occur through simple mistakes. A mathematical or typographical error can lead to major problems. Agents are expected to take steps to prevent clerical AND procedural errors, and will be evaluated as such.

FILE MANAGEMENT

The Federal Highway Administration requires the following regarding Right of Way acquisition, property management and relocation records:

23 CFR 710.201(e) and (h)
(e) Record keeping. The acquiring agency shall maintain adequate records of its acquisition and property management activities.
(1) Acquisition records, including records related to owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with this part and 49 CFR part 24. These records shall be retained at least 3 years from the later of either:
(i) The date the SDOT or other grantee receives Federal reimbursement of

the final payment made to each owner of a property and to each person displaced from a property; or

(ii) The date of reimbursement for early acquisitions or credit toward the State share of a project is approved based on early acquisition activities under § 710.501.

(2) Property management records shall include inventories of real property interests considered excess to project or program needs, as well as all authorized ROW use agreements for real property acquired with title 23 funds or incorporated into a program or project that received title 23 funding.

(h) Assignment of FHWA approval actions to an SDOT. The SDOT and FHWA will agree in their Stewardship/Oversight Agreement on the scope of property-related oversight and approvals under this part that will be performed directly by FHWA and those that FHWA will assign to the SDOT. This assignment provision does not apply to other grantees of title 23 funds. The content of the most recent Stewardship/Oversight Agreement shall be reflected in the FHWA-approved SDOT ROW manual. The agreement, and thus the SDOT ROW manual, will indicate which Federal-aid projects require submission of materials for FHWA review and approval. The FHWA retains responsibility for any approval action not expressly assigned to the SDOT in the Stewardship/Oversight Agreement.

INDOT, Local Public Agencies, and Consultants are required to maintain parcel files with records of all documents, activities, contacts with displacees and/or their representatives, and invoices of all services and expenses for the length of time according to the Indiana Commission on Public Records. Agents should be able to provide documentation within a reasonable timeframe upon request by INDOT, a Local Public Agency, Federal agents, or their representatives.

All files must be maintained in a manner that protects the confidentiality of all parties involved. Precaution should be taken when transferring information, whether in printed form or by electronic means such as a file transfer site, email or fax. Furthermore, when the retention period has ended, documents that contain personal or sensitive information must be treated with utmost care in their disposal. This applies to printed documentation as well as electronic records.

LOCAL FIELD OFFICES

The decision to establish a local field office is the responsibility of the acquiring agency and is an integral part of the relocation planning process. The decision should be made prior to the acquisition stage of the project and should be based on the anticipated volume of work and the needs and characteristics of the persons to be displaced. Early opening of an on-site office usually encourages communication by the project occupants. This is valuable from a public relations standpoint and facilitates relocation activities on a project.

A local field office should be located at a convenient site that is readily accessible, preferably near the project and to the persons displaced by the project. If possible, it should be located within walking distance or be convenient to public transportation. The office hours should be convenient for project residents and include evening hours if necessary. It is also good policy to employ

persons in the local field office who are intimately familiar with the project area and the problems of its residents. Local personnel can be a tremendous asset to any relocation program.

The following information should be made available in a local relocation office:

1. Copies of Acquisition and Relocation Brochures.
2. Project plan sheets illustrating the project and the surrounding area.
3. Current lists of comparable replacement housing that are for sale and for rent, which are available without regard to race, color, religion, sex, age or national origin. The listings must be suitable in price and size to fulfill the needs of the individuals and families being displaced
4. Current lists of available business and farm properties for rent or for sale when such properties are being acquired by the project
5. Current information regarding security deposits, typical down payment requirements, mortgage interest rates and terms, and average closing costs for residential property in the area
6. Multiple listing services, apartment directory services, neighborhood and metropolitan newspaper advertisements where available, and various other sources of information regarding residential dwelling units
7. Maps indicating the location of schools, parks, playgrounds, shopping areas, places of major employment, health facilities, public transportation routes and other amenities in the area
8. Schedules and cost of public transportation
9. Copies of local housing codes, ordinances, and local building codes
10. Consumer education literature on housing, shelter costs, family budgeting, and other pertinent information useful to displacement

The local field office can be beneficial to the acquiring agency as well as to displaced persons if it is supplied with qualified personnel. The local office can be a valuable tool in building confidence in the acquiring agency.

If a local field office is not established, it is still very important that the information listed above be made available to displaced persons.

POLICY, PROCEDURES AND REGULATIONS

There are laws, regulations and policies too numerous to mention which govern INDOT's actions. Federal Regulations, Title 23 CFR Part 710 (Federal Highway Administration Right of Way and Real Estate); and Title 49 CFR Part 24 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs) govern INDOT's acquisitions. This chapter will cite some of the more common authorities and procedures which may be questioned or challenged by property owners. The Acquisition Section's policies have been established in the previous chapters. Other questions regarding design standards and construction practices will require the Agent seek advice from the appropriate source; i.e. the Project Management Section, the design consultant, the District construction engineer, the Project Manager or the INDOT Standard Specification manual.

AUTHORITIES GRANTED INDOT UNDER THE INDIANA CODE

IC 8-23-7-26; **the authority to enter upon private property** for the purposes of surveying, investigating, boring, archeological digging, etc. with a 5 day advance written notice.

IC 8-23-7-28; provides for **compensation for damages caused by entry** onto the property under IC 8-23-7-26. If an owner complains of damage caused by survey crews, which will not be compensated in the offer to purchase, the Agent should refer the owner to the district development engineer. If a damage claim is not satisfactorily resolved, the owner has the right to sue for damages in the county circuit court.

IC 8-23-7-13,14,15 & 16; **sale of excess property.** These sections establish the procedures for disposing of excess land. **1.** The land must be declared excess, which will not occur until the project is completed. **2.** INDOT will offer the land to the owner of the property from which the land was separated at the appraised fair market value. If the acquisition was a total taking and thus no residual owner, the land may be sold to the public at fair market value of less than $4,000. **3.** If the land is valued at more than $4,000 it must be offered to the public through advertisement and sold to the highest bidder.

Land improvements which are not retained by the owner may be auctioned by INDOT. If they do not merit an auction, or time will not allow for an auction, the improvement will become the property of the demolition contractor who may sell, salvage or demolish it.

IC 8-23-5-1; **authority to remove encroachments**. Encroachments may be removed by INDOT after giving a 30 day written notice to the owner. The cost of removal will be billed to the owner. An exception to this is an aerial overhang which existed prior to August 12, 1963. This encroachment may be allowed to remain if INDOT determines that it poses no safety hazard.

IC 8-23-6-6; authorizes INDOT to require and **issue permits** for improvements to be constructed within the public Right of Way: i.e. driveway approaches, sewer pipe connections, etc. Failure to obtain a permit prior to construction is a Class C infraction. Please note that the development of a property, including the construction of a drive access, is the owner's responsibility. INDOT will reconnect an existing drive, or construct a new drive to replace an eliminated drive or to provide

access to a residue which is landlocked due to the taking. If an owner asks for a new drive, the Agent should explain that the owner must submit a drive permit application to the district permit engineer.

IC 8-23-7-5 & 6; an owner may not subdivide a property or erect any improvements after receiving a **notice of intent to acquire** (an offer letter) without first notifying INDOT of the intended use. INDOT has 90 days after receiving notice of the intended improvements in which to acquire the property or commence condemnation proceedings.

IC 8-23-7-10; INDOT will **publish a list of the owners** names, areas acquired and the price paid. INDOT chooses to publish the entire list of owners on a project at the completion of the acquisition phase.

INDOT STANDARD SPECIFICATIONS

The Standards and Specifications can be referenced via: www.in.gov/dot/div/contracts/standards

107.08(e) & 611.05; the contractor will reconstruct **private roads and mailboxes** as soon as possible to minimize inconvenience to property owners. During construction the contractor will remove the mailbox and its stand, offering the owner the opportunity to store it. A temporary mailbox assembly secured on top of a 55 gallon drum will be installed outside of the construction area. The contractor is responsible for installing a permanent mailbox assembly, approved by the U.S. Postal Service and meeting FHWA crash test standards, of comparable size to the mailbox which was removed.

107.13 ; the contractor is responsible for damage or injury to property resulting from defective work or materials...

107.14 ; the contractor is **not allowed to enter upon private property** without the permission of the owner. The contractor shall erect a **temporary fence** in temporary easement areas which contain livestock. The offer to purchase will compensate the owner for erecting permanent fence once the work is completed. The owner should coordinate the timing of the fence construction with the project engineer in order to assure that the area is continuously fenced.

107.16; any **damage caused by the contractor** outside of the Right of Way is a basis for a damage claim by the owner. The owner should contact the project engineer to file the claim.

104.04; "**Temporary approaches** to businesses, parking lots, residences, garages, farms, and crossings and intersections with trails, roads, and streets shall be provided in a safe condition." The Right of Way Agent should inform the owner that while the temporary access may not be desirable (i.e. muddy or rutted), INDOT will provide reasonable access at all times, except during periods of actual drive construction and associated improvements such as drainage pipes.

GENERAL STANDARDS & POLICIES

INDOT will **seed** the Right of Way in areas considered to be rural or agricultural. **Sod** will be laid in areas considered to be residential or commercial.

Temporary easements will be restored to their original condition. If improvements in the temporary easement must be moved or replaced the owner will be compensated under the land acquisition offer.

While it is common knowledge that the sale of property is subject to capital gains **income tax**, the Right of Way Agent shall not give any advice or explanation of how the sale will affect the owners' tax status. Explain that tax status is a complicated field and the owner should review the issue with the IRS or their accountant.

Indiana Code (IC 25-39-4-6) requires that all **abandoned wells** be capped. If the project requires a property with a water well which is not shown on the plans the Right of Way Agent will locate the well and notify Design to reflect it on the plans. The Agent will note all wells on the Status Report as a land improvement purchased in order to notify Property Management of the need for capping.

When purchasing any building or mobile home the Right of Way Agent should explain to the owner that the **transaction is not final until payment is received**. Therefore, the owner should **maintain insurance** until payment is received AND the building is vacated. Any fire or accident which would occur prior to payment would cause the property to be reappraised and the owner would need to seek reimbursement from the insurance company. Losses or liabilities which occur after payment is made but while the owner still occupies the building must be covered by the owner’s insurance.

The owner should also be advised to **continue to make payments on the mortgage and real estate taxes** during the interim period while a closing is pending.

EARLY ACQUISITION
ALTERNATIVES UNDER FEDERAL LAW

Federal law requires FHWA to not accept property as a contribution towards a Federal program or project unless certain federal statutes and regulations were complied with during the acquisition and relocation process. 42 U.S.C. § 4627.

In addition, the National Environmental Policy Act ("NEPA") requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions about projects. Using the NEPA process, agencies evaluate the environmental and related social and economic effects of their proposed actions. An acquisition being funded under normal federal funding process would not proceed beyond the appraising process unless and until the environmental review process under NEPA has been completed and a decision has been issued. A proposed project has three possible levels of environmental assessment: Categorical Exclusion (CE), Environmental Assessment (EA) or Environmental Impact Statement (EIS). Project actions which do not individually or cumulatively involve significant social, economic, or environmental impacts result in a CE or EA.

Federal regulations provide for a variety of alternative property acquisition processes if there is a need to acquire property early, prior to the completion of the environmental review process; these early acquisition processes, if correctly followed, allow for INDOT or an LPA to maintain eligibility for future Federal assistance. 23 CFR § 710.501. This section of this manual describes these alternatives.

OVERVIEW OF THE EARLY ACQUISITION OPTIONS

Certain early acquisition alternatives that can be pursued prior to a NEPA decision include:

(a) State/LPA funded acquisitions without federal credit or reimbursement;

(b) State/LPA funded early acquisitions eligible for future credit; and

(c) State/LPA funded early acquisitions eligible for future reimbursement.

These types of early acquisitions of real property take place without contemporaneous Federal-aid participation and prior to completion of environmental review under NEPA and are commonly referred to as "at risk" acquisitions. These acquisitions must comply with the Uniform Act and must not influence the decision of the environmental review process of the project required under NEPA. When INDOT or an LPA proceeds with early acquisition using its own money, even though federal funds are not being used, FHWA must nonetheless make certain that the acquisition actions do not affect the environmental analysis or review of the project, or bias the FHWA's decisions on the project. A State undertaking State-funded early acquisitions is doing so subject to the risk that the State may purchase Right of Way that is subsequently not used in a federally-assisted project either because the NEPA process yields a different decision than that which motivated the State to engage in early acquisition in the first place, or because the FHWA determines the standards for avoiding bias were not satisfied.

In addition to the foregoing early acquisition alternatives, a different early acquisition alternative can be pursued using a standalone transportation project where a separate NEPA decision is obtained for that standalone project, includes federally funded early acquisitions. This type of early acquisition is commonly referred to as MAP-21.

Finally, there are a variety of additional alternative advance acquisition options, including:

(a) Protective buying; and

(b) Hardship acquisitions.

A chart with guidance about all of these options is available at FHWA's website here.

Failure to comply with requirements in 23 CFR § 710.501, 49 CFR § 24, and other federal regulations during an acquisition could result in a transportation project losing its eligibility to obtain future Federal assistance.

4(F) PROPERTIES

If proceeding under an early acquisition process, the State or an LPA cannot acquire what is considered a "4(f) property." Acquiring a 4(f) property prior to a NEPA decision using an early acquisition alternative may result in the State or LPA losing its eligibility for Federal assistance on their proposed transportation project. These types of properties, referred to as 4(f) properties due to the original location of the statutory provision being located in Section 4(f) of the Department of Transportation Act (DOT Act) of 1966, include publicly owned park and recreation areas that are open to the general public, publicly owned wildlife and waterfowl refuges, as well as public or privately owned historic sites. (The current location of the applicable laws are now codified in 49 U.S.C. §303 and 23 U.S.C. §138.) The term historic sites includes prehistoric and historic districts, sites, buildings, structures or objects listed in, or eligible for, the National Register of Historic Places. This may also include places of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. Sometimes, you may encounter properties that do not fit neatly into one of these categories. Such properties may belong to one or more of the four basic property categories identified by the statute, and may or may not be protected by Section 4(f), depending on a variety of other factors. More information on 4(f) properties can be found at FHWA's website here.

Although 4(f) properties cannot be acquired using the early acquisition alternatives that use state or local funds, if appropriate procedures are followed, 4(f) properties can be purchased using the alternative advance acquisition options of protective buying and hardship acquisitions.

REQUIREMENTS FOR EARLY ACQUISITION ALTERNATIVES

710.501 – Early acquisition.
(a) General. A State agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The State agency may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor

preservation, access management, or other purposes. Subject to the requirements in this section, State agencies may fund Early Acquisition Project costs entirely with State funds with no title 23 participation; use State funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (e) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally assisted transportation projects.

EARLY ACQUISITIONS WITHOUT FEDERAL CREDIT OR REIMBURSEMENT

INDOT or a LPA can acquire property at its own expense, with no plan to get Federal credits or reimbursement, and incorporate that property into a transportation project. For that transportation project to be eligible for future Federal assistance, however, the acquisition has to have complied with the requirements of 23 CFR § 710.501(c)(1) through (5), which are:

(1) The property was lawfully obtained by INDOT or the LPA;

(2) The property is not a 4(f) property;

(3) Acquisitions and relocations complied with the Uniform Act;

(4) INDOT or the LPA complied with Title VI of the Civil Rights Act; and

(5) FHWA concurs that the early acquisition did not influence the NEPA decision for the proposed transportation project, including;

   a. The need to construct;

   b. The consideration of the alternatives; or

   c. The selection of design or location.

Failure to comply with these requirements could result the loss of eligibility for federal funds for the entire transportation project. If INDOT or the LPA wants a project to be eligible for title 23 funding in any phase, title 23 acquisition requirements including compliance with the Uniform Act must be met.

EARLY ACQUISITIONS ELIGIBLE FOR FUTURE CREDIT

INDOT or an LPA can acquire property at its own expense and later incorporate that property into a transportation project or program and obtain future credit for the direct eligible costs if the following requirements of 23 CFR § 710.501(c)(1) through (5) are met:

(1) The property is lawfully obtained by INDOT or the LPA;

(2) The property is not a 4(f) property;

(3) Acquisitions and relocations comply with the Uniform Act;

(4) INDOT or the LPA complies with Title VI of the Civil Rights Act; and

(5) FHWA concurs that the early acquisition did not influence the NEPA decision for the proposed transportation project, including;

a. The need to construct;

b. The consideration of the alternatives; or

c. The selection of design or location.

INDOT or the LPA may obtain credit in the amount of the current fair market value or the historic acquisition costs to acquire; this credit must be applied consistently within the transportation project subject to 23 U.S.C. § 323(b). Title 23 U.S.C. 323 allows INDOT to credit the non-federal share of project costs with the fair market value (FMV) of lands donated or lawfully obtained, and/or donated materials, and services that are incorporated into a specific transportation project. 23 U.S.C. 323(b)(3) states that donations made by a Federal agency are not eligible for credit toward the project matching share. In addition, 23 CFR 710.507(b) provides that credits are not available for lands acquired with any form of Federal financial assistance, or for lands already incorporated and used for transportation purposes.

EARLY ACQUISITIONS ELIGIBLE FOR FUTURE REIMBURSEMENT

For INDOT or an LPA to be able to obtain reimbursement for property acquired at its own expense, not only will the requirements of § 701.501(c)(1) to (5) have to be met, but in addition, INDOT or the LPA also have to demonstrate that it has met the following requirements:

(1) The State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition;

(2) The acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to 23 U.S.C. 135;

(3) The alternative for which the real property interest is acquired is selected by the State pursuant to regulations issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(4) Before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the real property interest was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws that shall be identified by the Secretary in regulations; and

(5) Before the time that the cost incurred by a State is approved for Federal participation, the Secretary has determined that the property acquired in advance of Federal approval or

authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection

Reimbursement of acquisition costs will be based on the usual costs to acquire in 23 CFR § 710.203(b)(1).

FEDERALLY FUNDED EARLY ACQUISITIONS (STANDALONE PROJECT)

These acquisitions, frequently referred to as MAP-21 acquisitions based on the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) ("MAP-21") that was signed into law on July 6, 2012, are federally funded early acquisitions, as opposed to the other early acquisition alternatives which are state or local funded. For an acquisition to be approved as a MAP-21 acquisition, an environmental review process must have been completed (usually a CE) prior to the requesting of federal funds for the acquisition.

When a parcel is identified for early acquisition under MAP-21 rules, **it must be acquired without the threat of condemnation**. Even though the threat of eminent domain is not to be used with these offers, relocation benefits must be provided for any displaced individuals or businesses. If the early acquisition offer is not accepted within the negotiation period, it will not be processed for condemnation. Instead, it will be rescinded in writing.

The property owner may receive another offer in the future that will not be considered "early acquisition." It is also possible that after the early acquisition offer is rescinded, there will be no other future offer. If this other future offer is not accepted and an agreement cannot be made on the acquisition within the negotiation period, INDOT will have the right to file suit to condemn and appropriate the required acquisition. For federal consideration of funding, the LPA or INDOT must be able to certify that the following requirements have been met:

- That there is authority to acquire under Indiana law;
- That the acquisition is for a Title 23 eligible transportation project and does not involve 4(f) properties;
- That the acquisition will not cause significant adverse environmental impacts because of the early acquisition project or from cumulative effects of multiple early acquisition projects carried out in connection with the transportation project;
- That the acquisition will not limit the choice of reasonable alternatives for the transportation project or otherwise influence the decision of FHWA on any approval required of the transportation project;
- That the acquisition will not prevent FHWA from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;
- That the early acquisition project is consistent with the State transportation planning process under 23 U.S.C. 135;

- That the acquisition process will comply with other applicable Federal laws;
- That the acquisition will be acquired through negotiation, without the threat or use of condemnation.
- That INDOT or the LPA will not reduce or eliminate relocation benefits under the Uniform Act and Title VI of the Civil Rights Act;
- That the early acquisition project is in the applicable Transportation Improvement Program(s); and
- That NEPA for the early acquisition project is complete (including compliance with 23 CFR 710.501(e)(4)) and approved by FHWA.

No developmental activity related to the demolition, site preparation, or construction that is not necessary to protect health or safety may be undertaken on the acquired property; if developmental work is needed to protect health or safety, advance FHWA approval is required. Real property interests acquired must be incorporated into a transportation project within 20 years.

ADVANCE ACQUISITION ALTERNATIVES

23 CFR 710.503 also allows INDOT to seek, prior to approval of the environmental document, FHWA's agreement to reimburse for the advance acquisition of a particular parcel or a limited number of parcels in order to prevent imminent development and increased costs on the preferred location (protective buying), or to alleviate hardship to a property owner or owners on the preferred location (hardship acquisition), provided the following four conditions are met:

1. The project is included in the currently approved statewide transportation improvement program (STIP).

2. INDOT has complied with applicable public involvement requirements in 23 CFR parts 450 (public involvement in the planning process) and 771 (any public involvement, coordination, and notifications required by the environmental process). The expectation for adequate public involvement in conjunction with protective buying and hardship acquisition is that the general public has had reasonable opportunity to be aware of the project for which the property is to be acquired and that sufficient outreach activities have been conducted such that scope of the project and range of alternatives and preliminary alignment locations to be evaluated through the environmental process have been shared with the public. Public involvement can be accomplished through one or more of the following activities:

    a. Corridor studies.

    b. Development of a metropolitan planning organization (MPO) long range transportation plan.

    c. Development of an MPO transportation improvement program (TIP).

d. Development of a statewide TIP (STIP).

e. Development of a city or county comprehensive plan.

3. A determination has been completed for any property that is subject to the provisions of 23 U.S.C. 138, also known as a Section 4(f) land, e.g. public park and recreation lands; wildlife and waterfowl refuges; and historic sites. This can be accomplished by one of the following, as appropriate:

    a. Documenting that the property in question does not qualify for protection under Section 4(f).

    b. Providing a Section 4(f) determination in which the concluding statement specifies that there is no feasible and prudent alternative to the use of the Section 4(f) property and that the proposed action includes all possible planning to minimize harm to the Section 4(f) property resulting from such use.

4. Procedures of the Advisory Council on Historic Preservation are completed for properties that are subject to 16 U.S.C. 470(f), Section 106 historic properties. This can be accomplished by either of the following, as applicable:

    a. Documenting that the property in question does not qualify for protection under Section 106.

    b. Providing Section 106 process documents which demonstrate that one of the following applies to the proposed acquisition and subsequent use of the property in question:

    - no historic properties will be affected,
    - no historic properties will be adversely affected, or
    - acquisition and use of the property is consistent with the Section 106 memorandum of agreement concerning the proposed action.

PROTECTIVE BUYING

INDOT must demonstrate that development of the property is imminent and that such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase, but cannot be the sole criteria. Examples of information to demonstrate that development of the property in question is imminent and could result in the loss of alternatives include:

a. Development requests, including plat and building permit requests.

b. Analyses demonstrating the cost impact if the property were to be developed beyond its current use.

The Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance (HMA)

acquisition programs including the Hazard Mitigation Grant Program may be available to acquire properties which have been impacted by flooding. The requirements for FEMA's acquisition are found in 44 CFR Part 80. Protective buying can be considered if parcels within the affected flooded corridor are subject to imminent purchase under the HMPG and HMA programs when purchase deed restrictions would impede future transportation choices [23 CFR 710.503] Only the FHWA can approve protective buying, after INDOT has asked FHWA for approval.

HARDSHIP ACQUISITION

INDOT may concur in a request for a hardship acquisition based on a property owner's written submission that:

a. Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

b. Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

Information and documentation supporting the property owner's request for hardship acquisition is based on one of the following categories:

1. Health

    a. Debilitating illness or injury, ambulatory or other major disability or handicap of a long-term nature, where present housing facilities are inadequate or cannot be maintained by the owner, causing an undue hardship compared to others awaiting project development.

    b. Other extraordinary conditions posing a significant threat to the health, safety, and/or welfare of the owner-occupant or a member of his/her household for whom he/she is responsible.

    c. Acceptable documentation for either health category includes a doctor's statement clearly stating the medical reason the patient should relocate.

2. Financial

    a. Job transfer verified by employer or other source.

    b. Pending bankruptcy, mortgage foreclosure, tax sales, etc., including copies of actual documents.

    c. Any documented situation similar in impact to those stated above.

and, documents the inability to sell the property because of impending project, at fair market value, within a time period typical for similar properties not impacted by the project (a minimum of 3

months). Acceptable documentation includes the real estate listing agreement with broker's statement indicating the property is not marketable due to the impending highway project. Also accepted would be proof of the owner's attempt to market the property themselves through local newspaper advertising (minimum of 3 advertisements).

The use of eminent domain is not prohibited on hardship acquisitions but FHWA prefers it to only be used when it is warranted for both the property owner and the agency. An example of when it would be warranted would be when INDOT or the LPA cannot otherwise clear liens or encumbrances from the property with the agreement of the other interest holders.

Acquisition of property under 23 CFR 710.503 shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location. Parcels authorized using 23 CFR 710.503 must be incorporated into the final project in order to retain eligibility for Federal-aid participation, per 23 CFR 710.203(b) on direct eligible costs. Only the FHWA can approve hardship acquisitions, after INDOT has asked FHWA for approval.

INDOT PROCEDURE

The Early Acquisition process begins when an INDOT Project Manager requests approval of funds through INDOT Project Financing. If the funding can be approved, Project Financing, in turn, coordinates the approval process with FHWA. If the acquisition is approved for early acquisition, the Project Manager notes the parcels as At-Risk in SPMS (Scheduling Project Management System) and coordinates early acquisition efforts with the Real Estate Division.

LOCAL PUBLIC AGENCY PROCEDURE

Unless otherwise noted, the provisions for state DOTs apply to Local Public Agencies (LPAs). Federal regulations consider the LPA to be a state agency and, as such, the Federal requirements for state agencies apply to LPAs that wish to use Federal funds in its transportation project. FHWA provides guidance at fhwa.dot.gov/federal-aid essentials. To assure compliance with Federal regulations, Local Public Agencies should consult with the appropriate INDOT District Office for clarification, when necessary, or for additional information.

Local Public Agencies should develop and consistently follow procedures similar to INDOT's for identifying and obtaining approval for early acquisitions. Please note that this acquisition method does not allow for parcels to be acquired early in order to avoid following the protections required by the Uniform Act. Failure to demonstrate compliance with Federal Uniform Act regulations at all stages of the project will result in loss of all federal participation.

PROPERTY ACQUIRED PRIOR TO PLANS FOR PROJECT

ACQUISITIONS OF PROPERTY NOT FOR AN INTENDED, PLANNED, OR DESIGNATED PROJECT

Projects using property acquired by the State or by an LPA that was not acquired to be a part of an intended, planned, or designated project, where the regulations Subpart B of 49 C.F.R. § 24

were not followed, may still be eligible for federal assistance as long as the following applied to the acquisition:

1) No specific site or property needed to be acquired by INDOT or the LPA; if more than one property was acquired, all owners were treated similarly;

2) The property acquired was not a part of an intended, planned or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits;

3) The property owner was told, in writing, that the acquiring agency would not acquire the property if negotiations failed to result an amicable agreement, i.e., condemnation cannot be threatened;

4) The State or LPA informed the owner, in writing, of what it believed the market value of the property to be; and

5) If any tenants needed to move as a result of the acquisition, they were provided relocation benefits. (Although tenants are considered displaced persons, the owners of the property acquired through voluntary agreements pursuant to these types of processes are not considered displaced persons.)

49 C.F.R. § 24.101. INDOT or the LPA should retain all documentation needed to demonstrate to FHWA that the acquisition complied with these requirements. These acquisitions might not eligible for reimbursement or credit if used with a federal aid project in the future; a failure to comply with the above requirements during the land acquisition process could result in a project being denied the use of federal funds if it is later determined the property is needed for a project.

DONATIONS, EXACTIONS OR DEDICATIONS PRIOR TO PROJECT

ROW acquired through zoning or subdivision procedures requiring donation, exaction, or dedication of strips of land through the normal exercise of police power is not considered an acquisition or taking in the constitutional sense. Thus, payment of just compensation and compliance with the provisions of the Uniform Act and 49 CFR Part 24 may not be required, since police power is being used. ROW acquired through the exercise of police power, that occurs some time prior to the initiation of a project, can be considered lawfully obtained in accordance with 23 U.S.C. 323 (b)(1)(A). If such property is incorporated into a project at a later date, this property may be eligible for credit toward the project match. That said, ROW being acquired for a current project is considered to be "under the threat of eminent domain" and is subject to the requirements of the Uniform Act and 49 CFR Part 24. ROW currently being acquired for a specific project cannot be acquired through a dedication, exaction or forced donation. This will be considered to be undertaken to circumvent Federal requirements and can result in the withdrawal of federal-aid funds from all phases of the project, including construction. See FHWA's Project Development Guide, Donations, Lands Acquired Early, and Matching Share Credit for more information.

FUNCTIONAL REPLACEMENT

The transportation needs for the public must be balanced with the other peace, safety, and wellbeing needs for the public for whom Indiana's government is instituted. When the Department of Transportation has determined that a publicly owned property, essential to the peace, safety, and well-being needs of the public, must be acquired for a transportation project, fair market valuation is not the appropriate method for valuing such property, but rather, a replacement property must be provided to the public to ensure that the needs of the public does not suffer as a result of the highway project. To this end, the Department will functionally replace publicly owned properties that provide needed public services. Examples may include schools, police and fire stations, parks, recreational areas, municipal garages or maintenance facilities, libraries and city or county government buildings and other public-owned areas. For parks and recreation areas, Sec. 4(f) provisions of the US Department of Transportation (DOT) Act of 1966 may apply. The real property cannot be owned by a utility or railroad.

The functional replacement concept permits federal participation in costs of acquiring an adequate replacement site if one is required and the construction costs of the replacement improvements that duplicate the function of the acquired improvement. This concept requires that the facility must be needed by the public, must be actually replaced and the costs to presently replace the facility or cure damage to it be actually incurred by the public agency. Indiana Code Section 8-23-17-30 empowers the Indiana Department of Transportation (INDOT) to take actions as necessary in order to put into effect policies that comply with federal law and regulations, and pursuant to this, INDOT has the authority to create and implement provisions that assist INDOT with consistent application and administration of functional replacement benefits. The functional replacement concept may also be applied to state-funded projects.

The intention of functional replacement is to consider providing additional assistance when it is recognized that the Fair Market Value compensation for the acquisition of the public facility may be insufficient to restore it to the level needed to provide the same services which were being provided at the subject site. Costs of increases in capacity and other betterments or enhancements are not eligible for federal or state participation except where necessary to replace the facility's utility, unless required by existing codes, laws or zoning regulations, or related to reasonable prevailing standards for the facility being replaced. Because of the added review, oversight and approval associated with the functional replacement process, the importance of early coordination cannot be over emphasized. If you anticipate functional replacement will apply to a project, contact the Real Estate Division as soon as possible to discuss specifics. The agency owning the public facility, at its option, may choose to accept conventional Fair Market Value compensation provided through INDOT's standard acquisition process, in lieu of functional replacement.

When the department determines that functional replacement of real property in public ownership and public use may be necessary and in the public interest, state funds may participate in the payment to the public agency for:

- Functional replacement costs of improvements required to be replaced exclusive of increases in capacity or betterments; and

- Market value of land owned by the public agency when that public agency has land upon which to relocate facility; or

- Reasonable cost of acquiring a comparable, substitute site where lands owned by the public agency are not available for use in relocating the facility.

For federal participation in functional replacement, FHWA must provide prior approve for the acquisition. The provisions of 23 CFR Section 710.509 should be reviewed to assure compliance with federal regulations pertaining to functional replacement of real property in public ownership. The acquiring agency will prepare an early costs estimate of functional replacement to include all eligible costs.
Prior to the initiation of real estate services, the Project Manager should identify any parcel acquisitions that may meet the definition of functional replacement. If such a parcel is identified, the following approvals and steps must be followed:

1. The INDOT or LPA Project Manager must contact INDOT's central office acquisition section manager regarding the possibility of functional replacement when publicly owned real property, including land/or facilities, is to be acquired for a federal aid or a state funded project.

2. INDOT and FHWA, if applicable, will agree on scope of required oversight prior to initiation of functional replacement. INDOT's Real Estate Division Director will seek and provide all necessary approvals prior to initiation of functional replacement.

3. The acquiring agency should meet early in process with the public agency and inform the agency in writing of their right to just compensation based on appraisal of fair market value and of the option to choose either just compensation or functional replacement. Amount of functional replacement shall be limited to difference between approved offering price based on an appraisal of market value and actual cost to replace facility with an equivalent facility as defined in 23 CFR 710.509 provided below in this chapter.

4. Parcels approved for functional replacement, shall have a mutually acceptable course of action developed with owner via a Memorandum of Understanding (MOU) agreement. Action may include discussion on functional equivalency of facility and need to obtain bid estimates for necessary construction.

5. INDOT's Real Estate Division management will have responsibility to review and approve final costs estimates for state funded projects. If federal funds are involved, estimates must be processed through INDOT's Real Estate Division who will obtain necessary review and approval from FHWA.

6. Functional replacement funds over the approved acquisition amount will be processed through the established MOU agreement.

7. A portion of replacement funds will be held until construction is complete to ensure replacement actually takes place and costs have actually been incurred. The terms of the distribution of the

function replacement funds will be outlined within the MOU agreement.

8. Total cost of functional replacement will be based on a written estimate of construction (approved by INDOT) and either market value or reasonable, actual cost of acquiring a comparable substitute site.

9. All other Real Estate service functions to include but not limited to; appraising, buying, relocation, finance, and property management services will be provided as needed and established within the INDOT Real Estate Division manual.

23 CFR 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

(2) The property in question is in public ownership and use

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

(4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are -

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) Procedures. When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate

within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

CROP DAMAGE CLAIMS

*** These instructions assume the damage is due to a State project. For LPA projects, the contacts, tort claim process and the voucher will differ, but the basic process should be the same. Please contact the LPA for specifics. ***

DETERMINING IF CROP DAMAGE PROCEDURES APPLY

The following procedure applies only to claims that fit in one of the following categories:

1. Crops acquired upon acquisition of a parcel: Sometimes we will acquire crops when we take title to a parcel. We pay for these crops in the same manner as we acquire any interest real estate.
2. Survey and Inspection: INDOT has a Right of Entry onto property to conduct surveys and inspections before a parcel is acquired during the condemnation process. IC 8-23-728 provides for the process for paying people that have crops damaged when we undertake those activities. This category may only be used for damage caused during planning phases of a project and only when INDOT or a contractor/consultant enters onto property in order to conduct a survey or other investigation. It shall not be used for damage caused after construction begins.
3. Breach of Contract: Sometimes, a right-of-entry, easement, Right of Way grant or other document will provide that INDOT will pay crop damages in certain cases. In this case, the claim should be processed as a breach of contract claim and INDOT will pay the claim.

If the damaged property does not fit the categories described above, the claim must be resolved through the tort claim process. Common tort claims may include damages suffered from chemical spraying by INDOT or flooding caused by INDOT design or construction errors. The required Tort Claim Notice can be found here. The claimant should submit the completed form to the Office of the Attorney General at the address shown on the form. **INDOT is not authorized to pay any crop damages when a tort claim should be filed.**

CROP DAMAGE CHECKLIST

1. Determine if INDOT may handle the crop damage or if the claimant must file a Tort Claim.

2. If a Notice of Tort Claim must be filed, provide claimant with a link to the claim form and proceed no further. If no Notice of Tort Claim must be filed, proceed with the following steps.

3. Use the Crop Damage Workbook (Online Forms) to find instructions and all the forms necessary to calculate and submit a Crop Damage claim.

4. Obtain a completed Vendor Information (W-9) from the claimant and complete Report of Crop Damage. The report will need to be printed to add a sketch of the damaged area and sign the form.

5. Scan and e-mail the W-9 to INDOT Real Estate Finance. It is important this is submitted as soon as possible so that payment will not be delayed. The Auditor will accept a scanned copy.

6. Obtain 3 estimates from co-ops or verifiable buyers (ex.: Grain Elevators or early contract-out price for Bio Fuel / Ethanol Plants).

7. Submit Report of Crop Damage, estimates and Compensation Calculation to the Buying Supervisor to obtain Legal approval of the claim.

8. Once the claim is approved, e-mail INDOT Real Estate Finance with the DES, Code and Parcel numbers, and the dollar amount of the claim so that State funds can be set up in advance

9. District personnel will be responsible for creating the Claim Voucher in LRS under the Project tab, not the specific Parcel tab. This will be a Property Damage voucher type.

10. Send Cover Letter, Claim Voucher, appropriate Crop Damage Agreement (Statutory Right of Entry or Breach of Contract), and self-addressed envelope to claimant for signatures. If an owner and a tenant are involved, obtain signatures from all parties, even if there is only one claimant.

11. Obtain District Deputy Commissioner's (DDC) approval signature on Agreement and Claim Voucher after the claimant signs. **Do not** send the Agreement signed by the DDC to the claimant.

12. Send original Claim Voucher, marked "CROP DAMAGE" and **copies** of all executed documents to INDOT Real Estate Finance for payment processing. INDOT Real Estate will send payment and copies of all executed documents to claimant.

13. Obtain proof of payment from Property Management and retain with all **original** documentation for recording and audit purposes.

INDOT INCENTIVE PROGRAM

When deemed necessary for a specific project, INDOT will institute an incentive program. At that time, updated guidelines and procedures will be defined. The option of an Incentive Program is rarely used, and with recent strides in streamlining the acquisition and relocation processes, is becoming less necessary.

The most recent guidelines and procedures used are outlined here for demonstration purposes only - this project was completed and the guidelines are now defunct. Any future guidelines and procedures will supersede what follows.

RIGHT OF WAY INCENTIVE PROGRAM

(Effective of January 1, 2011)

WHEREAS, the Indiana Department of Transportation (hereafter, INDOT) has determined that it is in the best interests of the State of Indiana to expedite the acquisition of Right of Way and subsequent relocation of persons and (personal) property by and through the use of a Right of Way Incentive Program, and

WHEREAS, Indiana law does not prohibit the use of a Right of Way Incentive Program, and

WHEREAS, the United States Department of Transportation by and through the Federal Highway Administration (FHWA) has endorsed the use of Right of Way Incentive Programs as an accepted practice, and has reviewed and approved of INDOT's Right of Way Incentive Program for use in acquiring Right of Way and/or relocating persons and (personal) property to facilitate the construction of select INDOT Projects, and

COMES NOW, INDOT by and through this Right of Way Incentive Program, effective January 1, 2011, the plan and program details of which are as follows:

PROGRAM GUIDELINES:

PURPOSE

To support, facilitate, and expedite INDOT's overall mission to "plan, build, maintain, and operate a superior transportation system, enhancing safety, mobility and economic growth", by and through the cost-effective acquisition of Right of Way and subsequent relocation of persons and/or (personal) property.

GUIDELINES

1. The Right of Way Incentive Program shall be consistently applied to all property owners on all INDOT projects throughout the State, following a determination by INDOT as to the propriety of use for incentives on each project. Thus, INDOT shall assess the cost/benefit of using incentives on a project-by-project basis.

2. Upon determination of the incentive program's propriety for a specific project, INDOT will prepare an incentive plan for said project. The records and details of the project specific incentive plan shall be maintained in INDOT's central office, and available for review by FHWA upon request.

3. The project-specific incentive plan will analyze the following items to estimate the cost-effectiveness of the incentive payments by way of a reduced Right of Way acquisition time- frame, and other benefits to the traveling public over standard Right of Way acquisition/development processes.
   a. Market trends to identify the annual rate of increase in property values;
   b. Identify adequate available comparable replacement housing supply;
   c. The rate of inflation of construction costs (based on a 5 year average of PPI);

d. The safety benefits to the traveling public resulting from the project's early completion;

e. An otherwise eligible project may be eliminated from the program if circumstances warrant, as documented in a Cost Effectiveness Estimate.

4. INDOT may consider requests from property owners for advanced acquisition of property for at-risk, protective buy, and/or hardship acquisitions on a selected project regardless if incentive payments will be used for that project. However, under no circumstances will advanced acquisitions be eligible for incentive payments since the property owner's request for advanced acquisition reduced the time needed to acquire the Right of Way, and said acquisition was not initiated by INDOT. The advanced acquisition will accomplish the program goal of an expedited time-frame. Thus, the expenditure of public funds for incentives on advanced acquisitions is not justified nor in the best interest of the State.

5. Upon completion of Right of Way acquisitions, INDOT will tabulate the cost of the incentives paid and compare them to the estimated costs associated with standard Right of Way acquisition/development processes. The final cost comparison will be maintained in the Right of Way Incentive Program File, to be reviewed by FHWA annually or upon request.

PROJECT ELIGIBILITY CRITERIA

The minimum project eligibility criteria shall include, but not be limited to the following:

- The estimated project construction cost shall be equal to or greater than $25,000,000, OR
- The project is considered critical to public safety, OR
- The project involves emergency repairs to an INDOT facility, property, or other infrastructure. (Emergency repairs being defined as an emergency declaration by the Governor's office.), OR
- Other project related criteria, evidence, or circumstances deemed integral to the State's interest.

Upon review of the criteria, INDOT will determine whether the use of incentive payments will expedite the project delivery schedule, resulting in significant cost savings and/or improved public safety. The plan will be reviewed for effectiveness each year for the first two years following authorization and as warranted thereafter.

Individual projects that are subparts of a larger project, such as bridges within a major road project, will be included in the program and the cost review despite having separate project numbers assigned.

ACQUISITION INCENTIVE PLAN

30-day Acceptance Period:

The Acquisition Incentive is designed and intended to provide motivation to the property owner to sign and accept the offer to purchase, and all conveyance documents, within 30 calendar days of receiving the offer. The property owner must sign the Acquisition Incentive Agreement within the 30-day acceptance period for the offer to purchase to be eligible for the incentive payment. Upon expiration of the 30-day acceptance period, the acquisition incentive shall be withdrawn and no longer payable to the property owner. Properties with multiple owners may receive offers to purchase on different dates; they shall be afforded the benefit of having the 30-day period begin as of the last date that all owners receive the offer to purchase (*see Multiple Signature Procedures, p. 192*)

The 30-day Acceptance Period shall commence the same day of receipt by the property owner of the offer to purchase, and conclude at 11:59PM on the 30th calendar day thereafter. If the 30-day acceptance period expires on a weekend (Saturday-Sunday) or legally recognized holiday, the next business day (Monday-Friday), shall be considered the 30th and final day of the acceptance period.

Extension of 30-day Acceptance Period – Extraordinary Circumstances:

Only in cases involving extraordinary circumstances, may INDOT's Director of Real Estate, in his/her sole and absolute discretion, grant a maximum of one, 15-day extension to the 30-day acceptance period. A property owner's failure to sign and accept or respond to the offer to purchase, within the 30-day acceptance period, shall not be considered extraordinary circumstances without regard for other factors beyond the control of the property owner (i.e., death, injury, illness, military duty, etc.).

Modification of 30-day Acceptance Period – Errors or Delays by INDOT:

A property owner may be entitled to a re-start or other modification of the 30-day acceptance period where: (1) documents, provided by INDOT, contain errors or omissions of material facts, or (2) delays by INDOT in responding to a property owner during the 30-day acceptance period. Such a decision to re-start or otherwise modify the 30-day acceptance period shall be at the sole and absolute discretion of INDOT's Director of Real Estate.

Administrative Settlement:

The incentive payment is separate from the offer to purchase and the Administrative Settlement and does not preclude the use of an Administrative Settlement. However, if an Administrative Settlement is used, the settlement offer must be signed and accepted by the property owner within the 30-day acceptance period. If the 30-day acceptance period expires while INDOT is reviewing the merits of an owner's counter-offer/Administrative Settlement proposal, the property owner will be afforded the same number of additional days to review and respond to any Administrative Settlement proposal by INDOT as were used by INDOT in reviewing and preparing the Administrative Settlement, and still remain eligible for the acquisition incentive payment. Failure to accept the terms of the Administrative Settlement upon expiration of the additional days granted will result in the acquisition incentive being withdrawn and no longer payable to the property owner.

Right of Entry Agreement:

The property owner must sign a Right of Entry Agreement after signing the Uniform Offer Acceptance and conveyance documents in cases involving bare land that are encumbered by a mortgage or other lien. The purpose of the incentive payment is to reduce the time needed in which to acquire/possess the property. Thus, the incentive payment has no value to INDOT if acquisition/possession is delayed awaiting a mortgage/lien release for the property to be vacated. Right of Entry Agreements are not applicable to owners that are eligible for relocation services.

Relocation Incentive Agreement:

If applicable, the property owner must sign and accept the Relocation Incentive Agreement and comply with the terms thereof in order to receive the acquisition incentive payment. Receipt of an acquisition incentive payment does not affect a property owner's entitlement to relocation benefits. Incentive payments related to the acquisition of tenant-owned improvements or cost to cure items of tenant-owned improvements will be shared in proportion to the amount of the offer to purchase between the property owner and the tenant.

Presentation and Receipt of Documents:

INDOT will present the Acquisition Incentive Agreement to the property owner simultaneous with the offer to purchase. All conveyance documents, payment vouchers, and other necessary forms must be signed within the 30-day acceptance period. If these documents are returned to INDOT by U.S. mail or other postal delivery service, the envelope must be post marked within the same 30-day period.

Content of Acquisition Incentive Agreement:

The Acceptance section of the Acquisition Incentive Agreement shall include an "assurance of no coercive action" clause, above the signature block, which states that the owner recognizes the right to review the offer for 30 days and waives this right, that the offer was accepted of the owner's free will and that no coercive actions were taken by INDOT or its representatives. Any revision or amendments to the appraisal and/or statement of just compensation amounts shall be reflected in the calculation of the acquisition incentive payment.

Acquisition Incentive Payment Amounts:

The Acquisition Incentive Payment for fee acquisitions shall be an amount equal to ten percent (10%) of the offer to purchase. The minimum payment shall be $500.00, and the maximum payment shall be $50,000.00.

The Acquisition Incentive Payment for temporary acquisitions (i.e., easements) shall be an amount equal to ten percent (10%) of the offer to purchase said interest. The minimum payment shall be $500.00, and the maximum payment shall be $5,000.00.

The use of an Administrative Settlement will have no influence in the calculation of the amount of the acquisition incentive payment.

Timing of Payment to Property Owners:

The Acquisition Incentive Payment will be made after all terms of the Acquisition Incentive Agreement are satisfied, including compliance with the Relocation Incentive Agreement, if applicable, **AND** in no case sooner than receipt of payment for the offer to purchase, but not later than sixty (60) days thereafter.

RELOCATION INCENTIVE PLAN

The Relocation Incentive is designed and intended to provide motivation to the property owner or tenant to sign and accept the offer to purchase, and all conveyance documents within 30 calendar days of receiving the offer, AND vacate and remove personal property items from the property prior to expiration of the 90-day Notice to Vacate. The property owner or tenant must sign the Relocation Incentive Agreement within the 30-day acceptance period and meet its requirements to be eligible for the maximum relocation incentive payment. The Relocation Incentive will be explained by the Right of Way Agent assigned to provide relocation assistance.

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VALUATION PROCEDURES

INDIANA DEPARTMENT OF TRANSPORTATION - REAL ESTATE DIVISION MANUAL

August 2018 – Revised August 2021

USE OF THIS MANUAL

INDOT has appraisers as a part of its staff, but in addition to its appraisal staff, hires licensed appraisers to perform appraisal and valuation assignments. This manual is to be used for the preparation of valuation reports, for the review and approval of valuation reports, and for guidance regarding Indiana law and INDOT policies on highway-related acquisitions and dispositions.

Both the staff and consultants of INDOT are expected to use this manual as a guide and resource for their assignments. For consultants, compliance with the manual may be a contractual requirement, except to the extent INDOT authorizes a variance from the requirements of the manual.

There may be certain policies within this manual that were created by INDOT solely to ensure INDOT is compliant with state laws that only obligate INDOT. Wherever possible, if a policy is not applicable to a Local Public Agencies (LPAs), such a disclosure will attempt to be made, however, if a LPA believes such a disclosure may have been inadvertently left out, the LPA may need reach out to INDOT to determine if a waiver of the policy is permissible. LPAs should not seek waivers of compliance with federal law.

This manual is intended to comply with state and federal law and regulation, and to the extent this manual conflicts with applicable law, that applicable law supersedes this manual.

CONSULTANT QUALIFICATIONS

Fee Appraiser Prequalification Policy

In accordance with the federal regulations, the Real Estate Division, Indiana Department of Transportation, has established qualifications for fee Appraisers and fee Review Appraisers to be utilized by the acquiring agencies in the appraisal of property needed for land acquisition purposes. INDOT maintains a list of all appraisers and review appraisers who have completed the process of demonstrating their qualifications to become approved by INDOT; this list is referred to as the Approved Appraiser List.

> ***49 CFR 24.103 (d). Qualifications of appraisers and review appraisers.***
> *(1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, §24.103(d)(1).)*
>
> *(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)*

Appraiser & Review Appraiser Qualifications

The prerequisites for appraisal consultants to be placed and retained on the Approved Appraiser/Review List are:

a. INDOT Approved Appraiser List:

   i. Appraiser must be a licensed IPLA appraiser (Licensed Residential, Certified Residential, or Certified General).

   ii. An application must be submitted to the INDOT Appraising Section for approval.

   iii. Applicant must then complete and pass INDOT's Appraiser Exam.

b. INDOT Approved Review Appraiser List:

   i. Appraiser must be a licensed IPLA certified general appraiser with 5-years of Right of Way appraisal experience.

   ii. An application, demonstrating that applicant meets the qualifications described above must be submitted to the INDOT Appraising Section for approval.

   iii. Applicant must then complete and pass INDOT's Review Appraiser Exam.

Those approved for the Approved Review Appraiser List, who were not previously on the Approved Appraiser List, will be included on the Approved Appraiser List without needing to take the Appraiser Exam or submitting an application to be on the Approved Appraiser List.

Value Analysis Qualifications

The prerequisites for consultants to be placed and retained on the Approved Value Analysis Consultant List, to be able to prepare FMV Evaluation: Waiver Valuation reports are:

a. The applicant must have an active real estate broker's license in the State of Indiana or the applicant must be a licensed or certified appraiser in the State of Indiana.

b. The applicant must have completed INDOT's Valuation of Simplistic Acquisitions course.

c. The applicant must demonstrate knowledge of INDOT policies and the ability to read right-of-way plans by having passed either INDOT's Appraiser exam, Review Appraiser Exam, or Buyer exam.

d. An application, demonstrating that applicant meets the qualifications described above must be submitted to INDOT's Acquisition Section for approval.

e. The applicant must complete any continuing education courses required by INDOT in the future to be able to remain on the list.

Appraisal Types that May Be Performed Based on Licensure

For fee appraising services performed for the Agency, licensed appraisers can only take on those assignments permissible under Indiana's licensing regulations, currently located in 876 Indiana Administrative Code 3-2-3.

With regards to eminent domain specific issues, not addressed by State regulation, INDOT Real Estate Division's policy also includes the following additional limitations on fee assignments based on licensure:

- Licensed Residential Appraisers have the following eminent domain appraising limitations:

  a Assignments cannot be given if they involve severance damages, except that parcels with cost-to-cure items, such as the relocation of wells, septic systems, fencing, and signs or billboards can be assigned.

- Certified Residential Appraisers may appraise the following eminent domain specific valuation issues:
  a. Cost-to-cure items, such as the relocation of wells, septic systems, fencing, and billboards;
  b. Partial acquisitions with setback damages to the residue dwelling or damages to the residue land; or
  c. Properties with minor severance/angulation damages to the residue land area.

- Certified General Appraisers have no limitations as to what eminent domain specific issues they may appraise.

Conflicts of Interest

Appraisers receiving an assignment, for which, there is a conflict of interest, should refuse the assignment. If the conflict is not discovered until after the assignment has been made, the appraiser should contact INDOT immediately so that arrangements can be made for the assignment of a new appraiser.

> ***23 CFR Part 1.33***
> *No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project. No officer or employee of such person retained by a State or other governmental instrumentality shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the State highway department and of such other*

governmental instrumentality, and such officer, employee or person has not participated in such acquisition for and in behalf of the State. It shall be the responsibility of the State to enforce the requirements of this section.

Staff Appraiser Guidelines

Appraisers employed with INDOT who are completing appraising-related assignments are required at a minimum to hold a real estate broker's license. All staff should take all continuing education necessary to maintain their existing licensure, and for those who do not hold an appraiser's license, IPLA approved continuing education classes on USPAP must be taken on a regular basis whenever USPAP is updated. Employees must take part in additional trainings as directed by their supervisor.

INDOT staff appraisers take on a variety of functions and roles, at various times, including the Desk Reviewer role, the Appraising Technical Advisor ("ATA") role, an early assessment role, and a role as an appraiser. When in the ATA role, staff appraisers are assigned to serve as a liaison, between fee appraisers, INDOT Real Estate, and the INDOT Project Manager, to help resolve appraising technical issues and questions that may arise during the appraising process.

COMPLIANCE REQUIREMENTS FOR ALL APPRAISAL ASSIGNMENTS

1. **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** (Public Law 91-646), as amended (Uniform Act). All appraisals must conform to Title III of the Uniform Act and appropriate Federal regulations

2. **Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs** (49 CFR Part 24)

3. **Uniform Standards of Professional Appraisal Practice (USPAP)**

4. **INDOT Appraisal Manual**: INDOT Real Estate Division

5. **Indiana Law**

All appraisal and wavier valuations for INDOT land acquisitions are to be treated as confidential and the content of ANY valuation document prepared for the INDOT Real Estate Division is not to be revealed to anyone other than approved INDOT personal, FHWA personnel, and those from the Attorney General's Office. [LPAs should consult with their counsel to determine whether there are similar obligations upon them for their valuation documents.]

However, pursuant to Ind. Code § 32-24-1-3, INDOT is to provide a copy of the valuation report to the owner of the property *reproduced in light green. A cover document, also in green, that has the following shall be attached to the valuation report:*

CONFIDENTIAL DOCUMENT. NOTICE: This document has been classified as confidential pursuant to IC 8-23-2-6 (C) (2). It is being provided to you as authorized by IC 32-24-1-3(C), but with limitations set forth in the Uniform Property or Easement Acquisition Offer presented to you by the State's Right of Way Agent. This document is excluded from public access, and is issued within the context of an offer to purchase real estate or real estate interests. It may not be used in court if eminent domain proceedings become necessary."

VALUATION ASSIGNMENTS

SUMMARY OF TYPES

Early Assessment

Early Assessments consist of project impact identification, estimating the Right of Way costs and services fees, and an estimate of the time a project will take in the right of way acquisition phase. This estimate is then used for project budgeting purposes and/or to request monetary participation by the Federal Highway Administration. Additional goals within the early assessment process are reviewing the project to identify potential damages which could be mitigated or options to reduce the Right of Way acquired

Early Assessment includes preliminary field check assignments. A follow-up memorandum is to be prepared and distributed to the Project Manager within a few days of attendance of the field check. During the field check, the Appraiser should review the project to see if damages can be alleviated or the amount of Right of Way purchased can be reduced through suggested design changes. Suggestions for design changes that may alleviate damages to the property and/or reduce the Right of Way necessary for the project should be made by the Appraiser during the field check.

Appraisal Problem Analysis & Fee Estimate

> ***49 CFR 24.103 (a) (1)***
> *The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the* ***scope of work and defining the appraisal problem****. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.*

The Appraisal Problem Analysis (APA) is a concurrence between the Agency, the Appraiser and/or Review Appraiser concerning the appraisal problem and the first step in the appraisal process to define the appraisal problem, scope of work, and appraisal format involved to complete the assignment for the property to be acquired.

FMV Evaluation: Waiver Valuation

The FMV Evaluation: Waiver Valuation (the "Waiver Valuation") report is a brief and simplified valuation used by INDOT for the uncomplicated acquisition of property or property rights as defined elsewhere in this manual and also defined by 49 CFR Part 24.2(a)(33), 49 CFR Part 24.102(c). This report is not intended to be an appraisal, and for this reason, the appraisal assignment expectations in the Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the assignment. The basic concept is that the Waiver Valuation will be prepared by a knowledgeable real estate person who is aware of the general market values in the project area. It is not required that the person preparing the valuation be a licensed/certified appraiser.

R/W Acquisition Appraisal

This appraisal is a written statement independently and impartially prepared by a qualified Appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information, for right-of-way acquisitions. The appraisal must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The Uniform Act), the Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, the Uniform Standards of Professional Appraisal Practice (USPAP), the INDOT Appraisal Manual and Indiana Law.

R/W Appraisal Review

The purpose of the appraisal review is to confirm that the right-of-way acquisition appraisal contains all of the necessary data properly applied and presented to support an estimate of fair market value and from this estimate, to recommend the amount of Just Compensation to be offered to the property owner. If the Reviewer is a Fee Consultant the agency is responsible to set the basis for Just Compensation. The Review Appraiser is responsible for appraisal quality, value determinations, consistency, and establishing the amount believed to be just compensation for each parcel on the assigned project.

Desk Review

The purpose of INDOT's desk review process is to ensure that a valuation report supports the amount of just compensation that should be paid to a property owner, and in addition, that a valuation report is both in compliance with INDOT guidelines as well as various federal and state laws.

Expert Witness

Expert witnesses are usually appraisers or valuation witnesses but on occasion may be architects, geologists, etc., depending on each given situation. An appraiser who accepts an assignment from INDOT shall be expected to be prepared to be called as a witness to testify.

It is the responsibility of the expert witness to be prepared to adequately represent their opinion in the case. If the expert's area is appraisal, the witness must be prepared to give supported testimony as to the before and after values of the subject property.

Excess Real Property Appraisal Report

Real property owned by the state of Indiana for the benefit of the Indiana Department of Transportation, having been declared excess, is appraised for disposal via the utilization of this appraisal report.

EXPECTATIONS OF ASSIGNMENTS

Appraiser Certification

> ***49 CFR Part 24.103(d)***
> *…if a detailed appraisal is necessary, and the Agency employs a contract (fee) Appraiser to perform the appraisal, such Appraiser must be certified in accordance with Title XI of the Financial Reform, Recovery, and Enforcement Act of 1989 (FIRREA).*

Consultants and contractors hired by INDOT (or an LPA) for an appraisal must be licensed as appraisers by the State of Indiana.

Market Data

The term "Market Data" includes all comparable sales, rents, leases, expenses, vacancy rates, interest rates, costs, damage studies, etc. obtained from the local market for use in real property appraising. The Appraiser **MUST** include all comparable sales, complete damage studies, etc. utilized within the body of the report.

Comparable Sales Information

As a general rule, comparable sales should not be used if the transaction took place in excess of two (2) years prior to the effective date of the current appraisal. When older sales are used, the Appraiser must thoroughly explain their inclusion and application.

All sales of parcels on a current project should be developed as comparables if there has been a transfer of ownership within the last five (5) years. The sales should be verified with a second source in addition to the present property owner, if possible. The Appraiser must personally observe the exterior of each comparable sale being developed to ascertain that the property is indeed comparable to the subject property.

Additional pages may be added if necessary. It is important that all pertinent information be included which may affect the comparable's use in support of the market value determination. While it is preferable that INDOT's standard comparable forms be used, a form of the Appraiser's

choosing may be substituted as long as all required information is included. The comparable forms (*see Appendix*) currently used are designated as Improved Land Comparable, Unimproved Land Comparable, Commercial Improved Land Comparable, Comparable Lease Data, and Sign/Billboards. The forms are self-explanatory and may be expanded as needed.

Verification of Comparable Sales

Proper verification of sales is vital in the development of market data. The following methods of verification are acceptable.

1. Via "Sales Disclosure" public records and/or the buyer, seller, broker, or other person having direct knowledge of the price, terms, and conditions of the sale.

2. Viewing the closing statement pertaining to the transaction.

3. Local Multiple Listing Service information UNLESS the information does not appear consistent with other data that has been collected. While in most instances this source is reliable, CAUTION must be exercised and in some cases a second verification will be considered necessary.

4. Re-verification of comparable sales which apparently have been properly verified by another Appraiser (either staff or fee) is not required. Bear in mind, however, that the accuracy, validity, and analysis of all information included in the appraisal report either by inclusion or reference is the Appraiser's professional responsibility.

General Guidelines Improved and Unimproved Land Comparable Forms

1. Photo View – Identified photographs (in color) of comparable properties are required even though no improvements are involved. The "Photo View" caption should identify the location from which the photo was taken, the direction the photo was taken, and comments sufficient to allow the reader to ascertain what the photo represents if the subject matter is not readily apparent. The photo must be permanently affixed to the comparable data sheet. The date the photo is taken should be the inspection date at the bottom of the comparable form.

2. Aerial Photo/Sketch – Present an aerial photograph or sketch of the comparable property at the upper right-hand corner of the form. The presentation should reflect the location of the property with relation to pertinent landmarks such as roads, street intersections, etc. and should be of sufficient scale to visualize all of the comparable's land and building improvements. If additional aerial photos or sketches are required, they should be presented within the "Comments" section of the form or by adding an additional exhibit page, properly identified, in the report.

3. Date Sold – This is the date the sale was completed and may not necessarily be the date of the deed or the date the deed was recorded. In the event of a contract sale, the sale date is the date the contract was initiated rather than the date the property was transferred by warranty deed to the contract purchaser. If the property is a listing or there is a pending offer, enter the date the information was obtained and clearly indicate that it is not a sale which has been finalized. Listing

or offers to purchase should be used primarily to supplement a scarcity or sales information and can never be solely relied upon for an appraisal report or when testifying in condemnation proceedings.

4. Sale Price – Indicate the actual verified sale price of the comparable property. If the sale included any items other than real estate, these should be indicated and explained within the "Comments" section of the form.

5. Land Size – Enter the size or area as reported on the transfer instrument. If the sale is not recorded and its exact size is not available in public records, the Appraiser is justified in using the size or area that was supplied by the party with whom the sale was verified.

6. Unit Sale Price – For land sales below one acre in size, the unit sale price should be the actual sale price divided by the comparable's square feet. The appropriate unit sale price for land comparables one acre or larger is typically the sale price per acre. However, many times market participants continue to utilize sale price per square foot for commercial land sales above one acre and the Appraiser should likewise use this unit of comparison if it is typical of the market. The appropriate unit of comparison for improved properties is the sale price per square foot of the comparable's improvement area. This is many times referred to as a "package" unit price as it includes the values of the land and land improvements. If the sale is on a net basis this should be noted and discussed in the comment section. Comparison to the subject should be on a net basis for both the comparable and the subject.

7. Vendor, Vendee, Property Address, City. All should be presented exactly as they are stated on the transfer document.

8. Legal Description – Enter fractional section, township, range and county or subdivision and lot number as appropriate.

9. Document # – Indicate the transfer instrument identification number, deed book and page number, or other appropriate recording identification.

10. Financing – Financing, especially seller participation in financing, must be thoroughly investigated, analyzed and explained. If the seller received immediate full cash payment, a statement to that effect is sufficient. If, however, the sale as a market indicator is affected by the financing, a cash equivalency analysis should be made to determine the sale's true indication of market value.

11. Condition of Sale – Investigate the condition of sale and if there are no atypical conditions associated with the transaction, so state. If the comparable sale price is believed to be affected by atypical motivation etc. the comparable can still be used in comparative analysis but the effect of the atypical condition(s) must be fully explained and analyzed with any adjustment well supported by data. If the adjustment cannot be well supported, the sale should probably not be used.

12. Verification Source – Enter the name of the person who verified the sale and their role in the transaction.

13. Zoning – If the sale property is zoned, the zoning should be stated. If the sale property has no zoning, indicate such. *Record zoning designation; i.e. R-1 (Residential)*

14. Highest and Best Use – Indicate the highest and best use of the sale property at the date of sale. If the Appraiser feels the highest and best use was other than its actual use, an explanation must be given.

15. Comments – Space is provided for additional information or descriptions such as:

a. Description of improvements made after the sale which have changed the appearance and/or quality of the property

b. The Appraiser's analysis of component values

c. Pertinent property history

d. Pertinent area and neighborhood information

e. Development of overall capitalization rates

f. Rent multipliers

g. Market depreciation, local costs, interest rates, etc.

Improved Land Comparable

1. See previous general guidelines section instructions regarding all applicable line items.

2. Main Improvement, Other Improvements, Land Improvements, Land - Fill in as much detail as possible as indicated on the form. If information with regard to the interior of the property is not available, so indicate under "Comments"

Unimproved Land Comparable

1. See previous general guidelines section instructions regarding all applicable line items.

2. Improvements Made Since Purchase – Make note of any improvements made to the sale property after the date of sale which have changed the appearance and/or quality of the property, and which were not a condition to the sale.

3. Land Improvements – Fill in the blanks provided as they apply to the sale being reported.

4. Available Services – Indicate the type of road serving the sale property and indicate the availability of water, sewer, gas lines or other services.

5. Land: Topography/Drainage, Quality of Soils, Other – Indicate whether the land is hilly, rolling, level, etc., whether it is well drained, poorly drained, etc., and indicate the soil suitability for the use of the property described. For a farm, the principle soil type or class of land or production

rating would be appropriate. For other type properties the bearing quality or percolation rating, etc., may be appropriate.

Comparable Lease Data

Complete as much of the information as you have obtained and verified. Additional pertinent information may be added under "Comments". Designate each comparable with a sequential Comparable No. preceded by "LD". (Ex. LD-1, LD-2, etc.)

Sign/Billboard Comparable Data

The sign/billboard comparable data form will need to be used when appraising signs/billboards for purchase. Guidelines for the completion of the form follow:

1. Photo View – Identified photographs (in color) of comparable signs are required. The Photo View must contain comments sufficient to allow the reader to ascertain what the photo represents. If the sign is back-to-back or "V" type, a photo of each side should be included.

2. Photo Date – Date photograph was taken.

3. Amount of Land Lease – The remuneration per year or month for the land lease.

4. Terms of Lease – The length of time of the lease, length and number of each renewal, and any other pertinent data.

5. Remaining Period of Lease – The number of years remaining on the lease and renewals.

6. Land owner, Lease Date, Address, Phone Number - Self Explanatory.

7. Sign Number – The number assigned to the subject sign by INDOT and attached to the sign.

8. Location – Road number or Street Name, side of street or road, distance and direction from intersection or other identifiable landmark.

9. Legal – Fractional section, Township and Range or lot number and subdivision.

10. Zoning – County or City Zoning District in which sign is located.

11. Type – Either Poster Panel or Painted Bulletin.

12. Style – Single face, double face, back-to-back, or "V" type, side-by-side, stacked or combination.

13. Traffic Count – The annual average daily traffic past the subject as determined by INDOT Division of Program Development.

14. Sign Length – Length of sign face, if more than one face per sign, length of each sign face.

15. Sign Height – Distance from bottom of sign face to top of sign face.

16. HAGL – Height Above Ground Level, the distance from the bottom sign face to the ground.

17. Cutout Size Area – The dimensions or area of any applied or extended cutouts.

18. Number of Post – Number of posts supporting the sign face(s), total.

19. Post Size – Length and width of square post on diameter of round posts.

20. Post Height – Length of post from ground level to top of post.

21. Post Material – Wooden or Metal, Usually steel and may be either square, rectangular, "I" Beam or round.

22. Illuminated – Type and number of lights illuminating sign.

23. Power Run In/Linear Feet – Length of power supply line from the sign to source of power (power line, building, etc.) / lineal feet.

24. Sign Status – Legal or illegal, conforming or non-conforming.

25. Date Erected – Self Explanatory.

26. Sign Owner – Individual or Company owning Sign.

27. Address – Address of above.

28. Phone Number - Phone Number of above.

29. Sign Leased To – Individual or Company the sign face (advertising) is leased.

30. Sign Lease Date – Self Explanatory.

31. Amount of Lease – Monthly or annual remuneration for Advertising on sign face.

32. Term of Lease – Length of lease on sign face and other considerations, if any.

33. Verified By

34. Sketch – drawing showing dimensions and any other pertinent details.

35. Comments

After Value Studies

Economic Studies (also called After Value Sales, Residue Sales, or Severance Studies) – Economic Studies, when used, appear almost exclusively in the after valuation as supporting data to justify severance damages. The general development and application of Economic Studies are discussed below.

Economic Studies Used For Adjustment Justification

The Economic study provides support for a particular adjustment made in comparing other sales to the subject. The adjustment will serve as a measure of severance damages. In most cases the adjustment justified will be in terms of a percentage representing the difference in value between the subject, which has a certain adverse condition imposed by the Right of Way acquisition, and the sale which lacks that certain condition. The Economic Study analyzed must demonstrate, to a comparable degree, the same adverse condition as the subject, even though its location, land improvements may not be closely comparable to the subject.

Photographs

Good quality color photographs are to be attached to the appraisal report, as indicated on each report form. Additional pages may be added as necessary. Each photograph must be dated, indicate from which direction the photo was taken, and include comments sufficient to allow the reader to ascertain what the photograph represents.

Include a sufficient number of photographs to show significant features of the property, particularly the improvements and land improvements (i.e., lawn, gravel, asphalt, concrete, etc.), including items that may be inside of pre-existing right-of-way. At least one photograph of each area to be acquired is required. If building improvements are in the Right of Way, photographs are required to show the major interior features, i.e., bathroom, kitchen cabinets, fireplace, heating plant, etc. Include photographs of improvements which will be damaged by the acquisition.

Comparable Sale Photo View – Identified photographs (in color) of comparable properties are required even though no improvements are involved. The "Photo View" caption should identify the location from which the photo was taken, the direction the photo was taken, and comments sufficient to allow the reader to ascertain what the photo represents if the subject matter is not readily apparent. The date the photo is taken should be the inspection date at the bottom of the comparable form.

Billboard Photo View – Identified photographs (in color) of comparable signs are required. The Photo View must contain comments sufficient to allow the reader to ascertain what the photo represents. If the sign is back-to-back or "V" type, a photo of each side should be included. Date photograph was taken.

Proposed Design Changes

It is the responsibility of both Appraisers and Reviewers to observe any project design feature which will cause a loss of value to the residue of a particular parcel. These features might be such items as location of driveways, reduction in the acquisition to alleviate set-back damages, drainage structures, etc.

If in the Appraiser's or Reviewer's opinion, the loss in value could be reduced or eliminated by a change in design. It is their responsibility to personally contact the Appraiser Technical Advisor (ATA) assign to the project and discuss the possibility of a design change.

The same procedure may be followed if a property owner requests a design change that will not

seem to significantly impact the project but will be more acceptable to the property owner than the current design.

If the design change is deemed appropriate by the ATA to proceed, then the ATA will present the design change request to the Appraisal Supervisor for approval, if the design change is approved then the ATA will submit the design change request to the project manager and design. If approved a memorandum detailing the design change is submitted to the project file, the memorandum shall be prepared by the ATA.
If the decision is that no change will be made, a memorandum to the project file shall be prepared by the ATA. This memorandum must contain the same information as a memorandum requesting a change along with a statement that the request was denied. Place a copy in the parcel file for Records.

The ATA shall update LRS with the appropriate remarks to document the request and decision concerning the request.

Change in Ownership

When there is a change in ownership on an assigned parcel, the following procedure is to be followed:

1. The Appraiser completes the Name Change notice in **duplicate** and insert one copy in the parcel packet. And send one copy to the ATA assigned to that project.

2. The ATA sends one copy of the name change notice to the Records Section for filing and recordkeeping.

3. New Deed documents must be supplied.

4. The ATA shall mark out the original fee owner(s) name on the parcel packet and add the new fee owner(s) name. The ATA shall confirm that LRS has been updated, if not the ATA shall follow up with R/W Engineering to update LRS.

5. If there is **no change in the acquisition**, this is all that needs to be done. DO NOT send the parcel to the Engineering Section.

6. If there is a **change in the acquisition** due to a partial sell-off, design changes, etc., follow the normal procedure for submitting the parcel to the Engineering Section for the necessary change in the description, etc.

Do Not Disturb Designation

<u>Land Improvements/Structures in Temporary Right of Way</u>

If land improvements or structures are located within the Temporary Right of Way, but outside of the construction limits, and it is the Appraiser's or Reviewer's opinion, the total of a cost to cure

could be reduced or eliminated by a do not disturb designation then contact the ATA assigned to the project and discuss the possibility of a do not disturb. The same procedure may be followed if a property owner requests a do not disturb that will not seem to significantly impact the project but will be more acceptable to the property owner than the current design.

If the do not disturb is deemed appropriate by the ATA to proceed, then the ATA will present the do not disturb request to the Appraisal Supervisor for approval, if the do not disturb is approved then the ATA will submit the do not disturb request to the project manager and design. If approved a memorandum detailing the do not disturb is submitted to the project file, the memorandum shall be prepared by the ATA. If the decision is that no change will be made, a memorandum to the project file shall be prepared by the ATA. This memorandum must contain the same information as a memorandum requesting a change along with a statement that the request was denied. Place a copy in the parcel file for Records.

The ATA shall update LRS with the appropriate remarks to document the request and decision concerning the request.

Improvements Solely on Residue

There may be obligations by INDOT to minimize potential harm to certain properties, referred to as 4(f) properties, i.e., publicly owned park and recreation areas that are open to the general public, publicly owned wildlife and waterfowl refuges, and public or privately owned historic sites. If right-of-way plans have a do not disturb marked on improvements located outside of the construction limits, and under the appraisal assignment, due to potential residue damages, the appraiser is exploring whether cost-to-cures to move (or impact) those improvements, the appraiser should first ascertain whether the site is a 4(f) property, to determine what limitations may be in place for the site.

Change in Appraisal Problem

If, during the course of the valuation process, it is determined by either party that the appraisal problem is other than that which was identified when the agreement was initiated, the Appraising Section Supervisor may amend the fees and change the due date by letter stating the reason for the change.

Extensions of Time for Assignments

1. Extensions to the due date are given careful consideration since any delay may impact the construction schedule for the project.

2. If the fee Valuation Report preparer finds that an extension to the due date is necessary, an email to the appropriate INDOT program supervisor stating the reason(s) for the request must be received PRIOR TO the specified due date. If the extension is not granted, the penalty clause in item (5) of the agreement will be enforced.

3. Requests for extension to the due date received subsequent to the date will not be given consideration.

4. All amendments to the original agreement must have prior approval.

Submittal of Reports to INDOT

Valuation Reports, Review Appraisals, and Statements of Just Compensation should be submitted to INDOT (or the LPA) pursuant to contractual guidelines. INDOT's current policy is that these documents should be provided electronically, by portable document file, either by email or by an agreed upon file sharing service that is acceptable to the Indiana Office of Technology, and in addition, the following number of paper copies should be provided: an original, a copy on regular paper, an additional copy on regular paper if there is a building in the acquisition, and one copy on green paper for disbursement to the parcel owner.

EMINENT DOMAIN LEGAL INFORMATION

This section provides an overview of the legal issues right-of-way appraisers should be aware of for valuing acquisitions for governmental acquisitions.

Determination of Damages

Appraising for eminent domain or condemnation involves unique problems. The purpose of an appraisal in a condemnation case is to determine the damages suffered by the owners of the interests in the property rights acquired by the Acquiring Agency.

Indiana Courts have recognized two methods of estimating damages in condemnation cases.

The *First method* is to appraise the entire property immediately before the acquisition and then appraise the residue immediately after the acquisition: The difference between the two appraisals equals the total damages suffered by all defendants. See Stephenson v. State (1963), 244 Ind. 452, 193 N.E. 2d 369. However, benefits caused by the highway project may never be offset against the value of the real estate and improvements taken. If benefits are indicated, it may be necessary to use the second method of valuation.

The *Second method* of measuring damages involves totaling the various types of damage cause by the State's taking. These types of items of damage are specified by Indiana Statute, Ind. Code § 32-24-1-9(c), as follows:

First – The fair market value of each parcel of property sought to be acquired and the value of each separate estate or interest in the property.

Second – The fair market value of all improvements pertaining to the property, if any, on the portion of the property to be acquired.

Third – The damages, if any, to the residue of the property of the owner or owners caused by taking out the part sought to be acquired.

Fourth – The other damages, if any that will result to any persons from the construction of the improvements in the manner proposed by the Plaintiff.

The words "parcel of property" in the first element of damage above means parcel of land, since the word 'property" also includes improvements which are included in the second element of damages and the General Assembly did not intend for improvements acquired to be paid for twice. Although the third element specifically refers to damages to "land", any reduction in value to improvements cause by the acquisition should also be included under this item.

Measuring Setback

The setback for a residential structure that contains Previously Existing Right of Way (PER), that will be required according to the Fee Simple Warranty Deed description, shall be measured from the edge of travel lane pavement to the closest point of Living Area. If the property does not contain PER measure the setback from the Right of Way line to the closest point of Living Area.

1. Open porches and/or covered porches regardless of method of attachment to the associated structure are not considered living area.

2. Porches which have been enclosed in such a manner as to make them usable on a year round basis are to be considered living area.

Explanation and Support for Proximity Damages

The identification, measurement, support and documentation of severance damages as a result of an eminent domain acquisition is the heart of condemnation appraisal methodology. It is critical that all influences on value are identified, measured and supported with verifiable market data. When measuring the loss of value attributable to severance damages, the Appraiser must be careful not to appraise with a "broad brush." Rather, the Appraiser should measure the subject property market data while realizing that what one market might be sensitive to, another market might not even recognize, or recognize to an equivalent extent. It is universally recognized that speculative or conjectural damages are non-compensable. One aspect of severance damages is the loss in value attributed to the reduction in proximity to the Right of Way line for single family residential dwellings. The following section will provide guidance and expectations when addressing severance damages as a result of the reduction of proximity.

Multiple factors can be attributed to the diminution in value of a dwelling improvement due to a

reduction of proximity. Some factors, while market driven, are considered to be non- compensable by law under eminent domain. "Non-compensable" means that, although there may be a decrease in value to the reminder property due to certain specific factors related to the Right of Way acquisition, the decrease in value cannot be compensated for under Just Compensation. (*see Non-Compensable Damage Items*).

Damages as a result of proximity reduction should not be assumed. Therefore, it is a necessary step in the process for the Appraiser to physically measure the reduction in proximity, confirm the zoning requirements and verify whether the acquisition will cause the subject property to be in violation of setback requirements. The result will need to be discussed and addressed according to the subject market influences. In addition to the zoning requirements, the Appraiser should verify what the subject property's market expectations are regarding proximity from the Right of Way line. The Appraiser must identify and support the Right of Way distance in which the subject's market begins to recognize a loss in value to the subject property and what the loss in value is as the proximity is reduced. Both the market Right of Way threshold point and resulting damages incurred due to the reduced Right of Way must be supported from market data reflective of the subject property.

Additional consideration for estimating proximity damage is analysis of market expectations for the subject property dwelling type and how proximity to the Right of Way influences market values. A challenge for the eminent domain Appraiser is the disassociation of the desires and opinions of the current owner of the subject property compared to that of the market for the subject property in the before and after valuation. While the current owner may or may not discount the value of their house due to a reduced proximity, it ultimately is the real estate market for the subject property that would support whether a value difference exists. The current property owner may disagree, but the highest and best use of the subject could remain the same while the market value of the subject is unaffected by the proximity loss. With this challenge in mind the Appraiser must especially remain as a disinterested third party to the transaction (as expected while valuing all real estate), and establish the fair market value of the subject property, unencumbered with the personal desires of the current property owner or the acquiring agency. The driving force and support of the valuation must be the subject property's market, therefore, the Appraiser must identify, quantify, analyze, support and then document the market expectations for the subject property; both before the acquisition and after the acquisition (where the market forces may be different between the two).

Properly supported paired sales analysis is necessary to quantify the diminution in value due to a reduction in proximity to the Right of Way. When using paired sales analysis, the Appraiser must fully analyze and report the similarities and dissimilarities of all the sales used in the paired sales analysis and then discuss how the paired sales correspond to the subject property. The sales data collected and used to support the proximity damage is subject to the same requirements and expectations as comparable sales used to value the subject property within the appraisal. In other words, the comparable sales used to support a proximity impact should also have appropriate similarities to the subject dwelling and overall property characteristics as the comparable sales utilized to support the subject property value. When the data for paired sales analysis is insufficient locally, care must be taken to ensure that as the comparable sales are selected from a wider

geographic area, the comparable sales are selected from similar markets and reflect similar attributes to the subject property, thus minimizing the need for adjustments. If the analysis and support for the reduction of proximity cannot be completed within the scope of this method please consult with INDOT supervision.

General and Special Benefits

For a condemnation filed by INDOT or by a county for a public highway, or by a municipal corporation for a public use, pursuant to Ind. Code § 32-24-1-9(f), appraisers should also assess whether any special benefits will accrue to the property owner.

> *Special Benefits:* Benefits are said to be special when they increase the value of the property, relieve it from a burden, or make it especially adaptable to a purpose which enhances its value. The benefits must be special, local, or result directly or peculiarly to the residue of the particular tract from which the appropriation is made. The benefits must be substantially greater in degree to the owner than to other owners in the community.
>
> *General Benefits:* Benefits that result to a landowner in common with other members of the general public or community at large cannot be assessed.

If an appraiser determines that special benefits will accrue to a property owner, the appraiser can offset the benefits against damages paid under Ind. Code § 32-24-1-9(c)(3) and (4), reducing the amount to be paid for damages to the residue or paid for damages, if any, that will result to any persons from the construction of the improvements in the manner proposed. The appraiser should not offset special benefits against the compensation to be paid for the fair market value of the land or improvements being acquired.

Items Affecting Value

The key in separating items that are compensable from items that are not under Indiana Condemnation Law is whether the item in question would affect the price a willing buyer would pay for the property. Generally, items that would affect the price a willing buyer would pay are compensable and items that would not affect the sale price are not.

1. The highest and best use to which the property is adaptable at the time of acquisition. This highest and best use is not limited to the use made of the property at the time of acquisition.

2. Generally speaking, all present or prospective damages which are the natural or reasonable result of the acquisition and construction of the improvement, but not including any damages arising from negligence, lack of skill or wrongful acts.

3. Division, by the acquisition from the subject as affecting access to the residue tracts, and the size and shape of these tracts. An example would be access to fields.

4. Contiguous parcels which are operated as a unit and are under the same ownership should be treated as a single parcel in the appraisal. The common use and ownership of the parcels are the most important factors. “Contiguous” does not necessarily mean adjacent.

5. Interference with access or loss of access is compensable only when the loss of access is special and peculiar to the subject property and no other reasonable means of access is available to the subject property for its highest and best use. This interference with, or loss of access can be cause by: (1) a grade separation between the subject and the road which prevents access from the subject to the road, (2) elimination of or deadending a road which in certain types of traffic being physically unable to reach the subject; (3) elimination of existing driveways.

6. Income which is intrinsic to the land itself and not to a business operated on the land. Ground rent may be used to determine the value of the land but the net income from a Business may not be.

7. Unplatted land should generally be valued at the price it would command in a single sale (as acreage). The value of the unplatted land may be based upon multiple sales (e.g., lots) if a ready market exists for the sales, no elements of skill or risk are involved in the sale and no development costs would be incurred.

8. Platted land may be valued based upon multiple sales, but a ready market must be shown with no elements of skill or risk involved and a discount factor applied to account for the time required to market the lots. Taking from one lot in a platted subdivision should normally not affect the value of other lots.

9. Existing crops, including nursery stock, should be paid for at the current value of the crop, if crop cannot be harvested. This value should be the estimated sale price at harvest minus cost of production (including harvesting) discounted to present value.

10. Minerals and trees as timber or landscaping should be treated as having contributory value to the land. Consideration should be determined to what extent the value of the land is increased due to the presence of mineral(s) and an estimation of how much more would a buyer pay for the land if it contains coal. These estimates should be supported by comparables containing the contributing item(s).

11. Cost-to-cure to restore utility to the residue may include: replacement fencing, the cost of constructing an access road or the cost of fill, etc.

12. Drainage problems caused by the construction of the improvement. This may involve the cost of restoring interrupted field tile or the cost of new tile or other drainage structures.

13. Reduction in setback or lot size which results in placing the subject in violation of local zoning. The damage cause by the change in highest and best use will need to be evaluated.

14. The nature of the landowner's interest in the property as well as the nature of the Acquiring Agency's interest (fee, easement, or dedication) in existing Right of Way. For example, if the Agency's interest in the existing Right of Way is by way of easement or Right of Way grant and the landowner owns the underlying fee; the land owner has a limited right to make use of that portion of the Right of Way not actually under pavement, so long as the owner's use does not interfere with the Agency's use of its easement or Right of Way for highway purposes.

In the above example, the landowner probably has a right to use the road shoulder to drive from one field to another or to make turns with farm equipment. See Town of Ogden Dunes v. Wildernuth (1968), 142 Ind. App. 379, 235 N.E. 2d 73. Any use of the non paved Right of Way by the landowner in the above example which is a dangerous hazard, obscures sight distance or interferes with the Agency's use of the Right of Way would be illegal and non-compensable.

Non-Compensable Damage Items

Factors affecting market value shall be considered, however, by public policy, certain types of consequential damages caused by construction may not be assessed as the Courts of Indiana have determined that awarding these types of damages place an undue burden upon the State for acquiring land for public improvements. The following are types of damages that a property owner may incur under Indiana law for which compensation is to not to be paid:

1. More circuitous route to some specific location unless it affects the physical use of the property as an operating unit.

2. More difficult and inconvenient access, as long as reasonable access remains and the change in access does not amount to substantial or material impairment of access.

3. Diversion of traffic or interference with a business operated on the subject property resulting from a loss of free flow of traffic to or past the subject, division of traffic or more difficult or inconvenient access.

4. Generally, any speculative or conjectural damages.

5. Speculation about future negligence in the construction or operation of the improvements.

6. Damages based upon the landowners specific intended future use of his property or compensation based upon improvements which are not yet in existence on the date of take.

7. The advisability of building the improvement or the location of the route.

8. Compensation for personal property. Fixtures or business fixtures are *not* personal property and should be treated as part of the real estate. To determine if an item is personal property or a fixture, refer to the Fixtures section.

9. Loss of profits from business operated on the subject property.

10. Theft or loss of personal property due to the proximity of the highway.

11. The cost of purchasing a replacement for personal property taken. Relocation entitlements MAY cover these costs.

12. Any damages for inconvenience suffered by the community or public in general, when streets are being repaired or highways constructed or widened.

If there are questions or concerns about the above types of damages, you should consult with the INDOT Appraising Supervisor.

Fixtures: Personal or Real Property

In the case of a total acquisition or an acquisition resulting in relocation, the assigned Appraiser must coordinate the property inspection with the assigned Relocation Specialist for all parcels which will involve relocation entitlements; residential, business, farms, personal property moves, and non-profit organizations. The purpose of the Right of Way Agent's presence at the property inspection is to help identify all personal and real property, as per the following regulations:

> ***49 CFR 24.103(a)(2)(i).***
> *An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, § 24.103(a)(1).)*

> ***CFR 24.205(c)(2)(i)(c)***
>
> *For businesses, an identification and resolution of personalty /realty issues. Every effort must be made to identify and resolve realty/ personalty issues prior to, or at the time of, the appraisal of the property.*

Fixtures are items which would normally be considered personal property, but because of attachment to the real estate or use in conjunction with the real estate, are considered part of the real estate.

Generally an item is a fixture if it is attached or affixed to the real estate or if it is adapted to the use of the real estate and it was the intent of the person attaching, affixing or adapting the item that it became part of the real estate. It is frequently said that the intent of the person is the true test of whether or not an item is a fixture and this intent is not determined solely by the person's stated interest. The person's intent is determined by all surrounding circumstances. For example, if a

person attaches an item to real estate in such a manner that removal would cause damage greater than the value of the item, the item is considered a fixture.

Parties, as between themselves, may agree that an item which is attached to real estate is to remain personal property and may be removed by the owner. A building erected by a lessee on real estate owned by the lessor may be personal property, if the lease so provides. However, an innocent purchaser of the real estate who buys without notice of the agreement would probably also acquire the building as part of the real estate.

Certain items are considered fixtures because they are routinely included in the sale of real estate. Among these items are:

- Lighting fixtures attached to walls or ceilings
- Water closets, vanities and other bathroom fixtures
- Stoves or other building appliances
- Curtain rods and attached blinds

It must be understood, however, that even these items are sometimes not fixtures, for the reasons stated above. Consequently, the Appraiser should always consider each item, and the facts surrounding its presence, individually and critically.

Trade fixtures are items, such as machinery, which are affixed to the real estate by a tenant and are to be used in the business conducted on the real estate. If there is no agreement to the contrary and the item(s) may be removed without causing substantial injury to the real estate or the item(s) themselves and are capable of being re-installed and used elsewhere, the item(s) probably remains the personal property of the tenant. If the tenant fails to remove the item(s) within a reasonable period of time after the termination of the lease, the item(s) probably become a fixture.

Business fixtures are those items used in conjunction with a business which are so specially adapted to that business that they have little or no value to the owner independent of the operation of the business. This definition of business fixture can include items that normally are considered personal property. Ash trays, towels and other items used in the motel business which have the name of the motel imprinted on them would be business fixtures, although such items normally would be personal property.

To avoid possible cases of double compensation; in the case of a total acquisition or an acquisition resulting in relocation, the Appraiser shall use due diligence to coordinate the property inspection with an agency Right of Way Agent; as per 49 CFR 24.103(a)(2)(i). Thus identifying and establishing the real property and personal property.

This discussion of fixtures is intentionally brief and is meant only to be an introduction to the subject and a general guide for the Appraiser. There are more diverse and questionable situations which the Appraiser will occasionally encounter. In those circumstances the Appraiser should seek advice from an appropriate supervisor, and/or legal advice from the Deputy Attorney General, or the Attorney for the Local Public Agency as the situation dictates.

Access Rights

Access rights have been defined as: "The right of ingress to and egress from a property which abuts upon an existing street or highway". The concern of the Appraiser is to what extent the Acquiring Agency may regulate this right without payment of just compensation, the point at which regulation or limitation of access requires payment of just compensation and what acts by the Agency constitute regulation of limitation of access.

The owner of real estate abutting on a street or highway has a private right in such street or highway, distinct from that of the public, which cannot be taken or materially interfered with without payment of just compensation. However, the rights of an abutting owner must be subordinated to the right of the public to the proper use of the highway and the right of governmental agencies to enforce proper police regulation. The right is subject to reasonable regulation and restrictions for the purpose of providing reasonably safe passage for the public, but the regulations or limitations cannot be enforced where they unduly limit or unreasonably interfered with the rights of the abutting owners.

The right of the abutting owner which has been using a highway for access purposes cannot be taken without just compensation, but, while the entire access may not be cut off, an owner is not entitled to access to lands at all points in the boundary between it and the highway. If the owner has a free and convenient means of access to the property and to the improvements thereon, and the means of ingress and egress are not substantially interfered with by the governmental Agency, there has been no compensable loss.

The right of access attaches to real estate which abuts on a public road or highway. The real estate which possesses this right does not have to be fee ownership in the land, but may consist of an easement. That is, if the owner of land which does not abut a public street or highway has the only means of access over an easement which runs to a public highway, the owner has the same right to that access at the highway as the owner of land abutting the highway.

The right to access is subject to regulation by the governmental authorities having control over the public highway through what is called "Police Power". In the case of state highways in Indiana, regulation may consist of speed, size and weight limitations on vehicles using the highway and INDOT regulations concerning driveway permits. Likewise, Local Agencies may have similar restrictions which must be adhered to.

Actual access from the abutting land to the highway is usually gained through a driveway. INDOT has enacted regulations establishing requirements and restrictions for driveways. These regulations can be found in the Indiana Administrative Code Title 105, Article 7. Under the regulations, INDOT has the authority to limit the number of driveways, determine allowable sizes for the driveways and require that the driveways meet construction and material standards.

Police Power gives INDOT the right to reasonably regulate access, for legitimate safety reasons, but not the right to deny reasonable means of access to the abutting owner. If regulation by INDOT, through its permits process, results in an abutting landowner being denied reasonable

means of access, INDOT is responsible for restoring reasonable access or paying just compensation to the landowner.

A landowner is not entitled to unlimited access to the public highway for the full length of its abutment on a highway; however, the landowner is entitled to reasonable access to his/her property. Reasonable access, for some uses, may require more than one driveway or driveways of unusual size.

Under certain circumstances, State or Local Agency actions remote from the landowner's land may substantially and materially interfere with access and require just compensation. The Indiana Appellate and Supreme Courts have held that relocation of a road which places the affected real estate on a dead end road or cul-de-sac may cause compensable damage. In many of the "dead end street" cases, the altered access to the property actually interfered with the existing use of the real estate; the new access was over roads with restricted weight limits or roads too narrow or turns too sharp to allow passage of trucks which had used the previous access to the property. See State v. Geiger & Peters (1964), 254 Ind. 143, 196 N.E. 2d 740; State v. Hastings (1965), 246 Ind. 475, 206 N.E. 2d 874 and State v. Toliver (1965), 246 Ind. 319, 205 N.E. 2d 672.

A change in grade of an existing road which substantially and materially interferes with the landowner's access would also require just compensation. However, the Courts have allowed damage even where there was no pre-existing use being made of the property and it retained access to another through road. State v. Peterson (1978), 269 Ind. 340, 381 N.E. 2d 83. While in Young v. State (1969), Ind., 246 N.D. 2d 377, the Court ruled that relocation of a pre-existing road away from the landowner's property did not substantially and materially affect access when the property retained its frontage on the former state road (now a frontage road) which was open at both ends.

In summary, loss of access is compensable only when the loss of access is special and peculiar to the property and only when no other reasonable means of access is available to the property. "Other reasonable means of access" does not mean access that is reasonable for some other use of the land. It refers to the access that will permit the land to be used for that purpose which was its highest and best use prior to the Agency's actions or acquisition.

On projects involving limitation or relocation of access, the State attempts to provide the landowner with access which is reasonable for its current highest and best use. However, the Appraiser should never assume that the property will be unharmed. The Appraiser must determine if the property will retain reasonable access for its highest and best use. If it does, the property is not damaged.

Title or Interest Acquired

It is the intent of this section to provide some comments of clarification regarding the various types of title or interest acquired by the State in the course of Right of Way acquisition.

1. **Warranty Deed** – Except as otherwise provided, INDOT acquires fee simple title

by warranty deed in all acquisitions of permanent right of way, including limited access acquisitions. With approval from the Office of the Attorney General, a special or limited warranty deed may be used for certain limited acquisitions where a property owner may have justifiable reasons to limit their warranties.

2. **Quit-Claim Deed** – This type of instrument is used to secure a conveyance or release, without warranties of title, interest, or claim, and is often employed to eliminate interests less than fee simple, like easements.

3. **Temporary Rights of Way** – This is often used by INDOT to seek a temporary easement in the property to complete construction on an area of land that INDOT intends for a property owner to retain ownership over, and upon completion of construction, INDOT will release its interest in the easement area.

4. **Right of Way Grant or Perpetual Easement** –Grant when INDOT is not seeking to acquire fee simple title for permanent Right of Way or access rights from the same owner, but instead, is seeking a permanent easement.

The Buying Procedures Section of the Real Estate Manual and the Right of Way Engineering Manual has more detail regarding these contingencies.

ADMINISTRATIVE EXPECTATIONS

Land Records System

For INDOT acquisitions, the use of INDOT's Land Records System (LRS) is an integral part of the right of way acquisition process. All staff and consultants are expected to utilize the system, during the appraising process, to provide status updates, information about the appraisal assignment, information about contact with property owners, and other reporting. This information should be entered accurately and timely.

NOTICE TO OWNER REQUIREMENTS

Notice to Owner Letter

Prior to or during the Appraisal Problem Analysis, the APA preparers or the ROW Manager should ensure that the Notice to Owner Letter, in the Appendix, is sent to a property owner with a physical copy of the *Acquiring Real Property for Federal and Federal-aid Programs and Projects* brochure developed by the Federal Highway Administration.

49 CFR § 24.102(b)

As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part.

For State projects, with the Notice to Owner Letter, a contact information request form is to be sent with a postage paid envelope; this contact information request form shall request that the property owner provide

their phone number and/or email address. When this contact request form is used, in lieu of a physical copy of the *Acquiring Real Property for Federal and Federal-aid Programs and Projects*, a web link to the online brochure can be provided in the Notice to Owner Letter, however, the contact information request form must allow for the owner to be able to request a physical copy of the brochure. LPAs can choose to use this process on their projects as well.

Letter of Owner Contact

For properties being appraised, the appraiser ***must*** provide the property owner or the owner's designated representative an opportunity to accompany the appraiser on the inspection of the property. This requirement is not applicable to properties that will be valued with a Waiver Valuation. A sample letter the appraiser can use for this contact is located within the Appendix. The FHWA booklet entitled *Acquiring Real Property for Federal and Federal-aid Programs and Projects* should be provided to the property owner or owner representative at the owner contact meeting, unless the owner confirms they have previously received it.

> ***49 CFR 24.102 (c)***
> *(Appraisal, waiver thereof, and invitation to owner. (1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in §24.102 (c)(2), and* ***the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser*** *during the appraiser's inspection of the property.*

APPRAISAL PROBLEM ANALYSIS (APA)

The Appraisal Problem Analysis (APA) is a concurrence between the Agency, the Appraiser and/or Review Appraiser concerning the appraisal problem and the first step in the appraisal process to define the appraisal problem, scope of work, and appraisal format involved to complete the assignment for the property to be acquired.

The Appraisal Problem Analysis & Fee Estimate (APA) form is the means by which the appraisal problem is identified. INDOT appraisal staff or fee appraisal consultants may be given an assignment to determine the appraisal problems which exist on each parcel of a given project. Review Appraisers under contract for either INDOT consultants or Local Public Agencies often perform this task. For appraisal assignments directly made by INDOT Real Estate, INDOT can waive the need for an APA for an assignment involving a Waiver Valuation, however, for appraisal assignments made by consultant ROW Service Managers, an APA is required for all valuation assignments so that INDOT Real Estate can concur with whether a Waiver Valuation is appropriate.

The following procedures should be followed in completing this assignment:

1. Study the latest Right of Way plans and plats for the project assigned.

2. Check the parcel packets for leases and other pertinent information that could have an effect on the appraisal problem.

3. When appropriate, review the project file checking all previous Right of Way cost studies, environmental studies, and correspondence.

4. Make a field inspection of the project area and the parcels to be estimated.

Upon the discretion of an INDOT Appraisal Supervisor, the appraisal problem will be identified by reviewing the Right of Way plans. When this is done, the Review Appraiser assigned to the project must verify that the appraisal problem was properly analyzed and that the Appraiser assigned to each parcel, will be preparing the correct appraisal report.

5. Prepare the Appraisal Problem Analysis for each parcel on the project. The APA includes current photos of the subject property and approximate area of acquisition (photos should be 3.5" X 5" minimum), aerial of the subject property, engineer's plat, area computation sheet and estimated setback of improvements on damaged properties. All attachments and supporting documents must be clear and conducive to read. If the parcels are subsequently assigned to a fee Appraiser/Reviewer, the Appraising Supervisor will use the Appraisal Problem Analysis to prepare the appraisal fee estimate.

6. The appraisal format and approach(s) to value must be appropriate for the appraisal problem to be addressed. When the analysis of the appraisal problem indicates it is a "borderline" situation (i.e. damages – long form versus no damages – short form); indicate the appraisal form and approaches which you feel will best address the appraisal problem.

   At the bottom of the report, briefly describe the alternate format, and approaches to value that may be required to prepare the appraisal report. The Review Appraiser for the project and the Appraiser assigned to appraise the parcel in question will later inspect the property and reach an agreement as to the valuation process to be followed.

7. If the Appraiser is a fee Appraiser under contract with INDOT, the Appraising Supervisor must be made aware of any changes that may cause a modification to the contract with regard to the fees or the due date. INDOT Supervisors will approve the appraisal & appraisal review fee amount and using the appropriate fee schedule, the APA should itemize both the appraisal & appraisal review cost breakdowns.

8. In compliance with provision 49 CFR 24.102 (b), the Notice to Owner letter (*see Appendix*) must be sent to all property owners on the project. At the beginning of the Appraisal Problem Analysis assignment, unless the ROW Services Manager has arranged for another staff member to mail the notice, the APA preparer will mail the Notice to Owner letter to all property owners and include a copy of the letter with the completed APA. The letter should address all owners of record as noted in the Title and Encumbrance Report.

   a. A copy of the letter will be submitted to INDOT with the completed APA.

b. The Notice to Owner letter is to be mailed to all parcels, including Waiver Valuation parcels, this requirement is to maintain compliance with the Federal Uniform Act. Include a physical copy of the land acquisition brochure with the Notice to Owner letter.

c. Please do not change the Letter except to add the date, pertinent project information, property address, owners of record.

LAND ACQUISITION VALUATION REPORTS

The type of property to be appraised combined with the nature and impact of the proposed acquisition will dictate the appropriate approaches to value required and the report format. The report format will dictate the length and contents of the valuation report or appraisal report. The following report formats are utilized by the agency for acquisitions:

1. FMV Evaluation: Waiver Valuation (Not an Appraisal)
2. Value Finding Report
3. Short Form Report
4. Long Form Report
5. Narrative / Specialty Report

Information and expectations for FMV Evaluation: Waiver Valuation Reports are located in the "Other Valuation Services" section of the Valuation Procedures chapter. In this section of this manual are instructions that are applicable to all appraisal reports for acquisitions.

Appraisal Reports Scope of Work

For each appraisal assignment, unless otherwise agreed between INDOT and the appraiser, an appraiser is expected to use the following at a minimum as their scope of work:

1. Provide an appraisal meeting the federally regulated definition of an appraisal:

> ***CFR 24.2 (a) (3)***
> *The term appraisal means a written statement independently and impartially prepared by a qualified Appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.*

2. Afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property, as required by the federal regulations. 49 CFR 24.103(a)(2)(i).

3. Perform an inspection of the subject property. The inspection should be appropriate for the appraisal problem, and the Scope of Work should address:

   a. The extent of the inspection and description of the neighborhood and proposed project area

   b. The extent of the subject property inspection, including interior and exterior areas, and digital pictures of these areas

   c. The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property)

4. In the appraisal report, include a sketch or marked up aerial of the property and provide the location and dimensions of any improvements. Also, it should include adequate color photographs of the subject property and comparable sales and provide location maps of the property and comparable sales as specified in this FHWA-approved manual.

5. In the appraisal report, include items required by the acquiring agency, including the following list:

   a. The property right(s) to be acquired, e.g., fee simple, easement, etc.

   b. The value being appraised (usually fair market value), and its definition

   c. Appraised as if free and clear of contamination (or as specified)

   d. The date of the appraisal report and the date of valuation,

   e. An identification of realty/ personalty as required per 49 CFR 24.103(a)(2)(i)

   f. The known and observed encumbrances, if any

   g. Title information

   h. Location

   i. Zoning

   j. Present use

   k. At least a 5-year sales history of the property

6. Influence of the project on just compensation: the Appraiser shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

7. In the appraisal report, identify the highest and best use as though vacant and as improved, if applicable. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.

8. Present and analyze relevant market information. Specific requirements for market information are in this Manual and should include research, analysis, and verification of comparable sales. Inspection of the comparable sales should also be specified.

9. In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project. If necessary, the appraiser may cite the Hypothetical Condition, Extraordinary Assumption or Supplemental Standards Rules under USPAP to ensure compliance with USPAP while following this Uniform Act requirement.

10. In the case of a total acquisition or an acquisition resulting in relocation. The assigned appraiser will coordinate the property inspection with the assigned Relocation Specialist for all parcels which will involve relocation entitlements; residential, business, farms, personal property moves, and non-profit organizations, as per 49 CFR 24.103(a)(2)(i).

11. Report his or her analysis, opinions, and conclusions in the appraisal report.

12. Floodplain: The report must have all pertinent information pertaining to the subject's floodplain status.

Additional Content – Scope of Work

INTENDED USE: This appraisal is to estimate the fair market value of the property, as of the specified date of valuation, for the proposed acquisition of the property rights specified (i.e., fee simple, etc.) for a Federally assisted project.

CLIENT & INTENDED USER: The client and intended user of this appraisal report is primarily the acquiring agency. However its funding partners may review the appraisal as part of their program and oversight activities.

TYPE OF APPRAISAL REPORT FORMAT: USPAP STANDARDS RULE 2-2

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: **Appraisal Report or Restricted Appraisal Report**.

ASSUMPTIONS AND LIMITING CONDITIONS: The Appraiser shall state all relevant assumptions and limiting conditions. In addition, the acquiring agency may provide other assumptions and conditions that may be required for the particular appraisal assignment, such as:

- The data search requirements and parameters that may be required for the project
- Identification of the technology requirements, including approaches to value, to be used to analyze the data

- Need for machinery and equipment appraisals, soil studies, potential zoning changes, etc.
- Instructions to the appraiser to appraise the property "As Is" or subject to repairs or corrective action
- As applicable include any information on property contamination to be provided and considered by the Appraiser in making the appraisal

FAIR MARKET VALUE - This is determined by State and Federal law. For the purpose of valuing the property, including land and any building, structure and improvement thereon, acquired under the power of Eminent Domain by the Federal government or using Federal-aid or Federal grant funds, ***Fair Market Value*** is the amount of money (cash or its equivalent) which, as of the date of valuation:

1. An informed and knowledgeable purchaser willing, but not obligated, to buy the property would pay to an informed and knowledgeable owner willing, but not obligated, to sell it.

2. Taking into consideration all uses for which the property is suited and might in reason be applied; including, but not limited to the present use or highest and best available use taking into consideration the existing zoning or other restrictions upon use and the reasonable probability of a change in those restrictions.

3. Allowing a reasonable period of time to effectuate such sale.

4. Disregarding any decrease or increase in fair market value of such real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner.

5. Disregarding the fact that the owner might not want to part with the land because of its special adaptability to the owner's use.

6. Disregarding the fact that the taker needs the land because of its peculiar fitness for its purpose.

7. Disregarding any "gain to the taker", i.e., not giving consideration to the special use of the condemner as against others who may not possess the right of Eminent Domain.

8. Fair market value, based upon adequate recent comparable sales and offering data is usually the measure of just compensation.

Instructions Applicable To All Appraisal Reports

1. INDOT approved forms should be used, unless otherwise authorized. The type of report being used should be named or marked at the beginning of the report. Forms used by fee appraisers should have a cover page that mirrors the Appraisal Report cover page, and in addition, should cover the same topics listed in the official form. Additional forms or pages may be added as necessary to properly document the appraisal of the property to be acquired
2. INDOT project numbers, code numbers, and parcel numbers must be included in the reports, along with the name of the road under construction and the county where the property is located. (Exceptions can be made for LPA projects.)
3. The type of property being valued should be identified.

    a The LRS database will only accept ONE type and it must be one of the following: Residential, Commercial, Bare Land, Farm, Special, or Industrial.

    b In the report, in addition to the above property type, you *may* add in parenthesis additional clarifications about the specific type of property, such as gasoline service station, general store, warehouse, dairy farm, single family residence, multi-family residential, etc. For instance: bare land (Commercial). Commercial (General Store), Farm (Dairy farm), etc.

4. Full name, address, and phone number(s) of the owner(s) should be provided; when applicable, the same tenant information should be provided.

    a Ownership information should be complete and match the names listed in the title and encumbrance report.

    b If during the appraising process, the appraiser determines that there are tenants of the property not disclosed on the title and encumbrance report, the tenants' information should identified (along with the nature of the rights of possession) in the report.

    c Contract buyers should also be identified and their names, addresses, and telephone numbers should be obtained, if possible.

5. The appraiser should describe the property to be acquired, and in addition, include a copy of the legal real estate description provided by the Agency in the report. The report should also provide: the location of the property (including the "911 address" of the property), the size of the property to be acquired, and a description of any impacted land improvements and improvements. An unaltered copy of the right-of-way parcel plat should be included in all reports along with a copy of the conveyance document(s).

    a In the report, in the appropriate spaces, you should provide the total NET area of the property before and after the acquisition, the total area of NEW Fee Simple Right of Way acquisition (separately denote any Previously Existing Right of Way; PER.), Temporary Right of Way3, and the Access Rights that may be acquired. The before area is the gross area minus the area which is in existing Right of Way.

b The report should be written so that the reader, who may never physically see the property, can attain the appropriate understanding and mental image of the property and acquisition.

6. Sales Record: All sales of/or from the subject property in the past five years must be reported showing the information called for on the form. If the appraiser finds that the property has sold but cannot verify the selling price, efforts made to satisfy this requirement must be explained.

   If a sale of/or from the subject property is reported in this section and such sale is not used as a comparable in the appropriate approach to value, the appraiser must explain in the valuation procedure analysis the reasons why the sales information was not used.

   If there have been no sales of/or from the subject property within five years immediately preceding the appraisal, simply state "None in Past Five Years" under this section.

7. Color photographs of good quality are required in each copy of any report format and must be no less than 3" X 5" inches in size. The photographs must at a minimum include the following: each area of acquisition (photographed looking both directions), all items involved with a cost to cure, and all land improvements and improvements in the area of acquisition.

8. The assigned review appraiser or reviewer must deliver a copy of the valuation report, and if applicable, the review appraisal, electronically in portable document format (PDF). Exceptions can be made for LPA projects by the LPA.

9. Documentation of Inspection: The appraiser ***must*** provide the property owner or the owner's designated representative an opportunity to accompany the appraiser on the inspection of the property. The appraisal should disclose the date of the inspection and the property owner's response to the appraiser's invitation to accompany him or her during the inspection.

   If *repeated attempt*s to contact the owner are not successful, it may be necessary to appraise the property without an inspection. However, the Appraiser must clearly indicate the circumstances under which the appraisal was made. If the property owner did not respond to the invitation, the appraisal should so state, and in addition, there should be a description of how the invitation was provided to the owner. The invitation should consist of at least the Owner Contact Letter and an attempt to reach the owner by phone if there has been no response to the Letter. The appraiser should list the names of everyone present during any meetings with the property owner. It is helpful for the Appraiser to describe in the appraisal report what concerns the owner may express.

10. Effective Date: The "effective date" or "as of" date should be included and should be the date the property was last inspected by the appraiser, unless the appraisal is a specially ordered report being made for a condemnation trial where the "date of take" has been determined through the condemnation legal process. The signature date on the report should not be more than 30 days after the effective date/last viewing of the property.

11. Certificate of Appraiser: This must be in the appraisal. Changes to the certificate should not be made unless approval is obtained from INDOT or the LPA. Please carefully read the certification before signing and dating the report. The appraiser's signature on this form certifies compliance with the certification as written.

12. Sketch Requirements: If the property is bare land, an unaltered copy of the land plat will be sufficient. If there are improvements on the property, provide a sketch/diagram of the parcel as near to scale as possible, showing dimensions, and attach a copy of the land plat. Provide a directional arrow indicating north and the plan sheet and/or aerial photo may be utilized. Specific items affected in the right of way acquisition that need to be identified in the sketch are as follows:

    a. *Land Improvements*- Label all affected land improvement; this includes all types of drive access and any parking area (asphalt, concrete, gravel, etc.) including the number of parking spaces, trees, shrubs, planters, light-poles, septic system, private well, sprinkler system and so forth. Identify any appropriate cost-to-cure items, where they are currently located and where they will be located after being moved.

    b. *Building Improvements*- Label all affected building improvement structures and identify any appropriate cost-to-cure items. When appropriate, the dwelling "setback measurements" should be provided to document the effects of the Right of Way acquisition.

13. Photos: Unless the appraiser was unable to inspect the interior of a property, there should be photos of the interior of any building improvements, in addition to photos of the exterior of building improvements, photos of all improvements and land improvements impacted by the acquisition, and photos of the right-of-way to be acquired.

14. Present Use and/or Highest and Best Use Analysis – State the present use of the property. State your opinion (based on a study of the market), as to the use that would result in the greatest net return to the property. If the present use is not the premise on which the valuation is based, an explanation must be given justifying the determination that the property is available and adaptable for a different highest and best use and that there is a demand for that use in the market.

15. Comparable Sales Data Documentation: A locator map setting out their locations relative to the subject property and neighborhood must also be included. For more information regarding comparable sales requirements, see the section on Market Data.

16. Improvements and Land Improvements:

    a If improvements are not affected by the acquisition, observed values can be used for the improvements.

b Describe all improvements to be acquired and establish the depreciated contributory value of each using the cost approach. A local contractor or a reliable cost manual may be used to establish the cost new. The estimated contributory value of the improvements may not exceed the cost new.

c The appraiser should also, for any improvements the owner may be able to retain, provide a salvage value for that improvement.

17. *Land Improvements in Temporary Right of Way*: If there are improvements in the temporary right of way which the appraiser believes may be allowed to remain without hampering construction, refer to the *Do Not Disturb section*.

18. Access: Even if no access-related damages are warranted, there should be a description of the existing access, and in addition, a description of what the access will be after the acquisition.

19. Evaluation of Residue Damages:

a Cost-to-cure items such as wells, septic systems, and fencing may be included in any appraisal report. Complicated Cost to Cure items are not appropriate for waiver valuations or value finding reports and will require a short or long form appraisal.

b The appraisal of minor land severance damages which requires only a brief explanation or analysis is also allowed in any appraisal report.

c If a change in the highest and best use is indicated after the acquisition, which will cause damages to the remaining property, a Long Form Report must be used.

20. Nominal Damages: If nominal damages are being awarded, these damages must be explained.

21. Excess Land – Procedures and policies for describing and referring to excess land and its valuation should be implemented when excess land is involved, as further detailed in.

22. Breakdown of Estimated Compensation – This section, located at the end of the Report, is an administrative requirement designed to facilitate review and audit operations.

23. Value of Acquisition – Multiply the areas of the various land types taken by their respective unit values and enter the products in the column provided. Itemize land improvements and buildings in the spaces provided and show the total value of the Permanent Right of Way acquisition.

24. Indicated Loss in Value to Residue –cost-to-cure estimates and the severance damage estimates are to be entered separately under this category.

25. Special Benefits – If special benefits will accrue to the remaining property by reason of the acquisition, the total amount will be entered and subtracted from severance damage in the space provided. When calculating the indicated loss in value to the residue, special benefits may be assessed only against total severance damages, and may partially or completely offset same.

26. Compensation for Use of Right of Way – These figures represent total estimated compensation for land areas of Temporary Right of Way Right of Way.

27. Estimate of Fair Market Value for all Right of Way Acquired – This figure is the sum of "Total Value of Acquisition", Indicated Loss in Value to Reside (net) and "Compensation for Use of Right of Way".

28. Addenda - Exhibits and data not included in the body of the report such as photographs, location maps, leases, legal descriptions, zoning requirements, construction plans, and cost-to-cure consideration may be included as addenda. The appraiser's qualifications are not required but can also be included as an addendum.

Value Finding Appraisal Report

The Value Finding report is used for uncomplicated acquisitions of property or property rights and uncomplicated cost to cures. The Value Finding is used when the appraisal problem exceeds the dollar limitations of the Waiver Valuation. As this appraisal report form is intended to be used for uncomplicated acquisitions, less detail and analysis is required than when a Short Form or Long Form is to be used for an assignment.

A Value Finding Report should not be used if the following apply:

1. If relocation of individuals to be displaced is required;

2. For acquisitions involving major building improvements, such as dwellings, commercial buildings, etc.;

3. If the current use is not the highest and best use of the property;

4. More than one valuation approach needs to be utilized to evaluate the value of the acquisition; or

5. If a change in the highest and best use is indicated after the acquisition, which will cause damages to the remaining property, a Long Form Report must be used.

The Value Finding Appraisal Report can be used for total takes when the acquisition only involves bare land and land improvements. The report can also be used for acquisitions involving small structures, such as sheds and small signs that do not produce income.

Short Form Appraisal Report

The Short Form report may be used for either a partial or total property acquisition. These reports require as much detail as necessary to describe the property to be acquired.

In addition to the general instructions applicable to all reports, and applicable to all appraisal reports, a Short Form Report should utilize the use of a market grid to help portray adjustments based on the degree of comparability of sales used. The adjustments should be entered as percentages or dollar amounts in the grid columns on the form, then the adjustments should be fully explained in the space below the grid. When there is not a substantial value difference between a comparable sale and the subject property, a "lump sum" adjustment is acceptable provided an explanation of the significant elements of dissimilarity is included in the appraisal report. If there is a substantial value difference between a comparable sale and the subject property, a detailed explanation is required for each significant element of dissimilarity affecting value for which an adjustment is made.

A Short Form Report should not be used if the following apply:

1. If there is an impact to the residue of the property that requires a need to evaluate the "after" value of the property, then a Long Form must be used;
2. If a change in the highest and best use is indicated after the acquisition, which will cause damages to the remaining property, a Long Form Report must be used.
3. If the appraiser has determined that "special benefits" have accrued to the property owner, a Long Form Report must be used.

Long Form Appraisal Report

The Long Form appraisal report is the report to utilize when there is a need to further evaluate the "before" value and the "after" value of a property, to explore the issue of residue damages. This form is to be used when the simpler appraisal forms are not applicable due to the limitations set for their usage. Explanations of appraising issues should be thorough and complete in Long Form appraisals.

This report form is also the appropriate form to be used to analyze issues with highest and best use when, after the State's acquisition in a partial taking, the highest and best use of the residue will change. In an analysis of highest and best use of the property being appraised, and any remaining property after the acquisition, must include consideration of any easements, leases or other title encumbrances. If the present use is not the highest and best use, show the basis for deciding that the property is legally and economically available and adaptable for a use other than the present use and that there is a demand.

<u>Cost Approach after Acquisition</u>

If the cost approach is used in the before value, it may well be applicable in the after value, assuming that all or a portion of the improvements are on the remainder. Building sizes and unit costs usually need not be repeated in the cost approach after the acquisition since they would remain constant: It will only be necessary to reconsider the accrued depreciation for any functional or economic obsolescence as a result of the acquisition. If no severance damages are found to occur to any parts of the residue, their respective values as established in the before value may be re-applied in the after value with only a brief explanation.

Market Data Approach after Acquisition

The same criterion applies in arriving at an estimate of value after the acquisition. If there are major changes in the residual property the Appraiser shall attempt to find sales that have factors of comparability, even though they may be somewhat remote. It is more acceptable for an Appraiser to use and make adjustments to sales of remote comparability (for support of the after value) than it is to disregard this approach. If no severance damages or benefits are found to occur to the residue, the value as established in the before value less than value of the part acquired may be re-applied to formulate the after value for this approach. A brief explanation will be necessary.

Income Approach after Acquisition

In many cases, the after value may be supported by developing a new income approach which may require a new estimate of economic rent and schedule of expenses. In any event, justification for the data used to support this approach will be required to the same extent as in the before value.

Consideration of Special Benefits

Damages to the remaining property which have been estimated and fully supported may be partially or completely offset by similarly supported special benefits. All residues located on or near interchanges should be considered for special benefits. Further information about special benefits, as opposed to general benefits, and how these damages should be used to offset against residue damages is in the section on General and Special Benefits in the Eminent Domain Legal Information Section.

POLICIES AND PROCEDURES

Contaminated Properties

Typically, INDOT requests the Appraiser to appraise the subject property as if free & clear of contamination. Please refer to the below extraordinary assumption and hypothetical condition provided by USPAP to be referred to in the appraisal report. Refer any questions about contaminated properties to the INDOT Office of Environmental Services.

Extraordinary Assumption

EXTRAORDINARY ASSUMPTION: an assignment specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the Appraiser's opinion or conclusions.

> *Comment*: Uncertain information might include physical, legal or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or the integrity of data used in an analysis.
>
> Example: Appraising a property as if it were free of environmental contamination when it is not known to be contaminated.

Hypothetical Condition

HYPOTHETICAL CONDITION: a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.

> *Comment*: Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.
>
> Example: Appraising a property as if it were free of any contamination when it is known to be contaminated.

In developing and reporting the appraisal, disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project.

Multiple Interest Holders

When a property has more than one interest holder, such as a tenant, easement, life estate, or other less than fee interest, the value of those interests in the property should be broken out in the valuation report, so that INDOT will know the division of the compensation that may need to go to those interest holders. INDOT will need to know the value of the interest (such as the life estate) as well as the value of the remainder fee interest.

Tenant-Owned Improvements

For tenant-owned improvements, at the time of the owner contact and/or property inspection it is the responsibility of the appraiser to determine ownership of the improvements. If any improvements are lessee owned, it will be necessary to determine:

1. Intent of the parties as to ownership of improvements made by the lessee.
2. Terms of the lease, if any, concerning improvements made by the lessee.
3. The method in which the improvements are affixed to the property.

Depending on the particular lessee owned improvement and the Intent of the parties, terms of the lease and the method of affixation of improvements, it will be necessary to determine if the improvement is personal property or real estate. If the improvement is determined to be real estate, it should be appraised, and a separate value broken out in the appraisal report. If the improvement is personal property, it should not be included in the appraised value, but should be identified in the appraisal as personal property. There may be relocation implications, as such notify Relocation. It may be necessary to obtain an appraisal prepared by a specialist for items not typically considered real estate.

Life Estates

A life estate is a right of use, occupancy, and control of a property, limited to the lifetime of a designated party, known as the life tenant. The life tenant has the right to earn profits from the property during his or her lifetime and has a duty to maintain the property in good condition. If it is determined during the appraising process that a life tenant is deceased, this should be noted, and the appraiser will not need to value the life estate. Both the life estate and the remainder interest should be valued.

Easements

An easement is a negotiated agreement that grants another property or individual the right to use a property for a specific, identified use, such as access, drainage, etc. A property gaining the right is benefited by the easement, whereas the property subject to the easement is burdened by the easement. Easements are rarely sold on the market, and so, a market value for an easement is difficult to determine. The appraiser should describe the easement holder(s), describe their easement interests, describe the valuation approach used, and determine the easement holder's portion of the compensation due for the value of an easement.

Pre-Existing Right of Way

In some instances, Right of Way acquisitions by the acquiring agency were not recorded. In an effort to correct this situation, some parcels may include a break-out of the area of existing Right of Way to be acquired by Warranty Deed as follows:

1. Area under the pavement.
2. Area of apparent existing Right of Way.
3. Area of additional Right of Way to be acquired.

The following policy has been established by INDOT to determine Just Compensation for acquiring Presently Existing Right of Way:

1. A nominal amount of $1.00 will be awarded for the entire area under the pavement.
2. The fair market value for the new Right of Way to be acquired will be established by standard appraisal procedures.
3. The value of the apparent/existing Right of Way calculated at 100% of the value of the adjacent new Right of Way.
4. Land improvements in the existing Right of Way will be appraised on the basis of their contributory value to the subject property or a cost-to-cure estimate as appropriate.

   State installed items, such as guardrail, bridge wingwalls, rip rap, etc. will be provided No compensation.

It is acknowledged that extenuating circumstances MAY in some instances seem to nullify this approach to value. If such is the case, the matter should be resolved by consultation with the Review Appraiser for the project and the INDOT Appraisal Supervisor. It is important, however, that all values be established on any given project in a consistent manner.

Improvements in Existing Right of Way (Non-"PER")

It is INDOT'S policy to award no compensation for improvements which are encroaching on existing Right of Way where the Right of Way grant or fee simple acquisition was properly recorded. If extenuating circumstances indicate that compensation should be awarded for such improvements approval must be obtained from the Appraisal Manager or the approving authority of the acquiring agency. PRIOR approval must be obtained from FHWA for federal participation in that portion of the acquisition. Consistency must be maintained on a project basis.

Uneconomic Remnants – Excess Land Breakouts

> ***49 CFR 24.2 (a) (27)***
> ***Uneconomic remnant****. The term uneconomic remnant means 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 Agency has determined has little or no value or utility to the owner.*

The phrase "little or no value or utility to the owner" is subject to interpretations. In some instances, the owner may have good reason to prefer to retain the remnant while in others; the owner may insist that the remainder is of little or no value.

The Uniform Act requires an agency to offer to acquire all uneconomic remnants. The AGENCY is responsible for determining whether a remnant is uneconomic. The Appraiser's value conclusion on any remainder may therefore result in the establishment of an offering price should that remnant be determined to be uneconomic.

At times, INDOT may have determined that a remnant of land will likely be an uneconomic remnant during the right of way engineering process and real estate descriptions with "Excess Land" denoted will be provided to the appraiser. The Agency is required to offer to acquire the remnant if it is considered to be an uneconomic remnant. It is important that the Appraiser perform a complete "before and after" appraisal of this type of property so that the value of the whole can be easily established if it is later determined that the property should be acquired in its entirety.

When it has been determined that land will be an uneconomic remnant, the value of each uneconomic remnant (especially if there are more than one remnants) should be broken out clearly and separately. Although the Agency is required to offer to acquire economic remnants, a property owner may choose to retain an uneconomic remnant and so the Agency will need to know how to adjust the compensation to be paid based on which remnants are retained.

POLICIES FOR OUTDOOR ADVERTISING SIGNS AND OTHER SIGNS

All signs in the Right of Way must be described, photographed (in color) and appraised.

Sign ownership is the determining factor as to how the appraisal is to be handled. Since sign leases are seldom recorded, this issue may not be determined until the property owner has been contacted. It is at this point that the Appraiser must inquire as to the ownership of the sign and then proceed as indicated below. It is important that the following definitions be fully understood in order to properly appraise signs.

Parcel Packets

Separate parcel packets needed for signs may not have been prepared prior to the project being sent to the Appraising Section. The Appraiser who was assigned the appraisal of the land to be acquired must request that an Appraising Supervisor prepare a parcel packet and enter the information in LRS for the sign(s). For off-premise signs where the fee owner of the land also owns the sign, a separate parcel for the sign should not be needed.

Temporary Right of Way for Sign Removal

If it is determined that INDOT must purchase a sign or billboard, temporary right-of way may be needed for the removal of the sign structure during construction. Temporary Right of Way for Sign Removal continued:

Right of Way will be required if a portion of the sign over-hangs the new Right of Way, even though the sign base is outside of the new Right of Way line. If the structure is totally within the new Right of Way, no Temporary Right of Way is needed.

On Premise Signs

On-premise signs are signs that advertise or identify a) activities conducted on the property upon which it is located, or b) the sale or lease of the property. On-premise signs, along with directional and official signs and notices (transportation signs, signs put up by governments, service clubs, and religious organizations meeting certain criteria), do not require the creation of a separate sub-parcel. A sign owned by a tenant or lessee who operates a business on the site requires a separate Statement of Basis for Just Compensation for each tenant or lessee.

Off-Premise Signs: Outdoor Advertising Signs

Please refer to the Policies for Off-Premise Outdoor Advertising Signs (OAS) at the end of the manual for appraising, buying and relocation.

TEMPORARY RIGHTS OF WAY ACQUIRED FOR AGENCY

Design engineers establish the purpose and the size of the required Temporary Right of Way and such are identified in the temporary legal description contained in the parcel packet. Examples of Temporary Right of Way might be for driveway construction, grading, drainage, building removable, sign removable, etc.

Under Temporary Right of Way, land will be, in essence, leased by the State through the completion of construction; for valuation purposes, this is estimated to be a period of no more than three years. The Temporary Right of Way will revert back to the property owner upon release. The present worth factor used in calculating the value of the Temporary Right of Way is based on payments made at the beginning of the period and not at the end of the period.

Temporary Right of Way is to be valued by a present-worth rental value for a three year period. A current rate of return based upon the economic conditions applicable to the property type should be used and the discounting of the estimated rental payments should be based on the risks associated with the asset class. It is important to recognize that discount rates are typically equivalent to overall capitalization rates when no changes in the income stream are forecast.

Land improvements in the area of Temporary Right of Way are addressed in different ways. The State will typically replace the land improvements (i.e. concrete, asphalt, gravel, lawn etc.) in the area of Temporary Right of Way with similar types of materials. The second way is if the land improvements are outside of the construction limits and it is deemed necessary, a “do not disturb“ notation can be place on Right of Way plans for the improvements after design approval, meaning that the contractor of the project will not disturbed these land improvements. If the first and second methods cannot be accomplished then the Appraiser must pay for the land improvements as they contribute value to the whole property.

***SAMPLE FORMULA**: Land Value: $1.40/SF X 238 SF Temporary R/W = $333.20*

Year	***Land Value***	***Return to Owner %***	***Present Value Rental Factor***	***Present Value***
1	*$333.20*	*.10*	*1.00*	*$33.32*
2	*$333.20*	*.10*	*0.909091*	*$30.29*
3	*$333.20*	*.10*	*0.826446*	*$27.54*
SUMMARY:			*Total =*	*$91.15*
Temp. R/W: 238 SF	*X $1.40/SF*	*X .10*	*X 2.736 =*	***$100.00 ®***

One exception to the policy is Right of Way acquired for a temporary run-a-round on agricultural land. Since the land is rendered unusable for agriculture for a significant period of time due to compaction, it is the policy of the Department to compensate the fee owner 95% of the documented fee simple unit value for the land to be used in this manner.

Perpetual Easements Acquired for Agency

Fee title is maintained by the fee property owner; however, the acquiring agency has the right to use the right of way for the intended purpose. Wide variations in the types of perpetual easements to be acquired and their inherently different impacts on the properties affected require individual assessment.

EXAMPLES: A perpetual drainage easement encompassing an area along the rear property line of an undeveloped commercial site where an established drainage ditch is already located might be reasonably analyzed to have a minimal impact on the value of the underlying land and no effect on the remainder of the property. However, a perpetual drainage easement might be expected to have a major impact on the underlying land value and the remainder property values if it were established through the center of a fully developable commercial site.

Therefore, appropriate compensation for the conveyance of a perpetual easement should be predicated on analysis of the specific limitations and/or specified rights of use of the encumbrance on the land, the projected change in value of any existing land or building improvements affected within the designated easement acquisition area, and consideration for the effect of the easement on the remainder property.

Relocation Breakouts

If a property owner will be displaced by the Agency's acquisition, the Relocation Breakout worksheet needs to be filled out by the appraiser and provided to the Agency. This requirement is for the purpose of assisting the Relocation Section in computing supplemental housing payments to parcel owners.

When appraising parcels having a nonresidential highest and best use but having an owner occupied dwelling being taken in the Right of Way, the Appraiser is required to include a valuation for the residential unit including the dwelling, a typical home site, all attendant buildings and land improvements. This valuation will be accomplished by developing a value for the residential unit as if it were a residential total take. A description of the residential unit should be included if not already accomplished in the body of the report. The appraiser should make a concluding statement setting out the total estimated value of the residential unit. It will not be necessary to indicate this value estimate in any other part of the report.

Cost-to-Cure Policies

The cost-to-cure is an acceptable method of estimating damages to land or improvements either in the Right of Way or on the residue and will typically replace, relocate, remodel or redesign various affected items.

The Appraiser must state the reason(s) for concluding that a cost-to-cure payment is the most feasible method of measuring the damages. The cost-to-cure estimate must be equal to or less than the severance damage compensation that would result if the cost-to-cure method was not utilized. Typical items requiring cost-to-cure estimates are; fence relocations, relocating signs/billboards, septic systems, well relocations, gasoline storage tanks, pump islands, re- designing parking areas, re-designing structures, etc. These guidelines are to be followed when in need of cost-to-cure estimates:

1. Using a sketch or aerial photo, the cost-to-cure description should document the existing location of the item to be moved and the proposed new replacement site.

2. An estimate from an appropriate local contractor is the preferred source for all such estimates.

3. Cost-to-cure estimates under $5,000.00: while a written estimate is preferable, verbal estimates by a local provider of the necessary services are acceptable. The name, location and telephone number of the person who provided the estimate MUST be included in the appraisal for the purpose of verification. (Complex cost-to-cure issues like sign relocation, septic systems, parking replacement, etc. always require written estimates).

4. Written estimates by a local provider must be provided when the cost-to-cure estimate is anticipated to be in excess of $5,000.00.

5. If every effort to obtain an estimate from a local contractor has been exhausted, a recognized cost manual may be used. Documentation as to why the cost manual is being used along with reference to the cost manual with date, & page must be stated in the appraisal.

6. Payment to contractors for written cost-to-cure estimates is allowable but there must be a clear understanding of what the fee will be prior to the estimate being made. A letter agreement stating the fee, due date, etc., must be obtained for all FEES in excess of $100.00 and be approved by the Appraisal Manager. For State projects, the following forms will need to be completed by the provider.

a. Letter Agreement for fees in excess of $100.00. Claim Voucher billings/payments must be under **$500.00** according to the policy of the Indiana State Auditor.

b. *Vendor Information Form* (replaced W-9) prior to or along with the first claim for payment. Additional *Vendor Information Forms* will not be needed for future claims unless there is a change in Address, etc.

c. Claim vouchers for payment of fees, to be prepared in LRS for State projects. Contact the Operations Section for assistance. The Local Project Agency will provide their own claim voucher format. Note: It is imperative that the payee portion of the claim voucher "match" the name and address on the *Vendor Information Forms*.

d. Vendors must have a direct deposit account for reimbursement (State policy – LPA policies will vary).

Resolving Septic Systems & Wells

When any portion of a septic system or private well is in the Right of Way to be acquired, the Appraiser must check with the Local Sanitation Department, the Local Board of Health, or other local officials to determine whether a permit may be issued for the re-installation. If current requirements require a system other than the system currently in use, the cost-to-cure estimate must include the cost to replace the system to meet local code requirements.

If the system cannot be replaced, due to code requirements, condition of the remaining soil, etc., the parcel may need to be changed to a total take. The Appraiser must present the information to the Review Appraiser and appropriate INDOT Supervisors or the LPA official for a decision as to a change in the acquisition. The appraisal report should document the following:

- Local ordinance requirements & correspondence with local officials.
- Identify the "affected part" (i.e. fingers, tank, etc.) of the septic system utilizing either the septic plans filed with the local health sanitarian or probed by a local contractor. Property Management requires this information for a possible demolition contract with the local contractor.
- Identify the affected private well and type (water, gas, oil). Property Management may need this data to set up a contract to cap the well.

Compensation for Fencing

In an effort to establish some basis for consistency for valuing agricultural type fencing and to ascertain that the property owner is duly compensated for the property being acquired, the following scenarios and solutions will be the policy of the INDOT Real Estate Division.

Assume:	Limited access taking with no frontage road.
Considerations:	Type and condition of current fencing. Utility served by the existing fence.

Policy:

1. If the existing fencing is comparable or superior to the fence which will be erected in its place, pay a depreciated cost value for all fencing in the area of the acquisition.

2. If the existing fencing has deteriorated to the point of having little or no value, pay nothing for the fencing in the area of acquisition.

3. If it is assumed that all cross fences will be left in place, pay a cost-to-cure for end sets, bearing in mind the "right hand rule", if there is no other indication of the ownership of fencing.

4. If the realignment of fields is necessary, pay a depreciated cost for end sets and fences which will be eliminated.

   OR

5. Pay a cost-to-cure for end sets and fences which will be relocated because the fence is stock tight farm fencing, residential, commercial or industrial type fencing.

Policy:

Pay a cost-to-cure for relocation of fences on the new Right of Way line plus end sets for all cross fences. Again, recognize "right hand rule" See definition below.

If there is a question as to ownership, for a fencing located along a property border, the applicable Indiana law is the "right hand rule", if there is no other indication of the ownership of fencing:

RIGHT HAND RULE:

IC 32-26-9-2 Lands outside or abutting municipal boundary
(a) The owner of a property that:(1) is located outside;(2) abuts; or(3) is adjacent to; the boundary of the corporate limits of a town or city shall separate the owner's property from adjoining properties by a partition fence constructed upon the line dividing or separating the properties regardless of when the properties were divided.(b) Except as otherwise provided in this chapter, and if a division of the partition fence has not been made between the property owners for the building, repairing, or rebuilding of the partition fence:
(1) for a partition fence built along a property line than runs from north to south:(A) the owner whose property lies to the east of the fence shall build the north half of the fence; and(B) the owner whose land lies to the west of the fence shall build the south half of the fence; and
(2) for a partition fence built along a property line that runs from east to west:(A) the owner whose property lies north of the fence shall build the west

half of the fence; and(B) the owner whose property lies to the south of the fence shall build the east half of the fence.(c) Notwithstanding subsection (b), if either property owner has constructed one-half (1/2) of a partition fence that is not the portion required under subsection (b) and has maintained that portion of the partition fence for a period of not less than five (5) years, the property owner may continue to maintain the portion of the fence.(d) If a property owner fails to build, rebuild, or repair a partition fence after receiving notice under this chapter, the township trustee of the township in which the property is located shall build, rebuild, or repair the fence as provided under this chapter. As added by P.L.2-2002, SEC.11.

Specialty Reports

An appraisal of items which are often considered personal property may be required when the items in question are not to be relocated. Such property may be owned by the fee owner of the property or the lessee who occupies the property. Items of this nature are often machinery, restaurant equipment, business equipment of a specialized nature, etc. For instance, the acquisition of trees which have a timber value may also require an appraisal by a person who specializes in this field.

The need for a specialty report will sometimes be apparent when the appraisal problem is analyzed by INDOT. However, it is the responsibility of the Appraiser and the Review Appraiser to ascertain that the items will need to be acquired and to obtain an appraisal of their value.

If assistance is needed establishing an agreement with a valuation expert, an Appraising Supervisor will lend assistance in initiating the agreement as necessary.

The format of the specialty report must typify professional documentation and the content should have, as a minimum, the following inclusions:

1. State the purpose of the report.

2. Definition of value(s) reported, i.e. fair market value, salvage value, value in use, etc.

3. Identification of the property and its ownership.

4. Statement of appropriate contingent and limiting conditions, if any.

5. Identification of the value problem.

6. The estimate of value(s).

7. The data and analysis to explain, substantiate and thereby document the estimate of value(s).

8. The date(s) on which and/or as of which the estimate of value(s) is made.

9. The certification, signature and date of signature of the specialist.

10. Maps, charts, plans, photographs and other descriptive material deemed to be relevant to the value estimate.

The Appraiser and/or the Review Appraiser must carefully consider the specialty report and incorporate the value into the estimate of just compensation consistent with appropriate sections of the Appraiser's Manual and applicable Federal and State laws and regulations.

APPRAISAL REVIEW

The purpose of the appraisal review is to confirm that the appraisal contains all of the necessary data properly applied and presented to support an estimate of fair market value, and from this estimate, to recommend the appraisal as the basis for the establishment of the amount of just compensation to be offered to the property owner.

If the initial appraisal submitted for review is not acceptable, the Review Appraiser is to communicate and work with the Appraiser to the greatest extent possible to facilitate the Appraiser's development of an acceptable appraisal. In doing this, the Review Appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself. The Review Appraiser must remain reasonably autonomous and not be subject to undue influence of "directed values". It is essential that the Review Appraiser not have any personal or business relationships or other interests where conflict of interest issues could arise.

The Review Appraiser is also responsible for appraisal quality, value determinations, and consistency amongst the parcels on the assigned project. The Reviewer must be constantly aware of the production schedule for completion of the appraisal process and strive to complete the review process to meet the established schedule. The Review Appraisers are often involved early in a project's development. Later they are involved in devising the scope of work statements and may participate in the designation of appraisal assignments to fee and/or staff Appraiser. The Review Appraisers are also mentors and technical advisors on agency policy and requirements, to Appraisers, both staff and fee.

The Review Appraiser must be qualified and competent to perform the appraisal review assignment. The qualifications of the Review Appraiser and the level of explanation of the basis for the Review Appraiser's recommended (or approved) value depend on the complexity of the appraisal problem. The Review Appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the agency's real property valuation needs and the Appraiser.

Review Appraiser Responsibilities

1. Development of the Appraisal Problem Analysis (APA). (At INDOT's discretion, INDOT may choose to use a staff appraiser to prepare the APA but hire a fee review appraiser to prepare the appraisal review.)

2. With Review Appraisal Assignments:

   a. The Review Appraiser's responsibilities may be broken down into three general headings:

      i Project Supervision
      ii The Review Process
      iii Administrative Requirements

   b. It is the Review Appraiser's responsibility to develop and include a Scope of Review with all appraisal review reports.

   c. During the review process the Review Appraiser will consult with Appraisers to clarify conclusions. The Review Appraiser may need to prepare an independent valuation that meets 49 CFR 24.103 requirements.

   d. The Review Appraiser will prepare a written report on appraisal review results of review using INDOT's *Certificate of Review Appraiser and Conclusion of Fair Market Value* form.

   e. The responsibility of the Review Appraiser is to determine whether the appraisal supports the establishment of the amount believed to be just compensation, and if the appraisal does support the establishment of the amount believed to be just compensation. The Review Appraiser has three options.

      i The appraisal is recommended as the basis to establish just compensation
      ii The appraisal is accepted as complying with all requirements, but not selected to establish just compensation
      iii The appraisal is not accepted. The Review Appraiser must include reasoning why the appraisal is not accepted

   f. If the appraisal is being recommended as the basis to establish just compensation, the Review Appraiser will prepare the Statement of Just Compensation. If the Review Appraiser is a fee appraiser, he or she will leave the agency approval signature block unsigned.

3. For Waiver Valuation assignments, it is the Approval Designee's responsibility to develop and include a Scope of Approval Process for all Waiver Valuations.

   a. Examine analysis and presentation of data.
   b. Assure all waiver valuation requirements are met.

4. Appraisals and Waiver Valuations prepared and reviewed by fee Appraisers must also be approved for negotiations by an LPA official or an INDOT Real Estate Division employee and only INDOT or the LPA may actually establish INDOT's (or the LPA's) opinion of just compensation

Minimum Compensation

It is the policy of the INDOT Real Estate Division to make a minimum offer of $1,000.00 for any type or combination of types of Right of Way acquisition. This policy applies to State and Local projects.

The Review Appraiser will add an administrative increment to any appraisal estimate below the appropriate figure in each situation to equal the appropriate minimum compensation. The Review Appraiser will allocate additional compensation to land and/or land improvements.

When the acquisition from a parcel **only** consists of Temporary R/W being acquired and the compensation is less than the $ 1,000.00 minimum compensation, the review appraiser should report the total $ 1,000.00 compensation on the Temporary R/W line of Section 5 of the Statement of the Basis for Just Compensation.

Excess Land Break-Out

The Review Appraiser is to utilize the excess land valuation provided in the appraisal report and break out the area of any excess land taken and its value in the spaces provided. The excess land is the after value as if it remained as a severed residue tract. Although the excess land may now be an uneconomic remnant, the owner may wish to retain it. In this event, the excess land value is readily available.

For Example:

Total acquisition	10 acres	value	$10,000.00
R/W required	8 acres	value	$ 9,500.00
Excess Land	2 acres	value	$ 500.00

The sum total of the Permanent Right of Way to be acquired plus the excess land must equal the total acreage acquired and the total compensation to the owner.

Value of Dwelling/Home Site for Relocation Purposes

When an owner-occupied dwelling is acquired, it may be necessary for the Review Appraiser to provide additional information for use by the Relocation Section in the determination of Replacement Housing Benefits, if any, that may be due to an occupant of the subject property.

If the appraised property is a total take whose home site is typical or less in size for residential tracts in the area, the necessary information should be contained in the appraisal on the Breakdown of Estimated Compensation sheet (*see Appendix*), and no further information from the Reviewer should be necessary. If the property is any of the following:

A partial take whose uneconomic remainder is not purchased by the Agency;

OR

If the Reviewer differs with the Appraisers estimation of the value of the property or the breakdown of the value of the property;

OR

If the dwelling is located on a tract other than typical for residential use in the area;

OR

If the dwelling is located on land with a different highest and best use.

The Review Appraiser must provide the following breakdown:

- Estimate of the value of the dwelling taken
- The itemized residential related land improvements taken
- The value of any residential related service buildings taken
- The typical residential size tract computed from the unit value approved for the corresponding area of take (show computation – site times unit value) plus the damages to the residential uneconomic remainder

These values must be compatible with and not exceed those inherent in the approved compensation.

When the uneconomic remainder is purchased by the Agency or the remainder includes a build able residential lot, show the "carve-out" as being the itemized before value of the whole residentially improved home site. The Reviewer must enter this information on the Relocation Breakout Form and include it in the addendum of the appraisal report. The Right of Way Agent will use this information to establish relocation entitlements.

Review of Two or More Appraisals

One of the Review Appraiser's primary responsibilities is determining fair market value when two or more appraisals are prepared for the same property and there is a divergence in value between the appraisal reports. All appraisals being considered may be acceptable but still reflect different opinions of value.

There are four alternatives available to the Review Appraiser when there are two or more appraisals to review:

1. Recommend one appraisal and accept or not accept the other appraisal and fully document the reasoning behind the decision;

2. The Reviewer may accept both of the appraisals but assign a fair market value either WITHIN the range of the appraisal reports or OUTSIDE the range of either appraisal. The Reviewer must follow acceptable appraisal practices, fully explain their reasoning, and provide adequate market information to document the fair market value estimate;

3. The Reviewer may choose to not accept either appraisal, but may request that the INDOT Appraising Supervisor, Agency Official, or Consultant, obtain another independent appraisal.

4. The Review Appraiser may include additional sheet (s) of paper to adequately explain the value correlation.

Not Accepted Appraisal Reports

Every effort must be made to avoid not accepting an appraisal report.

- The Review Appraiser **may not require** the Appraiser to change the report.
- The Review Appraiser **may not dictate the value** to be placed on an appraisal.
- If the Appraiser feels strongly about an element of the appraisal questioned by the Review Appraiser, and the two individuals cannot agree on a change, the Review Appraiser may make their revisions the report within the review appraisal report. The Review Appraiser then becomes the Appraiser and is solely responsible for the value conclusions. **Significant changes in value by the Review Appraiser must be supported** with the same level of documentation that would be required if the Reviewer were writing the Appraisal Report.

Updating Appraisals

If six months has passed since the effective date of an appraisal, either a staff appraiser or a review appraiser should determine whether the appraisal is no longer reflective of market value based on changes in the real estate market where the property is located.

When it is necessary to update an appraisal to the current date or due to minor design revisions, typically the review appraiser is given a revised appraisal problem assignment outlining the required updates.

All updated appraisals shall be supported by updated comparable sales and a physical inspection of the subject property. The review appraiser will report the updated valuation with a Certificate of Review Appraiser and Conclusion of Fair Market Value and include an updated Statement of Just Compensation.

STATEMENT OF JUST COMPENSATION

Federal Regulation 49 CFR 24.101 (b) (1) and (2) states that Agencies are to inform the owner(s) in writing of the Agency's estimate of the market value for the property to be acquired.

The Statement of Just Compensation (SJC) is the method of compliance with these requirements and is an itemization that the property owner will receive. The form is prepared and signed by a Review Appraiser, or, if the value was established by a Waiver Valuation, the person delegated by the acquiring agency or INDOT consultant to approve the report. An official of the Acquiring Agency must approve the compensation prior to an offer being made for purchase.

The SJC should state the area size and type of interest being acquired; each cost to cure estimate should be broken out with the amount of the estimate; the improvements and land improvements being acquired should be listed out, even if they have no contributory value, however, the specific number of trees, shrubs, etc., do not have to be provided; and any additional needed further explanation of the compensation should be provided.

DESK REVIEW POLICIES

The purpose of INDOT's desk review process is to ensure that a valuation report supports the amount of just compensation that should be paid to a property owner, and in addition, that a valuation report is both in compliance with INDOT guidelines as well as various federal and state laws. The review utilizes a checklist, the *INDOT Checklist for Reports of Valuation*, and is focused on ensuring that there are no errors in the report, that the report includes an appropriate description of the land/rights being acquired, and that the report complies with INDOT's policies for valuation reports outlined in this manual. Reports not in compliance can be sent back to the consultant for revisions or rejected. Depending on the specific contractual terms INDOT has with the consultant, INDOT may not be required to compensate a consultant for a report that fails to comply with policies outlined in this manual, and for this reason, when reasonable and possible, INDOT staff should provide the consultant with an opportunity to revise the report before rejecting it.

Appraisal reports, where the Review Appraisal was not completed by an INDOT staff member, need to be reviewed and approved by an INDOT staff appraiser. Waiver Valuations, which are not appraisals, can be reviewed by INDOT Real Estate Division employees who hold either a broker's or appraiser's license from the State of Indiana. Desk reviewers have discretion to reject reports for issues outside of the scope of the *INDOT Checklist for Reports of Valuation* but should be able to provide justification for rejection. Prior to rejecting a Waiver Valuation, desk reviewers who are not staff appraisers should consult with a staff appraiser if they have questions and concerns and are not sure how to address these questions or concerns.

EVALUATIONS

An evaluation of the Appraiser's and Reviewer's performance is completed by the Desk Reviewer for the project for all INDOT contracts.

Fee Appraisers who do not comply with the standards established by the Appraising Section may be removed from the list of qualified Appraisers. Following is a list of the primary causes for such removal:

a. Suspended or expired State of Indiana Appraisal License

b. Repeated failure to comply with the current Office or Real Estate Appraisal Manual

c. Repeated failure to meet due dates as stated in the appraisal agreement

d. Poorly prepared, supported or documented appraisals

e. Repeated flagrant mathematical errors

f. Evidence that the Appraiser/Review Appraiser has not adequately inspected the subject property and/or the comparables

g. Becoming a candidate for a political office or election to a political office

Qualified appraisers who have a salaried position with a governmental unit will remain on the list of qualified Appraisers/Reviewers solely for the purpose of performing appraisal work for the governmental entity by which they are employed.

ROW FUNDING vs. PE FUNDING

As detailed in 23 CFR 710.203(a)(3), federal preliminary engineering funding can be used to arrange for the hiring of appraisers to complete appraising assignments, however, if preliminary engineering funding is used for appraising services, adequate procedures should be put into place in order to ensure that no additional contact with property owners, for purposes of negotiation or relocation assistance, takes place until appropriate federal right-of-way funding approvals are obtained. A failure to comply with this could potentially result in the loss of federal funds for the project and buying negotiations on a project should not commence without funding approval.

OTHER VALUATION SERVICES

FMV EVALUATION: WAIVER VALUATION

A FMV Evaluation: Waiver Valuation (the "Waiver Valuation") report form is appropriate for uncomplicated valuations when the anticipated value of the proposed acquisition is $10,000 or less, as described in 49 CFR Part 24.2(a)(33) and 49 CFR Part 24.102(c). The Wavier Valuation is not intended to be an appraisal, and for this reason, the appraisal assignment expectations in the Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply to the assignment. The basic concept is that the Waiver Valuation will be prepared by a knowledgeable real estate person who is aware of the general market values in the project area. It is not required that the person preparing the valuation be a licensed/certified appraiser.

If the value of the proposed acquisition is complicated or more than $10,000, then the use of a Waiver Valuation form is not permitted. The following factors should be considered in determining the appropriateness of using the Waiver Valuation form:

1. Well or septic believed to be in the area of the proposed acquisition;
2. Elaborate landscaping features;

3. Whether there are any residue damages, unless cost-to-cure proposals that cost less than $1,000 will address the residue damages;
4. Advertising signs in the acquisition area;
5. Acquisitions involving more than one land type;
6. Improvements in the R/W that cannot be readily valued utilizing a current Marshall Swift manual or similar cost book; or
7. Other considerations that complicate the valuation.

Any one of the above factors does not necessarily preclude the use of the Waiver Valuation report; however, such items must be reviewed and considered in making a determination of whether factors exist that are severe enough to complicate the parcel's valuation. When it is determined that the parcel's valuation is complicated, other valuation methods must be used. In addition, if any of the factors precluding the use of the Value Finding or Short Form exist, the use of the Waiver Valuation form is not permitted, including the following:

1. If relocation of individuals to be displaced is required;
2. For acquisitions involving major building improvements, such as dwellings, commercial buildings, etc.
3. If the current use is not the highest and best use of the property or if the proposed acquisition will cause damage and potentially change the highest & best use; or
4. More than one valuation approach needs to be utilized to evaluate the value of the acquisition.

PROCEDURES FOR COMPLETING THE WAIVER VALUATION

1. The person completing the Waiver Valuation is responsible for sending the Notice to Owner Letter, unless one has already been sent by INDOT Support, the Right-of-Way Manager, or the APA preparer. A record of the mailing of this notice should be retained and included in the parcel file. The section on Notice to Owner Letters in this chapter should be reviewed for directions on the preparation of the letter.

2. The preparer is not required to invite the property owner to join **him or her on an inspection of the property, unless requested by INDOT or the LPA.** An onsite inspection of the subject property is also not required, however, current photos of the land being acquired are required, unless an exception is authorized by the Acquisitions Manager. Photos must clearly show any improvements being acquired;

3. Three comparable sales are to be provided on the report unless an exception is granted by the Acquisition Manager. The grid on the form is to be used to provide the comparable sale information and no additional documentation regarding the comparables is to be provided. The preparer will need to review more than three sales comparables, in order to become acquainted with the local market, and is expected to utilize the best three comparables in the report; the preparer can choose to retain information about any additional comparables reviewed in his or working file.

4. As a general rule, comparable sales should not be used if the transaction took place in excess of two (2) years prior to the effective date of the Waiver Valuation. When older sales are used, the report preparer should explain the inclusion of the older sale. All sales of parcels on a current project should be considered as comparable sales if there has been a transfer of ownership within the last five (5) years. These latter sales should be verified with a second source in addition to the present property owner, if possible.

5. Minor cost-to-cure estimate(s) for land improvements not included in the part taken may be added to the value of the acquisition. The cumulative total of any necessary minor cost to cure estimates for a Waiver Valuation may not exceed $1,000.00.

6. Temporary right of way easement values should be calculated the same as shown on page 83-84 unless an exception is authorized by the Acquisition Manager.

7. It is the policy of the INDOT Real Estate Division to make a minimum offer of $1,000.00 for any type or combination of types of Right of Way acquisition. This policy applies to State and Local projects. The report preparer should calculate the total compensation owed to the property owner, but check the box marked "minimum offer" at the bottom of the report if the total compensation was less than $1,000.00.

REVIEW PROCESS FOR WAIVER VALUATIONS:

1. The Waiver Valuations prepared by fee consultants will not require appraising review, as they are not appraisals; however, they will require INDOT Desk Review by an INDOT staff member as part of the agency's approval of the just compensation. INDOT staff members shall prepare the Statement of Basis of Just Compensation.

2. Waiver Valuations prepared by INDOT staff members will not require review or desk review but will undergo an administrative review process. The Statement of the Basis for Just Compensation will be prepared and approved by the INDOT staff member preparing the Waiver Valuation.

OTHER WAIVER VALUATION REQUIREMENTS

1. A Local Public Agency (LPA) or INDOT consultant Right of Way Manager may initially approve of the use of a Waiver Valuation but final approval by an LPA official or INDOT's Real Estate Division is required. Consultants are to obtain INDOT's confirmation that the assignment is a non-appraisal assignment by completing an APA and obtaining INDOT's approval of the APA.
2. For LPA projects, the LPA may utilize this Waiver Valuation process. The LPA can have the report preparer draft the Statement of the Basis of Just Compensation.

INDOT (or an LPA) may authorize a Waiver Valuation preparer to both purchase the parcel and also produce the Waiver Valuation report, pursuant to 49 CFR Part 24.102(n)(3); if the preparer is a fee consultant, the preparer must be on INDOT's approved consultant list for each type of services being provided. Waiver Valuations must be approved by the agency prior to the commencement of negotiations, and in addition, the agency must always approve just compensation offered by approving and signing the Statement of the Basis of Just Compensation.

EXCESS REAL PROPERTY DISPOSALS

Pursuant to 23 CFR 710.403(e), current fair market value must be charged for the use or disposal of a real property interest if that interest was acquired using title 23, United States Code funds. Indiana law controls the process of determining fair market value. When an appraisal report is required under Indiana law, the Appraising Section of the INDOT Real Estate Division can determine if a restricted appraisal report will suffice for the valuation assignment.

Real property owned by the State of Indiana through the Indiana Department of Transportation, having been declared excess, is appraised for disposal via the utilization of an Excess Land Appraisal. Excess real property, as referenced herein, can be either a property right or real property owned by the Department in fee simple. It may be improved or unimproved and often is an uneconomic unit. The acceptable appraisal process involves appraising the excess property by one of two methods:

1. If the real property was acquired by deed, it is to be appraised as excess property, valued as it stands by itself, on its own merits.

2. If acquired by grant (easement), the value of the excess property is to be appraised taking into consideration the increase in value of the underlying fee due to the release of the subject easement.

An excess land appraisal report is written to comply with Indiana law and the report is typically used to sell the excess land not needed for public use back to a private property owner. The highest and best use is analyzed to determine whether the excess land is buildable or an uneconomic remnant; current market comp data is used to value the property. Economic studies with paired sales are frequently utilized to discount uneconomic remnants that maybe landlocked, irregularly shaped, too small to develop, etc.

LIMITED ACCESS BREAK CHANGES

Access rights are considered a property interest under 23 CFR 710.105 and Indiana state law. When a property owner is requesting a new break in a limited access control line held along their property by the State of Indiana, through the Department of Transportation, or, is requesting for an existing break to be moved to a new location, the change in access must be appraised to determine the fair market value of this change in real property interests.

ROW USE AGREEMENTS

When the State of Indiana, through the Indiana Department of Transportation, leases or grants a perpetual easement in land, the Department must determine the fair market value of that land for the purposes of setting the lease rate and/or the cost of the perpetual easement.

An appraisal report is not normally required for these valuation assignments, however, at a minimum, an individual trained in valuations services by the INDOT Appraising Staff must complete these valuation assignments. The determination of the appropriate form of the assignment should be made by the Appraising Section of the INDOT Real Estate Division. For more complex valuation assignments, a licensed appraiser should be assigned to prepare an appraisal report. To ensure that the intended user has the appropriate expectations of the report preparer and the services being provided by the report preparer, the report preparer should disclose whether the report is an appraisal or whether the preparer of the report is acting as an appraiser during the preparation of the report.

Broadband Corridors Agreements

INDOT's appraising staff shall prepare a structured estimation process for determining the minimum fair market value to charge under a right-of-way use agreement for broadband corridors. This structured estimation process shall be prepared utilizing appraising processes and principles for corridor valuations, and as needed, will potentially consider enhancement factors based on connector points and/or other criteria. This structured estimation process shall be structured so it can easily be used by non-Real Estate staff members, and on a regular basis, INDOT Real Estate shall evaluate whether its fair market valuation estimates need to be updated due to changes in the real estate market.

Cell Tower Agreements

INDOT's appraising staff shall prepare a structured estimation process for determining the minimum fair market value to charge under a right-of-way use agreement for a cell tower lease. This structured estimation process shall be structured so it can easily be used by non-Real Estate staff members, and on a regular basis, INDOT Real Estate shall evaluate whether its fair market valuation estimates need to be updated due to changes in the real estate market.

REPORTS FOR OTHER ACQUISITIONS

Valuation services may be requested for acquisitions unrelated to a road construction project for a variety of reasons. If Indiana law requires an appraisal for the acquisition being made, an appraisal report must be prepared; otherwise, if there is no requirement that appraisal services be provided, depending on the complexity of the assignment and the expectations of those requesting the valuation services, the fair market value for an acquisition can be determined using non-appraisal valuation services. In such cases, the preparer of the report must disclose the type of services they are providing so that the intended user of the report has appropriate expectations. The determination of the appropriate valuation assignment should be made by the Appraising Section of the INDOT Real Estate Division.

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BUYING PROCEDURES

INDIANA DEPARTMENT OF TRANSPORTATION - REAL ESTATE DIVISION MANUAL
August 2018 – Revised August 2021

PROFILE OF A RIGHT OF WAY AGENT BUYER

INTRODUCTION

The Right of Way Agent is the principal contact between their client, the acquiring Agency (INDOT or a Local Public Agency), and the property owner. The initial impression made by the Agent is important to the successful acquisition of property, which is the ultimate goal of this Division. Abstracting, engineering, and appraising are preparatory functions of acquiring land. While each of these functions is an important component to the acquisition, each serves to prepare the Right of Way Agent to meet the goal of this division: **the timely acquisition of property from a knowledgeable owner who has been treated fairly.**

The responsibilities of a Right of Way Agent assigned to Buying include:

1. Thorough review of the plans,
2. Review and update the title information, completing the Supplemental Title and Encumbrance Report, (*see* Online Forms),
3. Review and understand the appraisal,
4. Prepare offer materials,
5. Deliver the offer to the ownership interests with an explanation of the project, plans, and acquisition procedures, either in person or by Certified Mail,
6. Address and document all owner concerns and determine whether plan changes or appraisal reviews are justified,
7. Gather information regarding obvious environmental concerns,
8. Preparation of all instruments/documents and obtaining all necessary signatures to provide clear title,
9. Assemble the parcel for submission, and
10. Submit the completed parcel within the target date.

ROLE

The individuals that the Right of Way Agent works with in either 1) acquiring real property (buying), or 2) providing relocation assistance, are deserving of utmost care and respect. Theyare entitled to all the rights and benefits afforded to them under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) as amended (Uniform Act), and the regulation titled Uniform Relocation Assistance and Real Property Acquisition for

Federal and Federally Assisted Programs (49 CFR Part 24); however, these individuals are not the Agent's clients.

The Right of Way Agent may be assigned to "buying" or to "relocation." Throughout the Buying Procedures section of the manual, those assigned to buying will simply be referred to as Right of Way Agents unless the need to differentiate between the Agent assigned to buying and the Agent assigned to Relocation arises.

PRE-REQUISITES

The qualifications of the Right of Way Agent includes having a valid Indiana Real Estate Broker license and being commissioned as a Notary Public by the Indiana Secretary of State.

A Right of Way Agent must be versed in multiple disciplines in order to review, verify and correct all the preceding land acquisition preparations:

1. The abstract/title report may be prepared for engineering use years prior to an offer being made. The Right of Way Agent must have a working knowledge of title law and be able to update a title report. This requires the Right of Way Agent to be familiar with the county land records system and the functions of the various county offices.

2. The Right of Way Agent should have basic right of way plan reading skills in order to be able to adequately explain the project and the purpose of the acquisition to the owner.

3. The Right of Way Agent should also possess a basic knowledge of the appraisal process, damage theory, and real estate law.

Once the Right of Way Agent is competent in these disciplines, he/she will be able to effectively communicate knowledge of the acquisition process to an owner.

NEGOTIATION SKILLS

COMMON COURTESY & RESPECT

Make appointments at the owner's convenience, within reason. Be punctual for appointments. This means planning for driving time, even in rush hour, and knowing how to get there. If tardiness is unavoidable, make an effort to let the owner know the meeting will be delayed. If the delay will be significant, apologize and offer to re-schedule if needed. The tone of the negotiation relationship is set here. Remember, this process is inconvenient for them and starting the meeting late can create an adversarial relationship before the offer is even made.

Allow adequate time for the appointment. The owner will feel unimportant if the Agent hurries or may interpret a rushed presentation as insecurity.

Pay attention to little things like wiping feet, awaiting instruction as to seating, being careful not to scratch a table with presentation materials. Treat their time/home/children/pets with respect.

While introductory pleasantries are necessary, don't spend an excessive amount of time before getting down to business.

APPEARANCE

Dress in a professional manner that is appropriate for the setting. Be aware of the individuals that will be attending this meeting and the environment where the meeting will be held and plan accordingly.

CONFIDENCE

Right of Way Agents must be prepared for every meeting. A thorough knowledge of the plans, owner's property, and the appraisal will allow an Agent to deal with the owner in a confident, *not superior*, manner. Do not enter the negotiations with an apologetic manner. Do express understanding for their situation and a sincere desire to help them sort through a complicated transaction.

CONTROL

Right of Way Agents should control the pace and agenda of meetings. The Agent has the information that they need and should be familiar with the issues and the procedures. The owner may need the Agent to guide him or her through the decision-making process. In order to be of assistance, Agents will have to remain calm, focus on the issues and not be argumentative. Avoid immaterial and controversial subjects which, if allowed to get out of hand, will keep the meeting from focusing on its true purpose. For example, refrain from conversations involving politics. Organize the presentation materials to be distributed to the owner before the appointment. This allows the material presentation to follow a logical progression and provides some control over pace and topics of discussion.

LISTEN

Right of Way Agents should plan to spend whatever amount of time is necessary listening to the owner's concerns, as long as the discussion is productive. Be appreciative that this may be the first opportunity the owner has had to vent any frustration about the acquisition. Allow some time for the owner to voice opinions and complaints. **Take notes regarding any problems, issues or concerns and include them in a Right of Way Agent's report and in the remarks section of LRS, along with notes of any actions to be taken**.

Active listening demonstrates concern for the owner’s situation and assures the owner that he/she has input to the process. This is the Agent’s opportunity to find out what specific issues are important. Money is not always the primary concern. **If it is unclear what would satisfy the owner, ask the owner to prioritize the issues**. Keep the owner focused on the relevant issues of the acquisition. Many times an emotional owner will consume the allotted time complaining about "government" actions which have nothing to do with the property in question or the project.

DISCUSS - NEVER ARGUE

If the owner expresses an opinion which is factually wrong, politely provide the correct information without arguing or conveying the impression of superiority. This will help discourage the owner from building a position upon a false assumption. If a discussion becomes emotional, both parties are so firmly set in their beliefs that neither party listens to the other. One person is thinking of a rebuttal and next statement while the other is speaking. If an owner is firm in their beliefs, the Agent should acknowledge the differing opinion and show appreciation for the owner's reasoning. Then the Agent should explain how the regulations and/or State policies require specific actions and limitations. It is possible to agree to disagree, which allows lines of communication to remain open and a settlement possible.

DON'T OVERSELL

Do not guess at answers to owners' questions. Simply offer to obtain an answer. **Don't over-emphasize the benefits of a project, appraisers' qualifications or the threat of eminent domain**. It will only serve to further alienate the owner and cause the owner to question the Agent's integrity. If there is unpleasant news to share, address it directly and honestly. The owner may react negatively at first but will appreciate the fact that the Agent didn't hide it or ignore the problem. Explain that the Right of Way Agent's job is to identify owners' concerns but there is no guarantee that all concerns can be resolved.

KNOW WHEN TO LEAVE

Occasionally an owner will become so emotional that any further discussion, after the plans and offer are presented, is counter-productive. It is not possible to convince this person of a different point of view at this point, and anyfurther discussion will alienate the owner. Ask if there are any other questions, explain what options are available and leave.

DEAL FROM FACT

Verify with all ownership interests that they are, in fact, being represented by the person who is acting as the point of contact, and that they support any decision that person makes. If an owner refers all future communication to an attorney, refrain from any further direct contact with the owner. The attorney will initially need to be informed of the details of the project, offer, and the acquisition procedures. **Verify that the attorney represents the owners' wishes and that whatever the attorney agrees to, the owners will accept**.

If an owner disagrees with the State's offer amount they must provide written documentation to support their counteroffer to the Right of Way Agent within the 30 day acceptance period. This documentation will then be presented by the Right of Way Agent to the Acquisition Section Manager for review. Please review the last section of this chapter for specific details about Administrative Settlements. Verify any information an owner cites, such as recent comparable sales in the area. It is human nature to exaggerate during an intense discussion or to repeat rumor as fact.

Frequently an owner will cite a neighbor's offer as a basis for demanding an increase. Explain that Agents are not permitted to discuss the neighbor's offer in the interest of protecting everyone's confidentiality. Explain that offers may contain damages and cost to cure items which invalidate simple comparisons of sale price divided by area. Minimum offer amounts may also seem to inflate the price per acre.

CLARIFY/SIMPLIFY

Avoid the use of professional jargon that may not be understood by owners. Appreciate that the owner may know little or nothing about real estate, highways, construction or appraising. After each discussion summarize what was covered to ensure that all parties understand. Such a recap should be in the Right of Way Agent's report (to be initialed by the owner) and in LRS, especially for a securing visit, when prolonged negotiations have resulted in multiple changes, or when special conditions occur that alter the terms of the sale from the original offer.

FOLLOW UP

Follow up regularly after presenting the offer, even when the owner has no questions. This will provide the owner every opportunity to raise questions before the 30 days expires. If the owner has no questions after the first call, ask if the owner wishes to waive the consideration period and accept the offer. If questions or problems are raised, the Agent will conclude every conversation and Right of Way Agent's report with a recap of what the Agent will do, what the owner will do, when the tasks will be accomplished and what the effect will be if the tasks are not completed on time. This same information should be copied into LRS Remarks. Agents should make sure to perform as they commit to, in order to maintain integrity as the State's representative.

Never assume that an owner is satisfied based on a verbal agreement. Diligentlypursue the parcel until a signed instrument is in hand.

Right of Way Agents usually have sufficient time to resolve owners' problems if they raise the issue or document it in a timely manner. Agents must stress the importance of timeliness for the owner's benefit. The State's goal is to treat every owner fairly while maintaining a project schedule.

It is the Right of Way Agent's responsibility to request any reasonable and necessary plan changes and address or communicate any problems appropriately. However, these requests must be timely. Delays in negotiations, whether caused by the Agent's failure to follow up and direct the negotiation toward a conclusion, or by allowing the owner to investigate issues that are irrelevant to the value of the property, will degrade the State's bargaining position by reducing the options that are available. At some point there will no longer be enough time left before the contract letting date to consider condemnation as a viable option. Remember that condemnations can take 6-7 months to provide INDOT possession of a property.

It is a fine balance of maintaining a productive working relationship while instilling a sense of urgency in the owner. The owner is more likely to respond positively when presented a time frame

on the first call with an explanation that it is the Right of Way Agent's responsibility to be proactive in keeping communication open so that the owner doesn't feel pressured into a decision without adequate information.

GOOD BUSINESS PRACTICES

Good negotiations identify all the issues before any changes are made. Be mindful of concerns that do not come up until the end of the 30-day consideration period, such as: "Everything we talked about is OK but I just thought of something else ..." Prolonged negotiations and plan changes that end in condemnation delay projects and increase their cost. The golden rule of negotiations is to be reasonable. If the owner's request sounds reasonable, it should be addressed.

PLAN REVIEW

Upon receipt of a project, the Right of Way Agent must review the plans to determine the nature of the project, its effects on the subject properties, and the need for the taking. The Right of Way Agent's ability to interpret the plans, explain the necessity of the taking, and answer the owner's questions will establish the tone of the relationship he/she will have with the owner. If the Agent cannot give a clear explanation of the plans and answer the owner's questions, he/she will not have confidence in any further explanations of appraisal methodology, acquisition procedures or INDOT policies.

If the plans are not included in the parcel packet that is provided at assignment, they may be available through ERMS (Electronic Records Management System). ERMS is an INDOT Technical Applications Pathway (ITAP) application. For more information on accessing ITAP and ERMS, visit itap.indot.in.gov

Right of Way Agents should begin plan review by noting the type of project (bridge or road, etc.) on the cover sheet, then become familiar with the format of the parcel index sheet. This sheet will indicate the appropriate pages for a particular parcel and save considerable time in searching through the entire set of plans.

The typical cross-section sheet will show what type of road, surface and ditches will be constructed. Agents should review this sheet noting edge-to-edge pavement width, number of lanes and their widths, shoulder width, type and size of side ditch and its side slopes. This sheet may denote the design variations of the road within different sections of the project by station lengths or show county roads (S lines) and Local Service Roads (LSR). The typical cross-section sheet may also show erosion control methods for side ditches.

The plan and profile sheet may provide the location of the new and existing improvements and elevations, property lines and drainage grades. **Any changes or new improvements that may affect the owner's use and enjoyment of the property should be noted in the Right of Way Agent's Report in order for the owner to make an informed decision on this sale.** These changes could include things such as new shoulders, guard rails, side ditches/side slopes, elevations, drive location-surface-widths, drainage patterns, access control lines, fences, and rip-rap areas. Highlighting the areas of the proposed acquisition on the owner's copy of the plan sheet may assist the owner in recognizing these areas.

Some plans may contain aerial photographs which are useful in determining drainage patterns. The plans must also contain a structure and approach table which delineates the type, location, and size of improvements to be constructed.

The following plan reading descriptions provide assistance in preparing to review and explain the plans to property owners:

1. *Property Lines:* The plans should show existing and proposed property lines, temporary Right of Way, and mortgage lines.

2. *Driving Lanes / Turn Lanes / Curbs / Sidewalks:* Right of Way Agents must explain driving lane widths, shoulders, turn lanes, edge of pavement. Cross sections will aid in determining these.

3. *Center Medians / Raised Island Turn Medians:* These may not actually be in the area of acquisition, but can certainly affect a property owner's decision.

4. *Drives:* Location (station number), width, type, length, grade can be found on the plan/profile, detail sheet, and approach tables.

5. *Guardrails:* These are found on the plan/profile in the profile section. It will show the beginning and end of the guardrails.

6. *Pipes:* These are almost always under drive entrances in the location of existing ditches, and will also be under drives in proposed locations. This information will be found on the plan/profile, detail sheet, and structure tables. Others types of pipes will be found under the driving lanes where ditches/small creeks flow under the roadway. The Right of Way Agent will identify size, length, and type of pipe, along with direction of flow.

7. *Ditches:* These are found on the plan/profile sheet in the profile section. Also, it is easy to show an owner where a ditch will be located by locating the pipes under drives; ditches will be located between the pipes. Owners will want to know the location (How much closer to their house?), the slope of the ditches (Will it be easy to mow?) how large, direction of flow, and rip-rap.

8. *Improvements and Natural Objects:* This will include trees, existing right of way markers, mailboxes, telephone poles, signs, water meters, fences and posts.

LEGAL TITLE

ABSTRACT REVIEW

Every parcel should include a Title and Encumbrances Report. It is the Right of Way Agent's primary responsibility to know the character of the title to be acquired. Failure to properly review the title can lead to the acquisition of a parcel with a cloud on the title.

The Right of Way Agent should begin with a review of the title history to verify that the abstractor's opinion of ownership is correct. Below are some of the many items to review:

1. The Right of Way Agent should verify accuracy of the abstract and that the owner(s) hold 100% of fee title under the same name and nature of title.

2. INDOT's policies require no less than a 20 year title search on fee simple acquisitions or parcels with environmental problems. Temporary easement only acquisitions will contain no less than the last deed of record.

3. **Review the caption deed to verify that the owner's name and nature of title is as the report cites it.** Verify that the owners' names are spelled the same in the deed as the report cites them. Typographical errors do occur.

4. **Note any subjections or reservations on the owner's caption deed.** These subjections may not appear in the report summary because they were not recorded separately. For example, if the owner assumed a mortgage, the deed subjection will likely be the only notice of this lien if no other instruments are recorded separately. Mineral interests may have been conveyed over 20 years prior and will only show up as a reservation in the later deeds. It is, therefore, very important to recognize these title clouds which are not always noted by the report.

5. Note all other interests in the subject parcel which must be released. These will most commonly include life estates, contract buyers, mortgagees, lessees, easement holders, lien holders, recorded tenant farmer leases, sign interests, and mineral interests.

TITLE UPDATE

The Right of Way Agent will update the title report by completing the Supplemental Title and Encumbrance Report form (*see* Online Forms). Any changes in the title will be detailed in the report. The Right of Way Agent will visit the County Recorder, Clerk, Court, and Auditor’s offices to verify in their records that the property does not have any new ownership, lien, court action or other interest, the Agent will then check the and obtain copies to bring the title up to date. If the new ownership is a sell-off of the original tract, the Agent will submit this information to the Acquisition Supervisor to determine whether the plat needs to be revised.

If there is a change in ownership or a typographical error in LRS, a "Notice of Land Acquisition Name Change" (*see* Online Forms) will be completed and submitted to the Acquisition Supervisor, along with the following documentation:

- Copy of recorded deed with new name
- In cases of a merger, documentation from the Secretary of State, or the merger document

The Acquisition Supervisor will then send this information and route the parcel in LRS to the District to have the name updated.

A copy of the name change packet should be placed in the parcel. This provides INDOT's database with the accurate ownership information which can be referenced in the future.

The following is a list of the types of ownership, interests of less than fee, and liens which may be encountered and the standard methods used to clear them. These rules apply to any type of conveyance instrument: deeds, temporary easements, rights of entry, etc. The buying process frequently encounters unique circumstances which must be dealt with by means other than standard practices. If such a situation presents itself, the Right of Way Agent should review it with the Acquisition Supervisor to determine the best way to resolve the issue.

OWNERSHIPS

All ownership interests will be made party to the offer and sign an acceptance of offer, conveyance instrument(s) (with any jurats needed to convey clear title), claim voucher(s) and supporting documents. The offer will cite the owner exactly as title was conveyed, unless the caption deed contained an error such as a misspelling or an incorrect or confusing recitation such as "tenants in common with rights of survivorship" or "subject to a life estate." Please pay special attention to the notary block because the name, type of ownership, and title of the person (if not signing in individual capacity) must be included there to be valid.

Please note that multiple signatures by the same person acting in more than one capacity may be necessary. This will be common in the case of Life Estates, Trusts, use of Power of Attorney, etc.

JURATS VS. AFFIDAVITS

INDOT has developed a variety of jurats to be used, such that an affidavit will rarely be needed. These jurats can be found with the ownership type descriptions in the following pages, in the section discussing Real Estate Taxes, and in the Online Forms website. If it seems that an affidavit may be necessary, confirm with the Acquisition Supervisor that its use will be approved.

TENANTS IN COMMON, TENANTS BY THE ENTIRETY, JOINT TENANTS

These are the most common ownership interests an Agent will encounter. The offer will be addressed, and presented, to all parties.

If more than one owner is listed on the caption deed, then those owners are tenants in common, unless there is explicit language to the contrary. Tenants in common may hold unequal interests. If the caption deed cites their interests, the deed granting clause should include a recitation of their interests. For example, "John Doe, an undivided 1/4 interest". If a tenant in common has died the Agent should verify whether an estate was opened (*see Estates, p. 118*). Most acquisitions will require an Estate to be opened. If this occurs, please consult the Acquisition Supervisor for further instruction.

If the property is owned as "tenants by the entirety" ("husband and wife," "spouses," "wife and wife," or "husband and husband"), the marriage is considered the owner and both spouses will be made party to the offer and sign the deed. If one of the parties has died, the surviving spouse immediately becomes the sole owner through their position as the sole partner in the marriage.

The deed (and any other conveyance instruments) must include a surviving spouse jurat in this form:

> _____(Name of Surviving Spouse) represents and warrants that (he) (she) is the surviving spouse of_____, who died in the County of_____, State of_____, on _____(Date) and that they lived together continuously as husband and wife until the date of decedent's death, that husband and wife held title to the subject real estate as tenants by the entireties, that all funeral expenses, expenses of last illness, and debts of every kind and character were fully paid, that state, federal, or any other taxes which might have been assessed against the decedent's estate have been paid in full._____(Name of Surviving Spouse) makes these representations for the purpose of inducing the Auditor of said County to remove decedent's name from the tax records, and to induce the State of Indiana to accept a deed from the Grantor conveying the subject real estate to the State of Indiana.

All joint tenants with rights of survivorship hold equal interests and will be party to the offer. A joint tenancy's rights of survivorship must be specified in the caption deed granting clause in order to be created. If it is not specified, then the parties are tenants in common. If a joint tenant is deceased, a survivorship jurat must be added to the deed (and any other conveyance instruments) in this form:

Grantor represents and warrants that (he)(she)(they) knew in (his)(her) lifetime a person named_____and that person died in the County of _____, State of _____, on _____(Date) and that Grantor and decedent held title to the subject real estate as joint tenants with rights of survivorship. Grantor makes these representations for the purpose of inducing the Auditor of said County to remove decedent's name from the tax records, and to induce the State of Indiana to accept a deed from the Grantor conveying the subject real estate to the State of Indiana.

LIFE ESTATES

A life estate is a reservation/subjection in a deed which grants a right, to either the grantor or a third party, to occupy and earn profits from a property during their lifetime. This interest will expire upon the death of the life estate interest. Life estates are treated similarly as other owners, except that their limited interest will be noted in the offer and deed granting clause as "John Doe, Life Estate Interest Only." Compensation paid to the life estate holder and fee owner(s) may be apportioned using the Life Estate and Remainder Calculator, based on actuarial tables from the Social Security Administration, (see Online Forms). Alternatively, the life estate holder may receive all of the compensation in the event of a Temporary Easement, or no compensation. In either situation, it is necessary that both the life estate holder and owner(s) agree on the distribution of funds, which should be documented by the Right of Way Agent. Preferably, the life estate holder should sign the same Warranty Deed signed by the owner(s). Life estate holders will also sign the Acceptance of Offer and Claim Vouchers.

Please note that multiple signatures by the same person are sometimes necessary. For instance, if the life estate holder is also signing the deed in another capacity (for example the life estate holder is the trustee of a trust), the signature blocks should clearly state when that person is signing for the trust, and when he or she is signing individually for the life estate.

If the holder of the life estate interest has died, a death jurat must be added to the deed (and any other conveyance instruments) in this form:

Grantor represents and warrants that (he)(she)(they) knew in (his)(her) lifetime a person named_____and that person died in the County of _____, State of _____, on _____(Date) and that decedent held a life estate in the subject real estate until (his)(her) death. Grantor makes these representations for the purpose of inducing the Auditor of said County to remove decedent's name from the tax records, and to induce the State of Indiana to accept a deed from the

Grantor conveying the subject real estate to the State of Indiana.

CONTRACT BUYERS

A contract buyer is considered to hold an equitable interest in the title to the extent of the contract buyer's investment, if the land contract is recorded in the county of the subject property. The contract buyer will be made a party to the offer and his or her interest will be cited. Contract buyers are treated as an ownership interest except that they are allowed to sign a quit claim deed if they object to signing a warranty deed (*see Conveyance Instruments, p 186*). If they sign a warranty deed, their limited interest will be noted in the granting clause ("John Doe, Contract Buyer's Interest Only). If a contract buyer dies, the documents must be signed by the personal representative of their estate.

ESTATES

If the owner of record is deceased the Right of Way Agent should review the estate file in the county clerk's office to determine if the estate is open or closed. An estate must be filed in the county of the subject property even if the owner resided and died elsewhere.

Closed estates

If the estate is closed, the Agent should get a copy of the court's order of final decree, which distributes the assets, to determine the new owner(s). The Agent will make the offer to the new owner(s). The new owner(s) must record this court order, an affidavit or an executor's deed in order to be recognized as the owner(s) of record on the auditor's plat. While the court order does grant legal title, if unrecorded, the auditor will reject INDOT's deed from the heir for recording because it conflicts with the auditor's transfer book, which still reflects the deceased's ownership. A title update showing the recording of the documents and the county's transfer of ownership to the new owners must be in the parcel, or it will be rejected by legal review. Occasionally, an estate may need to be re-opened because the real estate was not distributed. Please contact the Acquisition Supervisor for assistance in this situation.

Open estates

If an estate is open, the offer should be made to the estate through the personal representative. Address the offer to the "Estate of John Doe" and present it to the personal representative. A copy of the order appointing the executor will specify if the estate is unsupervised, thus giving the personal representative authority to sell property. If the order does not specify unsupervised, then the estate is supervised by the court and **the personal representative must petition the court for approval of the sale.** INDOT will pay reasonable attorney fees, **if necessary** and as approved by the Acquisition Section Manager, for petitioning the court. The personal representative will sign the deed after receiving a court order approving the sale (if a supervised estate). **A copy of the order appointing the personal representative (for either a supervised or unsupervised estate) and the order authorizing the sale (only if a supervised estate) must accompany the signed deed.** Please note that the deed cannot be signed and dated prior to the date of the court order providing authority.

Here is an example of the signature block for a personal representative of an Estate (unsupervised):

Estate of John Doe

By: *Trevor Doe*___
Trevor Doe, Personal Representative under Cause No. 45C01-1009-**EU**-82

Here is an example of the signature block for a personal representative of an Estate (supervised):

Estate of John Doe

By: *Trevor Doe*___
Trevor Doe, Personal Representative under Cause No. 45C01-1009-**ES**-82

Pursuant to Court Order dated: _____

No estate opened

The owner will need to have their attorney open the estate to allow for conveyance of title. The legal fees can be reimbursed through an Administrative Settlement if an estimate of the attorney's fee is provided and approved by the Acquisition Supervisor prior to opening the estate.

In some rare occasions, it may be appropriate to obtain a deed signed by the owner's descendants. Advanced written consent of the Acquisition Section Manager and the Office of the Attorney General must be obtained to acquire real estate in this manner because some counties will not accept deeds of this type. The real estate would have to be of small value (less than$10,000), the owner died without leaving a will, and having less than $50,000 worth of assets. An intestacy jurat such as this could be used:

Grantor represents and warrants that (he)(she)(they) knew in (his)(her) lifetime a person named_____and that person died in the County of _____, State of _____, on _____(Date) _ and that decedent owned the subject real estate at the time of (his)(her) death. Grantor represents and warrants that said decedent died intestate without a will and left surviving the Grantor, who was the _____(state relationship) of decedent, as (his)(her) sole and only heir at law pursuant to [cite Indiana code provision creating that type of heirship], that no administration was had upon the estate of decedent because pursuant to Ind. Code 29-1-8-3, it appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: fifty thousand dollars ($50,000), the costs and expenses of administration, and reasonable funeral expenses. Grantor further represents and warrants that all funeral expenses, expenses of last illness, and debts of every kind and character were fully paid, that state, federal, or any other taxes which might have been assessed against the decedent's estate have been paid in full. Grantor makes these representations for

the purpose of inducing the Auditor of said County to remove decedent's name from the tax records, and to induce the State of Indiana to accept a deed from the Grantor conveying the subject real estate to the State of Indiana.

GUARDIANS

If an owner is incompetent or a minor, that owner cannot legally convey property. The offer will be addressed to the owner but made to the owner's guardian. If the owner does not have a guardian, INDOT will pay reasonable attorney's fees, as approved by the Acquisition Section Manager, to petition the court to appoint a temporary guardian. If the owner currently has a guardian, INDOT will pay the attorney's fees to petition the court for approval of the sale. The guardian will sign the deed after receiving a court order approving the sale. **Copies of the order appointing the guardian, petition to sell and order approving the sale must accompany the deed.** Please note that the deed cannot be signed and dated prior to the date of the court order providing authority.

Here is an example of the signature block for a guardian (if the owner is a minor):

John Doe, a minor

By: *Casey Doe*
Casey Doe, his legal guardian

Here is an example of the signature block for a guardian (if the owner is NOT a minor):

John Doe

By: *Monica Doe*
Monica Doe, under Cause No. 45C01-1009-**GU**-82
Pursuant to Court Order dated: _____

TRUSTS

If a trust owns the property, the offer will be made to the trust through the trustee(s). Proof of the trustees' authority to convey should be documented in the Title and Encumbrance report. The trust may use a Trustee's Deed to convey, upon review and approval by the Acquisition Section Manager. If the trustee is made payee, rather than the Trust itself, the full name of the Trust should be listed on the business name line of the voucher and the trustee should sign the voucher as trustee. This will avoid any claims by the trust that INDOT invited misappropriation of funds, should the trustee not distribute the sale proceeds as specified in the trust agreement.

A copy of the trust agreement (sometimes called Declaration of Trust), should be requested early in the negotiation process. If the trustee does not wish to provide a copy of the entire agreement, the following pages should be provided: Page one of the trust, the page which names the individual who is trustee of the trust, the section which grants the trustee the power to sell or convey property of the trust, and the signature page.

For the W-9, if a SSN is used for the trust, the individual's name should appear on line one of the W-9 form and the trust name should appear on line two. If the trust uses an EIN, the trust name should appear on line 1.

The following trustee authority jurat should be included in any conveyance instrument to further document the trustee's authority:

> The undersigned represents and warrants that (he)(she) is the Trustee of the _____[full name of trust including dated information], that pursuant to the Trust Agreement (he)(she) has full authority to manage the affairs of said Trust and sign and execute documents on its behalf and that said authority has not been revoked, and that (he)(she) is therefore, fully authorized and empowered to convey to the State of Indiana real estate of this Trust, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act.

POWER OF ATTORNEY

A power of attorney, (POA), is an authority granted from one party to another to conduct business on the Grantor's behalf. The power to sell real estate is not usually granted in a standard power of attorney. **When an owner has granted a power of attorney, the Right of Way Agent must verify that it specifically conveys the authority to sell real estate.** The document must be recorded in the county of the subject property. A copy of the recorded Durable Power of Attorney must accompany the deed or any other conveyance instrument.

The deed must contain a POA jurat citing the recording information:

> The undersigned represents and warrants that (he)(she) is executing this deed in accordance with the terms of the Power of Attorney granted to him by the Grantor on the___day of_____, 2_, which Power of Attorney was recorded as Instrument No._____in the Office of the Recorder of _____County, Indiana on_____(Date) and said Power of Attorney has not been revoked and that (he)(she) is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act.

In addition, be sure that the POA signs their own name and the owner's name on all documents. Here is an example of the signature block:

> John Doe, by Casey Doe
>
> John Doe, by Casey Doe, his Attorney in Fact
> Under Power of Attorney recorded as Instrument No. _____

NAME CHANGES, MISTAKES IN CAPTION DEED (N/K/A AND A/K/A)

Frequently owners change their names (through marriage/divorce or through a court order, for example). When that is the case, simply indicate "now known as" in the granting clause, signature block, and notary block: "Jane Doe n/k/a Jane Smith." The owner should sign his/her current legal name, not his/her old name.

If the caption deed had an error in the spelling of an owner's name, an "also known as" can be used in the granting clause, signature block and notary block: "Jane Q. Doe a/k/a Jane O. Doe."

MINERAL INTERESTS

Mineral interests may consist of oil and gas leases, coal leases, or a deeded fee interest in minerals. Mineral interests are separate from the overlying fee interest. A copy of the lease or mineral deed should be in the title report. The Right of Way Agent should obtain a copy for the parcel file if it is not a part of the title report. **Please note that the abstract may not include the original mineral deed and the mineral interests are often recognized only by a reservation in the caption deed and not by a separate instrument.** Thorough review of the caption deed is critical to noting that this interest exists.

Oil/gas/coal leases

Please note that oil/gas/coal leases are not considered to be ownership interests but are included here because of their relationship to mineral interests. Deeded mineral interests will be treated as an ownership (thus requiring that owner to sign a Quit Claim Deed) and oil/gas/coal leases will be treated as leasehold interests *(see Leases, p. 139).*

Inactive leases

The Right of Way Agent should review the lease to identify the development requirements and specifications for extinguishment. IC 32-23-8-1 provides for the extinguishment of oil leases one year after the last payment of rentals, or after the cessation of operation either by non-production or non-development. A lease which has not been developed, or which has been abandoned and royalties not paid, for over one year may be released of record by an Affidavit and Request for Cancellation of Oil and Gas Lease (*see* Online Forms). It is important that the affidavit be obtained, even though the lease is obviously not in effect, in order to release it of record.

Indiana Code does not provide for the release of inactive coal leases by affidavit. The Right of Way Agent should review the termination requirements of the specific coal lease in order to determine the appropriate actions necessary to extinguish the interest. If the coal company still exists, it may be most expeditious for the Right of Way Agent to contact the coal company and request a quitclaim of the leasehold interest. If this is not possible, please contact the Acquisition Supervisor for further instruction.

Active leases

Oil, gas, or coal leases in good standing must be released by a quit claim deed from the lessee. Project exceptions may be made on a case by case basis that allow for a quitclaim of surface rights only with FHWA approval for continued sub-surface mining or drilling has been obtained. This clause would allow the lessee to continue exploration/mining activities but prohibits penetration of the ground surface within the right of way acquired.

Mineral interest

Mineral interests are to be treated as an owner and made party to the offer; however, only under unique circumstances would this interest have a separately appraised value. Mineral interests must be released by a deed from the owner of the interest. If the owner objects to releasing a mineral interest, a "release of surface rights only" clause may be added to the deed upon approval of the Acquisition Manager (provided a surface right is an adequate interest for construction, maintenance, and operation of the facility). This clause would allow the owner to continue exploration/mining activities but prohibits penetration of the ground surface within the right of way acquired. In some cases, a Mineral Interest Waiver (*see* Online Forms), can be obtained if approved by the Acquisition Section Manager and the Real Estate Division Director.

Inactive mineral interests

IC 32-23-10 provides for the extinguishment of deeded mineral interests which are unused for 20 years. At this time, because of the stringent requirements of the statute and publication costs, INDOT will no longer accept an Affidavit of Mineral Lapse or Mineral Interest Affidavit of Non-Compliance. If the surface owner desires to extinguish the deeded mineral interests on their own before INDOT's acquisition, please contact the Acquisition Manager for review of the documents to avoid rejection by legal review.

CLASSIFIED USE PROPERTIES

A property owner of a forest or wildlife habitat area may register their land with the Department of Natural Resources (DNR) as a classified use property. This classification will cause the county assessor to hold the real estate taxes in abeyance. If the property is removed from the classification, all accrued real estate taxes become due. Our deed must be recorded first or the property owner will be subject to all back taxes on the area of taking. The Right of Way Agent should prepare a memo to the appropriate division (Forestry, Fish and Wildlife, etc.) notifying them of our acquisition and requesting that the area of acquisition be classified ***after*** our deed is recorded. The memo will be held by the Acquisition Section until after the deed is recorded and must include the owner's name, address, property location, legal description of the proposed acquisition, and classification of the property. A copy of the recorded conveyance instrument and the memo will be forwarded to DNR's Stewardship Coordinator. The owner may be charged for recording fees, which INDOT should offer to reimburse.

FEDERAL LAND TRANSFERS

Federal Land Transfers are regulated by Title 23 CFR 710.601 of the Federal Regulations. When federal funds are used, it is necessary to acquire lands from a Federal Agency, a "submission of application" must be made through the Federal Highway Administration via the division administrator. The Manual for Federal Land Transfers for Federal-Aid Projects serves as a guide: https://www.fhwa.dot.gov/real_estate/uniform_act/acquisition/flt_manual/fltman.pdf. The submission of application substitutes for the Uniform Land Acquisition Offer Letter and should be emailed or sent to:

Federal Highway Administration
Division Administrator
Room 254, Federal Office Building
575 North Pennsylvania Street
Indianapolis, Indiana 46204

A few crucial steps must be taken prior to sending the application. The first step is to contact the Federal Agency's civil engineer technician. This person must be provided with the plan and profile sheets, land plat, archaeological reconnaissance report, an environmental assessment report, and legal description. These items will provide the local office of the Federal Agency the information to do their scoping and to prepare for the project.

The Submission of Application letter shall consist of the project number, parcel number, code number, and Des number and be formatted in the following manner:

1. Paragraph One should state that the State desires to make application for transfer of the land held in title by the agency, and specifically mention which forest the land is within.

2. Paragraph Two should state the purpose for which the land is needed, the approximate location of the parcel, and the interest to be acquired by a Highway Easement Deed.

3. Paragraph Three should state under what provisions the construction phase of the project will be performed. It must also state what specific agency and office controls the land, as well as how and when the agency acquired title to the land.

4. Paragraph Four should state, "In order that construction not be impeded, we are requesting an immediate right of entry onto the subject lands while the mechanics of the transfer are being completed."

The application letter must be signed by the Real Estate Division Director for the commissioner.

The request package to be submitted will consist of the application letter, the highway easement deed, the legal description (Exhibit A), the land plat (Exhibit B), and a copy of the plan sheet and profile. These items should be formatted for 8.5" X 11" paper. The documents should be saved as a pdf file and emailed.

The time it takes to get the deeds back from the Federal Highway Administration may take anywhere from six months to one year or possibly longer. On return of the documents, the Real Estate Director will sign the Highway Easement Deed, which will then be sent out for recording.

When returned, a recorded copy must be sent to the Federal Highway Administration and the consenting federal agency for their records.

National Park properties

National park property is held in the name of "United States of America, Department of the Interior, National Park Service". All national parks in Indiana are administered by a superintendent at the park facility. The superintendent's immediate supervisor is the regional director. The offer should be made to the regional director.

INDOT'S Pre-Engineering Division will provide:

1. An environmental assessment and finding of no significant impact and;
2. A certification of public hearing requirement and socio-economic, ecological, environmental evaluations.

These items must be included in an application for transfer. Please note that the Park Service does not accept "categorical exclusions" and at a minimum, an environmental assessment must be made. The park superintendent has the authority to issue a "letter of authorization" which will serve as a Right of Entry. This should be pursued due to the lengthy process involved in transferring park property. An inquiry should be made to the agency prior to mailing the offer to insure that the parties are familiar with the procedures. The Park Service will issue a "Highway Easement Deed." INDOT Records, Land Acquisition Code 2410, Parcel 1, has the only example of this type of conveyance.

This acquisition is so difficult and time consuming that the Right of Way Agent should verify with the Project Manager that the taking is absolutely necessary and cannot be eliminated, prior to beginning negotiations.

PREVIOUSLY EXISTING RIGHT OF WAY (PER)

Prior to 1960, INDOT acquired right of way by easement grant. The grant provided for the use of property as right of way with reversionary rights to the owner upon abandonment. These grants were not always recorded, sometimes recorded years later, and some counties refused to record them at all. Further information can be found in the Right of Way Engineering Manual.

If an owner challenges the existing right of way line the Right of Way Agent should first review the abstract to determine if a recorded grant was included. If the owner took title by a deed "subject to all existing rights of way and easements of record" after the grant was recorded, INDOT has valid title to the existing right of way.

The appraisal will assign fair market value for the area to the edge of pavement. The area beneath the existing roadway will be valued separately in the appraisal.

BANKRUPTCY

If an owner has filed bankruptcy, the Right of Way Agent should ask the owner for the attorney's name and contact information. The Agent will ask the attorney to petition the court to approve the sale. Any property held as an asset in a bankruptcy must have court approval of the sale. If the bankruptcy has progressed to the point that a trustee has been appointed, the trustee will be considered the owner of the property and will receive the offer. **The petition to sell, the certified notice to creditors, and the order from the bankruptcy court approving the sale must accompany the deed, signed by either the owner or the bankruptcy trustee.** The Agent should review the court order to verify that the sale is free and clear of all liens and that clear title will be conveyed to the State. The deed will be signed by either the owner or the bankruptcy trustee and must be submitted to the Attorney General's Office for approval prior to processing payment.

LOCAL GOVERNMENT PROPERTY

Political subdivisions of the State, including any county, municipality (e.g. cities or towns), township, municipal corporation, or special taxing district, are authorized to convey lands to the State, with or without consideration, for the construction or improvement of any State highway (IC 8-23-18-3). A municipal corporation may be a school corporation, housing authority, fire protection district or other special taxing district, to name but a few. The sale of property is subject to the approval of the executive and the fiscal body, or only the fiscal body if the political subdivision has no executive. The Right of Way Agent should make the offer to the executive. The executive will sign all parcel documents, except in the rare case where there is only a fiscal body. **Additionally, the executive must arrange for the approval of the fiscal body. This may require getting on the agenda for a scheduled meeting, so be sure to ask about this process when presenting the offer to avoid delays.** The Right of Way Agent must include in the parcel file a copy of the approval of INDOT's acquisition by the fiscal body in the form of meeting minutes or a resolution. The resolution or meeting minutes must include, at a minimum,

- The date of the meeting,
- That a vote was held and a resolution passed to "accept INDOT's offer of $____for the real estate located at_____,"
- The name and title of the executive who is authorized to sign the deed and/or other documents.

These are examples of the "executive" in the following circumstances:

1. *County* – Board of Commissioners
2. *County with a consolidated city* – Mayor
3. *City* – Mayor

4. *Town* – President of the Board of Trustees or sometimes a Town Manager
5. *Township* – Trustee
6. *School Corporation* – Superintendent
7. *All other subdivisions* – Chief Executive Officer

These are examples of the "fiscal body" in the following circumstances:

1. *County* – County Council
2. *County with a consolidated city* – City-county council
3. *City* – Common (or city) council
4. *Town* – Board of Trustees
5. *Township* – Township Board
6. *All other subdivisions* – Governing/budget board

County

If the project requires the acquisition of property from a county, the Right of Way Agent should present the offer to the county commissioners. The conveyance instruments should be signed by at least two of the three commissioners.

Here is an example of the signature block:

Dearborn County, Indiana

By: _____
Thomas Jefferson, County Commissioner

By: _____
Benjamin Franklin, County Commissioner

By: _____
George Washington, County Commissioner

Also, the Agent should add to the conveyance instrument an authority jurat. Here is an example:

The undersigned represent and warrant that they are the County Commissioners of the Grantor, that pursuant to resolution of the County Council they have full authority to manage the affairs of said County and sign and execute documents on

its behalf and that said authority has not been revoked, and that they are therefore, fully authorized and empowered to convey to the State of Indiana real estate of the County, and that on the date of execution of said conveyance instruments they had full authority to so act.

The acquisition must be supported by a resolution or meeting minutes from the County Council.

County with Consolidated City

If the project requires the acquisition of property from a city or consolidated city (Indianapolis) the Right of Way Agent should review the caption deed to identify the exact grantee. If the caption deed conveys to “the City of Columbus", the Agent should make the offer to the mayor or the mayor’s representative. The mayor will sign the conveyance instrument and it must be supported by a resolution by the city council or city-county council.

Here is an example of the signature block:

City of Columbus, Indiana

By: _____
Abraham Lincoln, Mayor

Also, the conveyance instrument must include an authority jurat. Here is an example:

The undersigned represents and warrants that (he)(she) is the Mayor of the Grantor, that pursuant to resolution of the City Council (he)(she) has full authority to manage the affairs of said City and sign and execute documents on its behalf and that said authority has not been revoked, and that (he)(she) is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the City, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act.

The acquisition must be supported by a resolution or meeting minutes from the City Council.

City

If the project requires the acquisition of property from a city but the caption deed identifies the grantee as "the City of Columbus by its Parks Department," the Agent will make the offer to the parks board director **but the mayor will still sign the deed.** It will be supported by a resolution by the parks board. This logic will apply to any department of a city or county which is cited as the grantee in the caption deed; i.e. Department of Public Works, Street Department, etc. **Please note that local ordinances may provide other officials the authority to convey and override these guidelines of authorization.**

Town

If the project requires the acquisition of property from a town, the Agent will make the offer to the president of the town board. The deed will be signed by either the president or the entire board as directed by the adopted resolution by the board. **All conveyances from towns must have town board approval (IC 36-5-2-9). Use the examples above for the signature block and authority paragraph to add to the conveyance instrument.**

Township

If the project requires the acquisition of property from a township the Agent will make the offer to the trustee who will also sign the deed. Deeds must be supported by a resolution by the township board. **Use the examples above for the signature block and authority paragraph to add to the conveyance instrument.**

Other Government Agencies

If it is necessary to acquire property from another government agency and transfer documents need to be altered or amended, a review by the Deputy Attorney General is necessary to be certain that INDOT's interest are addressed.

Some government agencies, such as the Department of Natural Resources (DNR) have achieved the ability to make land transfers less problematic for INDOT by using easement rights transfers instead of actual fee simple transfers. Please consult with the Acquisition Section Supervisor for further details if needed.

CORPORATIONS

Corporations must be registered and in active standing with the Secretary of State in order to have legal standing in the State. All acts by the officers of a corporation must be within their authority as prescribed in the bylaws of the corporation or as directed by a resolution of the board of directors.

The Right of Way Agent should make the offer to the corporation through an officer or the officer's representative, such as a property manager. An officer, typically the president, authorized by the board of directors, will sign the deed. The officer's signature may be attested by a second officer, typically the secretary. While Indiana law does not require the officer's signature to be attested, the Agent should ask the Corporation if their bylaws require it. The officer's authority to convey will be established by a certified copy of a resolution of the board approving the sale to INDOT and authorizing the officer to sign the documents. At least two corporate officers (Preferably the President and Secretary), should sign a corporate resolution approving the specific transaction, plus a certificate of incumbency showing that the signees are current officers.

For partial acquisitions of $50,000 or less, the Agent may request that the Acquisition Manager waive the requirement of a resolution. A sample Resolution Waiver is available (*see* Online Forms), but resolutions prepared by the corporation are acceptable as well as long as they are dated before the date of the deed or other conveyance instrument.

Check the Secretary of State Business Services website to get current corporate status, exact name, etc. Copies of these documents should be included in the parcel file.

The conveyance instrument must include an authority jurat. Here is an example:

> The undersigned represents and warrants that (he)(she) is a duly elected officer of the Grantor; that the Grantor is a corporation validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full corporate capacity to convey the real estate interest described; that pursuant to resolution of the board of directors or shareholders of the Grantor or the by-laws of the Grantor (he)(she) has full authority to execute and deliver this instrument on its behalf and that said authority has not been revoked; that (he)(she) is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act; and that all necessary corporate action for the making of this conveyance has been duly taken.

Here is an example of a signature block:

> Howard & Sons Auto Repair, Inc.
>
> By: _____
> Jonathan Howard, President

In the case of a one person corporation, the Right of Way Agent should verify the officers and their titles with the Secretary of State website:

https://bsd.sos.in.gov/publicbusinesssearch If the incorporation filing does indeed show only one person holding multiple offices, the officer may sign the deed containing the authority jurat, under the title specified by the information found on the Secretary of State website, indicating authorization to sign a deed.

If a corporation or other business entity has been dissolved, no longer has legal status in its home state, or no longer exists, please contact the Acquisition Supervisor for further direction.

PARTNERSHIPS

A partnership is an association of persons for business purposes. The offer should be addressed to the partnership through one or all of the partners. All partners are general partners and any one may act for the partnership unless specified otherwise in the partnership agreement. Either all partners may sign the conveyance documents or one partner may sign the documents if a jurat is

included in the conveyance document (*see* Online Forms) to verify their authority to convey for the partnership. In addition, a partnership authority jurat must be included in the conveyance instrument.

Here is an example (when all Partners are signing):

> The undersigned represent and warrant that they are the Partners of the Grantor; that the Grantor is a partnership validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full capacity to convey the real estate interest described; that pursuant to a resolution of the partners of the Grantor or the Partnership Agreement of the Grantor they have full authority to execute and deliver this instrument on its behalf and that said authority has not been revoked; that they are therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments they had full authority to so act; and that all necessary partnership action for the making of this conveyance has been duly taken.

Here is an example of a signature block:

> Howard & Sons Auto Repair
>
> By: _____
> Jonathan Howard, Partner
>
> By: _____
> Jason Howard, Partner
>
> By: _____
> Jonathan Howard, Jr., Partner

Limited Partnerships

Limited partnerships must be registered with the Secretary of State's Corporations office. **Only general partners in a limited partnership have the authority to act for the partnership and then only if the partnership agreement specifies their authority to convey real estate**. The Right of Way Agent should make the offer to the partnership through the general partner. The general partner will sign the conveyance instrument. The partner's authority to sign will be supported by a Partner jurat included in the conveyance document (*see* Online Forms). A corporation may be the general partner of a limited partnership. In such instances the Right of Way Agent will include both a Partner jurat *(see* Online Forms*)* and a Corporate jurat (*see* Online Forms) to verify the corporation's authority to act as general partner and the officer's authority to act for the corporation. In addition, the Agent must include a partnership authority paragraph in the conveyance instrument.

Here is an example (when the General Partner is a person, not a corporation):

> The undersigned represents and warrants that (he)(she) is the General Partner of the Grantor; that the Grantor is a limited partnership validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full capacity to convey the real estate interest described; that pursuant to a resolution of the partners of the Grantor or the Partnership Agreement of the Grantor (he)(she) has full authorityto execute and deliver this instrument on its behalf and that said authority has not been revoked; that (he)(she) is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act; and that all necessary partnership action for the making of this conveyance has been duly taken.

Here is an example of a signature block:

> Howard & Sons Auto Repair, LP
>
> By: _____
> Jonathan Howard, General Partner

If the General Partner is a corporation, then both levels of authority paragraphs are needed:

> The undersigned represents and warrants that_____[name of corporation] is the General Partner of the Grantor; that the Grantor is a limited partnership validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full capacity to convey the real estate interest described; that pursuant to a resolution of the partners of the Grantor or the Partnership Agreement of the Grantor said corporation has full authority to execute and deliver this instrument on the limited partnership's behalf and that said authority has not been revoked; that said corporation is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments said corporation had full authority to so act; and that all necessary partnership action for the making of this conveyance has been duly taken.
>
> The undersigned represents and warrants that (he)(she) is a duly elected officer of the_____[name of corporation], that the said corporation is a corporation validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the said corporation has full corporate capacity to convey the real estate interest described; that pursuant to resolution of the board of directors or shareholders of said corporation or the by-laws of the said corporation (he)(she) has full authority to execute and deliver this instrument on its behalf and that said authority has not been revoked; that (he)(she)

is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act; and that all necessary corporate action for the making of this conveyance has been duly taken.

Here is an example of a signature block (with a double level of authority):

Howard & Sons Auto Repair, LP

By: Howard & Sons Auto Repair, Inc., its General Partner

By: _____
Jonathan Howard, President

LIMITED LIABILITY COMPANIES

Limited liability companies must be registered with the Secretary of State's Corporations office. Limited liability companies consist of members who share managerial responsibilities. The company may delegate all decision-making power to a manager in the company's Articles of Organization. The Secretary of State's Corporations office can verify if the articles give the authority to convey to the manager. The Right of Way Agent should make the offer to one or all of the members or to the manager, if one exists. If the LLC does not have a manager or a managing member, then all members must sign the conveyance document. If the LLC does have a manager or managing member, the manager, managing member or other officer may sign the deed with proof of authority in the form of a Member jurat included in the conveyance document *(see* Online Forms*)*. In addition, the Agent must include a member authority paragraph in the conveyance instrument. Other requirements include a copy of the Operating Agreement, an LLC Resolution signed by another Member or Manager, (unless a sole member or all members sign the conveyance document), or a Waiver of Resolution signed by the Acquisitions Manager which can only be used for acquisitions under $50,000.00.

Here is an example (when all Members are signing):

The undersigned represent and warrant that they are the Members of the Grantor; that the Grantor is a limited liability company validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full company capacity to convey the real estate interest described; that pursuant to a resolution of the Members of the Grantor or the Operating Agreement of the Grantor they have full authority to execute and deliver this instrument on its behalf and that said authority has not been revoked; that they are therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments they had full authority to so act; and that all necessary company action for the making of this conveyance has been duly taken.

Here is an example of a signature block:

Howard & Sons Auto Repair, LLC

By: _____
Jonathan Howard, Member

By: _____
Jason Howard, Member

By: _____
Jonathan Howard, Jr., Member

Here is an example (when a Manager is signing):

The undersigned represents and warrants that (he)(she) is the Manager of the Grantor; that the Grantor is a limited liability company validly existing in the State of its origin and, where required, in the State where the subject real estate is situated; that the Grantor has full company capacity to convey the real estate interest described; that pursuant to the Articles of Organization of the Grantor and the Operating Agreement of the Grantor the (he)(she) has full authority to execute and deliver this instrument on its behalf and that said authority has not been revoked; that (he)(she) is therefore, fully authorized and empowered to convey to the State of Indiana real estate of the Grantor, and that on the date of execution of said conveyance instruments (he)(she) had full authority to so act; and that all necessary company action for the making of this conveyance has been duly taken.

Here is an example of a signature block:

Howard & Sons Auto Repair, LLC

By: _____
Jonathan Howard, Manager

ASSOCIATIONS

Associations are non-profit groups with an elected leadership, united for a specific purpose. The most common associations are condominiums, unincorporated churches and special clubs, such as a garden club. First, check to see if the group has been incorporated. Many groups have become corporations for tax purposes. If the group remains unincorporated, the Right of Way Agent will identify the elected leadership and verify that they have authority to convey under their bylaws. Please contact the Acquisition Supervisor for further instruction if the acquisition involves an association or church that is not incorporated. A custom authority jurat will need to be inserted in the conveyance instrument and a consent resolution or minutes of a church meeting authorizing the sale will need to be included as part of the parcel.

CONDOMINIUMS

If the association is a condominium additional steps will need to be taken to identify what ownership interests need to be acquired. The title work may or may not include a copy of the declaration and bylaws of the association. These documents will establish the authorities and procedures for the sale of property.

A condominium is a collective group of co-owners, each holding a percentage interest in the common property (the land and buildings). A condominium unit is the interior space within a building which is considered real property and is owned in fee simple by an individual. The individual will also own a percentage interest in the common area real estate. The co-owners' association may be an informal body without any ownership interest, or it may be a very formal body that owns the common areas. It is established under the bylaws of the association for the purpose of enforcing the bylaws and authorizing maintenance expenditures.

If the project is acquiring a fee simple interest, it will be necessary to release each co-owners' interest. If the project is acquiring a building, the Right of Way Agent would treat the land and building as one parcel and the owners of the units in that building as separate parcels. Please consult with the Acquisition Supervisor before securing a parcel when a condominium is involved because of the complex issues.

SIGNS

ON-PREMISE SIGNS

On-premise signs are signs that advertise or identify a) activities conducted on the property upon which it is located, or b) the sale or lease of the property. A sign with a message consisting of the name of the establishment or identifies the principal or accessory products/services offered on the premises are considered “on-premise” signs. . These signs are appraised along with the appraisal of the property and does not require the creation of a separate parcel.

Off-Premise Signs: Outdoor Advertising Signs

Please refer to the Policies for Off-Premise Outdoor Advertising Signs (OAS) at the end of the manual for appraising, buying and relocation.

RAILROADS

Railroads are unique properties due to the methods by which they acquire and hold title and pay real estate taxes. The title report should contain the instrument by which the railroad took title. The key issue is whether it is an active or abandoned line. The only true source of this information is the railroad itself. There may be corridors without rails or ties and still are active lines because, for

example, the procedure of abandonment has not been performed. Also, there may be corridors with rails and ties that are abandoned, possibly because the rails and ties are being left in place until they can be used elsewhere or salvaged.

If it is determined to be an active line, the next task is to determine the type of proposed use of the railroad property, e.g., crossing (at grade or separation) or longitudinal.

If the use is at a crossing, the Utility and Railroad Division may negotiate a construction agreement with the railroad's engineering department. The Real Estate Division will not be involved if the construction agreement is feasible. If the use is longitudinal, the Real Estate Division will need to acquire a perpetual easement.

If the line has been abandoned, the first task is to determine the quality of title held by the railroad. This is usually determined from the deed to the original railroad. The two categories are fee and anything less than fee. To determine quality of title, here are some suggestions:

1. Thoroughly review the instrument, paying particular attention to the language and intent of the conveyance.

2. If the instrument is a warranty deed using the terms "convey and warrant" and "fee simple" the intent is clear.

3. Where the language is ambiguous, carefully consider the intentions of the parties.

4. If the instrument conveys land - not rights - with no restrictions, and is adequately described, chances are good that fee title is being conveyed.

5. If the instrument grants a "right" or "Right of Way", then only an easement has been conveyed.

6. If the instrument conveys an interest "exclusively for railroad purposes," only an easement has been conveyed.

7. If the instrument conveys an interest for a specific period of time, only an easement has been conveyed.

8. If the instrument contains any type of reversionary clause, only an easement has been conveyed.

Although Indiana appellate courts have used their discretion in determining whether fee simple interest has been conveyed, if an instrument is questionable, the trend seems to be in favor of determining that an easement, rather than fee simple interest, has been conveyed.

If the railroad holds fee simple title, then the acquisition is the same as any other corporation holding fee title to property. If the railroad held anything less than fee simple title, their interest vanished when the line was abandoned and ownership reverts to the successor in title to the original grantor. Please consult with the Acquisition Supervisor for questions on the status of title.

INDOT needs to coordinate with the Surface Transportation Board to determine the status of all active or abandoned rail lines.

UNKNOWN OWNERSHIPS

If a parcel is assigned that has an unknown owner or tax ID number on the legal description, the Right of Way Agent should contact the Acquisition Supervisor. If all attempts to identify an owner fail, the Agent should review the problem with the Acquisition Supervisor to determine whether a published offer and condemnation or an administrative acquisition is appropriate. This determination is on a case-by-case basis, depending on the title history and other factors. See the section on Publication of Offer for procedures for publication. For administrative acquisitions, the Right of Way Agent will complete the Administrative Acquisition Memo for approvals. (*See* Online Forms).

CEMETERY PURCHASES

Although it is extremely rare, purchases from cemeteries can occur. According to state law (IC 23-14-44-1) a highway cannot be built across any part of a cemetery within 100 feet of a space in which burial rights have been transferred, without consent of the owner of the cemetery. IC 23-14-44-2 further adds that upon the complaint of any person, a permanent injunction shall be issued to prevent any other person from constructing a road on any ground that is held for cemetery purposes.

If construction requires the relocation of burial sites, the Right of Way Agent must make a diligent effort to locate the next of kin, and obtain permission from each of them. If no relatives are found alive, then the judgment and approval must be obtained from the Superior or Circuit Court of the County where the graves are situated. Court approval is obtained through the services of the Attorney General's office, with information provided by the Real Estate Section. Court approval should be attempted whether relatives have given consent or not. In accordance to IC 23-14-57-5, the Department must obtain permission from the landowner to remove the bodies. A suitable public cemetery must be located for re-interment of the bodies. All cemeteries within the county that permit the public to be buried in their cemetery should be contacted. A written agreement must be entered into upon between the State and the designated cemetery. A permit must be obtained from the State Board of Health to disinter, remove, and re-inter human remains and must be conspicuously displayed at both the disinterment and re-interment sites. A licensed funeral director or embalmer must be present at all times during disinterment and re- interment.

INTERESTS LESS THAN FEE

Interests of less than fee must be released and may be made a party to the offer, noting their limited interest. These interests will be contacted and the project explained to them. A quitclaim deed and

claim voucher, along with any necessary supporting documents such as corporate consent resolutions, will be signed in order to release their interests.

EASEMENTS

Easements which will be affected by the taking must be released by quitclaim deed (except for public utility easements to which INDOT's deed is subject). The easement holder should be contacted, the plans explained and a release by quitclaim obtained. Under some circumstances a release of easement can be waived, upon prior approval of the Acquisition Manager. When a taking involves a limitation of access, then access easement holders should be made a party to the offer.

Public Utility Easements

For INDOT Projects, utility coordinators on a project first work with the utilities to determine whether the utilities (and their easements) are in conflict with our ROW/other utilities installed near the ROW. These coordinators are heavily reliant on information received from the utility, and if the utility and our ROW are in conflict with one another, Utilities & Railroads manages the process of getting the utility relocated, entering into various agreements with the utility during the course of the process.

When dealing with utilities who have easements, if appropriate, a subrogation agreement is generally executed. With regards to the dealing with the easement interests of the utilities, the general standard that they're following is:

If utility to remain in place (in an easement), one of two courses of action are generally taken:
- A subrogation agreement is obtained; or
- Notes are made in EPS (our permitting system) about the utility/easement so INDOT is aware of the utility/easement, to avoid future issues with it.

If utility is relocated to a new location:
- If they're going into their own (new) easement/property, the coordinator seeks to get a subordination agreement to resolve the old easement area that we're acquiring while negotiating the relocation related agreements; or
- If they're relocating into our right-of-way, they will sign a subordination agreement to resolve the old easement area that we're acquiring and there will be a permit.

The costs being paid to a utility for the relocation process is key to getting the utility to agree to a subrogation agreement, and because INDOT's real estate acquisition process has a different timeline from the utility relocation process, in that projects arrive to our groups at different times, forcing the Divisions to work through an easement issue at the same time would create timing problems for us and will make our processes less efficient. In the case of large projects, the timelines may be very, very far apart and the Utility Coordinator may not yet know if a pipeline will have to be relocated or if it will be allowed to stay in place; holding up a parcel for an indefinite period of time would create other problems for us. But if, instead, we recognize that a "sub-parcel" can be created in the future if there is an easement issue, we can ensure that an easement release is not sought before INDOT has in fact made a determination that it is necessary that

we eliminate that interest. As there have been few, if any, cases of us having to go back to condemn utilities at a later date, we expect this situation to be extremely rare, if it were to ever occur. For INDOT projects, parcels will be processed, without obtaining releases from the utility easements found in the title & encumbrance reports, ROW Plans and parcel plats.

Local Public Agency (LPA) projects will need to determine their own level of risk acceptance when determining whether to require a release for utility easements.

Prescriptive Easements

A prescriptive easement can be created by adverse use (actual, open, hostile and continuous) or by the acquiescence of the owner, for an uninterrupted period of 20 years. A situation may arise in which the acquisition will impact an adjoining owner who will claim damages based on a loss of prescriptive easement. The Right of Way Agent should review the issue with the Acquisition Supervisor for the validity of the claim and possible resolution of the problem. Warning signs include roads or dirt paths that connect the subject property to adjacent parcels. These should be brought to the attention of the Acquisition Supervisor. (*see Previously Existing Right of Way (PER), p. 125*)

Way of Necessity

A way of necessity is a legal easement created when a public construction project, such as a ditch relocation or dam, creates a landlocked parcel and the owner is unable to obtain an easement from adjoining owners. These are primarily historical issues since current acquisition practices require that the owner be paid landlocked residue damages or acquired as excess land. The Right of Way Agent may encounter a way of necessity in the title work of a parcel. If it is affected by the acquisition it should be treated in the same manner as an easement. Warning signs include roads or dirt paths that connect the subject property to adjacent parcels. These should be brought to the attention of the Acquisition Supervisor.

LEASES

Leasehold interests generally require a release by quitclaim deed. A lessee is usually not made a party to the offer except when lessee-owned improvements are within the acquired area, such as signs or restaurant equipment. To ascertain if trade fixtures are being acquired, the Agent should coordinate with the appraising and/or relocation units. For some leasehold interests, such as outdoor advertising sign leasehold interests, the leasehold may be cleared under an "SA" suffix. In this case, the offer will be made separately based on a separate Statement of the Basis for Just Compensation (SJC).

If there is no separate SJC for the lessee, the Right of Way Agent will address the offer to both the owner and the lessee, noting the lessee's limited interest. The breakout of the values of each interest will help the parties to evaluate the offer, avoid a secondary set of negotiations among them and assure that the appropriate party is paid for any improvements, thus establishing their responsibility for removal of items from the Right of Way.

For acquisitions where the lessee's interest is being released with the main parcel (i.e., not through an SA parcel), any claimed loss in leasehold value is a matter between the owner and the lessee. In certain cases where a lessee has a long term lease at a favorable rate below economic rent, the appraisal may recognize the damage to the leasehold value. This damage would be addressed in the same procedures as the lessee owned improvements.

A lessee's interest can be waived if the taking does not affect his/her lease value or use of the property. An example of a leasehold interest that may be waived would be a tenant in a shopping center whose lease covers the entire common area boundaries of the property. The area of acquisition is a green strip between the parking lot and the Right of Way. The lessee will still enjoy the same use and benefits of the leased area without a loss (or significant loss) in parking. Furthermore, it would not be feasible to release 10 to 50 corporate leasehold interests in the shopping center.

A memo explaining the circumstances of the waiver of leasehold interest must be submitted, with prior approval, for the Real Estate Division Director's signature. A note must also be added to the Right of Way Agent's Report explaining the situation.

FARM TENANTS

A farm tenant is usually a year to year oral lessee for the purpose of farming. If the agreement is oral and year to year, the farm tenant's interest will be ignored because the owner will not renew it for the area acquired and the project is unlikely to disrupt his/her farming operations in the current year. If crops are damaged, those damages may be reimbursed by coordinating with the District (*see* *Crop Damage Claim* p. 35). A farm tenant is NOT made a party to the offer. **However, if the tenant does have a written lease in excess of the current year the Right of Way Agent will need to release the tenant's interest through a warranty or quitclaim deed and claim voucher.**

LIENS

Lien-holders are not made a party to the offer but their interests must be released by the appropriate instrument to secure clear title.

MORTGAGES

Mortgages are a lien against the real estate and must be released in order to provide clear title. Occasionally there will be a mortgage which the owner claims is satisfied but not released of record. The Right of Way Agent should verify that the mortgage is indeed paid off and have the owner submit a written request to the mortgagee for release. IC 32-28-1-1 requires that all mortgages or liens be released of record when they have been fully paid, including interest. If the mortgagee is no longer available to provide a release (such as a mortgagee who is an individual and has since died or a corporation which has ceased business in this state) the mortgage release can be waived on the basis of IC 32-28-4-1. This statute provides for the expiration of a mortgage 10 years after the date of the last payment due (20 years after the date of the last payment due on mortgages issued prior to September 1, 1982).

Valid mortgages require the Right of Way Agent to take the necessary steps to obtain a release. The Agent should obtain the mortgage loan account number from the owner and contact the mortgagee. The Agent will explain the taking and request a mortgage release, offering to make the mortgagee a co-payee. The mortgagee may prepare their own release. If so, the Agent should review the release, upon receipt, to assure that it cites the correct mortgage recording numbers and legal description.

The Right of Way Agent should prepare a Mortgage Release (*see* Online Forms) to be submitted, with a plat, copy of the deed and a copy of the signed acceptance of offer, to the mortgagee for their review. If the mortgagee charges a fee or a Mortgage Curtailment (mortgage paydown) for a partial release, this will be paid under an Administrative Settlement on a separate voucher with the owner as a payee and the mortgagee as the co-payee. The mortgagee does not sign the voucher. If the Agent is preparing the partial mortgage release (instead of the lender drafting their own document), he/she should include any assignments of leases and rents (common on commercial property) and any assignments of the mortgage from one lender to a new lender so the County Recorder will be able to follow the chain of title.

If the mortgagee requires payment prior to releasing, such as in a total acquisition, check- delivery instructions (in LRS for INDOT acquisitions) should be included on the claim voucher *(see Claim Voucher, p.* 279*).* Other information to be included are 1) name and address of the financial institution, 2) name of the contact person, 3) name of the mortgagor, 4) loan number, and 5) Instrument number of the recorded Mortgage.

IC 32-29-5-1 requires that an officer sign the release, generally a president or vice president for most lenders.

A "loan officer" or "branch manager" is not authorized to sign the release. If a mortgagee has multiple loans on the same property, they cannot be released with the same instrument; separate mortgage releases must be prepared. If a person or organization has a power of attorney for the mortgagee, the same procedures as described in Chapter 2, Power of Attorney, are required in order to sign a release.

Waivers and Partial Mortgage Releases

Waivers and Partial Mortgage Releases ARE NOT REQUIRED on acquisitions of $25,000 or less, unless noted negative equity or substantial risk.

Mortgages for acquisitions over $25,000 require a release unless complications merit waiving. These takings valued over $25,000 require a memorandum of waiver (Waiver of Partial Mortgage Release), with prior approval of the Acquisitions Section Manager, which is to be signed by the Director of the Real Estate Division. (*see* Online Forms).

Factors which will justify waiving mortgages would include a pending highway construction contract letting date, an unreasonable mortgage release fee of over $500, or a lengthy release

process taking six months or more. If these factors exist, the taking and mortgage condition must be evaluated to estimate the risk of foreclosure. The Right of Way Agent should compare the payoff balance versus the appraised after-value, noting whether the loan payment status is current.

Mortgage release waivers are not to be used as a shortcut to secure a parcel or meet a project target date. They are an assessed risk that INDOT must occasionally take in order to maintain a construction schedule.

Local Public Agencies (LPAs) acquiring properties that involve a possible mortgage waiver should seek specific guidance regarding exposure to this financial risk and its possible impact on local funding.

REAL ESTATE TAXES

Real estate taxes in Indiana are paid a year in arrears. In other words, tax bills issued in the current year are for the corresponding time period of the prior year. Tax statements are usually mailed in March with one payment due May 10, and a second payment due November 10. Penalties and interest accrue on delinquent taxes. In order to convey clear title, the real estate taxes, including ditch assessments and delinquent taxes, must be paid current or paid in advance, depending upon the nature of the taking. Prior to submitting the parcel for payment, the tax status must be checked and verified current.

Upon receipt of the State's deed for recording, the Auditor will change the plat book to reflect the State's ownership. They will forward the deed to the Assessor who will change the tax plat and status. The Treasurer will issue a new tax key number (on partial takings) or change the taxpayer information on a total acquisition. The State must not have taxes due on this new key number. If the taxes are delinquent, the owners must pay the past due taxes, penalties and interest. If the owner is unable to pay this before securing the parcel, then the past due taxes must be paid out of the proceeds of the acquisition.

INDOT requires that total acquisitions have all assessed taxes paid prior to making payment to the owner. Documentation of payment must include either a paid receipt or a signed voucher for the amount to be paid.

The Indiana Tax Commissioners and the Attorney General have determined that the effective date of transfer is the date of the deed, not the date of payment or the date the deed is recorded. Therefore, if a deed is signed prior to December 31, the effective date of transfer to the State will be the date of the deed and taxes for that year, payable the next year, will be forgiven. Taxes are not prorated.

> ***IC 8-23-7-31(b) Acquisition of property, rights, and easements; taxation***
> *(b) Real property and interests in real property acquired for permanent highway purposes are exempt from taxation from the date of acquisition, provided that all taxes, interest, and penalties recorded on the property tax duplicates have been paid.* ***Where real property or interests in real property are acquired after the assessment date of any year but before December 31,***

> ***the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor****. A property owner who on or after March 1, 1965, conveyed real property or rights in real property to the department and who after July 8, 1965, is assessed taxes upon the property or rights conveyed and who pays the taxes by reason of the failure of the department to properly record the interest in the real property conveyed with the county auditor and recorder for tax purposes may recover the amount of the taxes from the department.*

For example, if the deed was signed October 12, 2018, the Right of Way Agent should arrange for the owners to pay the November installment of the 2017 payable 2018 taxes. Payment was made January 6, 2019, and the deed was recorded February 20, 2019. The owner is not responsible for 2018 payable 2019 taxes which will be due in May of 2019. When a transfer takes place late in the year the Right of Way Agent should inform the owner that the Auditor may not be notified of the transfer in time to change the ownership in the plat book before tax statements are mailed in 2019. While they may receive a tax statement in 2019, they will not be responsible for these taxes.

Real Estate Tax Clause

If the deed is signed after, for example, December 31, 2018, and before the 2018 payable 2019 tax statements are issued, it is not possible to pay the unknown taxes in advance. However, the owner is responsible for the 2018 payable 2019 taxes because they had ownership and possession of the property for the entire year of 2018. Therefore, the Right of Way Agent should add a clause to every deed, not just during the interim period, which establishes the owner's responsibility for the taxes when they become due.

> "The grantor(s) assume(s) and agree(s) to pay the_____payable_____ real estate taxes and assessments on the above described real estate. This obligation to pay shall survive the said closing and shall be enforceable by the State in the event of any non-payment."

The Right of Way Agent will contact the County Treasurer to verify if the Treasurer will accept an estimated payment based on the amount of taxes paid the previous year. If the Treasurer will accept this amount, then the Right of Way Agent will deduct that amount from the proceeds and pay the taxes in advance of the statement being issued on a separate co-payable (owner and Treasurer) voucher, with check delivery instructions included (in LRS for INDOT acquisitions). If the actual taxes due end up being a lower amount, INDOT will process a refund to the owner.

If the actual taxes due are in excess INDOT will contact the owner to request payment of the additional taxes as per the tax clause on the deed. Please note, the tax clause is only for deeds, and should not be added to temporary easements or other non-deed documents.

Vouchering Delinquent Taxes

If the owner cannot pay the delinquent taxes, the Right of Way Agent should arrange to pay the taxes out of the proceeds from the acquisition. The Agent should prepare a separate voucher with the owner as payee and the County Treasurer as co-payee for the exact amount of the tax bill as projected 90 days forward to the date of payment. Verify with the Treasurer and the Auditor *all* the fees and penalties that are due, and will be due, before the State's check will be available. The Agent should be careful to include any ditch assessments in this total as well.

Verify that the property is not listed for tax sale this year. If it is on the tax sale list there will be a $50.00 advertising fee, which is not reflected on the tax statement, but must be paid even if the ad has not yet been placed. The Auditor may also have fees assessed for tax sale processing (*see Claim Voucher,* p. 279*; use the same procedures for check delivery for a mortgagee as a co-payee*).

Properties sold for taxes

If a property has been sold for delinquent taxes the highest bidder will receive a tax sale certificate which entitles him to receive a 10% return on the sale price. If the owner does not pay all accrued taxes, penalties, interest and tax sale fees within one year of the tax sale the certificate holder may redeem the certificate for a deed from the county auditor. Special attention must be given to a parcel that is still within the one year redemption time period to make sure the property is not lost because of a missed deadline. The Right of Way Agent will treat a certificate holder the same as a lien-holder. The certificate holder is not made a party to the offer nor do they sign the deed. The owner must clear all tax liabilities, including the certificate, in order to convey clear title. Evidence of the cancellation of the tax certificate must be submitted with the secured parcel.

If the owner asks for the payoff of the redemption taxes to be vouchered, the Agent must:

1. obtain the consent of the Acquisition Supervisor first to ensure enough time remains for checks to be issued,
2. prepare a separate voucher for the redemption amount (separate even from the current year taxes),
3. obtain a redemption payoff sheet from the county and include it next to the voucher,
4. give explicit check delivery instructions on the LRS Voucher screen for INDOT acquisitions, including mailing instructions,
5. include a copy of the redemption payoff sheet with payment requesting the property be redeemed from tax sale.

The certificate holder would be cited in a condemnation report as a lien-holder.

Taxes Exceeding Acquisition Offer

In some rare cases, the Offer amount is not sufficient to cover real estate taxes that are due on a property. Consult with the Acquisition Supervisor to seek a solution. In lieu of an administrative settlement, the county may agree to record a partial acquisition in exchange for the proceeds of the acquisition being applied to back taxes. Such an agreement needs to be worked out between the county recorder and treasurer.

PERSONAL PROPERTY TAXES -- MOBILE HOMES

INDOT occasionally acquires mobile homes which cannot be relocated. **Mobile homes are subject to personal property taxes which are both assessed and payable for the same year.** The Right of Way Agent should verify that all personal property taxes are paid for the year before submitting the parcel for payment (see *Offer Preparation, p. 152 for more detail on these acquisitions*).

MECHANICS LIENS

Contractors and suppliers can file a mechanic's lien against a property for labor, materials or credit which was supplied to construct a building on the property. These liens are routinely filed during the construction of buildings to insure that the owner will pay all the expenses due to the contractors. **These liens are filed in the Miscellaneous Book of the recorder's office in the county where the property is located**. If there is a newly constructed building on the subject property, the Right of Way Agent should verify that no mechanic's liens are still of record.

If the lien is over one year from the date it was recorded or date payment was due if credit was given and no lawsuit for collection is pending, the lien will be considered expired as provided for in IC 32-28-3-6. If the lien is less than one year old and the owner doesn't feel the lien is valid, the owner should contact the lien-holder to request a release be filed. If the lien-holder will not release, the owner may issue a written notice to the lien-holder to commence suit within 30 days of receipt of notice. If the suit is not filed within 30 days the lien becomes void. The owner may then file an affidavit with the recorder stating that no suit was filed after notice, and the recorder will release the lien on the basis of this affidavit.

If a suit is pending, the owner may post a surety bond with the court to ensure payment if a judgment is issued. If the bond is accepted by the court, the court will issue an order to release the lien.

The lien-holder may be treated as a mortgagee and be made a co-payee from the proceeds of the sale if the lien is valid and the owner agrees. The lien-holder would not sign the claim voucher but will be named co-payee. A release of mechanic's lien must be provided to Property Management by the lien-holder upon release of funds. This information should be included in the Check Delivery Instructions (in LRS for INDOT acquisitions).

The lien may be waived only on partial takings with sufficient after-value when all other methods to release it are not feasible. A waiver similar to the mortgage and real estate tax waivers should be prepared, upon approval of the Acquisition Manager, signed by the Real Estate Director, and placed in the front of the parcel.

JUDGMENTS

Judgments are a finding by a court of a financial obligation against a person. If the person owns property, the judgment becomes a lien against that property. As with a mechanic's lien, the Right of Way Agent should investigate the judgment's validity and note the date of the judgment. Occasionally the judgment holder will fail to release a satisfied judgment. IC 34-55-9-2 provides for the expiration of the judgment after ten years, exclusive of the time during any appeal process or other restraint of the order. Therefore, **a judgment may be waived if it is over ten years old and no activities, such as an appeal, took place after the order.**

The Right of Way Agent will review the judgment book in the clerk's office of the county in which the property is located. If the judgment is determined to be valid and does not exceed the offer amount less any senior liens requiring payment, the judgment holder(s) will be made a co-payee from the proceeds of the sale. **Note that a judgment may continue to accrue interest monthly and a payoff will require the Right of Way Agent to project the total due at the date the check will become available.** The check delivery instructions (in LRS for INDOT acquisitions) will include directions for the Property Management Unit to obtain a satisfaction of judgment upon release of funds.

If the owner has a common name and claims the judgment is not against him or her, obtain an Affidavit of Judgment Debtors (*see* Online Forms).

UNIFORM COMMERCIAL CODE FIXTURE FILINGS (UCC)

A Uniform Commercial Code fixture filing, under IC 26-1-2.1-309, is a form of a financing statement in which goods are used as collateral for a loan. The goods become fixtures when they are "so related to particular real estate that an interest in them arises under real estate law." A UCC filing will be found in the recorder's office in a UCC file. A fixture filing creates a lien on the fixture and can be waived if the fixture is not a part of the taking. A filing may be against a satellite dish, solar panels, or grain bins. If the fixture is within the taking, the UCC filing must be released and must contain a description of the real estate concerned.

Per IC 26-1-9.1-515, a UCC fixture filing is valid for a period of five years from the date of filing but a continuation statement (renewal) may be filed within six months prior to the expiration date. If the owner states that the loan is paid, yet the UCC filing is not released, the owner should send a written request to the lender requesting a termination statement to release the filing.

FEDERAL AND STATE TAX LIENS

Tax liens cannot be waived. If there is a tax lien, the Right of Way Agent should ask the owner to contact the appropriate agency (either the Internal Revenue Service or the Indiana Department of Revenue) and request a release of lien (or partial release on a partial taking). The requirements for release are established in IRS publication 783, "Certificate of Discharge from Federal Tax Lien." The IRS or Department of Revenue will be made a co-payee to the proceeds of the purchase and the parcel can be submitted for payment on the basis of a memo to the file referencing a letter from these agencies stating that the lien will be released upon receipt of payment. The agencies may be willing to release based on the security of the after-taking value of the property. If the title work reveals a state tax warrant number, the Agent can call the tax warrant hotline to obtain payoff information at (317) 232-2165. All state tax liens must be paid before the parcel is secured or must be vouchered with payoff information.

UNDERSTANDING THE APPRAISAL

It is the Right of Way Agent's responsibility to read and understand the appraisal. The goal of this review is to comprehend the method and theory used to arrive at the final value. The Agent's ability to explain how the offer amount was produced is critical to how the owner will react. Explaining the appraisal process will give the owner confidence in the offer and in the negotiation process.

> ***IC 32-24-1-3(a) and (c)(2)***
> *(a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article…*
> *(c) The effort to purchase … must include the following:*
> *(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.*

State law requires that INDOT provide the owner with "an appraisal or other evidence used to establish the proposed purchase price." The owner is provided a copy of the appraisal printed on green paper. Although the owner receives a copy of the appraisal, **only the owner is entitled to a copy; the document is classified as confidential to the rest of the public per Indiana Code:**

> ***IC 8-232-6(c)(1) and (2)***
> *(c) The department shall:*
> *(1) classify as confidential any estimate of cost prepared in conjunction with analyzing competitive bids for projects until a bid below the estimate of cost is read at the bid opening;*
> *(2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division;*

The appraisal should provide the owner's address and phone number, contract buyer information, and other interests which were contacted.

A Right of Way Agent should be able to explain, in layman's terms, the appraisal process.

APPRAISAL TERMINOLOGY

The following is a list of the most common terminology used to explain the appraisal process. While an understanding of these basic definitions is necessary, the Right of Way Agent is responsible for a more detailed and working knowledge of the appraisal process and the different approaches to value. This chapter is not intended to be an appraising handbook. The details and applicability of the cost, income, and market approaches cannot be addressed in this manual.

Fair market value - the amount in cash for which the property would be sold by a knowledgeable owner, willing but not obligated to sell, to a knowledgeable purchaser who desired, but is not obligated, to buy.

Highest and best use - the highest and most profitable likely use for which the property is adaptable and needed, or likely to be needed in the near future. Be aware that a change in highest and best use to a commercial building, while not necessarily creating an uneconomic remnant, could entitle the occupant to relocation benefits.

Before and after method - an appraisal method for partial takings in which just compensation is arrived at by first estimating the market value of the entire unit before the taking and then subtracting from it the market value of what remains in the ownership after the taking. The difference is compensation including both value of land taken and any diminution of value in the remainder.

Comparable sales - arm's length transactions of land in the vicinity of and comparable to the subject land and reasonably near the time of the taking.

Market approach - an appraisal technique based upon the prices paid in actual market transactions with adjustments made for comparability, time of sale, and market factors.

Income approach - an appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The only income properly considered under this approach is the income generated by the real estate (rental income) and not the income generated from a business conducted on the property.

Cost approach - a method of valuation derived by estimating the replacement cost of the improvement; deducting there from the estimated depreciation; and then adding the value of the land, as estimated by the market approach.

Landlocked - a parcel of land without access to any road resulting from INDOT's partial taking. Usually damaged at a percent of value although circumstances may warrant lesser damage (*see Excess Land/Uneconomic Remnant, p. 150*).

Severance damage - the diminution in value of the remainder, directly caused by the partial taking or by the proposed use of the partial taking.

Setback damages - a form of severance damage, applied to the value of a dwelling only, resulting from a taking which reduces the distance between the Right of Way and a dwelling below a distance which is typical for the area.

Cost-to-cure - the cost necessary to restore utility to a land improvement which is integral to the highest and best use of the property.

Angulation damages - The loss in value to an agricultural residue which was shaped by 90 degree corners before the taking and will have angled property lines with acute or obtuse corners after the taking, resulting in an uneconomic shape for agricultural purposes (point rows). The damage is calculated to the loss in value of the residue area which will be lost in recreating the 90 degree corner.

Waiver Valuation- a simplified valuation used by INDOT in place of an appraisal for the acquisition of property or property rights when it is obvious that there will be no residue damage to the remaining property and the value of the part to be acquired is $10,000.00 or less.

Temporary easement - provides access at a limited duration, pending the completion of construction work.

Excess land/ uneconomic remnant- land which has very limited use or value after the taking and which INDOT incorporates into its offer to purchase. An Action Item Form – Excess Land (*see* Online Forms). The owner has to sign this form to acknowledge that they are aware of the circumstances and implications if they retain the excess land and the actual cost deducted from the offer for the land if they keep it. An in-person meeting is also required unless the owner declines or lives out of state.

Excess land is determined by INDOT's Right of Way engineers on the assumption that the owner will not want the residue. This would be a result of land locking the parcel with LA R/W, physically land locking due to an impassable creek, or both. The area is incorporated into the taking description as "excess land" with a retention value established in the appraisal. **The Right of Way Agent will explain that owner may retain the excess land.** The Appraisal Review will note the damaged value of any excess land which is being purchased.

If the acquisition offer includes excess land, there should be a second Statement of the Basis for Just Compensation (SJC) that excludes the excess land value that must be provided to the owner for retention consideration. If the owner elects to retain the excess land and there is no second SJC to establish a value for this, the Acquisition Supervisor will return the parcel to Engineering to remove the area from the description, and will be routed through Appraising to adjust the offer. A revised offer, revised deed and a letter of rescission for the original offer will then be delivered to the owner.

An uneconomic remnant is an area of residue which is not developed as a part of the taking but is severely damaged in the appraisal.

The Right of Way Agent's review of the appraisal should result in a thorough understanding of these issues and the ability to explain what is included in the valuation.

APPRAISAL REVIEW SHEET

The appraisal is evaluated by a Review Appraiser for approval of the theory, methods and calculations. The review may increase or decrease the appraiser's estimate of value. **The appraisal review sheet will show the approved amount to be offered, which may be different than the appraised amount.** If the Review Appraiser has changed the value from the original appraisal, read the review comments to see what the new value represents. Be sure to recognize any changes the Review Appraiser made in order to avoid making an offer for the incorrect amount. The review sheet will also indicate the area to be acquired and whether the appraiser considered there to be any environmental hazards on the property.

The Right of Way Agent should verify that the appraisal belongs with this parcel packet and that the review sheet is attached to the correct appraisal. A parcel may be handled by several people before it reaches the Agent and the contents may have been placed in the wrong packet.

Verify that the appraisal is for the same area that the deed covers.

STATEMENT OF THE BASIS FOR JUST COMPENSATION

The Statement of the Basis for Just Compensation (*see* Online Forms located in LRS) is a breakout of the total value of the land and land improvements, and damages included in the offer. The Statement of Just Compensation form sheet must be completed in LRS. It will note the type of damages and any improvements acquired. It must be signed by an Agency Official with specific authority to sign, usually the Desk Reviewer. It is important that the owner knows exactly what items are being acquired; therefore, the Right of Way Agent should review the statement for accuracy before including it in the offer package to be provided to the owner.

ERRORS AND OMISSIONS

The Right of Way Agent should discuss any mathematical errors, improvements overlooked, or appraisal methodology concerns with the Acquisition Supervisor. If the supervisor feels the issue warrants further investigation he or she will take the appropriate steps with the Appraising Unit to correct the error.

OFFER PREPARATION

PRIORITIZE MULTIPLE ASSIGNMENTS

When assigned a group of parcels for acquisition, Right of Way Agents should check the target date(s) and identify those to be contacted first. Priority should be given to parcels where a home is in the acquisition process, or where the owner is a large corporation that may take months to process the documentation and complete the sale. Buildings always have priority status due to asbestos inspection and demolition requirements which create delays in the Right of Way clearance phase. Priority Parcels included are:

1. **Top Priority**: Relocations (Displacements)
2. Buildings without relocation and bridge parcels
3. Complex/high value (probable owner's appraisal)
4. Corporations (inherent delays with bureaucracy) and out-of-state owners
5. Parcels with complicated utilities logistics

These parcels must be negotiated early and secured or condemned promptly. The condemnation process can add a minimum of 6-7 months to the land acquisition phase of the project.

Right of Way Agents should strive to complete their parcels by or before the target date. These dates are sometimes advanced. The Acquisition Supervisor will alert an Agent when this occurs and it is the Agent's responsibility to finish earlier. **No regulatory time frame should ever be jeopardized.**

REVIEW THE PARCEL PACKET

Prior to contacting the owners, the Right of Way Agent should examine the contents of the parcel packet to see that it contains the following:

1. A copy of legal descriptions noting the correct conveyance document(s) to use and associated land plats;
2. Title and Encumbrance Report;
3. Approved appraisal or estimate of value, with review;
4. Statement of the Basis for Just Compensation form;

Review the plans (specifically, the plan and profile sheets and detail sheets and typical cross-sections) in order to become familiar with the project and taking, verifying that no changes have

been made since the appraisal was completed. If the acquisition will be complicated, it is a good idea to make a site inspection prior to the Offer. The Agent can use internet satellite mapping, county GIS and county office information websites to note the points of access to the property and compare them to the plans to verify that no access points are being closed or relocated.

The Right of Way Agent should note and verify:

- whether any items have been omitted,
- whether any items should not have been included,
- whether any items were included, but now are missing from the property,
- that the appraisal reflects plan sheet/details.

Review the legal description of the acquisition. While Agents may not be capable of determining if the description closes, they may note a typographical error. Consult with a Acquisition Supervisor concerning any discrepancies in the description or appraised land improvements. The legal description should note the correct conveyance document(s) to use.

Review the title report as described in *Abstract Review*.

Review the "correspondence" file for the project maintained in the Records Section file room. This step is optional, but can offer very useful information. Note the public hearings report and any comments or letters from property owners. This will forewarn the Agent of any potential problems or owners concerns which have not been addressed. The scope of the project and Engineers Report may orient the Agent to the nature of the work to be accomplished. Pay particular attention to any environmental reports in the file; the Initial Site Assessment, Preliminary Site Investigation, and Detailed Site Investigation (*see Environmental Review, p.183*). Agents may access the correspondence file by completing the online INDOT Research and Request Form, https://entapps.indot.in.gov/OPSM.

VERIFY PARCEL INFORMATION

It is helpful to drive through the project area to understand how the acquisition(s) will affect the area. The Agent should check basic information such as name and address for obvious errors so that they can be corrected as quickly as possible.

The Right of Way Agent will visit the county auditor, treasurer, court, and recorder's offices to verify the ownership as shown in the title report, no court actions have been filed, that no sell- offs have occurred, and that the real estate taxes are paid current. If any changes have occurred, the procedure is outlined in the chapter entitled Legal Title under the heading Title Update.

A thorough review of the parcel, plans, and site will enable the Right of Way Agent to confidently address the owners concerns and questions. Failure to adequately study the acquisition will certainly lead to a loss of credibility with the owner and possibly lead to errors which may be costly.

FIRST CONTACT WITH OWNERS

The Right of Way Agent will contact all ownership interests, explaining that an acquisition is pending and give a brief explanation of the acquisition process. The preferred method to deliver the Offer documents is in person; these documents are very important because their delivery starts the 30-day negotiation period. The Agent may give the option for an appointment at the owner's convenience to personally present the offer, or to have the offer sent by Certified Mail. In order to make an in-person offer possible, "the owner's convenience" could require mornings and evenings beyond normal office hours. Emailed offers may be authorized by the Acquisitions Manager on a case-by-case basis.

The Agent should take this opportunity to verify the accuracy of the title report. This includes should verifying the exact name and spelling of the owner(s)' names to assure that the offer will be correct and legal. Occasionally the caption deed will misspell the owner's name, or a spouse may have since remarried. The Agent should also verify the exact ownership interests, i.e., that the contract sale is still in effect; the mortgagee hasn't assigned the mortgage, merged or changed names; the life estate holder is still alive; that a trust hasn't been established; that there have been no divorces or deaths, etc.

Every contact with owners or their representatives should always be noted in the remarks section of LRS. Right of Way Agents are required to enter updates in LRS every 7 days during the active negotiation phase, at a minimum.

OFFER DOCUMENTS

The offer package shall contain the following:

1. Right of Way Agent's Report for in-person offers
2. SNET Letter
3. Uniform Land or Easement Acquisition Offer (the Firm Offer Letter) with legal description
4. Statement of the Basis for Just Compensation
5. Owner's copy of the appraisal or other valuation document (the "Green Copy")
6. Owner's Appraisal Letter
7. Brochure, "Acquisition; Acquiring Real Property for Federal and Federal-Aid Programs and Projects"
8. Sales Disclosure Form for fee acquisitions

9. Real Estate Tax Memo for fee acquisitions

10. All conveying documents with legal description and land plat attached

11. Plans for the project showing the property to be acquired

12. Action Item Form for Cost-to-Cure items

13. Any other documents deemed necessary per the Acquisition Section Manager

RIGHT OF WAY AGENT'S REPORT

The Right of Way Agent's Report (*see* Online Forms) serves as a historical narrative of the negotiation process. As the only record of each interaction with owners, it is critical that all pertinent information, conversations and authorizations be made a written part of the parcel through the Right of Way Agent's Reports. This will help to resolve any future questions or disagreements. This is *the Agent's protection* against the potential of unfounded claims of misrepresentation by the property owner. It also provides the owner with a synopsis of all discussions which can be reviewed at a later date to avoid misunderstandings. The report must be as detailed and accurate as possible without containing irrelevant information.

A report will be prepared for all owner contacts, or other contacts of significance, with a copy to be provided to the owner. The report should be initialed by the owner on personal visits in order to document the nature of the conversation. If the owner refuses to initial, the Agent will still provide him/her with a copy and note his/her refusal on the report. These reports will be maintained in the parcel file.

A Right of Way Agent will document telephone conversations or other events that are not personal visits in the remarks section in LRS. This running record of all contacts and progress through the negotiation process will be thoroughly documented.

Reports accompanying Offer Letters should contain the following information:

1. Specific verification of the title report: For example, "The owners verified that the title and liens are as shown in the title report" or "The owner verified he holds title as John H. Doe with a mortgage to Bank One, n/k/a Chase Bank", are acceptable, however; "I checked the title with the owners" is vague and does not confirm the accuracy of the title report.

2. A list of all documents and information provided.

3. A statement explaining that the owner was provided with the appropriate FHWA brochures, per federal regulations.

4. A statement that the Right of Way Agent will provide follow-up contact to the owner within 7-10 days of receiving the offer.

5. A recap of the conversation containing the owner's concerns, Agent responses, expectations for the owner, a list of Agent responsibilities and the time frame in which these are expected to be accomplished. This can be hand-written on a previously prepared Report. This information should also be noted in the remarks section in LRS.

   For example,

> "The owners feel the offer is low and their residue is worthless. I explained that a private appraisal can be submitted for review at the owner's option and expense. I reminded them that the severance damages recognized the loss in value to the residue. I also explained that I will see if INDOT will purchase the residue as an uneconomic remnant at the owners' request and let them know next week. The owners will obtain a private appraisal to be submitted before the 30-day offer period expires."

Reports accompanying secured instruments should contain the following:

1. A recap of the terms of the transaction if the parcel was complicated and negotiations involved changes to the plans, retentions, Administrative Settlements or any other items which were negotiated since the offer was made. This summary will clarify the terms of the acquisition for both parties (if applicable).

2. A list of all documents and information provided.

3. A statement that the Agent reviewed the owner's responsibilities regarding major retentions and gave them a copy of the retention agreement (if applicable).

4. A statement of waiver if the owner waives the 30-day consideration period, the owner's right to request the purchase of an uneconomic remnant, or to retentions.

SNET LETTER

The SNET Letter (*see* Online Forms) is to be a separate document in the Offer package and should not be combined into a Right of Way Agent's Report includes the following information:

1. SNET (Scope, Necessity of Take, Effects on Residue, Terms): A thorough and detailed explanation of SNET is paramount to the owner's complete understanding of the taking. Its elements are explained as follows:

   a. **Scope:** A brief description of the nature of the project and the specific impact it will have on the subject property. "I showed the plans and explained the project" is **not** acceptable. Instead write, for example:

> "The project will replace the bridge and approaches over Wildcat Creek on SR 28. The bridge will have two 12-foot lanes and 10-foot shoulders with guard rail. In addition, the approaches will be two 12-foot lanes with 11-foot shoulders, three-

foot side ditches with guard rail from the bridge to STA 124+23 Lt. Also, the approach on the north side along their frontage will be raised 1 - 3 feet and their drive will be relocated to STA 124+45 Lt., 16 feet wide with a bituminous surface."

All changes to the road, topography or land improvements as they affect a property must be specified in the report; i.e., changes of centerline or elevation, addition of guard rail, shoulders or ditches, specification of drive location, size and surface.

b. **Necessity of Acquisition:** A brief explanation of the need for the property. For example,

"INDOT needs to acquire the .306 acres of frontage for the addition of the left shoulder and to provide room for a 3:1 slope from the new road elevation to the new Right of Way line."

c. **Effects on the residue:** an explanation of how the remaining property will be affected by the acquisition. Examples include severance damages, changes of highest and best use, drive closings, temporary rights of way, and drive construction details.

d. **Terms:** an explanation of the offer amount and what is being purchased and compensated for. All cost to cure items **must** be specified. For example,

"The $3,400 offer is for .306 acres with trees and includes $200 to relocate the light pole."

2. A statement that the owners may retain certain buildings or fixtures. The retention of these items will be at a salvage value and that value will be subtracted from the final consideration.

3. An explanation of the time frame for obtaining clear title, including obtaining partial mortgage releases, and check processing, making note that the 90 days doesn't begin until clear title is secured and the parcel is approved by INDOT Legal.

THE UNIFORM LAND OR EASEMENT ACQUISITION OFFER

The Online Forms website includes a copy of the Uniform Land or Easement Acquisition Offer (Uniform Offer) that is mandated by IC 32-24-1-5, et seq. The following general policies apply:

1. This "offer letter" is to be filled out completely and signed by the agent
   a. Give the original to the owner;
   b. Place one copy in the parcel;

2. A copy of the legal description must be attached to *each* copy of the Uniform Offer;

3. Offers are to be made within 15 days of assignment.

Be sure to read and know this offer letter and what it contains. There are various items which must be lined out and other items which must be filled in. Be sure that this is done *accurately*. Please refer to the Online Forms website for an example of the offer.

It is the Right of Way Agent's responsibility to explain the Uniform Offer in layman's terms. The Agent should review the letter noting key points of information, such as the time frames, the owner's options and the steps involved in purchasing or condemning. Remember, the objective is to decipher the "legalese" and provide information. Having a standard presentation will allow the Agent to stay focused during the inevitable distractions which will occur. A thorough knowledge of the offer and a comfortable, standard presentation will allow the Agent to pick up their train of thought after any interruption.

The Uniform Offer must be addressed to all ownership interests. This will include the names and addresses of contract buyers, certain lessees and others as indicated previously. Also note that on Page 3 of the Uniform Offer, space is provided for the name, county, and date the offer is presented to each owner. Remember to enter the date the offer was made to each party. The offer is not legally valid until all ownership interests have received it.

Attach the conveyance instrument and legal description to the Uniform Offer. The Uniform Offer now represents what amount is being offered, the conditions of sale, and what is to be purchased. Prepare two copies of the offer. The original is provided to the owner and one remains in the parcel.

VALUATION DOCUMENTS

The **Statement of the Basis for Just Compensation** is part of the parcel packet. Other than the appraisal itself, it is the only break out of the appraised amounts for land/improvements and damages that may be disclosed to the owner *(see Statement of the Basis for Just Compensation, p. 151).*

The **Valuation Document** must be presented on green paper. This document is confidential and may only be shared with the owner(s). (*see Understanding the Appraisal, p. 148)*

OWNER'S APPRAISAL LETTER

The Owner's Appraisal Letter (*see* Online Forms) states that the owner may submit written information which may affect the value of the acquisition, at the owner's option and expense. The letter specifies the types of documentation that will be most acceptable. However, all relevant written facts, evidence and circumstances provided by the owner should be considered by INDOT (or Local Agency) in its review.

ACQUISITION BROCHURE

The FHWA publication "Acquisition; Acquiring Real Property for Federal and Federal-Aid Programs and Projects" describes the Acquisition process per Federal guidelines. This is a general overview that the Agent is required to provide to every owner. The brochure can be printed from the FHWA website.

Local Public Agencies are required to furnish written documentation that this booklet was provided to all parties of interest in the acquisition.

SALES DISCLOSURE FORM

The Right of Way Agent must complete a Sales Disclosure Form (SDF) for each parcel requiring it and place a printed copy in the file. The most updated SDF form can be found online at www.salesdisclosuresonline.com. Several counties require online submittal of the SDF – this website provides a current listing of these counties. It is the Right of Way Agent's responsibility to check with each county for online SDF submission requirements. Sales Disclosure Forms are not used for parcels with only a temporary easement being acquired.

If the SDF is generated online and page #2 is filled in by hand, the SDF number must be placed in the box at the top of that page. If the SDF is not generated online, the county usually fills this in later.

The code and parcel number must be printed in the top right hand corner of each page. Attach a copy of the conveyance document with legal description and land plat. If the acquisition is not contiguous property or has multiple tax ID numbers, more than one SDF will be required.

REAL ESTATE TAX MEMO

Contact the county treasurer and verify that the real estate taxes are current - year-to-date for partial takings and paid for the entire year on total takings - prior to the appointment to sign the deed (*see Real Estate Taxes, p. 406*). The Online Forms website includes an example of a tax memo for acquisitions. Complete the appropriate tax memo and give the original to the owner and place a copy in the parcel. The owner may initial this form to show receipt of a copy.

CONVEYING DOCUMENTS AND LAND PLAT

In the past, a blank sample of the required **Conveyance Document** was provided in the parcel packet when it was assigned. Going forward, the Right of Way Agent will determine which conveying document(s) to use by matching to the legal description(s) and exhibit(s) provided in the parcel packet. If any question arises in this determination, contact the Acquisition Supervisor. All approved conveying documents can be found on the Real Estate Resources website that is accessible through ITAP.

Conveyance Document Preparation

The recommended deed form is usually included on the parcel's legal description/land plat provided. The Right of Way Agent is responsible for completing the granting clause, county and state of owners' residence, recitation of consideration, any necessary jurat, signature blocks, land/improvement and damage breakout. The granting clause will cite the owners in the same format, exact spelling and interest by which they took title. Please note that an "also known as" (AKA) clause in the granting clause is preferable to a "same person as" affidavit. The signature block and notary will follow the same recitation from the granting clause. The consideration will be dually cited with an actual written amount and a corresponding numerical figure. The deed will be dated when it becomes a valid instrument -- as of the date of its final signature. **Do not date the deed or notary in anticipation of the owner signing.** The owner may not keep the appointment or another issue may arise preventing the owner from signing at this meeting.

The *Legal Title* chapter starting on page 199 provides more specific instructions on preparation of the conveyance instrument. The Legal Title chapter starting also describes many of the jurats that might be necessary. The Online Forms website has examples of deeds and jurats. The most common conveying documents are the Warranty Deed, the Quit Claim Deed or an Easement.

Common Conveyance Documents

A **Warranty Deed** (*see* Online Forms) is the preferred instrument to be used for a fee simple conveyance.

The Warranty Deed comes in several different forms. They will be differentiated by the file name, the header, and the access rights that are conveyed by that particular deed form.

Access Rights Only

INDOT occasionally will acquire access rights, without any land being acquired, in order to establish an access control line on multi-lane highways. Access rights are the rights of ingress and egress. An access control line will restrict the rights of ingress/egress to specific, approved drive locations in order to improve the safety of the multi-lane design. While INDOT has statutory authority to control access by issuing drive permits, a warranty deed conveying access rights will create a covenant on the property which, if violated with an un-permitted drive, will create a title cloud at such time as the property is sold. This method of self-policing helps to limit the number of illegal drives constructed without permits. The covenant remains in effect for successors in title.

A **Quitclaim Deed** (*see* Online Forms) may be used to release an interest of less than fee. Individuals with interests less than fee may also sign a warranty deed by citing their limited interest in the granting clause: "John Doe, Contract Buyer Interest Only".

If INDOT is acquiring an interest of less than fee, the appropriate conveyance instrument shall be indicated, such as a **Perpetual Easement**, **Temporary Easement** (*see* Online Forms), or a **Conservation and Mitigation Easement**. The procedures for completing the instrument are the same as for the warranty deed. Temporary easements will be used when the Right of Way is for

driveway construction, yard grading, building removal or other uses which will not substantially alter the terrain and use of the property or require future maintenance access. Perpetual easements will be used when future maintenance access will be necessary such as for construction of a legal drain or sewer. Conservation and Mitigation Easements are used for property acquired for mitigation sites when the owner desires to retain possession and limited use of the property.

The **Land Plat** is part of the legal description, and is usually in the R/E Engineering envelope in the parcel packet when it is assigned. If not, obtain it through the Electronic Records Management System (ERMS) which is an ITAP application (*see Buying Tools, p. 16)*. The plat will show the area of take in relation to the property boundaries. Please note that temporary easement only parcels may not have a plat prepared. Areas of Excess Land must be noted on the land plat when it is determined that excess land is being purchased.

PLANS

The Right of Way Agent should provide the sheet(s) which contain the owner's property that is to be acquired. These can be obtained through ERMS (Electronic Records Management System).

If a parcel's plan sheet(s) are unavailable at the time the agent is assigned the offer, the offer can still be presented with the detailed plan sheets to follow when they become available.

The Agent should highlight the area of acquisition on the plan sheet which depict the owner's property. This will help the owner recognize the acquisition among the multiple lines which are on a plan sheet. The Agent might also highlight any other information to point out to the owner. This would include side ditch/guard rail information, elevations, or a relocated center line.

The Right of Way Agent will not provide a full set of the plans to any property owner.

ACTION ITEM FORM FOR IMPROVEMENTS IN THE ROW

An Action Item Form – Improvements in the Right of Way (*see* Online Forms) must be used for parcels with a cost-to-cure payment for improvements in the Right of Way. It is not to be used for cost to cure items for improvements outside of the acquired Right of Way, such as adding parking, building modifications, etc. An in-person meeting is also required unless the owner declines or lives out of state

IRREVOCABLE RIGHT OF ENTRY

The purpose of the Irrevocable Right of Entry Grant is to allow the purchasing Agency and its contractors to enter upon your property, as needed, to undertake project-related activities while negotiations continue for final acceptance of the acquisition offer. This entry will only be within the area(s) defined within the acquisition offer. Please note that acceptance this agreement is **voluntary**.

INDOT has determined that the Irrevocable Right of Entry (IROE) is to be used on all State projects. Local Public Agencies may make their own determination regarding their own projects.

The following guidelines must be applied to the use of an Irrevocable Right of Entry for State or LPA projects:

1. An Irrevocable Right of Entry is only for parcels involving bare land acquisitions with no acquired improvements or costs-to-cure.

2. The Fair Market Value offer must be presented and received before the Irrevocable Right of Entry may be accepted, signed and submitted.

3. The Irrevocable Right of Entry must be accompanied by a W-9 and IROE claim voucher for payment in advance of the remaining acquisition claim voucher.

4. The payment for the Irrevocable Right of Entry is an advance portion of the payment for the acquisition. The remaining balance of the offer amount must be on a separate claim voucher.

5. The advance payment amount for an Irrevocable Right of Entry is **the greater of**:

   a. $500.00, or

   b. 10% of the total acquisition offer

When the Irrevocable Right of Entry is utilized, the SNET Letter should include the following language:

[INDOT] is offering you an ADVANCED PAYMENT of $(_____) (Enter 10% of offer OR $500.00, whichever is greater) if all owners will sign an Irrevocable Right of Entry Grant. The purpose of this type of payment is to allow [INDOT] and its contractors to enter upon your property, as needed, to undertake project-related activities. This entry will only be within the area(s) that [INDOT] has defined within the offer package.

The advanced Irrevocable Right of Entry Grant payment is part of the Fair Market Value acquisition offer. If you accept the terms of the Irrevocable Right of Entry Grant, the remaining balance of the Fair Market Value will be processed for payment upon the final acceptance of the total acquisition offer. You are under NO OBLIGATION to accept this offer. If you want to receive this advance payment while negotiations continue for your final acceptance of your parcel(s), **<<Right of Way Agent inserts instructions, see below>>**.

Options for completing the instructions in the SNET Letter are as follows:

1. **"Please sign the enclosed Irrevocable Right of Entry"**

   Customize the IROE documents for the owner(s) and send with the offer. Include signing, notarization and return mailing instructions

2. **"Contact me as soon as possible and I will send you the necessary documents along with instructions on how to claim your advanced payment."**

GRANT OF ENTRY (Tree Clearing)

The Project Manager may request or authorize a Grant of Entry for tree clearing (see Online Forms), for a given parcel to allow the acquiring agency and or its contractors to enter upon property for the removal of trees from the proposed right of way. It can be sought in advance of or in conjunction with the acquisition process when needed to avoid project delays associated with tree clearing. A One Thousand Dollar ($1,000.00) payment is offered to the owner(s) in exchange for this grant for the removal of all trees within the proposed or acquired right of way. This is useful in situations where trees need to be removed prior to the start of nesting season in areas where endangered species are known to nest. There are separate Grant of Entry forms for private and corporate-owned real estate, the difference being the addition of a jurat for corporately owned real estate, (see Online Forms). Each expires on April 1st after execution.

OTHER DOCUMENTS

Donations

When an owner desires to convey property without compensation, he or she will sign a Donation Agreement (with or without offer, as appropriate, *see* Online Forms) in conjunction with the deed. This document will waive the owner's right to an appraisal and compensation. If the owner requests an appraisal and offer for income tax deduction purposes, the parcel will need to be returned to the Appraisal Section.

The owner will be cited and sign the same as on the deed. The Donation Agreement will replace an acceptance of offer in the parcel assembly. The owner will not sign a claim voucher or W-9 since no payment will be made. However, a claim voucher for $0 will be placed in the parcel file in order to provide the Real Estate Division Director and Attorney General's Office a place to sign, approving the transfer.

The Right of Way Agent must take care to document that the owner's rights were clearly explained in the case of a donation without an offer. This can be in the form of a signed Right of Way Agent's Report.

For driveway donations, the following process is used:

- Items for District to initiate
  - Requests LA Code from LRS Administrator
  - Create parcel in LRS, complete engineering screen & route to appraising
  - Legal Description is forwarded to CO Real Estate for review, including state property number

- Specify the nature of rights to be acquired if other than fee (WD-1)
- Provide a link to ProjectWise file containing an aerial view which clearly delineates the parcel and donation area and clearly labels it with a location, Route # and state property #
- Provide title work, minimum of last deed of record.

⎦ Appraising will make entries in LRS, including $1.00 SJC and route to buying
⎦ CO environmental provides the environmental review
- If environmental concerns are identified, CO will notify district of any needed remediation
- If no environmental concerns are identified, CO processes the acquisition

⎦ Contact owner
⎦ Prepare documents needed to convey
- Conveyance Instrument
- Donation Agreement (Without Offer)
- Sales Disclosure – if required by Assessor
- Voucher for $1.00 (for Legal Approval)
- Buyer's Report

⎦ Parcel is reviewed in acquisition department
⎦ Route to Legal for approval
⎦ Route to Records for recording (request email copy of recorded conveyance instrument)
⎦ Send or email copy of recorded conveyance instrument to owner and district permits manager

Purchase of Mobile Homes

INDOT will occasionally purchase a mobile home which is either immovable or un-relocatable. Immovable means that the structure physically cannot be moved. Un-relocatable means that another site for the mobile home cannot be found or that the mobile home will not be accepted in another park due to its age or size. The Right of Way Agent will make the owner an offer in the same manner as a purchase of real property, and obtain a quitclaim deed to release the interest of the leasehold. A month-to-month tenant's interest will not be released but terminated through a one month notice.

An immovable mobile home will be considered a land improvement to the real property. If the mobile home and the land are owned separately, separate parcels and offers will be made to each owner. If the mobile home owner rejects the offer the parcel will be condemned.

However, in the case of un-relocatable mobile homes, INDOT and/or the Local Agency have no legal recourse to force the sale of personal property under eminent domain laws. The Right of Way Agent should inform the owner that if the offer is not accepted, INDOT and/or the Local Agency may provide relocation assistance. The owner may submit a private appraisal just as he/she would if the purchase involved land. If no agreement on value can be reached, inform the owner the offer will be withdrawn; void it and place it in the parcel.

If the owner accepts the offer, the Right of Way Agent will need to include the following items in the secured parcel packet in place of a deed before submission:

1. Mobile home title
2. "Indiana Department of Revenue Certificate of Gross Retail or Use Tax EXEMPTION for the Purchase of Motor Vehicle or Watercraft" (*see* Online Forms)
   a. This must be signed and notarized.
   b. INDOT is a tax exempt agency and no gross retail tax is due on the sale.
   c. The amount of the offer for the mobile home, separate from any land improvements such as a well, is the "amount subject to tax".
   d. Enter INDOT's tax exempt number (#005530822-0019) on the "Amount of tax collected" line.
   e. The Property Management Section will complete the "Exemption claimed" section. Place the mobile home title and certificate in the parcel in place of a deed.
3. Mobile Home Permit signed by the County Treasurer
4. Vehicle Identification Number (VIN)

See the *Legal Title* chapter starting on page 199 for information regarding personal property taxes on mobile homes.

OFFER PRESENTATION

All reasonable efforts to personally contact each property owner or the owner's designated representative must be attempted. IC 32-24-1-5. The owner is entitled to receive an explanation of the Right of Way acquisition process and have an opportunity to ask questions. This is best achieved by presenting the offer in person.

In an effort to improve and raise our level of customer service we provide to our property owners, face to face offers are required for certain parcels (see below). A signed Right of way Agent's Report is required detailing the face to face in-person offer meeting, signed by the owner.

Offers which require a face to face meeting	Offers which may be mailed
All parcels with a FMV in excess of $25,000.00	All parcels which do not fall under the face to face in person category and parcels where the owner declines a meeting or lives out of state.
All parcels with a Cost to Cure Item	
All parcels with the potential of excess land as determined by the appraiser with a pre-determined retention value	
All parcels with the relocation of a residence, business or personal property	
Any parcel in which an owner requests a face to face in person meeting	

SET THE TONE OF THE MEETING

Having arrived at the appointed time, provided contact information, made the introductions and exchanged pleasantries, the Right of Way Agent should take control of the meeting by establishing where it will take place. Request a space that will allow room to display the plans and paperwork and provide adequate seating for all parties, such as a dining table.

DISPLAY THE PLANS

Begin with a general description of the nature of the project. Show the cover sheet or Plat 1 noting what is to be built and the lengths of the project. Begin with the plan & profile sheet as it contains the most information. Then show the typical cross section sheet explaining the surface, width and drainage required. Note the existing structure/ lanes and then compare it to the new structure/lanes & shoulders in order to emphasize why additional Right of Way is necessary. Point out any elevation changes, new structures (inlets, pipes, guard rail), side ditch locations, driveway widths-lengths- surfaces and locations. **Be careful not to leave the owner with the impression that a driveway will be resurfaced on its entire length – generally, only the drive approach will be repaired.**

Offer to walk the area of the take in order to point out improvements to be acquired and to help orient the owner to the taking. This is a good time to discuss any design problems such as septic system locations or cost to cure items to be moved and to confirm all items in the acquisition are in the appraisal. It will be easier for the owner to identify the area where items must be relocated. After thoroughly explaining the plans and taking, ask the owner if there are any other questions.

If the owner requests a set of plans, the Agent should leave his/her copy with them.

OFFER PRESENTATIONS

Organize the offer materials to be presented in a logical order to eliminate paper shuffling. **Be aware that the information will feel overwhelming to the owner.** This is a subject of which most people have little or no knowledge. Therefore, the Agent must control the subject matter and maintain the owner's attention by limiting the distractions (*see Profile of a Right of Way Agent, p. 106*).

The Right of Way Agent will go through the offer package with the owner, presenting and explaining each item. The package should include:

1. "Acquisition: Acquiring Real Property For Federal And Federal-Aid Programs And Projects" brochure,

   Present the booklet with a brief explanation of its contents and set the booklet aside. Explain that all the necessary information will be covered in the Offer Presentation and that the booklet is for reference. This will prevent the owner from reading the booklet during the meeting.

2. Plat sheet and legal description,

   Present and explain the plat attached to the legal description.

3. Uniform Offer with deed and legal description attached,

   This is the moment the owner has been anticipating: the Offer. The Uniform Offer should remain out of the owners view until the Agent is ready to discuss it. Verify once again that the offer is correctly addressed, and that all appropriate parties are identified. Announce the offer in a confident voice while placing the Uniform Offer in a position that all parties can view it. Look the owner in the eye while announcing the offer.

   The owner may want to discuss the amount or ask the Agent to justify it immediately. Stay on course and address questions, but explain that this can be discussed after all the information has been presented, with the help of the Statement of the Basis for Just Compensation breakout. This may diffuse an outburst of emotion if the owner has to wait before expressing an opinion.

Explain the acquisition procedures and the owner's options while pointing to where the information can be found. Note that there are no expenses involved for the owner in selling the property if the offer is accepted.

Refer to the Owner's Rights listed on page two of the Uniform Offer. Explain that INDOT will not reimburse for attorney fees for representation in the negotiations or for the cost of obtaining a private appraisal. Explain the procedures of eminent domain litigation if the offer is refused.

Note that the offer is signed and dated on page three, which will initiate a 30-day period for consideration of the offer. Finally, explain that page four is an acceptance page and that a copy of the deed, legal description/land plat is attached, which describes the area which INDOT has offered to purchase.

4. Statement of the Basis for Just Compensation (SJC) and Appraisal Report or Waiver Valuation

   Explain what the offer represents. Present the Statement of the Basis for Just Compensation and explain what land area, nature of title to be acquired, severance damages and cost to cure items are involved. Be prepared to explain the appraisal and information regarding the components of the offer in the Statement of the Basis for Just Compensation. Agents cannot specify the amount paid for a particular land improvement the owner may find in the copy of the appraisal or waiver valuation provided, unless the value was broken-out by the appraiser. If the owner is reacting negatively, explain what options are available to obtain a value that the owner considers to be fair.

5. Owner's Appraisal Letter

   Present the Owners Appraisal Letter and explain what types of documentation will be acceptable (*see* Online Forms). However all relevant written facts, evidence, and circumstances provided by the owner should be considered by INDOT (or Local Agency) in its review. Explain that the owner may also obtain additional estimates for cost to cure items and submit them for review. The Agent should emphasize that the time frame for negotiation is limited to 30 days from the Offer.

6. Right of Way Agent's Report (noting the date and activity).

   Prepare the Right of Way Agent's report in advance of the appointment. See *Right of Way Agent's Report* on page 155 for specific instructions on preparing this report. Go over everything in the report and explain along the way. This is a good opportunity to review and wrap up all the information that has already been presented throughout the Offer meeting. Add notes to document any of the owner's objections, questions, comments, or agreements as to what steps will be taken. Ask the owner to initial the completed report to show that all the topics indicated on the report have been covered. This protects the Agent from future unfounded claims of misrepresentation. Provide a copy to the owner for future reference.

It is the Right of Way Agent's role to hear owner opinions and determine how they need to be addressed. Explain that the Agent's job is to assist owners in understanding the offer and to explain their rights. ***Agents may not give their opinion of the offer.*** The decision must be the owner's.

Some owners may wish to initiate negotiations with an unsupported counteroffer under the mistaken impression that the Agent is able change the offer amount independently. This is an opportunity to explain that Federal regulations require adequate written documentation to justify any payments that exceed the amount shown on the Statement of the Basis of Just Compensation (*see Administrative Settlement, p.175*). If the owner will submit supporting documentation of a differing opinion of value, it will be considered by the Agency. Furthermore, any unjustified settlements made would serve to penalize the other property owners who accepted their offers or submitted appraisals. If the presentation is going well, the Agent should explain that they may accept the offer at any time prior to the 30 days expiring by signing the acceptance with a Notary and mailing it; OR they may sign all the documents at the Offer meeting if they do not wish to review the offer any further.

SUMMATION

Ask the owner if there are any other questions. Tell the owner to write down any questions that may come up after the meeting. Obtain any additional contact information such as an alternate phone number or email address. **Make arrangements to follow-up for further questions or discussion.** Provide contact information, including phone number and email address, to owner. If there is an issue to investigate, give the owner an estimated time frame for obtaining an answer and make every effort to follow through on it. If the owner plans to take some action, such as speaking to an attorney or obtaining an estimate, impress upon him/her the time limitations and agree on a time frame (*see Follow Up,* p. 110). **The objective is for all parties to know what their responsibilities are, the time frames, the consequences of delays, and what the next activities will be.**

AFTER THE MEETING

The Right of Way Agent is required to update LRS with all dates and data, including verifying that names, addresses and phone numbers are correct. The Agent must document important information in the remarks section in LRS within 24 hours of the Offer presentation.

Also, the Agent should review all the notes added to the Right of Way Agent's Report and begin working on obtaining answers and solutions as soon as possible. Owners have the expectation that the Agent will deal with their issues immediately. If there is a delay (workload, problems getting answers, illness, etc.) the Right of Way Agent should call the owner to let them know of the delay and when they can realistically expect to receive answers. Property owners must be kept informed of the parcel status at all points until the parcel is totally completed. This will continue to maintain goodwill through this sometimes arduous process.

DAILY NOTICE TO RELOCATION

INDOT Central Office has discontinued requiring the use of the Daily Notice to Relocation for State projects as of October 2014, citing that:

- Relocation is now noted in LRS
- Right of Way Agents assigned to Relocation are attending the Appraisal Meeting

In the case of Local Public Agency (LPA) projects, the LPA has the discretion to require this form be used. Use of this form does not preclude the requirement that Right of Way Agents assigned to Relocation attend the Appraisal meeting.

OFFERS BY MAIL

The Right of Way Agent should make all practical efforts to present the Uniform Offer in person. The Right of Way Agent should strive to establish rapport with the property owner, inspire confidence in the correctness of the acquisition process and the fairness of the offer being made.

The Uniform Act requires that the property owner be provided with a written statement of the amount established by the agency as just compensation along with a summary of the basis for the offer. The owner is also entitled to receive an explanation of the acquisition process. The Right of Way Agent can best ensure that these requirements are met through personal contact.

If all reasonable efforts to make a personal contact with the owner have failed, or if the owner resides out of state and personal contact is not practical, the owner may be contacted by Certified Mail. **Offers by Mail should not be considered where an owner hardship is known or anticipated or any other circumstances exist that indicate an offer in person is in the best interest of the State and/or the owner** -- i.e., age, disability, language differences, etc., or when the acquisition entails displacement of persons or personal property.

If an offer is to be mailed, the Right of Way Agent must document this in a Right of Way Agent's Report and in the remarks section of LRS, with updates regarding when the package was received and any follow-up correspondence.

The Right of Way Agent should follow all the same preparatory procedures as outlined earlier in this chapter. Prepare an Offer by Mail package and mail it to the owner of record.

The offer by mail package shall contain the following:

1. Introduction letter;

2. Uniform Land or Easement Acquisition Offer with legal description attached;

3. Statement of the Basis for Just Compensation.

4. Owner's copy of appraisal or waiver valuation (The Green Copy)
5. Owner's Appraisal Letter;
6. Brochure, "Acquisition: Acquiring Real Property for Federal And Federal-Aid Programs And Projects;"
7. Sales Disclosure Form (if land is being acquired)
8. All conveying documents with legal description and land plat attached
9. Plan sheet highlighting subject property and required Right of Way;
10. Any other documents deemed necessary by the Acquisition Section Manager.

The offer by mail package should be carefully prepared and assembled in a sequence which is intended to guide the owner logically through the acquisition process, explaining the taking, presenting the offer, and defining the owner's and the State's rights and options in accordance with applicable laws.

THE INTRODUCTION LETTER

The most important document in the Offer by Mail package is the Introduction Letter to the Owner (*see* Online Forms). This letter will include project identification information e.g., project, parcel, code, etc.; also, an introductory paragraph describing the purpose of the project. Subsequent paragraphs will include aspects of SNET, information pertaining to the acquisition and its effect on the owner's property; location of access, elevation of road, reduction in set-back, drainage, etc. The Agent will then explain what the offer represents; area of acquisition, temporary Right of Way, land improvements, cost-to-cure, damages, etc. The letter must be specific as to what improvements are acquired and what the allowance for damages represents. The letter should include an explanation of the acquisition process to follow, with a notice that the Agent will contact them within 10 days of receipt. However, if the owner wishes to contact the Right of Way Agent before that time, he or she should be encouraged to do so with the introduction letter providing the name and telephone number and email address of the Right of Way Agent.

MAILING THE OFFER

The Offer by Mail package is to be mailed by Certified Mail to the owner of the property, with return-receipt. The "owner" is defined as the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property and the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located, IC 32-24-1-2. In the event there is a discrepancy between the person listed on the assessor's tax rolls and name on title, the offer should be mailed to both. The physical mailing of the offer should coincide with the date of the introduction letter describing the Scope, Necessity, Terms, and Effect of the proposed acquisition. The Right of Way Agent must keep documentation and evidence that the offer was mailed in the form of the returned- receipt (Green Card or signature confirmation print-out from the

postal service if done electronically) and a copy of the introduction letter. The Green Card or signature print-out should be attached to page 3 of the Uniform Offer to be included in the parcel file. The Agent must note in the remarks section of LRS the date the offer was mailed and update the Offer Received field in LRS. The date received should be noted on page three of the Uniform Offer.

OWNER CONTACT

The Right of Way Agent should follow-up via email or phone call every 5-7 days to address problems, remind the owner(s) of the 30-day window to accept or reject the offer, and to ask for a "signature appointment." At every point of contact, a note should be added to the remarks section of LRS with a brief summary of the conversation. If no decision is received with respect to accepting or rejecting the offer within 20 days after the Offer is received, the Right of Way Agent should contact the owner and request a decision with a reminder of the date that the 30- day offer period ends.

This procedure describes *minimally acceptable* negotiations and in no way reduces the obligation of the Right of Way Agent to provide whatever additional contacts and services are necessary for each owner.

PUBLICATION OF OFFER

Occasionally the owner will refuse to meet with a Right of Way Agent or to receive the offer through Certified Mail. Agents may also encounter a parcel which has an owner that cannot be located. Under these circumstances, the Indiana Code allows for the offer to be published in a newspaper either where the property is located or where the owner was last known to reside. Before publishing an offer, the Right of Way Agent should make every effort to convince the reluctant owner that it is in their best interest to allow the Agent to explain the offer and acquisition procedures. Resources to locate owners include neighbors, voter registration, the Post Office, and public utility companies in an attempt to locate the owner. The Agent will mail the offer to the same address as is listed on the tax records prior to publishing an offer. It might also be useful to contact local law enforcement offices to see if the owner is incarcerated.

If it becomes necessary to publish an offer, the Right of Way Agent must document all attempts to contact the owner and the fact that the offer is to be published. This documentation, at minimum, must appear in a Right of Way Agent's Report and in the LRS remarks section.

The eminent domain procedures, as set out in IC 32-24-1-5, also establish the requirements for advertising an offer:

NOTICE

TO:_____(owner(s)),_____
_____(condemnor) needs your land for a_____(description of the project), and

will need to acquire the following from you:_____(general description of land or interest to be acquired). We have made you a formal offer for this land (or interest) which is now on file in the Clerk's Office in the_____County Court House. Please pick up the offer. If you do not respond to this notice, or accept the offer by _____(a date 30 days from the first date of publication) 20_, we shall file a suit to condemn the land or interest therein.

_____
Condemnor

The condemner shall file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice; one (1) immediately, and a subsequent publication at least seven (7) days and not more than twenty-one (21) days after the prior publication.

The notice shall be delivered to the newspaper(s) by the Right of Way Agent. The notice is to be published twice: once immediately, and again no more than 21 days later. Leave a claim voucher, W-9, and direct deposit form with the newspaper, for direct billing purposes, to be returned with the publisher's claim (certified proof of publication). The publisher's claim will be placed in the parcel file, behind the Uniform Offer, to document that an offer was made. Verify that the newspaper company will direct-bill the Agency (INDOT or Local Public Agency) for the costs of publication. The Right of Way Agent will complete the appropriate affidavit (Unable to Present Offer or Unable to Locate Owner), whether the owner refused the offer or was not located, (*see* Online Forms) and place it in the file to document why the offer was published.

The Right of Way Agent will follow the same distribution of the Uniform Offer copies as cited in Chapter 6, The Offer Letter. The Right of Way Agent will leave a complete offer package with the county clerk. The Agent should leave a copy of the Clerk's Office Notice with the Clerk's office. This form asks them to notify the Agent if the packet is picked up. The published notice will direct the property owner to the clerk's office to pick up the offer. If there is no response from the owner 30 days after the last publication, the Agent will retrieve the package and place it in the parcel as documentation of a failure to respond and note this action in the remarks section of LRS. The parcel will then be processed for condemnation.

Some counties may have different requirements of procedures. On those instances, it is the Right of Way Agent's responsibility to update LRS with this information and consult with the Acquisition Supervisor for guidance.

SPECIAL TOPICS IN NEGOTIATION

ADMINISTRATIVE SETTLEMENT

An Administrative Settlement can serve as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

> ***49 CFR 24.102(i) Administrative Settlements***
> *The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized [INDOT] official approves such Administrative Settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, and must include that information, data, and analysis that supports such a settlement.*

INDOT and Local Public Agencies (LPAs) shall make every reasonable effort to acquire the real property expeditiously by negotiation. If negotiations with the owner reach an impasse and the owner is unwilling to accept the agency's offer, the owner may choose to provide a counter-offer that stipulates an alternative value with adequate supporting evidence.

If the owner intends to provide an appraisal report, the Right of Way Agent may provide the owner and/or his/her appraiser with the State's valuation procedure guidelines and inform them that their appraisal should be based upon those guidelines. However, all relevant facts, evidence, and circumstances provided by the owner will be considered by INDOT or the LPA in its review of the owner's counter-offer.

Any supporting evidence submitted by the owner must contain statements, data, information, and analysis to a sufficient depth and degree for INDOT or the LPA to be able to draw a reasonable conclusion of value consistent with the owner's. The accuracy, sufficiency, and acceptance of the evidence submitted by the owner shall be at the sole and absolute discretion of INDOT or the LPA, although the LPA must consult with INDOT before giving approval.

ACCEPTABLE EVIDENCE

Administrative Settlements submitted for review that do not contain any supporting evidence of value may be rejected. Examples of satisfactory evidence may include, but are not limited to, the following:

1. A formal appraisal report or opinion letter prepared, dated and signed by a licensed appraiser in accordance with the State's Real Estate Manual Valuation Procedures guidelines.

2. A Broker's Price Opinion (BPO) letter prepared, dated, and signed by a licensed real estate broker. The BPO must be supported with market data and analysis.

3. Sales Disclosure Forms from the respective county Auditor's office documenting actual sales of comparable properties to the subject property.

4. Cost estimates from professional contractors, vendors, or suppliers for additional features, items, and issues peculiar to the property such as processing fees to obtain a mortgage release or other cost-to-cure items. These also must be signed and dated by the estimator.

5. Reputable real estate and appraisal industry data, research, reports, and publications indicating market trends, land values, and other factors of influence in the local and regional economy.

6. Any other documentation deemed acceptable by the Acquisitions Manager.

UNACCEPTABLE EVIDENCE

Examples of evidence that should not be used by the owner to support or justify an owner's counter-offer include, but are not limited to the following:

1. The opinion of an owner based solely on conjecture.

2. A "review" of INDOT's/LPA's appraisal.

3. Any evidence used by INDOT/LPA in its appraisal.

4. Data from sales of properties that are not "arm's length" transactions.

5. Any evidence older than five years from the date of INDOT's/LPA's appraisal.

6. Costs the agency would incur in condemnation.

ADMINISTRATIVE SETTLEMENT PROCEDURE

The Right of Way Agent will notify the INDOT Acquisition Supervisor (or LPA) that the owner has provided a counteroffer and prepare a Recommendation for Administrative Settlement Memo citing the reasons for the settlement (*see* Online Forms). Any assertions made in the Memo must be quantified with supporting evidence. For instance, if the memo states that the Settlement will result in cost savings due to the construction schedule, an analysis of the cost of delay from the District, consultant Right of Way Manager or INDOT Project Manager must be included.

The Agent will compile all the information provided by the owner and submit the entire packet to the Acquisition Supervisor (or LPA). A notation about the request for an Administrative Settlement should be added to LRS in order to maintain the comment timeline. A copy of the packet, including any documentation submitted by the owner, must be placed in the parcel file as well.

Supplementary Information

The approving Agency must provide supplementary information to justify the Settlement. Examples of acceptable supplementary information include evidence and data analysis to support overall project cost savings resulting from construction delay claims, permit penalties, expert witness and appraisal fees, and excessive court awards, among others.

INDOT-Specific Procedures

The Buying Unit Supervisor will review the submitted Administrative Settlement Memo and documentation to ensure all needed support for the request is included. Requests with a total counteroffer that exceeds $25,000.00 that require appraisal review will be forwarded to the Appraisal Section for review and comment; counteroffers $25,000 or less can be reviewed by trained realty specialists. After this review, the packet will be forwarded to the Acquisition Manager. If the Acquisition Manager approves, the recommendation will be forwarded to the Real Estate Director for full consideration of all pertinent information.

Costs the agency would incur in condemnation cannot be used by a property owner as a basis for an administrative settlement, however, the agency can be more lenient with an owner's evidence and claims based in part on administrative condemnation costs that would be saved. Any leniency granted based on administrative condemnation costs cannot exceed $5,000. The agency in its review process can also consider all available appraisals or valuation reports, including the owners; recent court awards for similar type properties; the Right of Way Agent's recorded information; and the range of probable testimony as to fair market value should condemnation be filed. The opinion of legal counsel, when appropriate, can also support an administrative settlement, and when this opinion is provided, additional condemnation trial costs can also be considered as a part of the settlement process.

It is possible that settlement can be made for less than the value approved during the administrative settlement review process.

If the Real Estate Division Director approves the Administrative Settlement, he/she will sign the memo of Recommendation for Administrative Settlement and return it to the Acquisitions Section. Once the owner has accepted the settlement offer and the requisite instruments have been signed and completed, the original Memo will become part of the parcel file.

Local Public Agency (LPA) Procedures

Local Agency and District officials will need to develop and follow similar procedures that satisfy Federal and State guidelines for initial review and approval or denial of counteroffers. Special emphasis shall be placed on ensuring consistency, tracking approved and denied Settlements, and documentation of the process. Settlement requests must be reviewed by INDOT Central Office prior to approval. The pre-certification review by INDOT's LPA Section Manager will involve review of all Administrative Settlements to ensure proper documentation and support for any increases.

Post-Review Agent Procedures – All Agencies

The Memo and the Appraising Review are confidential, internal documents used for deliberative purposes and are protected from public disclosure:

> ***IC 8-23-2-6 (c)(2) Confidential Documents***
> *The department shall:*
> *...(2) classify as confidential that part of the parcel files that contain appraisal and relocation documents prepared by the department's land acquisition division*

Should the request for an Administrative Settlement be denied, the Acquisition Supervisor will direct the Right of Way Agent to notify the owner that the original Uniform Offer based on the Statement of Just Compensation is still effective for the remainder of the negotiation period.

It is possible that settlement can be made for less than the value approved during the administrative settlement review process. The agency shall inform the Right of Way Agent of what his negotiation authority is during the course of negotiating an Administrative Settlement. If the owner agrees, the Agent will edit the offer and securing documents (*see Offer Preparation, p. 152, Securing, p. 185 for the full list*) to reflect the settlement amount.

On the Acceptance page of the Uniform Offer, the Agent will add the following to the left of the signature block, using the appropriate dollar amounts:

Original Offer	$10,000.00
Administrative Settlement	+ $5,000.00
Total	$15,000.00

No other portion of the Offer should be altered, nor should the Offer be referred to as "new" or "revised." A "new" Uniform Offer is made only on the basis of an appraisal and is never prepared when making an administrative settlement. A "revised" Uniform Offer is made when a new Statement of the Basis for Just Compensation is issued based on a new appraisal and/or an Engineering change. In this case, a Letter of Rescission is also sent to the owner to rescind the original offer

The amount of the increase will be applied to the appropriate category on the deed breakout, either land/improvements or damages, depending upon the owner's claim for increased compensation.

If the administrative settlement affects the value of land and/or improvements, and the parcel has relocation involved, the buyer must provide a copy of the Administrative Settlement to the assigned relocation agent and update LRS. The Right of Way Agent should make the owner aware that an Administrative Settlement *may* result in a change to the amount of relocation benefits due to the owner, but that the Right of Way Agent assigned to Relocation will be able to determine the actual effect, if any.

In instances where the Administrative Settlement is refused by the owner, the owner shall be notified in writing that the administrative offer is withdrawn and the parcel will be condemned on the original offer amount approved by the State Review Appraiser.

The Right of Way Agent shall clearly document each step in the Administrative Settlement process, including an accurate explanation of key owner-agency interactions and decisions. All correspondence, notices, letters, and emails should be accounted for in the parcel file, along with a list of all documents and information provided to the owner, when provided, and by whom. The agent shall include appropriate remarks in LRS and provide a detailed timeline for all points of contact with the owner(s).

GLOBAL SETTLEMENT

A "**Global Settlement**" is typically one that includes both a counter-offer related to acquisition and entitlements related to relocation. Global Settlements are **not permitted** on federal-aid Right of Way projects, and are not to be considered viable alternatives to Administrative Settlements. Any relocation issues or entitlements are to be discussed and handled by the Right of Way Agent assigned to the relocation process, and should be kept separate from any discussion regarding the acquisition.

PLAN CHANGES

Review the request with an Acquisition Supervisor and the Acquisition Section Manager. Consider whether the plan change will reduce the offer and whether the owner is aware of this or will expect the same compensation. The Acquisition Section Manager will consult with the Project Manager and request the change. If a plan change is warranted, be sure to add a comment and route the parcel in LRS.

RETENTIONS

Offer to allow the owner to retain land improvements, fixtures and buildings. Note this offer in the Right of Way Agents Report. Retentions will fall into two categories; major and minor.

MAJOR RETENTIONS

Major retentions involve buildings and structures. "Buildings" include homes, commercial structures, barns and garages **but not portable storage sheds or mini barns.** Mini barns may not be appraised or be included in the offer because they are usually considered personal property and should be moved as a relocation item. "Structures" include free-standing land improvements that are anchored to the ground such as radio towers or fuel storage tanks.

The Right of Way Agent should explain as a part of the offer process that retention of a building or structure is possible and that **the owner must make arrangements for retention before the deed is signed.**

If the owner is interested, the Right of Way Agent should advise the owner of the necessary considerations to be made before committing to the retention. The Agent will give the owner a copy of the Major Retention Agreement (*see* Online Forms) and review it to ensure that the owner's responsibilities are fully understood. The Agent will explain that the first two pages must be completed and submitted to the Acquisitions Section for review and approval.

Right of Way Agents must **notify the Acquisition Supervisor and post remarks in LRS** to document each step of the process.

In order to complete the Major Retention Agreement form, the owner will need to investigate and document:

- Local by-laws and building restrictions allow the structure to be moved.
- Required setbacks, lot size needed, utilities available, zoning requirements, elevations needed and permits required are all compatible with this move.
- Contact railroad companies for costs and permits needed to cross their lines.
- Obtain roadway permits and road closures needed for moving the structure.
- Costs for any necessary permits, inspections and compliance with local ordinances
- Contact utility companies for costs and removal/ replacement of power lines and poles
- Availability of a suitable replacement site in the form of a signed and accepted purchase agreement, deed, or tax records
- County Health Department approval letter
- Statements (moving, foundation, septic/well) to verify the structure is feasible to move, that the contractors will be available for work during the specified time frame, that the moving permits can be obtained and zoning is appropriate
- Bids from moving contractor(s) or building contractor(s) for the cost to prep the replacement site, move the building/structure, construct a foundation, and install electric or other utilities and/or well and septic that existed in the previous location

Once the first two pages of the Agreement form are completed and the documentation of bids, feasibility, and replacement property has been collected, the Agent will submit the packet to the Acquisition Supervisor with a request for approval and subsequently for a move date, retention value and amount of surety performance bond to be posted.

The Acquisition Supervisor and the Acquisitions Section Manager will work with Property Management and the Project Manager regarding whether there is sufficient lead time for the owner to remove the improvement. In considering lead time, generally180 days are allowed for removal of improvements for major retentions. Property Management, the Project Manager and the Acquisitions Section must also consider the time to process the payment as removal of improvement is not expected to begin for at least 30 days after payment. This information will help determine the date by which the owner must complete the obligations to satisfy the agreement.

If the Acquisition Supervisor and/or the Acquisitions Section Manager grant approval for the retention, the required move date, retention value and amount of surety bond will be entered into the Agreement Form. This will be returned to the owner through the Right of Way Agent for consideration and signature. If the owner agrees, the Right of Way Agent will forward a copy of the fully completed and signed Major Retention Agreement to Property Management and will update LRS and place a comment in the Remarks section.

The surety performance bond must be in the form of a certified check or cashier's check (payable to "The Indiana Department of Transportation") for the amount specified by the Major Retention Agreement. The Major Retention Agreement will be signed along with other conveyance documents and submitted with the performance bond in the secured parcel.

If the owner is unable to obtain a surety performance bond, consult with the Acquisition Manager. In some cases, the requested bond amount can be held out of the acquisition payment until all items in the Major Retention Agreement are completed. A separate voucher would be prepared by the Right of Way Agent in lieu of requiring the bond.

The Right of Way Agent should make it clear that a major retention is a commitment to move the structure and any failure on the owner's part or on the part of his/her contractors will cause a forfeiture of the surety bond and a potential loss of the building. **The State has no responsibility for any damage to the building, other structures or injuries incurred in the move.**

The owner must:

1. Remove the structure from the Right of Way by or before the date indicated above
2. Remove any personal property, trash, debris, unwanted items, and hazardous material from the area of acquisition ,
3. Remove all improvements left above ground (not including a slab)
4. Contact the district Construction Engineer 48 hours prior to completing move to arrange an inspection
5. The day of the move:
   a. Remove all debris from the foundation, crawlspace or basement
   b. Seal drains with concrete

c. Remove all improvements down to two feet below grade

d. Break up the floor

e. Backfill the foundation, crawlspace or basement with gravel.

Upon verifying a passing inspection, the Engineer will sign an approval form, releasing the owner's bond. The owner is responsible for submitting the approval form to the Right of Way Agent so that Property Management can be notified with a copy of the approval form, and updates to LRS and the remarks section. The bond will be refunded within 30 days of receipt of the approval form.

Note that a retention clause must be added to the deed, as follows.

(REMOVAL OF ENTIRE BUILDING)
Reserving, however, unto the Grantor the building _____ (describe building), which is currently situated upon the aforedescribed real estate and which shall be treated by the Grantee and Grantor hereto as personal property, and which building encroaching upon the aforedescribed realty Grantor hereby covenants and agrees to remove from the aforedescribed realty as consideration for part of the aforestated amount paid by the Grantee to the Grantor for this conveyance. Such removal shall be accomplished by 60 days from the date payment is received for the above described realty and the Grantor shall post a performance bond (in the amount of $_____) in favor of the Grantee to insure completion of the removal of the aforesaid building which encroaches upon the aforedescribed realty. If the aforesaid building is not removed within the aforementioned time limit then the Grantee, utilizing the funds from the aforesaid performance bond, shall be permitted to remove from the aforedescribed realty, by destruction or otherwise, said building which encroaches upon the above conveyed real estate without incurring any liability whatsoever to the Grantor, his successors or assigns other than his liability and attendant legal obligation under and pursuant to the aforesaid performance bond.

(REMOVAL OF PART OF BUILDING)
Reserving, however, unto the Grantor the building _____ (describe building), which is currently situated upon part of the aforedescribed real estate and which shall be treated by the Grantee and Grantor hereto as personal property, and which part of said building partially encroaching upon the aforedescribed realty Grantor hereby covenants and agrees to remove from the aforedescribed realty as consideration for part of the aforestated amount paid by the Grantee to the Grantor for this conveyance. Such removal shall be accomplished by 60 days from the date payment is received for the above described realty and the Grantor shall post a performance bond (in theamount of $_____) in favor of the Grantee to insure completion of the removal of the part of the aforesaid building which encroaches upon the aforedescribed realty. If said part of the aforesaid building is not removed within the aforementioned time limit then the Grantee, utilizing the funds from the aforesaid performance bond, shall be permitted to remove from the

aforedescribed realty, by destruction or otherwise, said part of said building which encroaches upon the above conveyed real estate without incurring any liability whatsoever to the Grantor, his successors or assigns other than his liability and attendant legal obligation under and pursuant to the aforesaid performance bond.

If the structure is a billboard, the salvage value will be included in the appraisal. While the salvage value will be deducted from the offered amount, a retention agreement is not necessary for a billboard. The retention will be noted on the Status Report to alert the Property Management Section that an improvement must be monitored for removal. The owner must contact the Property Management Unit to arrange any lease back provisions if it is not to be removed immediately. Even if the land has not yet been acquired, INDOT has purchased the sign owner's lease and the owner has no right to leave it in place. INDOT has acquired all leasehold rights to that site.

If the retention is a small wood sign it will be treated as a minor retention, unlike a billboard.

Retentions of Buildings with Slight Encroachments

If the building is only slightly encroaching into the proposed Right of Way, the owner may plan to simply remove the encroaching porch or corner and keep the building intact without moving it. If INDOT paid $60,000 for the building and the owner retained it for $4,000 and spent only $3,000 removing the porch, the owner would net $53,000 in damages. This would be considered a windfall to the owner because it would far exceed the damages which would have been paid for a reduction in setback. **The Right of Way Agent should foresee this possibility before committing to a retention value.** Under these circumstances, the Agent should not obtain a retention value from Property Management. Instead, the Agent should consult with the Acquisition Manager before routing the parcel to the Appraisal Section to determine the cost of removing the encroachment as a Cost to Cure and to establish a retention value based on the estimated severance damages due to a reduction in setback. The deed will still retain the temporary easement for building removal to assure INDOT's ability to remove it should the owner fail to do so. Once the retention value is established the procedures to retain are the same as described for major retentions.

MINOR RETENTIONS

These are fixtures and land improvements which are included in the real property value such as plumbing, lighting fixtures, cabinets, water heaters, landscape items and trees. The Right of Way Agent is responsible for establishing the salvage value of minor items. The Agent should consider the replacement cost, age, condition, cost to move and any possible antique value in determining the retention value. The goal is to establish a fair value but this price should not become an obstacle to the acquisition of the parcel. The Agent will explain that the retention is to be removed within 30 days of receipt of payment on partial acquisitions. Retentions will be removed prior to vacating the property on total acquisitions. All retained items must be listed on a Retention of Ownership (Fixtures and Parts) form.

Please note that exterior doors and windows should not be retained due to the security and legal liability problems posed during INDOT's possession prior to demolition.

These retentions not only cause problems for INDOT but also create an unsightly environment within the neighborhood, giving it an abandoned appearance. This appearance invites vandalism and scavenging, making life unpleasant for those homeowners who live nearby and exposing INDOT to potential legal liabilities for injuries.

Notice of Items to be Treated as Personal Property

This form (*see* Online Forms) will be completed when items, major or minor, are retained. Place one copy in the parcel and submit copies, or email to Relocation and Property Management. Describe the items and specify the number of items retained.

ENVIRONMENTAL REVIEW

For acquisitions which may have environmental concerns, the agent should review the environmental documents. If obvious environmental hazards are identified by the agent which are not mentioned in the environmental document, the Acquisition Supervisor should be notified. Environmental review services are beyond the scope of knowledge that a Right of Way agent provides for these issues.

With parcels involving acquisitions from gas stations or known former gas station locations, the agent should carefully review the Title and Encumbrance Report to determine if there are any environmental restrictions from previous conveyances which require inclusion in the conveyance instrument for the proposed acquisition. Any inclusion or references to environmental restrictive covenants to be added to our deed must be reviewed and approved by INDOT's legal department prior to obtaining signatures.

INDOT'S Environmental Policy Office is dedicated to ensuring that INDOT is compliant with the National Environmental Policy Act (NEPA) and hazardous material requirements. The Office is responsible for red flag investigations, Phase I & II environmental site assessments (ESA), remediation of contamination discovered during construction, noise barrier assessments, air quality reviews, and the preparation/review of NEPA documents.

Within Environmental Policy there are two units: Document Review and Site Assessment & Management. The Document Review Unit is responsible for ensuring that Indiana's transportation projects comply with federal and state requirements for environmental documentation, including NEPA, the state Environmental Policy Act, and associated regulations. The unit prepares and reviews Environmental Impact Statements, Environmental Assessments, and Categorical Exclusions.

The mission of the Site Assessment & Materials (SAM) is to provide support and guidance to INDOT employees, consultants, and contractors in the areas of:

- Processing, developing, reviewing, and approving Red Flag Investigations, Phase I ESA and Phase II ESA for INDOT transportation project development and implementation;
- Management of the investigation and remediation of INDOT-owned contaminated properties;

- Hazardous materials management;
- Hazardous waste management; and
- Day-to-day guidance as needed

If the parcel contains excess land or an uneconomic remnant the Agent should review the procedures described in Chapter 3. INDOT will NOT acquire excess land or an uneconomic remnant without the owner providing certification that remediation has taken place or that the levels of contamination are below IDEM's enforcement action levels.

LEAD BASED PAINT DISCLOSURE DOCUMENT

The Residential Lead-Based Paint Hazard Reduction Act of 1992 directs the EPA and HUD to require disclosure of known information on lead based paint hazards before the sale or lease of most houses built prior to 1978. INDOT is purchasing the residential building for demolition purposes and therefore does not care whether there is lead based paint. However, in order to protect the Right of Way Agent's broker's license and to provide INDOT with knowledge, should we auction the building or lease it, the prudent course of action will be to obtain the disclosure form from the seller.

A Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (*see* Online Forms) must be completed and signed by the seller of residential buildings meeting the following criteria.

1. If the building was constructed prior to 1978 a disclosure form is required.

2. Zero bedroom units (such as loft/efficiency/dormitory) and elderly housing are considered exempt from the disclosure.

3. The Right of Way Agent will initial item "d" indicating that a lead information pamphlet was provided. This pamphlet is available at the Central Real Estate Office, and sellers should not be required to provide one to the State. See also: https://www.fsa.usda.gov/Internet/FSA_File/pfflinyhbrochure.pdf

4. The Right of Way Agent will initial item "f."

5. The Right of Way Agent will initial the form under the purchaser's acknowledgement and check the box waiving the 10 day inspection period.

6. The Right of Way Agent will print "State of Indiana, by_____" in the purchaser's signature block.

SECURING

COMPLETING THE NEGOTIATION PHASE

At this point, all of the owner's concerns should have been addressed to the best of the Right of Way Agent's abilities. The 30-day consideration period has expired and there are no other legitimate reasons for delaying the decision. The Agent should contact the owner(s) and ask what they have decided.

If the owner rejects the offer, identify all objections and make note of them in the Right of Way Agents Report. If they cannot be resolved, explain the condemnation process and refer to the Owner's Rights listed on page 2 of the Uniform Offer *(see Condemnation, p. 193).*

If the owner accepts the offer, the Agent will verify the terms of the sale to ensure that there will be no misunderstandings when the documents are ready to be signed.

- Verify that the owner won't retain anything or what items will be retained and their cost. If the acceptance is subject to any plan changes, verify that they are completed.
- Verify that the title has not been changed since negotiations began. Inform the owner of any actions that must be taken prior to accepting the offer, such as paying taxes or obtaining a retention performance bond.
- Verify the payment arrangements if there are multiple owners. It is important to know, in advance, how to prepare the claim voucher.
- **If the owner insists on preparing their own deed, the Agent will provide a draft copy to the Acquisition Supervisor for review by the Deputy Attorney General.** Acquisition Supervisor. Without DAG approval, no variation to approved deed templates is allowed.

Make whatever arrangements are the most expeditious and appropriate to obtain the necessary signatures. This may mean either a personal meeting(s) or a mailing(s). If the securing documents are mailed, they must be complete and ready to sign. The acceptance package should be sent within two days of verbal acceptance. Include detailed instructions and indicate where signatures are necessary and what documents need notarized. Also, be sure to remind the owners to sign exactly as their name is typed (e.g. with or without a middle initial). This will hopefully reduce the potential for the owners to make an error, thus voiding the documents. For multiple signatures, refer to *Multiple Signature Procedures, p. 192*.

Proceed with the acquisition in the same diligent manner in which negotiations were handled. If a person has excessive time to deliberate an issue, it may increase the likelihood that they will doubt their decision.

This is a good time to make a habit of checking all information fields in LRS to make sure it is complete and accurate. Update the remarks section with dates of contact, topics discussed, and any unique information about the parcel. Verify that all information, including dates, names, addresses and phone numbers, is correct. Remember, the LRS remarks should tell the story of the acquisition.

SECURING DOCUMENTS

The documents necessary to convey the property generally will include a(n):

1. Instrument to convey, with complete legal descriptions attached
2. Acceptance of offer
3. Claim voucher (with attachment, if necessary)

   NOTE: for free donations, a blank, unsigned voucher for $0.00 is required, but acceptance and W-9 are not
4. Vendor Information Form (W-9)
5. Receipt of conveyance instrument
6. Proof of paid taxes if payment was not vouchered
7. Sales Disclosure Form

   NOTE: not used for Temporary Easements, Quit Claim Deeds, Limited Access Rights

Supporting documents which may be necessary to accompany the above:

1. Appropriate affidavits (*see* *Jurats vs. Affidavits*, p. 115)
2. Major or minor retention agreements
3. Right of Entry
4. Donation Agreement (with or without offer)
5. Mortgage Waiver Letter
6. Mortgage Release / Partial Mortgage Release

CONVEYANCE INSTRUMENTS

Please see *Offer Preparation*, starting on page 152 for information about conveyance instruments. The Right of Way Agent will place the original signed instrument and a copy, clearly indicated as a *copy*, in the parcel package and give one copy to the owner. See *Legal Title* starting on page 199 for when clauses / jurats or affidavits may be required in conveyance instruments. Please note that the "Deed Signed Date" in LRS will be the date of the last signature on the deed.

ACCEPTANCE OF OFFER

An acceptance of offer (*page 4 of the Offer Letter*; *see* Online Forms) will be prepared citing the owners in the same manner as used in the deed granting clause and signature block. Notarize and place the signed original in the parcel. Provide an extra copy to be signed for the owner's records.

If there are changes to amount to be paid through retention or an Administrative Settlement, the Agent may not change the amounts originally entered into the Uniform Offer that were based on the Statement of the Basis of Just Compensation. Instead, the Agent will add the following to the left of the signature block:

Original Offer	$10,000.00
Retention – cabinets	– $200.00
Administrative Settlement	+ $5,000.00
Total	$14,800.00

No other portion of the Uniform Offer should be altered, nor should the Offer be referred to as "new" or "revised," as a new or revised offer would restart the 30-day clock!

For multiple signatures, refer to *Multiple Signature Procedures,* starting on page *192*.

CLAIM VOUCHER

INDOT Right of Way Agents will prepare a claim voucher in LRS (Land Records System). Local Public Agency Agents will need to use the Local Agency's approved voucher form. Depending upon the number of payees and their relationship, there are several different formats to use in the claim voucher preparation. Take care to ensure that the voucher and W-9 are complete, accurate, and prepared in the proper format. If the voucher is rejected by the auditor, it will certainly delay the payment.

All interests in the property will sign the claim voucher. If more space for signatures is required, prepare another voucher with the notation "FOR SIGNATURE ONLY" in the "Gross Amount" space. This will prevent the additional vouchers from being processed, multiplying the payment, yet still providing the necessary signatures. The "signature only" vouchers will be placed behind the primary voucher in the parcel assembly. In the case of a corporation, partnership, etc. where someone is signing outside of their individual capacity, the same authorized officer(s) who signed the deed should also sign the voucher.

Claim Voucher Formats

1. **A single payee** (and the mortgagee or county treasurer) **or spouses** (and their mortgagee or county treasurer). A mortgagee or county treasurer can be added as co-payees because they are not receiving taxable income from a sale of property. The income will be reported under the owner's social security number.

2. **A single payee but more claimants than signature blanks available**. A mortgagee or county treasurer may still be added as a co-payee in this format.

3. **Multiple payees who are not married**. Using this format, each payee will submit a W-9 and each payee will have a separate claim voucher; taxes will be reported for each payee's social security number. A mortgagee or treasurer can still be added as a co- payee on each check.

Claim Voucher Preparation

The following fields can be found in the LRS voucher preparation screen, but should also be on any voucher form used for Local Public Agency projects as well. Rules regarding voucher types and exact payee names apply in both situations. LRS will automatically populate several fields, but it is still important to verify that all information is correct. Watch for special characters such as apostrophes (‘) and ampersands (&) in the payee name – **LRS does not recognize these characters as text and will not produce the voucher document.**

NAME - This area identifies the payee(s) and their address. This block is used for payment to the owner, as an individual, spouses, or owner and his/her mortgagee or county treasurer. These are the only combinations of multiple payees which can be used in this block to obtain a single check unless permission is granted in an unusual circumstance. The first name listed will also be the person who signs the W-9 and provides their social security number or federal ID number. The payees should be cited with the exact same name as was used when they conveyed title. The payees' name and address must match the W-9. The payees' names will be reversed- last name first, followed by a comma, first name. Middle initials are ignored by the Auditor.

If there are multiple payees who are not married or a mortgagee/treasurer/lienholder, separate claim vouchers must be prepared for each party that will be signed by all parties involved. The percentage of the total payment given to each payee must match the percentage of ownership according to the deed.

Please note that co-payees such as mortgagees, the county treasurer, or other lienholders are not required to sign the voucher. Spouses that are named as co-payees must sign the voucher.

VOUCHER TYPE - Choose the appropriate voucher type. This will usually be “Land and Improvements.”

DELIVERY INSTRUCTIONS - This should include the names and addresses of the parties to be paid and what actions should be taken at the closing. If a mortgage release needs to be obtained, real estate taxes paid, or paying a service fee, be very specific, citing the account number and recording numbers of the mortgage to be released or the tax parcel key numbers and addresses for co-payee. Delivery instructions are to be entered in the voucher form in LRS. Local Public Agencies should use the check delivery instructions form available with the approved forms found on the Real Estate Resources website accessible through ITAP.

If an owner has refused to sign a deed before receiving payment and cannot be dissuaded (*see Receipt of Conveyance Instrument, p. 186*), explain that a check cannot be processed by the Auditor without a signed deed as proof of debt due. The owner may sign the deed and hold the original until closing while a copy (clearly marked "copy") can be submitted with the claim voucher. The delivery instructions would then specify that the original deed be obtained.

GROSS AMOUNT - Enter the total amount to be paid by this voucher.

CLAIMANT NAME(S) - All parties of interest who signed any form of an instrument releasing an interest will sign the claim voucher. Exceptions would be Mineral Rights Release, Quit Claim releases in certain situations or an individual such as a County Clerk attesting to an “action” of another.

The first line is to be used when dealing with an entity, as opposed to an individual. Individuals will sign and date, exactly as cited on the deed and as payees, on the remaining lines with their names printed beneath their signatures. Note that the date of their signature cannot precede the date of the deed and acceptance as one cannot make a valid claim for payment until the debt is incurred. All names should match the W-9 and the deed exactly.

Please note that co-payees such as mortgagees, the county treasurer, or other lienholders are not required to sign the voucher. Spouses that are named as co-payees must sign the voucher.

The Agent will sign and date in the "recommend approval" area above the “originator” line with their name printed beside the signature of originator.

Multiple Checks with Differing Payees

If one check is to be addressed to the owner and another check is to be addressed to the owner and a payee (such as a mortgagee or the county treasurer), **two separate claim vouchers must be used.** Follow the standard voucher format for each check.

W-9 – VENDOR INFORMATION FORM

A signed and completed W-9 (Request for Taxpayer Identification) must be submitted before vouchers can be processed. Names on the W-9 must match the current name on the conveying instruments exactly either in the Legal Name field or in the Trade Name (D/B/A) field. As noted under claim voucher preparation, the first payee named on the voucher must sign a W-9 and provide a Social Security number/federal ID number. To ensure security of these numbers, all W-9s submitted will be done by direct mail, personal delivery, or e-mail. Faxing a W-9 to INDOT is not permitted.

RECEIPT OF CONVEYANCE INSTRUMENT

A Receipt of Conveyance Instrument (*see* Online Forms) will be prepared in duplicate, giving the original to the owner and placing the copy in the parcel. If the owner objects to signing a deed prior

to receiving payment, explain that the receipt is proof of monies due and that the owner will still possess and use the property until payment is made and the deed is recorded. The owner may initial this form to show receipt of a copy.

SALES DISCLOSURE FORM

Update the Sales Disclosure Form (SDF) that was prepared for the Offer to reflect any changes that occurred through the negotiation process. See *Offer Preparation*, starting on page 152 for specific instructions for preparing the SDF.

ELECTRONIC SIGNATURES AND DOCUMENTS

INDOT can accept electronic records and electronic signatures, however, it may request paper copies of an electronic document. If the original document is electronic, the original electronic document should be provided to INDOT in addition to any requested paper copies.

For transactional agreements, such as the acceptance of INDOT's offer or conveyance documents, any electronic signatures must comply with Indiana law, including Ind. Code 26-2-8. Parties to an electronic transaction must both agree to conduct the transaction electronically; if a party is willing to conduct one transaction electronically, he or she can refuse to conduct other transactions electronically. The electronic signature process must be conducted using a software that utilizes security procedures that verify that the electronic signature is that of a specific person and is able to detect changes or errors in the record. Acceptable software includes but is not limited to Adobe Sign and DocuSign. Any "transactional" documents can be rejected if INDOT is not able to verify the signature through a security software or acceptable evidence of the security verification can be provided to INDOT.

For electronic documents that are not transactional, i.e., the document does not create an agreement between the parties, signatures included in the document do not need to be verifiable through software security procedures, however, consultants and staff should maintain careful processes to ensure that others are not using their signature on documents. INDOT reserves the right to reject reports and forms where signatures do not have a professional appearance. For documents, such as Buyer's Reports, where language is at risk of being interpreted as an agreement, software with verification capabilities should also be used if electronic signatures are going to be obtained.

If the Uniform Offer or a deed is electronically signed, the notary block must also be electronically signed by the notary.

NOTARY PROCEDURE

Notarization assures the parties of a transaction that a document is authentic, and can be trusted. It is a three-part process, performed by a Notary Public, which includes vetting, certifying and record-keeping. Notarizations are sometimes referred to as "notarial acts." Above all, notarization

is the assurance by a duly commissioned Notary Public that a document is authentic, that its signature is genuine, that its signer acted without duress or intimidation and intended the terms of the document to be in full force and effect.

For a notarization to be effective, one of the following is required:

1. The documents are signed in the presence of the Notary (preferred).
2. The person physically signs the documents in advance and then, in the presence of the Notary (i.e., in the same room, not by phone), points to the signature and tells the Notary that the signature on the document is his or hers.

If the notary is electronically signing the deed or Uniform Offer, unless Remote Notarization processes are being utilized as discussed below, the above requirements must be met. A notary electronically signing must also ensure that they are using software that utilizes security procedures that verify that the electronic signature is that of a specific person and is able to detect changes or errors in the record, such as the software programs referenced the above section; the notary also needs to ensure their notarial seal information is included in the appropriate location of the document.

The date of the notary should be the date the Notary witnessed the signature. It is not necessary for that date to match the date of the document. However, if the date differs, a note from the Notary must be included in the file (and in LRS) explaining why the dates were different.

If it is not possible for the Right of Way Agent assigned to buying to be present with the person(s) signing the document in order to provide notary service (for instance, they live in another state), the person(s) signing will need to use a Notary that can be present. It is not acceptable to receive signed documents in the mail and notarize them.

For documents which will be notarized in the State of Florida, please refer to the Florida Notary Block (*see* Online Forms).

REMOTE NOTARIZATION

Remote notarial acts performed by a remote notary public are presumed valid. Ind. Code Sec. 33-42-17-10. Beginning July 1, 2020, or earlier if rules are adopted under Ind. Code Sec. 33-42-16-2, a remote notary public, registered in Indiana, who is physically present in Indiana and is using approved audiovisual communication technology can attest to or witness signatures executed outside of the State of Indiana, regardless of the location of the signor, and the notarial act will be governed by Indiana law. Ind. Code Sec. 33-4-17-3.

A remote notary, in Indiana, must be registered through the Indiana Secretary of State as a remote notary public. An electronic notarial certificate of a remote notarial act must:

1. Specify that the notarial act is a remote notarial act;

2. Include a space in which a remote notary public may indicate whether the principal in the remote notarial act appeared before the remote notary public; and
3. Specify both:
    a. The city and county in Indiana in which the remote notary public is physically located when the remote notary public performs the remote notarial act; and
    b. The city, county, state or province, and country in which the principal is physically located when the principal signs the document.

Ind. Code Sec. 33-42-17-7. The remote notary certificate, if prepared in Indiana, must comply with the requirements listed in Ind. Code Sec. 33-42-17-7(b); a copy of the certificate is located in INDOT Real Estate Forms website.

Remote notary acts performed in other states or jurisdictions, if legal in that jurisdiction, can be accepted; that notary certificate must comply with the laws of that jurisdiction.

MULTIPLE SIGNATURE PROCEDURES

Most documents offer space for up to four signatures on the same sheet; this is sufficient for most situations. As noted in Notary Procedures, the notarization should be dated as of the day the Notary was in the presence of the individual(s) whose signatures are being notarized.

If more than 4 signatures are required, or interested parties will be signing on different dates due to scheduling or geographical distance, use duplicate signature pages citing all interested parties on each page. This avoids any misconception that the parties signing each acceptance form will receive the total offer amount as opposed to their share of the total. .

Each duplicated page must be annotated with the page number and a letter. For instance, the signature pages of the Uniform Offer will be marked 4A, 4B, 4C…

The dates for each signature should match the day each individual signed – they do not need to match. The “Acceptance Date” and the “Deed Signed Date” noted in LRS or any other documentation will be the date of the last signature.

CONDEMNATION

BE TIMELY. The Negotiation period is limited to 30 days – if an agreement has not been reached, the condemnation process should begin on day 31. IC 32-24-1-5 states that a suit cannot be filed before 30 days after the offer is made. An exception to this rule is if the owner signs documentation that they are rejecting the offer prior to the 30 days. The condemnation process can be quite time consuming and should begin at the earliest feasible date.

To help bring negotiations to a close within the 30-day offer period, keep communications open and be mindful of time. Do not request plan changes, except for legitimate corrections, unless the owner specifically agrees to accept. If the owner's appraisal, or other documentation for support of higher compensation is overdue, explain that the acquisition process must proceed in order stay within guidelines; however, the owner may submit their documentation whenever it becomes ready. As an attempt to avoid condemnation, any documentation provided should be forwarded to the Acquisition Supervisor. An appraising review will determine whether higher valuation can be justified. **Once a condemnation is certain, the parties of interest will be notified, the report prepared and the parcel submitted within one week.**

BE REASONABLE. Unavoidable delays, such as death, illness or divorce in a family, a pending legal action or sale do happen. Review the issue with the owner determine if the issues can be resolved within the 30-day offer period. These issues should be communicated to the Acquisition Supervisor and documented in the remarks section of LRS. Sometimes the Agent will also need to make the owner aware that a requested change may not be feasible.

BE COURTEOUS. Right of Way Agents should recognize when the difference of opinions is too great to be resolved. While INDOT respects the owner's opinion, INDOT must be able to justify all expenditures to the taxpayer. **Remember, Agents may be sent back to secure a parcel if a settlement is reached at a later date.**

Before submitting the condemned parcel to the Acquisition Supervisor for review, the Right of Way Agent must complete the Condemnation Report and bring the title up to date by utilizing the "Supplemental Title and Encumbrance Report" form. Also, LRS must be updated to indicate that the parcel has been condemned, and a comment should be added. Any vouchers that have been created in LRS for buying purposes need to be voided as well – relocation or other vouchers should not be changed.

After the parcel is reviewed for SNET and regulations compliance by the Acquisitions Section Manager, it is then routed to the Condemnation Unit.

CONDEMNATION REPORT

The Condemnation Report (*see* Online Forms) is prepared by the Right of Way Agent, as the person most knowledgeable of the issues. Complete questions #1- #5, names and addresses, citing the owners exactly as they hold title and were cited in the offer letter. Do not use a P.O. Box as a

legal address. **If the owners address is a Rural Route number and box, provide directions to the house. The notice of suit will be personally delivered by the county sheriff who must be able to locate the address.** Cite the name of the officer of the mortgagee that was notified.

Answers to questions #6- #27 should be detailed, accurate and insightful. These answers should reflect knowledge of the appraisal, the design, the owner's position and the amount of effort that was invested. Having viewed the site and worked in the area, the Agent is aware of information that the Deputy Attorney General will not have. Right of Way Agents should include their knowledge of the uses and conditions of the surrounding properties (both positive and negative), planned developments in the area, effects of the project on the residue (both positive and negative), and any comments the owner has made which support or contradict their position. **It is not acceptable to simply state that the owner did not say what he/she wanted. It is the Agent's responsibility to ask.**

CONDEMNATION PROCESS OVERVIEW

The following outline is intended to give the Right of Way Agent an overview of the Condemnation process so that they can understand how their actions and documentation affect the process. When discussing the Condemnation process with owners, Agents should first refer to the Owner's Rights listed on page 2 of the Uniform Offer.

The Condemnation Specialist will update all pertinent information in LRS and add a note in the remarks section. The Specialist will then contact all parties of interest to inform them of the proposed suit. Parties to be contacted will include all ownership interests, lessees, easement holders which will require a release, farm tenants, renters, mortgagees, and attorneys.

If it is determined that the condemnation must proceed, the Condemnation Specialist then prepares the Service Order certifying, to the Attorney General, the need to acquire the desired interest in this particular parcel of land through the powers of eminent domain.

The Condemnation Specialist then forwards the Property Management Section who notes:

1. The condemnation status of the parcel;
2. All (if any) structures in the Right of Way to be acquired; and
3. All (if any) cost to cure items in the Right of Way to be acquired.

The Property Management Section then forwards the parcel to the parcel to the Condemnation Unit Manager, who will perform another review of the parcel as a final attempt to reach a settlement. The Condemnation Unit Manager will sign the service order and forward the parcel to the Deputy Attorney General's Office.

The Deputy Attorney General (DAG) assigned to the case must first determine that all parties of interest in the property to be appropriated have been identified and given a good faith offer.

The Deputy Attorney General files a complaint to appropriate the interest needed in the county in which the property is located. Said complaint includes all parties of interest plus the county auditor.

The county serves all defendants with notice of the complaint having been filed.

Having been served, all defendants have the opportunity to appear and object to the appropriation; however, appearance is not mandatory unless the defendant is a corporation.

No objections having been filed, or filed objections having been satisfied, the Deputy Attorney General may then petition the court to enter an order of appropriation. The order of appropriation certifies that this acquisition is in the public interest and may proceed under the eminent domain statutes.

The court then appoints three appraisers, qualifying as follows:

> ***IC 32-24-3-2***
> *1) One disinterested resident freeholder of the county where the property is located; and*
> *2) Two disinterested appraisers licensed under IC 25-34.1 who are residents of Indiana to appraise the value of the property. One (1) of the licensed appraisers appointed under this subsection must reside not more than fifty (50) miles from the land or building.*

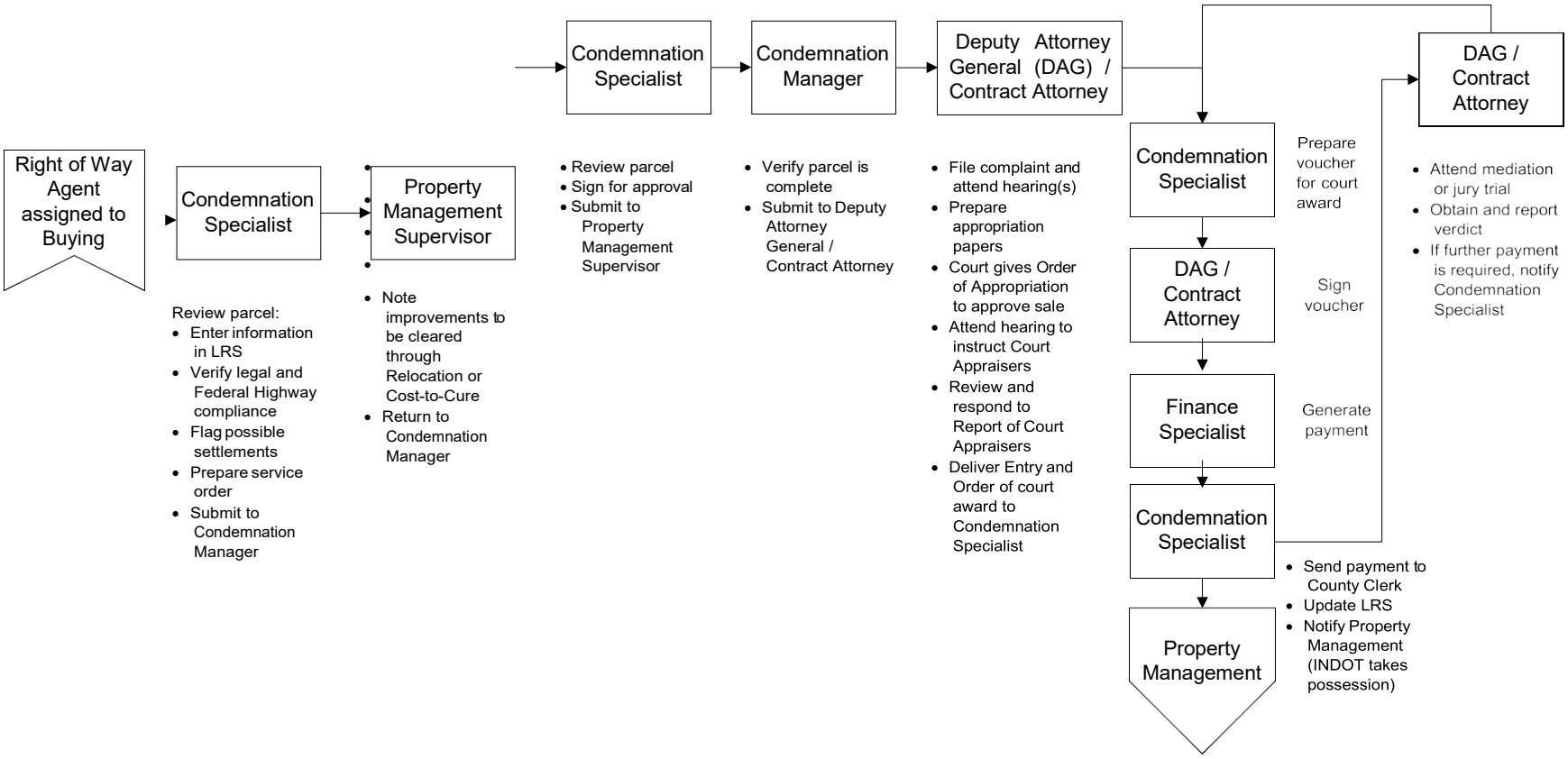
The court-appointed appraisers report one sum which the court enters as the court award. Both the plaintiff and defendant may file an exception to the court award.

If the State desires to take possession of the interest sought, it may deposit the court award with the clerk of the court, at which time the State may take immediate possession of interest sought.

If neither party files exception to the court award, that amount will stand as final judgment.

If either party files exception to the court award then further adjudication, i.e., settlement, mediation, jury trial, etc., will be necessary to arrive at a final judgment.

CONDEMNATION PROCESS FLOWCHART



RELOCATION

State and federal laws provide for relocation assistance to be provided to eligible persons and businesses that are displaced by eminent domain acquisitions for public projects. The Relocation Unit of the Real Estate Division administers the relocation payment program for INDOT. Their activities will coincide with the Right of Way Agents during the acquisition.

Relocation payments are made to eligible parties for moving personal property which is in the Right of Way, to assist an owner or tenant in purchasing or renting a replacement dwelling, to reimburse the cost of an increase in the interest rate of a new mortgage and reimbursement of certain costs involved in business moves. The relocation agent will determine the displaced party's eligibility for these payments, document the appropriate expenses and process the payment.

While a basic understanding of the nature of the program is necessary, **the Right of Way Agent assigned to negotiate the acquisition of a property should never try to explain the relocation program or determine the person's eligibility.** The owner will be most anxious to know complete information at the time of the offer and will press the Agent for details regarding the relocation program and his/her eligibility. The Agent must refrain from making any statements and request the owner’s patience in waiting for the Right of Way Agent assigned to provide relocation assistance to explain all possible benefits.

If the acquisition will displace a business or persons from a residence, if personal property must be removed from the proposed Right of Way, or if the acquisition changes the highest and best use of the property, the Right of Way Agent will note that the parcel involves Relocation in LRS. In the past, this notification was completed through the use of a Daily Notice to Relocation, but this practice for State projects has been discontinued in lieu of marking a parcel for Relocation in LRS.

It is the policy of the Acquisition Section to allow a residential owner/occupant to receive the relocation entitlement letter and 90-day notice, which specifies the relocation benefits for which the displacee is eligible, **before** asking for the owner’s decision on accepting the Offer. This provides the owner with the knowledge of the total amount of money available for the purchase of another home, prior to entering into a contract to sell the existing home. *This policy applies only to displaced residential owner/occupants and not to businesses or owners who merely have to move personal property out of the Right of Way.*

ASSEMBLY

Upon obtaining all executed instruments necessary to transfer the property and provide clear title, the parcel will be assembled and reviewed for approval to process payment. If the offer is rejected, the condemnation report will be prepared and the parcel assembled in a different manner. The Right of Way Agent will assemble the parcel, either secured or condemned, as specified in the Parcel Closeout List (*see* Online Forms). The Right of Way Agent will prepare a Status Report for all secured parcels (*see* Online Forms) and place it in the parcel file.

For LRS users, the Status Report is to be prepared in LRS. Local Public Agencies will use the form available on the Real Estate Resources website accessible through ITAP.

The status report serves to notify the Property Management Unit of cost to cure items, retentions, excess land and land improvements requiring demolition. It also will provide any future reader of the file with a synopsis of the taking.

The Agent will use the Closeout List (*see* Online Forms) to review the assembled parcel and verify that:

- signatures from all the ownership interests have been obtained,
- clear title is being conveyed,
- all of the owners' concerns were addressed,
- all issues requiring coordination with other divisions have been resolved (special contract provisions or plan changes),
- all arrangements for payment have been finalized,
- copies of all emails, correspondence, information and documents provided to the owner(s) are included in the file and/or on LRS,
- all documents are correct,
- all documents are in the prescribed order per the Parcel Closeout list,
- code and parcel are noted on every page

State Agents should then submit the parcel packet to the Acquisition Supervisor, add a note to the remarks section of LRS that the parcel has been submitted, and route the parcel to Parcel Evaluation in LRS. LPA Agents should submit to the hiring entity – either the LPA or the LPA's consultant. The assigned INDOT or Local Public Agency Reviewer will then assess the parcel and evaluate the quality of the Agent's work.

PAYMENT PROCEDURES

If the Reviewer approves the parcel, it will be submitted to INDOT's Legal Section for approval of legal format, clear title and payment. If approved by Legal, the parcel will be sent to the Finance Unit of the Operations Section for payment processing. The Real Estate Division Director then signs the voucher approving payment and forwards the parcel back to the Finance

Unit, who submits the voucher to the Accounting and Control Division which monitors the project budget. Accounting and Control then forwards the voucher and deed to the Auditor's Office for a check to be issued. Once the check is issued, it is delivered to Property Management. The Finance Unit forwards the parcel to the Property Management Unit, which makes note of any building retentions or purchases of excess land, arranges for delivery of the check(s), and then submits the parcel to records.

SPECIAL PROCESSING OF CHECKS

Agents should inform a property owner that payment will be made within a 90-day period following acceptance and approval of all the documents by the Deputy Attorney General's office. If a hardship exists or circumstances determine that expeditious payment will benefit INDOT, the Agent should review the merits of special processing with the Acquisition Section Manager.

WAIVERS AND MEMOS

Waivers of release of interest and official memos to the parcel will be prepared by the Right of Way Agent, with **prior approval** of the Acquisition Manager. Waivers and memos will be placed in the front of the parcel to explain special circumstances to the Reviewer and all parties involved in processing the parcel. A generic format guide for Administrative Settlement memos (*see* Online Forms) will be tailored by the Right of Way Agent to address the specific circumstances of the parcel. The same procedures will apply to memos of environmental recommendations *(see Environmental Review, p.183*, Online Forms*)*, waivers of partial mortgage release *and* waivers of real estate tax, judgment, UCC filing, etc. *(see Legal Title, p.* 199 and Online Forms*)*.

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RELOCATION PROCEDURES

INDIANA DEPARTMENT OF TRANSPORTATION - REAL ESTATE DIVISION MANUAL
AUGUST 2018 – Revised August 2021

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PROFILE OF A RELOCATION RIGHT OF WAY AGENT

UNDERSTANDING RELOCATION

When families, individuals, businesses, farms, or non-profit organizations occupy land for highway projects, it may be necessary to displace the occupants in order to facilitate the completion of a project. The Uniform Relocation Assistance and Real Property Acquisition Policy Act were drafted in order to provide certain benefits and protections for persons displaced by highway projects which are entirely or partially funded by the Federal Government and the Department of Transportation.

Under the Uniform Relocation Act, individuals, business owners or tenants, and residential owners or tenants that are displaced are provided payments and services to assist them in moving their personal property, as well as various supplemental payments and advisory services. The Act also outlines how government agencies must conduct purchases of occupied lands and sets clear guidelines for acquiring and relocating parcels of land.

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, containing relocation regulations are found in 49 Code of Federal Regulations Part 24. The purpose of the law is to ensure fair, consistent, and equitable treatment of displaced persons so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole; expedite acquisitions by agreement with such owners and minimize litigation and congestion in the courts; ensure Agencies implement regulations in a efficient and cost effective manner; and promote public confidence in Federal and federally assisted land acquisition programs. The basis for the law is very important and should be referred to often when dealing with difficult decisions or questions.

In order for a highway project to be successfully completed it is essential that relocation needs be evaluated before a project is started and during the entire process of the project. Without a firm grasp of the needs of the people, businesses, homes, etc. being affected, the potential for delays in construction as well as increased project costs overall become more prevalent.

The following chapters deal with specific guidelines for relocation planning, commercial relocations, residential relocations, advisory assistance, and useful supplemental information regarding INDOT's relocation program policies and procedures.

Relocation Agent Qualifications

In accordance with the federal regulations, the Real Estate Division, Indiana Department of Transportation, has established qualifications for relocation agents. INDOT maintains a list of all approved consultants who have completed the process of demonstrating their qualifications to become approved by INDOT; this list is referred to as the Approved Relocation Agent List.

The prerequisites for consultants to be placed and retained on the Approved Relocation Agent List are:

1. Individuals must be licensed by the IPLA as a Broker or Managing Broker.
2. An application must be submitted to the INDOT Relocation Section for approval.
3. Applicant must complete and pass INDOT's Relocation Exam.

RIGHT OF WAY AGENT MAJOR ACTIVITIES

Right of Way Agents are representatives of the acquiring agency. For INDOT acquisitions, the Agent's client is the State of Indiana. For Local Public Agency acquisitions, the Agent's client is that local agency.

The individuals that the Right of Way Agent works with in either 1) acquiring real property (buying) or 2) providing relocation assistance are deserving of utmost care and respect. They are entitled to all the rights and benefits afforded to them under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) as amended (Uniform Act), and the regulation titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24). However, these individuals are not the Agent's clients. It is an interesting balance to keep this in mind.

The Right of Way Agent may be assigned to "buying" or to "relocation." Throughout the Relocation Procedures section of the manual, those assigned to relocation will simply be referred to as Right of Way Agents unless the need to differentiate between the Agent assigned to buying and the Agent assigned to relocation arises.

Providing Information

1. Describing the availability of, and eligibility requirements and procedures for, obtaining payments and assistance
2. Explaining the procedures for filing complaints or appeals
3. Answering displaced persons' questions

Identifying Problems and Using Resources

1. Reviewing available data on the displaced person
2. Conducting a preliminary informational interview
3. Conducting follow-up diagnostic interview

4. Identifying displaced persons needs
5. Diagnosing displaced persons problems
6. Determining the availability of support resources to meet displaced persons problems and needs
7. Referring displaced persons to social agencies
8. Monitoring and evaluating displaced person's progress with social agencies

Assist in Searching Replacement Properties

1. Visiting, telephoning, emailing, and writing displaced persons about suggested replacement properties
2. Assisting and counseling displaced persons on personal problems related to the move
3. Preparing and maintaining lists of currently available replacement properties
4. Informing displaced persons about special government assistance programs for displaced persons
5. Initiating contacts with government agencies to coordinate services for displaced persons

Computing, Processing Claims and Payments

1. Determining displaced person's eligibility for relocation benefits
2. Computing displaced person's entitlements
3. Advising displaced persons on proper documentation needed for processing claims forms
4. Delivering claims forms to displaced persons
5. Assisting displaced persons in filling out claims forms
6. Collecting claims forms from displaced persons
7. Process claims for approval
8. Check Delivery

IMPORTANT RIGHT OF WAY AGENT TRAITS

Knowledge

1. Relocation Laws and Regulations
2. Real Estate Practices and Procedures
3. Finance and Economics
4. Social Work Disciplines
5. Property Management
6. Appraisal and Valuation Techniques
7. Agency Policies and Procedures

Ability

1. Communicate effectively with individuals in a face-to-face situation
2. Make effective oral presentations before public groups
3. Establish rapport with uncooperative or suspicious individuals
4. Work effectively with representatives of other agencies and organizations
5. Write effectively
6. Identify displaced persons needs and problems
7. Identify available resources for meeting displaced person needs
8. Perform advocacy on behalf of displaced persons within the limits of and subject to the allowable entitlements of the Uniform Act
9. Monitor and evaluate the displaced person's progress
10. Use formulas for computation purposes
11. Conduct personal interviews
12. Record all data accurately and concisely

Attitude

1. Desire to protect the public treasury
2. Intention to assure that displaced persons get no more and no less than what they are entitled to under the law
3. Empathy for persons with social, health, economic or emotional problems
4. A willingness to work modified hours to accommodate a displacee's schedule
5. Showing compassion for others and their well-being
6. Commitment to the goals and objectives of the Uniform Relocation Act
7. Commitment to the rapid and economical completion of highway and other public projects
8. Having a balance between helping displacee's and staying within the job guidelines

INTERVIEW SKILLS

It is necessary to become acquainted with the displaced person to give more than minimum assistance. After getting to know the displaced person, the Right of Way Agent can tailor the assistance offered to meet the displacee's special needs, and can make appropriate referrals when applicable. By taking some additional time in the beginning, the Agent will be more effective and probably save time and effort. Right of Way Agents will be more successful in providing the appropriate level of assistance by conducting a thorough interview with the person to be displaced.

Interviewing success depends heavily on preparation

1. Decide why the interview is to be conducted
2. Determine what outcome is desired; the information that is needed, and the information that will be given
3. Develop ways to achieve that outcome

These three items will change as Right of Way Agents progress from the initial interview to each subsequent interview. Each time, the outcome should become more specific.

Develop as much information as possible <u>before</u> the interview

1. Use written background information when available. The parcel file may contain information obtained during an earlier survey, possibly for relocation planning purposes.

2. The appraiser, the Right of Way agent assigned to buying, a welfare worker, or any other person who may have had prior contact with the potential displaced person will have first-hand information

3. If the person is a tenant, it may be helpful to talk with the landlord

4. If an Agent has interviewed the person previously, it is helpful to review prior notes to remember important details

Plan the interview carefully

1. Determine the purpose of the interview. Is the purpose to give information about the project, benefits, eligibility requirements, or is the purpose to prompt action? Some action is required. The displaced person must move, and a decision is necessary regarding the method to be used, such as a commercial mover, a self-move based on a schedule or a combination of both

2. Identify specific topics to be covered, their order, and the best method of presentation

3. Have a specific time period in mind before starting the interview. Do not exceed 90 minutes. Two shorter interviews are better than an overly long one. On the other hand, don't cut off an interview in which the person is fired up and communicating

Interviews can have many purposes

1. To become acquainted with the interviewee

2. To collect information

   Design questions carefully in advance. Use an interview questionnaire for the initial questions. (*See* Online Forms*, RAAP 41 A, B, C or D*) Factual information is needed and is the least threatening, so it is the most readily obtainable

3. To convey information
   a. Look at the problem from the interviewee's point of view. He or she is most interested in the direct effects on his or her self and family. Community impacts are secondary
   b. Impart information, requirements, options, restrictions, and procedures in a way that makes the interviewee receptive to the information being presented

4. To get reaction and questions
   a. Develop an atmosphere that will promote reaction and questions

b. Use a presentation method that encourages participation. Be relaxed, and do not appear rushed

c. Do not overdo written copy, authority, or personal identification. Mark important paragraphs in any written items which are used

5. To solve a problem jointly

   a. Promote interest and thought

   b. Get agreement on the nature of the problem

   c. Get agreement on the importance of the problem

   d. Minimize personal involvement and emphasize that the displaced person must do something, and you will help

6. To plant ideas

   a. Be subtle

   b. Consider alternatives ("If the interviewee should say...then I might say...")

   c. Help the displaced persons to think of all of their options

   d. Flag alternatives that should be avoided

   e. Help the interviewee to feel he or she played a major role in the development of the idea

   f. Be positive; help the interviewee look at the opportunities in relocation

Interview the right person

1. Interview the person most likely to have the answers to the questions being asked and who will need the answers that will be provided

2. The person being interviewed must certify legal residency in the United States for eligibility requirements, both for residential displacement and non-residential displacement (*See* Online Forms*, RAAP 38*)

3. Interview the person to whom specific information is to be given. All adult family members should be present if possible, or in the case of an elderly single person, a trusted son or daughter or close personal friend may be present during the interview if he or she desires or if they obviously need assistance

4. Group interviews may be appropriate in some instances, especially when it is necessary to:

   a. Obtain interrelated information

   b. Convey information of interest to all parties, e.g. the Right of Way Agent, the displaced person and a moving company representative

c. Sample reactions

d. Develop solutions to general problems

e. Generate group interest and identification

Arrange the interview properly

1. Have the right person request the interview. Either the Agent that will conduct the interview or another staff person will generally be most appropriate

2. Choose the manner of request carefully

   a. Arouse interest

   b. Be positive, pleasant and prepared, but flexible

   c. Explain the purpose of the interview

   d. Tell who will conduct the interview and why and do not imply that he/she is going to solve all their problems

Use more than one person to conduct the interview when appropriate

1. Be sure each interviewer pursues the same objective and develops consistent data

2. Have a clear direction and role assignment beforehand. One to interview and one to take notes

3. Be careful not to overwhelm the interviewee(s)

Conduct the interview with sensitivity in mind

1. Dress appropriately. Attire affects a first impression. Business casual is appropriate. Common sense is the rule. Be neutral.

2. Be on time

3. State the purpose of the interview and the topics to be discussed. This will eliminate possible fear or distrust

4. Be courteous, friendly, and interested in the people and in their home

5. Be warm and responsive to the interviewee's problems and point of view. Do not be defensive. Develop a trustworthy relationship

6. Move from general to specific information and from least sensitive to most sensitive subjects

7. Try to identify the reasons for the respondent's opposition, if it exists
   a. Fear, ignorance, suspicion, rumor
   b. Clash of objectives
   c. Clash of personalities. If the interview is with an obviously hostile person, the Agent may want to suggest making arrangements for someone else to handle the relocation if the displaced person prefers
   d. Lack of interest -- doubts displacement will occur
   e. Advice of others -- spouse, relatives, other displaced person
8. Tactfully point out unworkable alternatives before they get out of hand
9. Do not be overly concerned about silences. Silences usually are not as long as they seem and are often necessary for the interviewee to formulate his/her thoughts into a logical reply. During periods of silence, the interviewer should think about, “What is he or she really trying to tell me?"
10. Select the appropriate manner of speech carefully. Avoid jargon, i.e. RHP for Replacement Housing Payment or DS&S for decent, safe, and sanitary. Do not talk down to a displaced person, but keep explanations as simple as possible
11. Create an impression of competence. Know the program, and be able to answer questions with authority
12. Decide when to let the person present his/her point of view, when and how to get the interview back on course, and know what useful information or reactions may be lost by redirecting too soon
13. Restate what the person has said at key points. "You mean that"..."What I hear you saying is"...etc.
14. When necessary, clarify information the displaced person is presenting. All that may be necessary is to say, "Will you please explain that a little more."
15. Use listening responses frequently, (nod, smile, expectant pause, uh-huh, mmm, I see, echo (last few words repeated), mirror (you feel you have been treated unfairly), and brief summary (let's see if I have this right -- you...)
16. Be prepared to delete or modify the content or sequence of the interview as the person reacts in unforeseen ways
17. Take notes as appropriate but do not let the note taking get in the way of the interview. Be selective, brief, and clear in what is written down. Pay attention to the person being interviewed

Become a better listener

1. Keep an open mind. Remember that we often hear what we wish to hear. Bear in mind, one's own attitudes and biases affect the information we receive in an interview
2. Organize the person's remarks in your mind
   a. Identify the main points
   b. Decipher arguments versus facts
   c. Group facts around arguments
3. Anticipate the next point
4. Evaluate the person's evidence
5. Look for nonverbal clues. Body language and tone of voice can indicate anxiety, sadness or anger
6. Avoid distractions and concentrate on what is being said. Sometimes it may be necessary to ask the interviewee to turn off the TV or to move to a quieter environment
7. Stay alert. Do not daydream if a person's delivery is slow

Summary

1. A thoughtful, thorough presentation is a prerequisite of a truly successful interview
2. During the interview, center all attention on the other person; be sensitive to his/her reactions, and show sympathetic interest in his/her comments

ADVISORY SERVICES

One of the most important functions of any relocation program is to provide the services needed by persons being displaced by the project. The State is required to provide relocation services to minimize hardships and to carry out an orderly and humane relocation program. A relocation program will be successful only if services are provided by the personal contact of a Right of Way Agent who understands and is knowledgeable of the Uniform Relocation Act and its policies and is willing to provide the assistance needed by displaced persons.

Relocation advisory services are interrelated with all other program requirements from the preliminary interview to the final payment of relocation claims. Relocation services are the "frame of reference" embracing all program requirements.

Relocation assistance is necessary on all federal and federally-aided projects where displacement will occur or where there is a Highest and Best Use change. If the acquiring agency determines that an occupant of property adjacent to real property being acquired for a project is caused substantial economic injury, it may offer advisory services to that occupant. Relocation assistance is required by the law and has equal if not greater importance than payments.

ADVISORY SERVICES DEFINED

The Right of Way Agent must provide as a minimum the following services to persons who will be displaced:

1. Explain the relocation services which are available and the various types of relocation payments

2. Discuss and explain eligibility requirements necessary to receive relocation benefits, and determine the eligibility of each displaced person

3. Determine the needs of displaced persons for relocation advisory services, and make a sincere offer to help in any way possible

4. Provide assistance to persons displaced from dwelling units, businesses, nonprofit organizations and farm operations

5. Provide current listings and prices of available and comparable for sale and rental properties on a continuing basis. This requirement applies to residential units, businesses, nonprofit organizations and farm operations

6. Provide information concerning federal and State housing programs, federal loan programs and other governmental programs offering relocation assistance to displaced persons

7. Provide any necessary assistance in completing application and claim forms

8. Provide relocation advisory services commensurate with the needs of each displaced person, in order to minimize hardship associated with adjusting to a new location

9. Offer to provide transportation for displaced persons to inspect housing to which they are referred

Even this minimal amount of assistance will be helpful. However, in some instances it is necessary to go beyond these minimum assistance requirements. Many problems and possibly misunderstandings can be avoided if as much time as necessary is taken to provide a comprehensive explanation of benefits and assistance available.

The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

1. Determine for non-residential displacements the relocation needs and preferences of each displacee and explain the relocation payments and other assistance for which each displacee may be eligible, the eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each displacee. At a minimum, interviews should include:
   a. The displacee's replacement site requirements, current lease terms, other contractual obligations, and the financial capability to complete the move
   b. Determination for the need for outside specialists that will be required to assist in planning the move, assistance in accomplishing the move, and in the reinstallation of machinery and/or other personal property
   c. Identifying personal property vs. real property at the time of the appraisal of the property. This is best accomplished at the Appraisal/Inventory Meeting
   d. An estimate of the time needed to accomplish the move
   e. An estimate of the anticipated difficulty in locating a replacement site
   f. Identification of any advance relocation payments required to accomplish the move

2. For non-residential acquisitions the agency should provide current and continuing information on the availability, purchase price and/or rental cost of suitable commercial replacement locations. Assistance should be given to a non-residential operation to obtain and become established in a suitable replacement location
3. Determine for residential displacements, the relocation needs and preferences of each person being displaced; explain the relocation entitlements for which the person may be eligible, related eligibility requirements, and the procedures for securing any entitlements. This shall include personal interviews with all displaced persons.

a. Provide current and continuing information on the availability, purchase price, or rental costs of comparable replacement dwellings. It must be explained that the person cannot be required to move until at least one comparable replacement dwelling is made available

b. As soon as possible, the displacee should be informed in writing of the comparable dwelling and its price or rent amount used for establishing the maximum Replacement Housing entitlement

c. Where feasible, comparable housing shall be inspected prior to being made available to assure that it meets decent, safe, and sanitary standards. The displacee must be notified that a Replacement Housing Payment will not be made until the replacement dwelling is inspected and determined to be decent, safe, and sanitary

d. Whenever possible, minority persons shall be given reasonable opportunities to relocate to a decent, safe, and sanitary replacement dwelling not located in an area of minority concentration that is within the person's financial means. However, this policy does not require the acquiring agency to provide a larger than necessary payment to enable a person to relocate to a comparable replacement dwelling as described in 49 CFR 24.205 (C) (2) (ii) (D)

e. Any person who occupies property acquired, when such occupancy began subsequent to the acquisition, and the occupancy is permitted by a short term rental agreement, shall be eligible for advisory services as determined by the acquiring agency

4. Care should be taken to minimize hardships to displacees trying to adjust to being relocated by providing counseling, other sources of assistance that may be available, and other help that may be appropriate. This includes but is not limited to supplying displacees with information about federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other programs offering assistance to displaced persons. This includes technical help in applying for such assistance

PROVIDING RELOCATION ASSISTANCE

Once the Right of Way Agent knows something about the person or people being displaced, he or she is ready to provide assistance. Not all displacees will need assistance and some will need only a minimum amount of assistance. The Agent can expect to spend more time and effort with a small number of those persons in his or her relocation workload. Therefore, it is important to know where to go to get special help. The list of agencies which provide social services and other forms of assistance is long. However, this list is very basic and applies to all displaced persons whether owners or tenants of residential, business, and farm properties. The services are to be offered to occupants of expensive homes as well as to occupants of substandard homes and to large businesses as well as to small businesses.

There should be no assumptions made about the need for services, and the services should never be restricted to location of replacement sites. In many instances, it will be necessary to go beyond the minimum requirements in order to complete relocation successfully. The only way to determine what advisory services will be needed is to become acquainted with the displaced persons during personal interviews.

SERVICES AVAILABLE FROM PUBLIC AND PRIVATE SOURCES

County Welfare Departments

County welfare departments administer public assistance programs. Their major programs are:

1. **Financial Services** The principal types of financial services are (a) Aid to Families with Dependent Children (AFDC), (b) General Relief (GR), (c) Supplemental Security Income (SSI), and (d) Medical Assistance (MA).
   a. AFDC -- Aid to Families with Dependent Children
      i. Provides cash assistance to families in which dependent children have been deprived of support of a parent until 18 years of age (21 if a student).
      ii. AFDC families can also get help with rent coverage, utility bills, furniture needs, etc.
   b. GR -- General Relief
      i. Offered to those poor who do not qualify for other welfare department assistance programs.
      ii. Usually individuals or childless couples.
      iii. A transitional program, with States trying to move recipients to other forms of assistance shared by federal government, or to the labor market if feasible.
   c. SSI -- Supplemental Security Income
      i. A minimum assistance payment for those eligible who do not have other resources.
      ii. Direct income maintenance payments to aged, blind, and disabled persons based on a national uniform standard as well as uniform eligibility criteria and incentives for States to supplement this federal floor.
      iii. The SSI recipient receives cash payments from the federal government, but the State usually provides him or her with social services, medical services, and food stamps.
   d. MA -- Medical Assistance
      i. Medicaid
         1. Available to AFDC and SSI recipients. Those who are not eligible for direct cash assistance from the welfare department are aided in paying medical expenses that would reduce their income after they pay their bills to less than welfare standards.

2. A person is not required to be on welfare to be eligible for Medicaid provided his or her income is low.
3. The State sets its own limits and eligibility requirements, so check with your local welfare office for specific information.

2. **Social Services** The principal types of social services are (a) Foster Child Care, (b) Day Care Centers, (c) Nursing Homes, and (d) Family Planning. Social Services are provided directly by the welfare department or purchasers from private agencies and institutions or foster parents for public assistance recipients and others in need.

   a. Foster Child Care

      i. For abandoned or orphaned children.
      ii. Foster parents are provided a payment to provide care for these children.

   b. Day Care Centers

      i. For working mothers of preschool-aged children in many communities.
      ii. These centers often charge according to the parents' ability to pay.

   c. Nursing Homes

      i. For the ongoing care of welfare recipients and others.
      ii. Check on the availability and eligibility requirements in your area.

   d. Family Planning

      i. Budgeting, development of parental teaching and supervisory skills, and birth control assistance for individuals of childbearing age.

3. Food Stamps

   a. The eligibility formula balances income and assets against a range of deductions for shelter, childcare, medical and educational expenses, and other special fees and liabilities.

   b. Welfare recipients are automatically eligible for food stamps and must only prepare an affidavit listing income and resources to determine their allotment of food stamps.

County Health Departments

1. Clinics and a variety of health services

   a. For medical and dental care.

   b. Contact the Health Department in your area for specific services available for county residents and eligibility requirements.

2. A Public Health Nurse (Includes home visitation for the sick and newborns)

Contact your Health Department for availability of this service and eligibility requirement.

3. Nutrition Counseling

Provided by some Health Departments for persons with dietary problems resulting from certain illnesses.

The Social Security Administration

1. Retirement Benefits

Begin at age 65 or age 62 on a reduced basis (widows at 60) for retired workers covered by social security.

2. Survivor's Benefits

May be paid to the family of a deceased worker who was covered by social security. Payments can be made to unmarried children under 18, a widow under 60 if she is caring for the worker's children, widow or dependent widower 60 or older, and dependent parents 62 or older.

3. Supplemental Security Income Benefits (SSI)

The SSA also participates in monthly "SSI" payments to people in financial need who are 65 or older, blind, or disabled. For these three groups, the basic conditions of eligibility are specified levels of income and resources. This is a relatively new program. In 1973 the aged, blind, and disable people receiving public assistance payments from the State were converted to SSI rolls. This is not the same as social security even though the SSA administers the program through State Welfare Agencies. The money comes from the general funds of the U.S. Treasury with participation by State and local governments.

4. Aid to Families with Dependent Children (AFDC)

Money for this benefit comes from State and Federal funds. To be eligible, a child must usually be deprived of parental support or care because of a parent's death, a parent's continued absence from the home, or a parent's physical or mental incapacity.

5. Disability Benefits

May be paid to disabled workers and their families who are covered by social security. The worker must be unable to work. After a 5-month waiting period, a disabled worker and his/her family will receive the same amount as would be paid on retirement.

6. Medicare

The SSA is responsible for administering the Medicare program, which provides hospital and medical insurance protection for persons who are covered by social security and are 65 years of age, and over.

Other Private and Public Agencies

1. Community Service Organizations (United Fund)

Most communities have a network of voluntary human care service organizations which provide a variety of social services to assist the sick and needy. Perhaps one of the following agencies may be of assistance to one of your displacees.

2. Programs for Senior Citizens

Provide a variety of services for the elderly. However, they are primarily a central point offering contact with other people of that age group. They usually provide social and recreational activities, educational programs, health services or information, employment service or job registry, transportation programs, etc. A national nutrition program for older needy Americans known as Group Meals Services is a new experimental program usually administered by senior citizen's centers. Older persons are eligible who need improved nutrition for a variety of reasons, such as lack of knowledge of proper nutrition, inadequate facilities for preparing meals, difficulty in shopping, etc.

3. Big Brother and Big Sister Organizations

Have the responsibility of serving fatherless boys and motherless girls due to death, divorce, desertion, separation, imprisonment, or illegitimacy. This service provides the child with meaningful adult companionship and provides the child with opportunities to participate in recreation and social experiences. Some organizations work directly with the juvenile court to determine the need for this service.

4. Meals on Wheels (For elderly and shut-ins)

A program that usually provides two nutritious meals a day to persons at home. Eligibility varies but the program is designed to solve the nutrition program for the aged, the disabled, and the convalescents who cannot purchase or prepare adequate meals for themselves. Home delivered meals are provided under many organizational auspices and charges are usually based upon ability to pay. The program should be listed in your telephone directory.

5. Visiting Nurse Association (volunteers)

Provides in-the-home nurse visitations, visits to day-care centers, senior-citizens centers and low-income housing projects. The visiting nurse provides health-aid care, special

therapies, guidance, and counseling under the direction of the recipient's physician. The United Fund, Medicaid, Medicare, and several health plans will reimburse the Association whose fee is based on the actual cost of the visit when the patient cannot afford the cost of the service.

6. Volunteer Families

Available in some communities to be of aid and assistance to families receiving public assistance. They are well briefed on the community services available and may be of assistance to a displaced family receiving public assistance.

7. Charitable Organizations for Food, Clothing, Furniture, Financial Assistance.

a. Can be found in most communities across the country, the best known being "Goodwill Industries." Such organizations collect furniture, appliances, shoes, clothing, bedding, etc., and refurbish the items when possible. Distribution is made to needy families for a nominal sum or by donation to indigent families. This is an excellent source of help for low-income displacees who are in need of clothing and furniture. Charitable organizations also provide emergency financial assistance on a temporary basis to persons in need.

b. The "Salvation Army" is another charitable organization, which is active in most communities. This dedicated organization provides emergency finances, shelter, food, and clothing. It also provides social services for the aged, shut-ins, and problem children. Community centers provide family life education, group recreation services, counseling, physical education, and athletics. Disaster relief is also one of its many services.

8. Credit Counseling Services

Available in most communities to help individuals and families solve their financial problems. Professional counseling is provided for budgeting, money management, and the intelligent use of credit. In cases of over extension, a program is initiated for debt repayment acceptable to creditors and debtors. Voluntary fees from creditors as well as the client often finance credit-counseling centers. Credit ratings can often be restored or improved to the point where the formerly poor credit risk may qualify for a mortgage loan insured by one of the Federal agencies such as VA, FHA, or FmHA.

9. Centers for Alcoholism and Drug Abuse

a. Alcohol Abuse Programs include a variety of services pertaining to alcohol abuse and rehabilitation of the alcoholic. "Alcoholics Anonymous" usually participates in this program. It offers counseling, sharing, and understanding of the problems of the alcoholic on a one-to-one basis. The organization assists in locating doctors, hospital care, and financial resources for alcoholics. The service is available to both child and adult, and group service is available for family members of alcoholics.

b. Drug Abuse Centers are available in most communities and all metropolitan areas. The centers provide information and counseling services for drug users and their families. The centers quite often offer a therapeutic community to which drug-dependent persons are admitted on a live-in basis. The program is usually one of total abstinence with no use of substitute drugs, providing the addict an opportunity to withdraw from both physical and mental drug dependence through comprehensive rehabilitation services and backup care.

10. Legal Aid Society

Provides immediate and direct access to quality legal services to low income persons living in the central Indiana community. A majority of the Society's clients have issues that involve family law.

11. Religious Social Service Programs

a. Such as Catholic Charities, Jewish Social Service Agencies, and the Lutheran Social Services are active in many communities.

b. Such organizations provide marital, family, and individual counseling as previously discussed under "Family Services." Foster home care, day-care centers, adoption services, child guidance services, services to the aging, retirement counseling, and emergency assistance are other services provided by religious organizations. These services are often duplications of services provided by other community organizations, but it may be the only way some families may be reached.

12. State Employment Office for job placement, vocational counseling and training.

a. This is a public employment service for all grades of workers and employees, providing service without charge. Services to employees usually include recruitment, screening and referral, job analysis, evaluation, specifications, and skill inventories required. Vocational counseling and job placement is always part of the service. Training programs for prospective employees are often available. This office also administers unemployment compensation for qualified men and women.

b. This paper is not intended to be a comprehensive list of all public and private agencies providing service and financial assistance. Rather, it is a compilation of benefits that are available in most communities. It may be used as a reference guide by personnel involved in the relocation program and should be expanded to include local information for future use.

13. The Veteran's Administration

a. Guarantees mortgage loans for qualified veterans. The VA guarantees the lender against any loss (the dollar amount is stipulated by law), or 60 percent of the loan, whichever is less. The VA also makes direct loans for the purchase of a home in areas where private financing is not generally available. To qualify for either an insured

loan or direct loan, the veteran's income must be sufficient to meet the monthly mortgage payment and cover his/her other obligations and family expenses. The veteran must also be a satisfactory credit risk.

b. The VA will guarantee loans made by private lenders to veterans for financing the purchase of mobile homes, lot acquisition, and site preparation as well as homes.

14. The Farmer's Home Administration

(FmHA) of the U.S. Department of Agriculture guarantees mortgage loans made by private lenders and also provides for direct loans through the agency. The FmHA County Supervisor usually determines the eligibility of the applicants. One of the eligibility requirements is the inability of the applicant to obtain a loan from a private lender on terms and conditions that he/she can reasonably be expected to meet. Loans may be made for the value of the property as determined by the FmHA appraisal and approved by the Federal Housing Administration or VA. The FmHA has several rural programs available, including business and industrial loans, but the two basic types of loans are farm ownership loans and lot-to-moderate income housing loans. For more specific information, check with your FmHA County Agent.

15. Minority Business Development Agency (MBA)

Provides leadership to promote the establishment of and assistance in the expansion of minority-owned businesses. Advisory services and counseling are available to assist minority business development. Technical and management assistance is available at no cost and includes all forms of counsel, guidance, and advice on the establishment and operation of a business enterprise. No assistance is available to finance a business venture by MBDA, however.

16. The Small Business Administration

a. SBA provides loans for displaced small businesses that have suffered substantial economic injury as a result of displacement or being located adjacent to a federally aided project, including State and local projects. Owners of apartment houses or other real estate held primarily for rental income are not eligible, nor are farm operations and nonprofit organizations.

b. There is no maximum loan amount for displaced business loans. Direct loans are available when bank participation on a guarantee basis is not available. The SBA also offers training and management assistance to help the displaced small businessman reestablish and continue his/her business.

17. The Department of Housing and Urban Development (HUD)

a. Insures lenders against losses and guarantees the mortgage lender that, in the event of default by the purchaser, HUD will honor the lender's claim after the mortgage is foreclosed and the property conveyed to HUD.

b. To be eligible for a HUD insured loan, a borrower must have an acceptable credit record and enough income to make the monthly payments, in addition to other recurring bills and family needs. (Includes mobile homes as well as residential units). The agency also maintains a list of HUD-owned properties that may be an additional source of available housing.

There are many places to go for help when the services needed are beyond the scope or expertise of the relocation staff. Right of Way Agents should not hesitate to contact local service agencies and become familiar with their organizations and the nature of the services they provide. The Right of Way Agent should keep a list with names and telephone numbers of local service agencies and identified contact persons.

Right of Way Agents should encourage the displaced person to call the service agency, but should also offer to place the calls, make the appointments, and provide the transportation when necessary.

DIVERSITY OF DISPLACEES

Below is a list of some of the situations a Right of Way Agent should be prepared to work with. Local service agencies may be able to provide the necessary assistance to help the displaced person adjust to a new neighborhood or cope with an existing problem.

- The elderly
- Families with low income
- Large families
- Serious or terminal illness in a family
- Alcoholism and drug addiction
- Eccentric people
- Unusually large amounts of personal property
- People that live in isolation
- The owner of many animals
- The person with poor credit
- People for whom English is not the primary language
- The displaced person who is reluctant to move or cooperate with the process
- The case of discrimination in housing
- Individuals with physical, emotional or behavioral disabilities
- Unemployment
- Families on welfare
- Families with no automobile
- Businesses in need of financial and management help
- Dislocated farmers
- Acquisition of a church property

To relocate some of the persons mentioned presents a considerable challenge to any Right of Way Agent. Often Right of Way Agents face problems for which there seem to be no solutions. Inexperienced relocation personnel soon learn that it is not always necessary to reinvent the wheel.

Coworkers, supervisors and other knowledgeable persons may be able to offer helpful suggestions or approaches to a problem. In the end, the Right of Way Agent is expected to bring the relocation to a successful conclusion.

It is important to remember that displaced businesses including non-profit organizations and farms also have needs. They need to think through what is best for their business throughout the relocation process, need to plan ahead, and need to find at least adequate replacement sites. The Business, Landlord, or PPMO Interview Questionnaire done at the time of the Appraisal/Inventory meeting will assist in identifying those matters. The chapter on *Moving Entitlements* and related expenses will address these and other issues in greater detail.

RELOCATION PLANNING

ABOUT RELOCATION PLANNING

The Uniform Relocation Act Amendments of 1987 recognize the need for relocation planning. Section 205(a) of the act as amended requires programs or projects be planned so that the problems associated with displacements are identified at an early stage and resolution of those anticipated problems is provided.

Planning is a good management tool used to achieve a predetermined objective. For relocation, the objective is an orderly and humane relocation of persons displaced by a project without adverse impacts or costly delays to the project. The planning process should be initiated during the early stages of project development, be continued through the environmental analysis process and culminate in a relocation study appropriate for the particular project. The factual information learned should indicate if orderly relocation could be achieved. If problems are revealed early in planning, various solutions such as extension of lead-time prior to construction, undertaking clearly defined mitigation measures, or increasing personnel resources may be considered.

During the early stages of development, the acquiring agency shall plan federal and federally assisted programs or projects in such a manner that recognizes the problems associated with the displacement of individuals, families, businesses, farms, and non-profit organizations. The agency shall develop solutions to minimize the adverse impacts of these displacees. Planning may involve a relocation survey or study, which may include the following:

1. An estimate of the number of households to be displaced, including information such as owner/tenant status, property values, and rental rates of properties being acquired. Also, consideration as to the impact on minorities, elderly, large families, low income, and people with disabilities when applicable

2. An estimate of the number of comparable and replacement dwellings in the area, along with price ranges and rental rates. When an adequate supply of comparable housing is not expected to be available, housing of last resort or protective rent should be considered. Special consideration should be given to the need for, and availability of comparable subsidized housing.

3. An estimate of the number, type, and size of businesses, farms, and non-profits to be displaced and the number of employees that may be affected

4. An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems

5. Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies

LOANS FOR PLANNING AND PRELIMINARY PLANNING EXPENSES

The lead agency shall establish criteria and procedures for use of project funds upon the request of the federal agency funding the project

RELOCATION STUDY

While a formal Relocation Plan is not needed for a project to move forward. The best way for the State to document the planning process is to prepare a Relocation Study. This can be accomplished through the information gathered at the Appraisal / Inventory Meeting. Please refer to *Relocation Process* starting on page 234 for more information about the *Appraisal/Inventory Meeting*.

DETERMINING WHOM THE PROJECT WILL DISPLACE

The first step in the relocation planning process is to find out who and what will be displaced by the project. A drive through the project area and surrounding areas will provide general information about potential displaced persons, as will checking with public and private agencies that provide services to the area. The best way to ascertain who will be displaced and to learn about potential problems is to conduct personal interviews of those affected by the project. Before objections are raised about "stirring up problems" with personal interviews before a project begins, please be assured that a knock on the door is far more welcome than a notice in a newspaper or a red X on someone's residence on project plans at a public hearing. Information about the project and the potential relocation benefits and assurances should also be provided to counteract rumors or other misinformation.

The survey form designed for obtaining the inventory data should be adequate to address, as a minimum, family size, owner or tenant status, income range, special needs (disabilities, elderly, etc.), dwelling size, and number of bedrooms. Businesses, farms, and non-profit organizations should also be surveyed to determine the type of operation, number of employees, and relocation needs. Either a preliminary survey form or pre-relocation questionnaire can be used to conduct interviews at this time. If the pre-relocation questionnaire is used, only those items necessary for planning purposes need be completed.

After completing the survey, a tabulation can be made of replacement housing required based on the standards for comparable replacement housing, including price or rental range, number of bedrooms required, and size. Other correlation items should be added as appropriate, such as the need for subsidized housing. A similar tabulation should be completed for businesses and farms.

The inventory of characteristics and needs should indicate possible problem areas and generate thinking about the various methods to be used in providing the necessary replacement housing if shortages are discovered.

SURVEY OF COMPARABLE/ FUNCTIONAL EQUIVALENT REPLACEMENT PROPERTIES

It will be necessary to prepare a survey of available comparable replacement housing, business sites, including for non-profit organizations and farm properties. Because the Relocation Study already collected an inventory of housing needs, the types of units to be included in a survey of replacement properties is already known.

The survey and subsequent analysis must indicate the availability of sufficient comparable replacement housing for those individuals and families to be displaced. Otherwise the use of Replacement Housing of Last Resort should be considered. Again, the standards for comparable replacement housing must be used as the basis for this inventory and the housing selected must be decent, safe, and sanitary. Listings of currently available, comparable residential units for sale and for rent in the general price range and rental range of the properties to be acquired can be collected from multi-list services, realtors and their websites, newspapers and magazines. The listings should be adequate for comparison with the inventory and should equal or exceed the number of units being acquired. The determination that an adequate supply of comparable housing and other required properties will be available should be well supported. In the same manner, available businesses and farm properties should be analyzed.

If acquisitions and relocations are expected to cover a significant time span, additional consideration should be given to properties that would become available over such a time span. An analysis of the available rental and for sale properties over a representative period in the past and projecting this information to arrive at availability in the future may be made. Such a projection would of course give recognition to any known factor that might affect the projection.

OTHER SOCIAL AND ECONOMIC IMPACTS

In developing these impacts, social or economic occurrences that have taken place in the recent past that may have a distorting effect on the present real estate market should not be overlooked. Problems of today may also affect the real estate market in the near future. Some examples to keep in mind are:

1. Industries coming into or leaving the community
2. Increasing interest rates affecting home purchases
3. Tight mortgage money
4. Increasing prime interest rate affecting builders
5. Tight money for housing contractors
6. Industrial and business expansion with increasing employment
7. Economic recession and increasing unemployment

8. Economic inflation
9. Rate of growth or decline of population in the community
10. Project area population trends
11. Building moratoriums
12. Housing starts and rental vacancy rates
13. Zoning or other land use plans
14. Local rent controls

After a sufficient inventory of currently available residential units has been collected, the "for sale" and "for rent" properties should be tabulated to correlate with the requirements of the displaced persons. For example, one category of the needs survey may indicate that 28 single family, three bedroom dwellings between the price range of $100,000.00 to $125,000.00 are required. The survey of currently available housing may indicate that 40 units are available in this category. The tabulation will show 28 required, available 40. The same procedure will hold true for requirements in other price ranges and types of residential units, including characteristics such as subsidized housing. A tabulation of the needs and availability of rental units should be recorded separately. If the number of displacements warrant, it may also be appropriate to tabulate replacement properties for displaced farms, businesses and non-profit organizations, even though this is not a requirement.

ANALYSIS OF CURRENT GOVERNMENT DISPLACEMENTS

Coordination with other Federal, State, and Local governmental agencies is necessary to learn if any of their current or planned programs might also cause displacements or conversely, if there are programs planned to increase housing availability. Any planned or concurrent project in the community could have an effect on the supply and demand for replacement properties and could be competing. For this reason coordination with other agencies becomes extremely important.

After the displacement requirements have been compared with available replacement properties, the study will probably indicate that the displaced persons on the project can be relocated in a timely and humane manner. If problems are discovered or anticipated at this stage of the study, ways to resolve the problems, including the use of replacement housing of last resort should be planned.

ANALYSIS OF RELOCATION PROBLEMS

At this point in the planning process, a comprehensive analysis of the anticipated relocation impacts should be relatively simple to make. The facts have been gathered, the displaced persons have been identified, the available or anticipated resources are known, and the factors affecting supply and demand have been analyzed.

A relocation study can now be written, complete with recommendations to resolve anticipated problems and a timetable for orderly and humane relocation of the persons to be displaced.

RELOCATION PLANNING PROCEDURES

The Relocation Assistance Program is structured in an orderly and logical sequence of surveys, reports, and hearings that are performed for each highway project where displacement mayoccur. The following is a description of these activities in chronological order:

CONCEPTUAL AND DESIGN STAGE

The Relocation Section will receive a request for a Conceptual Stage Report from the Program Development or the Design Divisions. Those Divisions should provide copies of the preliminary plans or maps detailing the proposed alternate corridors to be considered for the specific project. Upon receipt of said request, the project is assigned to a Right of Way Agent(s) to prepare a Conceptual Stage Report.

Conceptual Stage Survey (CSS) and Conceptual Stage Report (CSR)

The Conceptual Stage Survey is conducted prior to the corridor or location public hearing. Survey data is secured with minimal disruption to residents. The data compiled in the Conceptual Stage Survey will be incorporated into a Conceptual Stage Report. The following data will be obtained for each alignment that is under consideration for the project:

1. The approximate number of residences to be displaced, including the family characteristics (e.g. minorities, disabilities, income levels, the elderly, large families, tenure, and owner/tenant status.) This is accomplished by a visual inspection in the field of each of the proposed corridors. It should be noted that the number of each category is solely an estimate at this time, and that the status of any vacant and habitable unit may change. Therefore, it should be accounted for in the above categories. This survey should consider the maximum number of displacements, which may occur on each corridor to assure that sufficient replacement housing will be available.

2. A discussion of available housing in the area and the ability to provide suitable relocation housing for each type of family to be displaced that is within the financial capabilities of the relocatees. This is accomplished by tabulation of present and future decent, safe and sanitary replacement sites which may be available based on real estate trends and development within the area as determined by contacts with Public Housing Authorities, Redevelopment Agencies, Real Estate Boards and Brokers, Chambers of Commerce, Local Builders, F.H.A. Offices, and other agencies in the field of housing and home building. For the purposes of this study, it must be presumed that the present sites are within the financial means of the prospective displacees. It shall also be presumed that residents will reestablish themselves in the same occupancy status. (*RAAP 1A & 1B*)

3. A description of any special advisory services that will be necessary for unique relocation problems.

4. A discussion of the actions proposed to remedy insufficient relocation housing including a commitment to housing of last resort, if necessary.

5. An estimate of the number, type, and size of businesses and farm operations to be displaced and of replacement business sites for affected businesses. The approximate number of employees for each business should be included the discussion along with the general impact of the business displacement(s) on the economy of the community. (RAAP 1)

6. A discussion of the results of early consultation with local government(s) and early consultation with businesses potentially subject to displacement. Discussions of potential sources of funding, financing, planning for incentive packaging (e.g. tax abatement, flexible zoning, and building requirements), and advisory assistance which has been or will be furnished to businesses along with other appropriate information.

7. Impact on the neighborhood and housing community services where relocation is likely to take place. If there will be extensive residential and/or business displacement, the affected community may want to investigate other sources of funding from local and State entities as well as HUD, the Economic Development Administration, and other Federal Agencies to assist in revitalization of the community.

8. The results of discussions with local officials, social agencies, and such other representatives as may be appropriate regarding the relocation impacts on displaced persons such as people who are elderly and/or disabled, non-driver's transit-dependent, minorities and other groups.

9. Statements that the housing resources used in the survey are available to all relocatees without discrimination.

The effects on each group should be described to the extent reasonably predictable. The analysis should discuss how the relocation caused by the proposed project will facilitate or inhibit access to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian facilities, shopping facilities, and public transit services.

The Conceptual Stage Report will be used to develop the preliminary plan that should be forwarded to the Program Development or the Design Division through the Real Estate Division Director.

Corridor and Design Public Hearings

Where the Conceptual Stage Report indicates displacement by any of the proposed corridors, the Relocation Unit shall be notified by the Environment, Planning and Engineering Division's, Public Hearings Unit as to the date, time and location of the hearings for the proposed project. Mention

of the Relocation Program will be included in the legal advertisement of the Corridor and the Design Public Hearing Notices. No specific relocation notice is required to be sent to individuals.

In order to assure that the public is informed of the eligibility requirements, services and benefits available through the Relocation Assistance Program, designated members of the Relocation Section will make formal presentations at the Public Hearings. Presentations shall include but not necessarily be limited to:

1. Statement of Policy

2. The relocation representative making the formal presentation will explain that no person shall be displaced by a project until replacement housing has been made available. Construction on projects involving federal funds cannot be authorized until comparable replacement housing has been made available to all persons displaced by the project.

3. The relocation representative will explain that all replacement housing offered to all persons displaced by the project must be fair housing open to all persons regardless of race, color, religion, sex, or national origin.

4. Availability of Assistance and Services
   a. Indicate the address and telephone number of the Central Relocation Office. All in attendance shall be advised that assistance can be obtained by contacting this office.
   b. Briefly indicate the services available including referral to public and private housing, advice concerning financing, and other Federal, State and local programs offering assistance to displaced persons.

5. Eligibility Requirements and Payment Procedures
   a. Indicate and briefly explain the payments available to displaced homeowners and tenants including
      i. Moving costs that are reimbursed on either an actual cost basis or according to a schedule based on room count;
      ii. Replacement Housing Payments for homeowners to reimburse for the additional cost of purchasing a comparable replacement dwelling plus increased interest costs and incidental expenses;
      iii. Rental Assistance Payments for tenants and homeowners who wish to rent to assist in meeting the increased cost of in renting comparable housing for the next 42 months;
      iv. Down Payment Assistance Payments for 90-day tenants who wish to purchase replacement housing;
      v. State that eligibility for Replacement Housing Payments for homeowners and tenants depends upon length of occupancy in the present dwelling and is contingent upon securing and occupying a decent, safe and sanitary replacement dwelling within one year.

b. Indicate that the payments available to displaced businesses and farms include

   i. Moving costs that are reimbursed on an actual reasonable cost or self-move basis;
   ii. The cost of searching for a replacement site;
   iii. Certain costs of reestablishing the business at a replacement site;
   iv. Or a Payment-in-Lieu of moving, searching, and reestablishment expenses that equals the average annual net earnings for discontinued or relocated businesses which lose patronage due to their move. Explain that this payment is based on the average annual net income of the two years preceding displacement, but is limited to a minimum of $1,000.00 and a maximum of $40,000.00.

c. State the eligibility requirements for each payment.

d. Indicate that a brochure briefly describing the Relocation Program is available to all in attendance.

6. Discussion of the Probable Displacement and Available Replacement Sites.

7. Using the results of the most recent Conceptual Stage Report for the chosen location and design plans, indicate:

   a. The estimated number of residences, businesses, and farms to be displaced by the design under consideration.

   b. The estimated number of dwelling units presently available that meet the replacement housing requirements for those residences to be displaced.

8. Questions and Answers Provide all in attendance with the opportunity to ask questions about the program and the assistance available.

PRE-RELOCATION INTERVIEWS

The next activity of the Relocation Program begins after final plans have been received from the Engineering Section and prior to the parcels being appraised. The Relocation Section prepares a relocation study developed from information secured in interviews of each affected residence and business; recognizes problems associated with the displacements; and develops proposed solutions to minimize any adverse effects of the required moves. The relocation study will address the following:

1. The number of households to be displaced, including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impact on minorities, the elderly, recipients of housing subsidies, large families, and individuals with disabilities.

2. The number of comparable replacement dwellings in the area that are expected to be available to fulfill the needs of those households displaced, including price ranges and rental rates.

3. The number, type, and size of the businesses, farms, and non-profit organizations to be displaced and the approximate number of employees that may be affected.

4. Any special relocation advisory services that may be necessary.

RELOCATION PROCESS

Ideally, a Right of Way Agent is aware of a relocation assignment well before the Real Estate process starts, or at the very least, in time to accompany the Appraiser on their site visit. However, notification may happen at various stages. It may not be determined until later that relocation is necessary. The Right of Way Agent must be flexible and take care to make sure all the steps are covered, regardless of when they are brought into the process.

ELIGIBILITY REQUIREMENTS

There are four categories of persons eligible to receive advisory services:

1. **Persons occupying real property to be acquired for the project.**

   Most of the people to whom the Right of Way Agent will provide advisory services will fall in this category. These are people who are occupants of the project site, also known as **Displacees**. This group may include owners and tenants of residences, owners and tenants of businesses and farms, non-profit organizations, and persons storing items within the area of acquisition. These displacees may be eligible for additional relocation assistance such as Moving, Housing (residential) and Reestablishment (business) Entitlements.

2. **Persons occupying real property adjacent to that being acquired who are caused substantial economic injury by the acquisition.**

   The acquisition of property adjacent to a business may reduce its clientele significantly, limit accessibility, or affect it in other ways which cause it substantial harm. While such businesses are not displaced persons and, therefore, not entitled to business relocation payments, the agency must make available relocation assistance advisory services to them. Examples of such services might include consultation with the business on space needs, current market conditions, or traffic patterns or transportation as they relate to relocating the business; information regarding the availability of relocation sites; or, information about and referral to the Small Business Administration.

3. **Persons who, as a result of the project, move or move personal property from real property not being acquired for the project.**

   For example, the owner of a business lives across the street from his or her business location. When it is relocated across town, the owner chooses to move his or her residence also, in order to remain close to the business location.

4. **Persons who move into property after acquisition and are aware that they will have to move due to the project.**

   In such cases, the tenant moves in with the knowledge that they will have to move out when the project requires and that they will not receive relocation payments to assist with the move. Such "short-term occupants" are entitled to advisory services.

24.208 ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES

As described in the regulation 49 CFR 24.208, any person, head of household for a family, or owner of a business, seeking relocation payments or relocation advisory services must certify that they are either a citizen or national of the United States, or an alien who is lawfully present in the United States. This certification occurs when the displacee signs a Certification of Legal Residency in the United States (*see* Online Forms*, RAAP38*).

1. The Right of Way Agent is only required to explain the certification process to the displaced person. In the absence of documentation or substantial evidence to the contrary, it is assumed that the signed certification form is valid. At all times, great care shall be taken to collect and review certifications in a nondiscriminatory manner (see item 3).

2. No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the sign certification form described above or who has been determined to be not lawfully present in the United States, unless such person can demonstrate that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or children.

3. Title VI - As a recipient of federal funds, INDOT is required to conform to Title VI of the Civil Rights Act of 1964 (Title VI) and all related statutes, regulations, and directives which provide that no person shall be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Transportation on the grounds of race, color, age, sex, disability, national origin or income status. Title VI applies to citizens, documented non-citizens and undocumented non-citizens. Title VI applies to every beneficiary who meets the program requirements regardless of citizenship.

DISPLACEE TYPES

RESIDENTIAL DISPLACEES

What is a "Household?"

The Right of Way Agent is responsible for learning the dynamics of the household and determining how to treat all occupants fairly and appropriately. Often, a residence contains an

easily defined family unit. Couples married or not, can be treated as a family unit. Adults and their minor children will be treated as a family unit.

However, it is also common to find a unique combination of individuals that live together. The occupants could be non-related roommates. Sometimes there will be a family unit plus a non-related adult that may or may not be paying rent. Adult children living with their parents must be defined as either "dependent adults" or "non-dependent adults." Other times, there will be more than one family unit sharing the home.

In each of these cases, it is important to gather information such as:

- The nature of the relationships in the household
- Financial arrangements for household expenses
- Employment status of each adult
- What areas of the home are shared equally and what is exclusively used by certain occupants
- Any formal or informal agreements with respect to use of the home
- How long each adult has lived in the home
- Whether or not all the residents plan to move together or separately

Residential Categories

1. **Owner-occupant for 90 days or more** – residents who own their home and have occupied it as their primary home for 90 or more days prior to the Initiation of Negotiations. Possible entitlements include:
   a. Move costs up to 50 miles
   b. Replacement Housing Payment or Rental Assistance Payment
   c. Advisory Services

2. **Tenant-occupant for 90 days or more –** residents who rent their home and have occupied it as their primary home for 90 or more days prior to the Initiation of Negotiations. Possible entitlements include:
   a. Move costs up to 50 miles
   b. Rental Assistance Payment or Down Payment Assistance Payment
   c. Consideration of the 30% of income rule
   d. Advisory Services

3. **Owner or Tenant-Occupant for less than 90 days** - residents who own or rent their home and have occupied it as their primary home for less than 90 days prior to the Initiation of Negotiations. Possible entitlements under Last Resort Housing include:
   a. Move costs up to 50 miles

b. Advisory Services

c. Rental Assistance Payment (if justified under Last Resort Housing)

d. Consideration of the 30% of income rule (tenants only)

4. Special Cases:

a. **Mobile home** residents will need to have their entitlements determined on an individual basis because their situations can vary:

i. Own the home and rent the lot
ii. Own the home and the lot
iii. Rent the home and the lot
iv. Rent the home and own the lot

b. **Seasonal home** occupants will be eligible for moving entitlements only. Because they are not being displaced from their primary residence, they will not be allowed to claim a Replacement Housing Payment.

BUSINESSES AND OTHER NON-RESIDENTIAL DISPLACEES

1. **Businesses -** A business can be Owner-Occupied or Tenant-Occupied. They will be treated the same except in how some personal property vs. realty issues are decided. A tenant may have a clause in their lease concerning tenant-owned improvements or trade fixtures. It is important to obtain a copy of the lease as soon as possible in order to make accurate determinations about this and other issues.

   Refer to *Moving Entitlements* starting on page 258 and *Non-Residential Occupant Entitlements* starting on page 338 for more detail; possible entitlements include:

   a. Move costs up to 50 miles and

   b. Business Reestablishment and

   c. Searching Expenses
   -OR–
   d. Fixed Payment in Lieu

2. **Landlords -** A landlord is treated the same whether the property they own is residential or commercial. The State of Indiana considers landlords to be business owners. However, many other states do not consider owning rental property to entitle a landlord to the benefits afforded to businesses. Even in Indiana, landlords are not eligible for the Fixed Payment in Lieu option that is afforded to other businesses.

   In order to qualify someone as a landlord, there must be evidence of a formal rental agreement. At the very least, there should be a signed lease and tax records for the rental income. This documentation should be collected at the *Appraisal / Inventory Meeting*, the *Initial Meeting* or sometime in between in order to justify the determination of entitlements to be provided.

Refer to *Moving Entitlements* starting on page 258 and *Non-Residential Occupant Entitlements* starting on page 338 for more details; possible entitlements include:

a. Move costs up to 50 miles

b. Business Reestablishment

c. Searching Expenses

Other Non-Residential Moves

Churches, government entities, farms and nonprofits will be treated just like a business. See *Moving Entitlements* starting on page 258 and *Non-Residential Occupant Entitlements* starting on page 338.

Previously Unidentified Businesses

Right of Way Agents may need to gather evidence to show that a business is actually present before making any determinations. This may occur when the business is being operated in a residence, if the displacee claims to have two separate businesses operating in the same location, if the business appears to be defunct already, or if the area of acquisition is not the primary business location. Evidence can take the form of tax records, licensing, or copies of receipts, contracts or invoices.

PERSONAL PROPERTY MOVE ONLY (PPMO)

A Personal Property Move Only (PPMO) is just that – the parcel is not occupied by people or an organization. The move will not disrupt the operation of a business or displace residents. A PPMO merely involves moving personal property. Many times this will occur with an area or building that is used for storage – a barn or bare land, for example. Possible entitlements include:

- Moving costs up to 50 miles

RELOCATION PARCEL ASSIGNMENT

When a relocation parcel is assigned to a Right of Way Agent, a Reviewer will also be designated. This designation will occur either prior to the assignment, or directly after the Appraisal/Inventory Meeting paperwork is submitted. An Agent may have a different Reviewer for each parcel that is assigned to them. The Reviewer is the first point of contact with INDOT Central Office for any questions or approvals. This procedure will be followed for INDOT and for Local Public Agency acquisitions. The Right of Way Agent must allow sufficient time for their Reviewer to consider any submittal or request – a minimum of 24 hours (1 full business day) for less complicated issues, and a minimum of 3 business days for complex items such as pre-approval for Last Resort Housing or unusually large move determinations.

Upon receiving a parcel assignment, the Right of Way Agent should immediately review all available materials for the parcel and prepare a file. The Progress Check Sheet (*see* Online Forms, *RAAP11, 11a & 11b*) is a useful tool to record basic information on the front of the file folder and to track all the steps that are taken throughout the relocation process. Right of Way Agents are required to maintain parcel files with records of all documents, activities, contacts with displacees and/or their representatives, and invoices for a minimum of five years following final payment for relocation services. Creating this file immediately will make it possible to organize all the information that will be gathered in the coming months. Many Agents will begin to prepare the Appraisal/Inventory Meeting materials at this time as well so that they can be ready at a moment's notice.

CONTACTING THE DISPLACEE

The first point of contact with the displacee is usually the Appraisal / Inventory Meeting, which is set up by the Appraiser. All contact following that point will be initiated by the Right of Way Agent in whatever manner seems to work best for the displacee.

PROGRESSIVE CONTACTS OF DISPLACEES

The Agent shall maintain frequent and continued personal contact with the displacee for the purpose of providing ongoing relocation assistance and information about the relocation program. The Agent must contact the displacee every 7 days while the parcel is active and a minimum of every 30 days if the parcel is in a waiting stage. The updated status of the parcel must be documented in LRS as a remark. Depending on the status information, further documentation in a Right of Way Agent's Report (*RAAP8*) may be necessary as well.

DOCUMENTING ATTEMPTS TO CONTACT

Every Right of Way Agent will eventually encounter a situation where the displacee(s) will refuse to meet or cooperate with the acquisition and/or relocation process. It is the responsibility of the Agent to document multiple attempts and various methods to engage the displacee(s). This is especially important for required relocation milestones such as issuing the Entitlement Letter and 90-Day Notice (*see* Online Forms, *RAAP16, 17, 17a, 30 & 30a*).

When a displacee refuses to accept the delivery of a required notice, or when personal contact of the displacee proves not to be possible, the Agent should use Certified Mail and First Class Mail concurrently to accomplish notification requirements for relocation information and eligibility determinations. Documentation will be required in the form of copies of the letters sent, mailing receipts, and tracking information in the form of the green Certified return card or information printed from the mail delivery company's website with a Right of Way Agent's Report (*RAAP8*).

The Agent should also visit the home of the displacee to leave the notice at their front door. This can be documented with a photograph of the notice as it is placed, and a Right of Way Agent's Report (*RAAP8*) explaining the situation. In the extreme case, it may be necessary to publish a

notification to show that all possible attempts have been made. If this appears to be the case, consult with the Reviewer.

When personal contact proves difficult or impossible for an individual, documenting all of these steps shows that the Right of Way Agent has demonstrated due diligence in providing the displacee(s) with information regarding their rights.

APPRAISAL / INVENTORY MEETING

Purpose

The purpose of the Appraisal / Inventory Meeting is to gather information about the displacee(s) and the property that will be acquired and to work with the appraiser on personal vs. real property issues. To be in compliance with the Federal regulations that follow, the Right of Way Agent assigned to relocation is required to attend the initial on-site appraisal inspection for all parcels which will involve relocation entitlements: residential, business, farms, personal property moves, and non-profit organizations. NOTE: If the appraisal will be paid with preliminary engineering (PE) funds, then one-third (1/3) of the payment for relocation services/* must be paid with PE funds.

> ***49 CFR 24.103 (a)(2)***
> *The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in § 24.2(a)(3) …*

> ***49 CFR 24.103 (a)(2)(i)***
> *An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, § 24.103(a)(1).)*

> ***49 CFR 24.205(c)(2)(i)(c)***
> *For businesses, an identification and resolution of personalty/realty issues. Every effort must be made to identify and resolve realty/ personalty issues prior to, or at the time of, the appraisal of the property.*

Procedures

The *Relocation Assembly Manual* includes a page for this meeting. Following the checklist and instructions will help ensure that all the necessary information has been gathered. The Relocation

Assembly Manual page is to be used as a cover page for all the documentation gathered at the Appraisal / Inventory meeting. The packet must be submitted for review within 24-48 hours of the meeting.

While it is only required to bring documents and paperwork related to the displacement type that is anticipated, it is a good practice to keep a supply of extra brochures and a variety of Interview Questionnaires (*see* Online Forms*, RAAP41a, b, c & d*) on-hand in case an unexpected situation becomes apparent. It is not unusual to be prepared for a simple business owner-occupant meeting and find that there is also a tenant, for instance. When this occurs, be sure to obtain as much information and documentation as possible to demonstrate that there might be an additional or different displacee type. Do not share any conclusions with the displacee(s) until the information has been submitted to the Reviewer and the displacee type(s) has been authorized.

As with any milestone in the relocation process, LRS must be updated with the information that is gathered at the Appraisal / Inventory Meeting. At the very least, this will include filling in dates, entering and verifying address and phone number, indicating the displacee type, entering the Title VI data and a note in the remarks section. These entries should be made within 24-48 hours of the meeting.

During this meeting, the following activities need to be accomplished:

- Attend appraiser's walk-through to help determine real vs. personal property
- Relocation brochure and agent's contact information delivered
- Residential, Business, Landlord or PPMO Questionnaire
- Comparable Properties sheet (*see* Online Forms*, RAAP14 & 14t*) for residential parcels
- Exterior photo of all structures
- Photos of street/neighborhood to the right and left of the property
- Photo inventory of all identified personal property (this will be accomplished with the assistance of the appraiser and property owner)

The following information will enable the Right of Way Agent to provide the required Advisory Services and begin searching for appropriate comparable properties.

- The preparation of an inventory of characteristics and needs of individuals, families, businesses and non-profit organizations and farms to be relocated.
- A survey of the real estate market to determine if an adequate supply of comparable replacement housing and suitable replacement locations for businesses and farms will be available to meet the needs of the displaced persons in a timely manner.
- An analysis of the problems anticipated in the relocation of the project occupants including any special relocation advisory services that may be necessary.
- Propose solutions for resolving the problems.

When interviewing a business displacee, the Right of Way Agent must learn basic facts about the displacement. Remember if problems are revealed early in planning, various solutions and

resolution of those anticipated problems can be provided without adverse impacts or costly delays to the project. Below are a few of those basic facts:

1. The business's replacement site requirements, current lease terms, other contractual obligations, and the financial capacity of the business to accomplish the move.

2. Determination of the need for outside specialists than will be required to assist in planning the move assistance in the actual move and in reinstallation of machinery and/or other personal property.

3. An estimate of the time required for the business to vacate the site.

4. An estimate of anticipated difficulty in location a replacement property.

5. An identification of any advance relocation payments required for the move, and the Agency's legal capacity to provide them.

RESEARCH PHASE – DETERMINATION OF ENTITLEMENTS

This phase is the period of time spent waiting for the Appraisal to be prepared and reviewed. It is not a time to be idle – this is the best time to prepare for the next major step in the relocation process: the Initial Meeting. There will likely be several times that the Right of Way Agent will be in touch with the displacee(s) – these points of contact should be documented in LRS as part of a contact log in the remarks section. During this time period, it is likely that all the eligible entitlements will be determined as well – these should be documented in the appropriate fields in LRS as well.

Advisory Services

After talking with the displacee(s) at the Appraisal / Inventory Meeting, it should be clear what advisory services will be needed. It is helpful to review the Interview Questionnaire and any notes that were taken at the Appraisal / Inventory Meeting to identify needs and special situations. In the weeks or months between the Appraisal / Inventory Meeting and the Initial Meeting, the Right of Way Agent should make an effort to gather resources and possible solutions for the displacee(s) so that they can be shared at the Initial Meeting.

Inventory and Move Determination

As soon as possible after taking inventory at the displacement site, Right of Way Agents should prepare an inventory presentation. Many times this will be a collection of photos with captions with the following information:

- Room where the photo was taken
- Items in the photo that will require special consideration (pianos, complex machinery)

- Items that are duplicated in other photos and should not be counted twice
- Identification of real property in the picture that should not be counted

A photo inventory is only as good as the photos that are used. Be sure to provide photos that clearly show the items such that they can be easily identified.

If the inventory includes items that need to be noted specifically, the Inventory of Personal Property (*see* Online Forms*, RAAP26*) can be used. For complex moves, it is helpful to create a chart that will track specific items and special considerations. (*Refer to the Professional Mover section on page 270 of the Moving Entitlements chapter for an example of the chart.*)

Once the inventory presentation is prepared, the Right of Way Agent should use information gathered from the Inventory / Appraisal Meeting to establish which type of move the displacee(s) will be using. If the displacee(s) did not indicate a choice during the Appraisal / Inventory Meeting, the Agent should first contact the displacee(s) to learn their preference. If no decision has been made, the Agent could prepare a move determination based on the option(s) that would make sense for the displacee(s).

Any move determination that exceeds $4,000.00 must be pre-approved by INDOT Central Office. In order to obtain pre-approval, the Agent can send a Right of Way Agent's Report (*see* Online Forms*, RAAP8*) detailing the determination along with all supporting documentation to their assigned Reviewer.

The *Relocation Assembly Manual* includes pages for a variety of move payment types. It is a good practice to use the assembly page that corresponds to the chosen move type in order to prepare a move determination. This ensures that all the necessary supporting documentation is included. Please see *Moving Entitlements* starting on page 258 for more information regarding move types.

Comparable/Functional Equivalent Property Search

Regardless of the type of displacement, the Right of Way Agent should immediately begin searching for available comparable properties. If the displacee is a business, landlord, farm or other non-residential entity, the Right of Way Agent is required to offer listings of available properties as advisory services.

It is a good practice to document dates and sources for each session of searching for comparable properties. This can be noted in a Right of Way Agent's Report or in LRS.

Replacement Housing Entitlement Determinations

If the displacement is residential, these available properties can be collected as evidence to support a **Replacement Housing Payment** (RHP) in the form of a **Price Differential Payment, Rental Assistance Payment** (RAP) or **Downpayment Assistance Payment** (DAP) determination and can also be offered to the displacee(s) as advisory services.

Every project timeline is different. Some projects will require the Right of Way Agent to be prepared to issue the Entitlement Letter and 90-Day Notice (*see* Online Forms*, RAAP16, 17 & 17a*) and explain all entitlement determinations including housing entitlements at the Initial Meeting. Other projects will allow the Comparable Property Search phase to begin *after* the Initial Meeting, which will require yet another meeting to issue the Entitlement Letter and 90- Day Notice and explain all the entitlements. Either way, as long as there has been sufficient time to perform a thorough Comparable Property Search, the Right of Way Agent should begin to calculate the potential housing entitlement determinations once the appraisal becomes available. This practice minimizes the amount of time the displacee(s) will have to wait for their relocation information after they receive an offer for the acquisition.

Procedures for calculating RHP/RAP/DAP determinations are detailed in the *Replacement Housing Entitlements* chapter. Any RHP/RAP/DAP that requires Last Resort Housing (LRH) must be pre-approved by INDOT Central Office. In order to obtain pre-approval, the Agent must follow the guidelines for additional documentation and justification described under *Last Resort Housing* in the chapter entitled *Special Topics in Housing Entitlements* to gather all supporting documentation that will be required for submission. After completing the potential Replacement Housing entitlement determination, the Right of Way Agent shall:

1. Thoroughly check all computations, assemble all data, and complete all forms and documentation as required in the *Relocation Assembly Manual*.

2. Submit the determination to the Reviewer for approval (required for all determinations if the Agent is in the probationary period and for any determination that is Last Resort Housing for all Agents)

3. If the Initiation of Negotiations has already occurred, arrange to meet with the displacee(s) to explain the entitlements in detail as soon as possible after obtaining approval from the Reviewer. This may happen at the Initial Meeting, or may happen at a subsequent meeting, depending on project timeline expectations.

   Failure to act quickly could result in having to identify a new prime comparable and re-calculate the determination because the first prime comparable was purchased or rented.

INITIAL MEETING

PURPOSE

The purpose of the Initial Meeting is to explain the relocation program fully and to inform the displacee(s) of their rights and any entitlements that they are eligible to claim. When appropriate, the Entitlement Letter and 90-Day Notice (*see* Online Forms*, RAAP16, 17, 17A & 30*) will be issued. This meeting typically should take no more than 60-90 minutes.

Once the appraisal report is ready, the Right of Way Agent assigned to buying will initiate negotiations by preparing and presenting the Uniform Offer. The buying Agent will always invite

the Right of Way Agent assigned to relocation to the Offer Presentation Meeting. If the buying Agent presents the offer alone, the relocating Agent must schedule the Initial Meeting as soon after the Initiation of Negotiations as possible (no more than two weeks).

In order to be prepared for either scenario, the relocating Agent should prepare the Initial Meeting presentation (including any necessary pre-approvals for determinations) as soon as the appraisal report is delivered. The *Relocation Assembly Manual* includes pages for Residential, Business and PPMO Initial Meetings, as well as pages for pre-approvals for issuing a residential 90-day Notice. Additional information will be required for any entitlement determination that falls into Last Resort Housing. Following and instructions in this manual and the checklists in the *Relocation Assembly Manual* closely will ensure that all the required information is covered in this meeting.

After the Initial Meeting is complete, the Initial Meeting packet (with the *Relocation Assembly Manual* page as a cover sheet) must be submitted to the Reviewer within 24 hours. It is expected that all Initial Meeting materials will be signed by the displacee(s). LRS should be updated with all pertinent data and a note in the remarks section within 48 hours.

Daily Notice to Relocation

Please note that INDOT Central Office has discontinued requiring the use of the Daily Notice to Relocation for State projects as of October 2014, citing that:

- Relocation is now noted in LRS
- Right of Way Agents assigned to Relocation are attending the Appraisal Meeting

In the case of Local Public Agency (LPA) projects, the LPA has the discretion to require this form be used. Use of this form does not preclude the requirement that Right of Way Agents assigned to Relocation attend the Appraisal meeting.

PROCEDURES

The *Relocation Assembly Manual* includes pages for Residential, Business and PPMO Initial Meetings. Following the checklists and instructions carefully will help ensure that all the necessary information and documents are covered in the meeting. In addition, it is important to refer to the Relocation Assistance Verification form (see Online Forms, RAAP10 a & b) during the meeting to verify that all topics and documents have been presented.

In the rare case that the Right of Way Agent has not had the opportunity to attend an Appraisal / Inventory Meeting or schedule an Inventory Meeting independently of the Appraiser, the Initial Meeting is best time to cover all the Appraisal / Inventory Meeting material. By the time the Initial Meeting is complete, the Agent should have accomplished the following steps:

1. Personally interview the person(s) to be displaced, but not duplicate the previous interview from the planning stage or the Appraisal / Inventory Meeting

2. If the property is occupied by other than the owner, the Agent shall secure a list of tenants from the landlord. (*see* Online Forms*, RAAP9*)

3. Explain the relocation assistance that is available as a result of being displaced by the project, including
   a. Where the Agent may be reached and the location of the INDOT Central Office and/or Project Office,
   b. A description of relocation services and resources available to assist displaced persons; and
   c. A description of the assistance and information that will be provided by the Right of Way Agent during future personal contacts with the displacee;

4. Complete the appropriate forms and secure sufficient information about the displacee's needs and the displacement dwelling as described in the appraisal to identify comparable replacement dwellings for referral and Replacement Housing Payment determinations; (RAAP 12 & 14)

5. Explain the applicable Replacement Housing Payments to which the displacee may be entitled when purchasing or renting replacement housing and any related eligibility requirements;

6. Determine the displacee(s) eligibility for replacement housing benefits from information provided by the displacee and based on whether the displacee:
   a. has been in occupancy for 90 days before initiation of negotiations for the parcel; or
   b. was in occupancy at the time a written notice of intent to acquire was issued;

7. Explain that eligibility amounts are determined using comparable dwellings presently available for purchase or rent and that the address and listing or rental price of the dwelling used in the determination will be provided to the displacee;

8. Explain that dwellings used in Replacement Housing determinations will be functionally equivalent to the subject dwelling according to the definition of comparability in the Uniform Relocation Act;

9. Explain to displacees with disabilities that the cost to make replacement dwellings free of barriers may be added to the Replacement Housing Payment for which they are otherwise eligible;

10. Explain that the displacee cannot be required to move permanently until:
    a. At least one comparable replacement dwelling has been made available and the displacee has been informed of its location

b. Sufficient time has been provided to negotiate and enter into a purchase agreement or lease for replacement housing

c. Assurance has been provided of receiving the relocation assistance and acquisition compensation to which the displacee is entitled, subject to reasonable safeguards, in sufficient time to complete the purchase or rental of replacement housing

d. At least 90 days advance written notice has been provided before being required to move

There are several documents that will be presented throughout the Initial Meeting that require a signature. While the displacee(s) should not be coerced into signing anything, it is important request signatures. It should be the exception, not the rule that a displacee refuses to sign. If a displacee does refuse to sign, however, the Right of Way Agent must write "refused to sign" on the signature line. The documents should be presented again at a later time with a request for signatures. Usually, a displacee will be willing to sign all the necessary documents when it is time to claim a relocation payment. While all documents with a signature line should be signed before the parcel is closed, critical signatures include:

- Relocation Assistance Verification (*RAAP10a & b*)
- Certification of Legal Residency (*RAAP38*)
- Vendor Information Form (*W-9*)
- Vouchers

IMPORTANT DOCUMENTS

Business Letters (RAAP45a & b, 46, 47, 48)

These forms are exclusively intended for business, non-profit and farm displacees.

1. **RAAP45a and 45b** give information regarding options that are available to business, farms, and non-profits (RAAP45a), and to landlords (RAAP45b).

2. The notice to businesses, farms and non-profits is titled Business Reestablishment vs. PIL (*see* Online Forms*, RAAP45a*) and shows that displacees can choose between taking entitlements for moving, searching and reestablishment separately, or they can choose to take a Payment in Lieu, which is also sometimes called a Fixed Payment. It lays out the basic payment limits so that the displacee(s) can make an informed choice. These options are discussed in more detail in the *Moving Entitlements* chapter.

3. The notice to landlords is titled Landlord Business Reestablishment (*see* Online Forms*, RAAP45b*). It omits the information about Payment in Lieu because this option is not available for landlords.

4. RAAP46 is titled Business Reestablishment Guidelines (*see* Online Forms*, RAAP 46*). It outlines some of the requirements regarding reestablishment claims. An important element to make clear to the displacee(s) is that all reestablishment claims must be pre-

approved by INDOT Central Office, so it is very important to maintain communication about all reestablishment plans. The remaining requirements will be easily met if the displacee adheres to the pre-approval process.

5. RAAP47 is titled Business Eligible Moving (*see* Online Forms*, RAAP 47*). It lists the items and activities that are considered eligible for reimbursement or payment for businesses under the moving payment category. This form also mentions the Searching Expenses Reimbursement.

6. RAAP48 is titled Business Ineligible Moving (*see* Online Forms*, RAAP 48*). It lists the items and activities that are not eligible for reimbursement or payment for businesses under the moving payment category. Some of the activities are not eligible for moving payments because they are eligible for Reestablishment Reimbursement.

Entitlement Letter and 90-Day Notice (RAAP16, 17, 17A, 30 & 30A)

These forms are intended for every displacee.

This is a required written notice that may be issued at the Initial Meeting or at a subsequent meeting, depending on the project timeline. A lawful occupant cannot be required to move unless he or she has received a written notice at least ninety days in advance of the date by which he or she may be required to move. When the notice is presented, it is important to explain all the information that it provides and to make it clear that this is not a notice to vacate. It simply informs the displacee(s) of their rights, entitlements, and states that they will not be required to move for the next 90 days. Another important element to discuss is that the displacee has the right to appeal any determination within 60 days of being notified.

The Agent may issue the notice 90-days or more before the person is expected to be required to move. However, the notice should not be issued before the displacee is notified of the following:

- Initiation of Negotiations
- Available comparable housing for residents
- Replacement Housing Payment, Rental Assistance, or Downpayment Assistance Payment determination for residents
- Searching and Reestablishment reimbursement for businesses, landlords, farms, and non-profits
- Moving payment determination for all displacees

The Entitlement Letter informing residential occupants of their specific maximum Price Differential, Rental Assistance or Downpayment Assistance entitlement determination and the 90-Day Notice are included in the same form. For landlords, businesses, farms, non-profits and Personal Property Moves (PPMOs) the Entitlement Letter and 90-Day Notice are also combined, but the notice of entitlement is more generalized. For all displacees, the actual move payment determination is to be issued in a separate document.

In unusual circumstances, an occupant may be required to vacate the property with less than 90-days advance written notice if the State determines that a 90-day notice is impractical. An example of when this would occur would be when a person's continued occupancy of the property would constitute danger to the person's health or safety. A copy of the determination shall be included in the parcel file.

Issuing the Entitlement Letter and 90-Day Notice to Residential Displacees

1. Arrange an appointment at the earliest convenience of the displacee (after the Right of Way Agent assigned to Buying has initiate negotiations) to explain the entitlements and issue the entitlement letter

2. Explain to the displacee how the entitlement was determined

3. Specify the entitlement amount and identify the location of the comparable dwelling used as the basis of the determination

4. State that transportation assistance can be made available to the displacee to visit the comparable dwelling that was used

The Right of Way Agent shall explain that referrals to additional properties will be made, as they become available. Since the referrals are for replacement housing, the rental rates and/or prices of the referrals shall be within the financial means of the displacee.

The Right of Way Agent shall in no way act as an agent for any landlord or real estate broker. The Agent will be careful in all conversations to avoid favoring one landlord/home seller over another in the recommendations that are made to the displacee.

Payment Notice (RAAP42a & b)

These forms are intended for every displacee.

The Payment Notice (*see* Online Forms*, RAAP42a & b*) gives information that is helpful to know in anticipation of receiving relocation payments so that the displacee(s) can plan accordingly:

1. Use a contingency clause on an offer for a replacement property to protect the Right of Way Agent against losing the sale, forfeiting earnest money, or having to pay a penalty

2. Plan ahead and allow sufficient time for payments to be processed as they can take 45-60 days for relocation payments and up to 90 days for acquisition payments

3. The acquiring agency (State of Indiana or local agency) cannot be held responsible for any loss, damage, or inconvenience caused by not heeding the first two statements, or by not communicating with the buying or relocating agents in a timely manner

4. By Federal law, relocation payments are not reported as taxable income, but acquisition payments will be reported

RAAP42b is to be used only in situations where Incentive payments have been approved for a project. This version of the form states that Incentive payments for relocation and acquisition will be reported as taxable income.

Tax Law Information (RAAP43a & b)

These forms are intended for every displacee.

The Tax Law Information form (*see* Online Forms*, RAAP43a & b*) states more specifically that according to **Public Law 91-646**, relocation payments are not to be considered taxable income. It also clarifies that acquisition payments are not included in this law.

RAAP43b is to be used only in situations where Incentive payments have been approved for a project. This version of the form states that Incentive payments for relocation and acquisition will be reported as taxable income.

MOVING PHASE

ADVISORY SERVICES

Right of Way Agents assigned to relocation should continue to provide the displacee with current information on the availability, purchase prices, and rental costs of available replacement properties.

The Agent shall advise that assistance and counseling is available in locating financing or completing lease arrangements for the replacement property. He or she will offer assistance in making moving arrangements and provide referrals as needed to both public and private agencies."

MONITOR MOVE

The Right of Way Agent should keep in contact with their displacee(s) such that they will have advance knowledge of the move date. In anticipation of the completion of the move, the Agent should prepare a voucher, assemble the supporting documentation according to the corresponding page in the *Relocation Assembly Manual*, and submit the packet to be processed for payment. This will make it possible to release a moving payment as soon as the move is complete and all requirements have been met.

The Right of Way Agent should, at the very least, be available on the day of the move. Many times it is wise to be present in order to monitor the progress. The degree of surveillance should be commensurate with the complexity and cost of the move. More complex moves may require a full time presence while low cost, simple moves may be serviced by a follow-up visit to the replacement site.

The surveillance of the move has several purposes. Most important for complex moves, the Agent monitoring the move should determine if the move is taking place in substantial accord with the specifications. If the mover completes less than the scope of work described in the move bid, either through non-performance or reduction in inventory before the move, there should be a renegotiation of payment to recover the savings for the State. If significantly more work is involved than had originally been specified, there may be an upward adjustment due, pending approval by INDOT Central Office. Surveillance is also helpful to the displaced person because problems, misunderstandings, and questions can be heard and resolved by the Right of Way Agent while the move is taking place.

MOVE INSPECTION & RIGHT OF WAY CLEAR

Please note that the move inspection is one of many steps that must be completed before the Right of Way can be considered "Clear." The Right of Way Agent assigned to Relocation can only state that the Right of Way is clear of personal property for Relocation purposes. District and Central Office Property Management personnel will determine when the Right of Way is "Cleared."

When the move is complete, the Right of Way Agent must perform a move inspection. The main purpose of a move inspection is to verify that all personal property, trash, unwanted items, and hazardous materials have been completely removed from the area of acquisition. Secondly, if the acquisition has been paid or, in cases of condemnation, money has been posted and the 30-Day Notice to Vacate has expired, the property will need to be secured, posted, and baited and keys will need to be collected.

If the property has not been paid nor has money been posted, these activities are not allowed unless the Right of Way Agent obtains a signature on an Authorization of Entry (*see* Online Forms*, AOE*). Without an Authorization of Entry, the move inspection will simply confirm that the area of acquisition has been cleared for Relocation purposes.

Generally, Right of Way Agents are expected to dress professionally for meetings with displacees. When planning for a move inspection, the Agent should consider the tasks that may be involved and dress accordingly.

48-Hour Notification to District

As soon as an appointment for the move inspection is made, the Agent should notify the Relocation Supervisor and representatives from the district where the project is located. Notification must be given at least 48 hours prior to the appointment. The 48 hour notification should include the current ownership status and the tasks being completed during the inspection. It should also include code and parcel, address of the acquisition, name of the displacee, and the time of the appointment.

After receiving notification, a representative from the district will likely attend the move inspection. If so, they will take responsibility for securing the property, taking keys, posting signs that state the area has been purchased by the State (or local agency), and for placing pest control bait throughout the property. If the district representative is not able to attend the inspection, the Right of Way Agent will be expected to perform these duties.

The 48 hour notice to the district Right of Way office is required and must be documented in the relocation file with a copy of the e-mail that was sent to the district.

Securing the Property

The following tasks should be completed when securing a property that has passed a move inspection, if the acquisition has been paid, money has been posted, or an AOE has been signed:

1. If the district staff is not present when keys are obtained, the keys must be submitted to the Office of Real Estate Property Management section with a tag indicating the owner's name and code and parcel numbers
2. Agent must verify that all personal property, trash, unwanted items and haz-mat have been removed from the acquired Right of Way
3. Agents must apply rodent control in all areas of the building
4. Agents must post notices of State ownership on all four sides of the building, in windows or outside in public view
5. All doors and windows are to be locked and/or secured. The main electric circuit breaker should be turned off and all water faucets should be in the off position
6. All health hazards (refrigerators, freezers, etc.) are to be removed or disabled
7. Any structural damage or if the property cannot be properly secured should be reported to the district Real Estate office
8. Safety must always be of concern when an agent is performing these duties

Confirm Completion of the Move

The expectation is that the displacee(s) remove all personal property, trash, hazardous materials and unwanted items from the area of acquisition. If the displacee(s) chose to retain any items, those should be removed as well. Once the move inspection is complete, the Right of Way Agent should obtain a signature on a Right of Way Agent Report (*RAAP8)*. This report must be forwarded to the Reviewer, Relocation Supervisor and representatives of the district within 24 hours of the move inspection to confirm whether or not the move is complete.

The Report should detail the move inspection and declare if:

- The Right of Way has been cleared completely or just for Relocation purposes
- The area was secured, posted and baited
- Keys were collected

- If an Authorization of Entry was required and obtained
- W-9 obtained with replacement address

The Right of Way Agent must also update the Move/Occupants screen in LRS with all relevant dates, the replacement address, whether or not the district was present, and a note in the remarks section.

Abandoned Property

In the case that the displacee(s) failed to remove all personal property, trash, unwanted items and hazardous materials from the area of acquisition, consult with the Reviewer and a district representative to determine whether the item(s) can be considered Abandoned Property (*see* Online Forms*, Abandon Property Letter, RAAP39*) with a possible reduction in the move payment, or if the item(s) must be removed by the displacee(s). All of this information should also be documented in the remarks section of LRS.

ISSUING ENTITLEMENTS

Payments are initiated by creating a voucher (INDOT Agents will use LRS for this) and preparing a packet of documentation with a cover page from the *Relocation Assembly Manual*. The Right of Way Agent's Report (*RAAP8*) should always include a description of the specific requirements.

Some displacees do not claim all of their entitlements immediately, if at all. It is important, however, that the Right of Way Agent makes it clear what the displacee is eligible to claim, and what all the requirements are. The Agent must check in periodically (ideally every 7 days and minimally every 30 days) with reminders of the possible entitlements, requirements and dates by which the claims must be made. A note in the remarks section of LRS should be made for each of these reminders as evidence of advisory services.

BASIC REQUIREMENTS

Every entitlement has its own requirements before it can be disbursed. These requirements are discussed in detail in subsequent chapters and in the corresponding page in the *Relocation Assembly Manual*, but the following basic requirements should always be met:

1. All entitlements require documentation that the expense is "actual, reasonable, and necessary." This takes different forms depending on the type of entitlement, but will always be required.

2. All moving entitlements require that the Agent verify that all personal property, trash, unwanted items and hazardous materials be completely removed from the area of acquisition.

3. Any payment that is considered a reimbursement will necessitate proof of payment before reimbursement can be released. This can be a receipt, a cancelled check, or a zero balance invoice.

4. Housing entitlements can only be paid to residential displacees who secure and occupy decent, safe, and sanitary (DS&S) dwellings within 12 months of the date of displacement. Displaced persons are encouraged to request a DS&S inspection (*see* Online Forms*, RAAP18*) by their Right of Way Agent of any replacement dwelling they are considering before they make any financial commitment on that dwelling.
5. All claims must be made within 18 months of the date of displacement. This date is defined in several different ways:
   a. **Owner Occupants** – the latter of:
      i. The date they move from the displacement location
      ii. The date of final payment for the displacement location
      iii. In condemnation cases, the date the final judgment is paid
   b. Tenants that must move - the date they move from the displacement location
   c. **PPMOs and Tenants with the option to move** - the latter of:
      i. The date of the 90-Day Notice
      ii. The date of final payment for the displacement location
      iii. In condemnation cases, the date the final judgment is paid

Once a displacee has met the requirements, payment can be mailed, delivered by hand, or if available, released for direct deposit. INDOT checks include a receipt portion – this should be signed by the recipient as evidence of payment. Other agency checks may differ, but the Agent is responsible for documenting proof that the payment was received. The receipt should be submitted to INDOT for the parcel file.

PAYMENT AFTER DEATH

A relocation entitlement payment is personal to the displaced person. After a displacee's death the non-disbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid

2. The full payment should be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling selected in accordance with these regulations

3. Any portion of a Replacement Housing Payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate

CLOSING FILE

Once all entitlements have been processed and/or the allotted time period for making claims has expired, the file can be closed. A closed file can always be re-opened if circumstances require it. The *Relocation Assembly Manual* includes a page with requirements and instructions for preparing a file for closing. Following these instructions will help ensure that the file has been thoroughly reviewed and that all the documents and steps have been taken care of properly.

Before submitting a File Closed Right of Way Agent's Report (*see* Online Forms*, RAAP8*) to a Reviewer, the Agent should make sure that LRS is completely updated and that the remarks section has sufficient information to recount the story of the relocation process. A final note should be added that the file will be closed.

SPECIAL PROCESSES

APPEALS

As noted in the Entitlement Letter and 90-Day Notice (*see* Online Forms*, RAAP16, 17, 17A, 30 & 30A*), "any person may appeal the State's eligibility determination or amount of relocation entitlement by submitting a written appeal to the Relocation Unit within 60 days of the date of the determination."

The best way to avoid appeals is for the Right of Way Agent and the acquiring agency (INDOT Central Office or Local Public Agency) to make every effort to comply with the Uniform Relocation Act and applicable regulations when providing relocation assistance for a project. Right of Way Agents who know the regulations and State procedures follow them carefully and work effectively with displacees to meet their needs in accomplishing their relocation will avoid many appeals.

In accordance with the 1987 amendments to the Uniform Act, appeal rights are no longer confined to the amount of or eligibility for payments. Persons filing appeals may be anyone who believes he or she is eligible for assistance of some kind. However, there could be appeals by persons desiring status as a displaced person or requesting assistance because of the proximity of their business or residence to the project.

Frequently, displaced persons will tell the Right of Way Agent about assistance procedures, eligibility criteria, comparables that were used, or payment amounts that were computed with which they are concerned or displeased. These items can become the subject of an appeal if they are not responded to promptly and comprehensively by the Agent. Sometimes, a displaced person may be complaining about one thing when they are really upset about something else. Careful listening will reveal the real problem and often a resolution can be identified without entering the appeal process.

Informal Appeal

An informal appeal could occur if the Agent is not able to provide resolution for the concerns in question. This would involve taking the concerns on an informal basis to a supervisor or to the Relocation Manager, as appropriate. A reevaluation of the relocation assistance, the selected comparable, payment computations, or of the offered services may be necessary. Understanding the reasons for payment computations or the selection of comparables may be the clue to the Right of Way Agent being able to provide an acceptable rationale to the displaced person.

If the displaced person is still dissatisfied with the determination, they may enter the formal appeal process.

Formal Appeal

If a displacee indicates a desire to submit an appeal, they must put it in writing. The Appeal Form (*see* Online Forms*, RAAP37*), provides a format for this, but it is also possible to submit a signed letter from the displacee or their representative. This appeal and any supporting documentation must be forwarded to the Relocation Supervisor and the Reviewer immediately. A note should be added to the remarks section of LRS as well. The appeal will be reviewed and a written response will be given. It is a good idea to keep in communication with the Reviewer so that the issue can be resolved as quickly and satisfactorily as possible.

The Right of Way Agent shall advise the displacee of the following:

1. An appeal must be submitted in writing and in any format the displacee chooses. However, the displacee is encouraged to use the INDOT Appeal Form (RAAP 37)

2. The time limit to file an appeal is **60 days** from the date the displaced person receives written notification of the determination by the State, the basis for its determination, and the procedures for appealing that determination

3. The appeal may be given to the Right of Way Agent assigned to relocation or mailed to the Acquisitions Section Manager at INDOT Central Office. The Agent will provide the displacee with that name and address

4. Upon receipt of the appeal, the Acquisitions Section Manager will review the information submitted by the displacee and all other pertinent information needed to ensure a fair and full review of the appeal. The Acquisitions Section Manager will usually attempt to resolve the problem through an informal discussion with the displacee

5. If the Acquisitions Section Manager is unable to resolve the problem, the appeal together with all pertinent justification, materials, and other information needed to ensure a fair and impartial review will be forwarded to the INDOT Commissioner who will appoint an independent reviewer

6. The displacee will be given a full opportunity to be heard throughout the appeal process

7. The displacee has a right to review relocation files and to inspect and copy all materials pertinent to his or her appeal except for materials classified as confidential by the State

8. The displacee has a right to be represented by legal counsel or other representative in connection with the appeal, but solely at the expense of the displacee

9. Promptly after receipt of all information from the displacee in support of the appeal, the appointed independent reviewer will make a written determination of the appeal including an explanation of the basis on which that decision was made. "Prompt" means not more than 60 days and preferably in 30-45 days maximum

10. In addition to the written response; the independent reviewer will provide a written transcript detailing the issue, timeline, evidence considered, each parties arguments, rationale for final decision, and relevant cites (law/policy) which may have been utilized

11. If the full relief requested by the displacee is not granted, the independent reviewer will advise the displacee of their right to seek judicial review through the courts

(NOTICE OF) INTENT TO ACQUIRE (RAAP 4A)

If there is a reason to have the property vacated before the initiation of negotiations, the State may issue a Notice of Intent to Acquire. This notice may be issued to owners and tenants when the acquiring agency desires to establish eligibility for relocation benefits prior to the initiation of negotiations for the parcel. It will contain the location where additional information may be obtained.

When the notice of intent to acquire is furnished to a landlord, it must also be furnished promptly to the tenant. If it is furnished to a tenant, the owner must be simultaneously notified of such action. The Notice of Intent to Acquire will be furnished by certified mail if the Agent cannot deliver it.

When a Notice of Intent to Acquire is issued and the person moves after that notice but before delivery of the initial written purchase offer, the "Initiation of Negotiations" will be the date the person moves from the property.

This notice shall only be issued in special circumstances. Extreme care and coordination must be exercised within INDOT to assure that another person does not subsequently occupy the property. If reasonable assurance of this is not foreseen before this notice is proposed to be given, the acquiring agency may consider not giving such notice and instead awaiting until negotiations begin for the parcel.

MOVING ENTITLEMENTS

Moves caused by public projects are usually involuntary; they were imposed by a Government agency. It may not be related to family needs, nor is it a signal of the success of a business. It is often a very stressful and emotional experience. Fear, helplessness, hostility, and anger are some of the feelings that may surface as the result of such an involuntary move. These negative reactions can be more intense when the displaced persons are more vulnerable or dependent upon their neighborhood ties or current business location. This is more likely to be true when the displaced persons are elderly or have disabilities. Persons with fewer replacement location options may be particularly resentful of an involuntary relocation. These conditions require Right of Way Agents to be more sensitive and patient. Advisory services provided by the Agent can help to alleviate some of the anxiety caused by the displacement.

MOVING POLICY AND REQUIREMENTS

All displacees can choose to move themselves, use a commercial mover, or do a combination. Entitlements can be paid through four options: Fixed Payment, Actual Cost, Professional Mover, or a Combination. It is helpful to know what the displacee(s) plan to do at the time of the Appraisal / Inventory Meeting so that the amount that may be reimbursed upon completion of the move can be determined as soon as possible. Also, knowing ahead of time will help the Right of Way Agent organize the inventory presentation according to the plan.

All move payment determinations in excess of $4,000.00 must be pre-approved by INDOT Central Office. This rule applies to INDOT and Local Public Agency projects. This can be accomplished by submitting a Right of Way Agent Report (*RAAP8*) detailing the determination along with all the supporting documentation and the inventory presentation. For moves under $4,000.00, agents that have surpassed the probationary period of their prequalification do not need to obtain pre-approval. Agents that are still in the probationary period of their prequalification should have all move determinations pre-approved, regardless of the determination amount.

Move payments are intended to be disbursed after the area of acquisition has been verified by the Right of Way Agent to be completely clear of all personal property, trash, unwanted items and hazardous materials. It should be left in “broom-clean” condition. If a hardship exists, it is possible to obtain a portion of the move payment before the move is complete. This type of payment will need pre-approval based upon written justification and satisfactory documentation to guarantee that the move will be completed and that a replacement location has been secured by a signed lease or purchase agreement. Before discussing a hardship payment to a displacee, the Agent should consult with the Reviewer for further instructions.

ELIGIBLE MOVING EXPENSES

Generally Eligible Moving Expenses – Residential/Business/PPMO

1. Transportation of the displaced person and personal property to the replacement site up to a distance of 50 miles. Transportation costs beyond 50 miles are not eligible unless the State determines that relocation beyond 50 miles is justified.

2. Packing, crating, unpacking, and uncrating of the personal property, or, if an actual cost self-move, rental vehicles or equipment such as trucks, pads, and dollies plus compensation paid to persons to help conduct the move.

3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated appliances, machinery and other personal property.

4. Insurance premiums for the replacement value of the personal property in connection with the move and approved storage.

5. The replacement value of property lost, stolen, or damaged during the move when insurance covering such loss, theft, or damage was not reasonably obtainable and the loss, theft, or damage was not the fault of or result of negligence by the displacee or the displacee's agent or employee.

6. Other moving related expenses that are determined by the State to be reasonable and necessary and that are not listed as ineligible. These may include special services such as an ambulance to transfer persons who have a disability that requires it.

7. The reasonable and customary cost of preparing a move bid, paid to the mover.

8. Storage of displaced personal property for a period not to exceed 12 months when approved in advance by the State unless the State determines that a longer period is necessary. Costs for storage on the displacement site or other real property owned or leased by the displacee is not reimbursable. This is rarely used – consult with the Reviewer before discussing this option with a displacee.

Eligible - Residential Specifically	Eligible - Business/Farms/Non-Profits Specifically
1. Utility transfer charges, telephone and cable TV (see exception in Residential Scheduled Move)	1. Any license, permits, and/or certification required of the displaced person at the replacement location, limited to the remaining life of the existing license, permits and/or certification. 2. Professional services necessary for: a. Planning the move of the personal property, b. Moving the personal property, and c. Re-lettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move. 3. When disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, other personal property, and substitute personal property, this includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, to the replacement site, or to the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the Right of Way to the replacement building or improvements are not eligible for reimbursement. However, these costs may be reimbursable as reestablishment costs.) 4. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $2,500.00, as the agency determines reasonable, which are incurred in searching for a replacement location.

INELIGIBLE MOVING EXPENSES

Generally Ineligible Moving Expenses – Residential/Business/PPMO

1. Cost of moving structures, improvements, or other real property in which the displaced person reserved ownership
2. Improvements to real property at the replacement site except modifications required to accommodate relocated personal property
3. Interest on loans to cover moving expenses
4. Loss of goodwill, profits, or trained employees
5. Additional operating expenses because of operating at a new location
6. Personal injury
7. Cost of preparing the claim for moving and related expenses
8. Payment for search costs in connection with locating a replacement dwelling
9. Costs for storage of personal property on real property owned or leased by the displacee
10. The cost of installing a well or a septic system

Ineligible for Residents Specifically	Ineligible for Landlords Specifically	Ineligible for Business/Farms/Non-Profits Specifically
1. Business/Non-Profit/Farm-specific moving entitlements and payment determination methods, including 100% of the Low Bid and Fixed Payment in Lieu	1. Payment in Lieu 2. Items listed as ineligible for Businesses	1. Any extension of utilities along the Right of Way or through easements on adjoining properties in order for the utility to access the replacement site is not eligible for reimbursement 2. Extension of utilities for new construction

MULTIPLE OCCUPANTS

Co-located displacees may decide to move to separate locations. If a separate move is voluntary, the total reimbursement should not be more than would have been incurred had a single move occurred. All arrangements for payments when there is more than one displacee should be documented in the remarks section in LRS, and in a Right of Way Agent's Report (*RAAP8*) to be signed by all non-dependent adult occupants

MOVE PAYMENT DETERMINATION METHODS

Many of the move determination methods available can be used to prepare a determination for any displacee. Some are intended for only a certain type of displacee. Each method description will include information in *italics* below the heading about when it can be used. Descriptions are in alphabetical order following the numbered list below:

1. 100% of the Low Bid for Self-Move
2. Actual Cost
3. Agent's Estimate
4. Combination Move
5. Direct Loss / Substitute Personal Property (DLPP / SPP)
6. High Bulk / Low Value (HBLV)
7. Payment-in-Lieu (PIL)
8. PPMO Brochure
9. Professional Mover
10. Residential Scheduled Move
11. Searching

100% OF THE LOW BID FOR SELF-MOVE

This option may be used to prepare a Self-Move payment determination for businesses/non-profits, and PPMOs

Non-residential displacees have the option of using the approved professional move payment amount to hire a licensed and bonded mover, or they can take 100% of the approved move amount to move themselves. A large percentage of non-residential displacees will opt for 100% of the Low Bid for a Self-Move payment. In this situation, the voucher packet should be prepared using the Business Self Move or PPMO Move page from the *Relocation Assembly Manual*.

ACTUAL COST

This option may be used to prepare move payment determinations for any displacee.

Actual Cost can reimburse for professional services, or reimburse for equipment and labor on a self-move. In cases where atypical items such as ham radio equipment, computers, above ground swimming pools, satellite dish antennas, or other such residential items must be moved from a residential property, the displacee may choose an actual cost reimbursement to engage a mover to move the atypical items, or may choose to perform an actual cost self-move of the atypical items.

Actual cost reimbursement, as the name implies, is a payment for the actual direct expenses incurred by the resident in accomplishing the move. Reimbursement for paid receipts from costs incurred, and/or the assumed hourly labor rate of $15.00 will be tabulated on the Labor Hours and Expenses Form (*see* Online Forms*, RAAP28*), based on a determination that it is actual, reasonable, and necessary. The *Relocation Assembly Manual* includes a page for Residential and Business Actual Cost Moves. This will provide instructions and requirements for obtaining payment or reimbursement for these expenses.

It will be required to show evidence that the costs incurred are actual, reasonable and necessary. Receipts or invoices, along with before and after photos must be used to show that the work was actually done. Bids, estimates, or a comparison with other similar actual cost moves will be required to show that the cost is reasonable. Demonstration of the necessity of the cost in the form of a Right of Way Agent Report (*RAAP8*) explaining the situation, photos, or a statement from a professional will be required as well. If the reimbursement will exceed $4,000.00, the Right of Way Agent must obtain pre-approval based on 2 professional comparative bids.

AGENT'S ESTIMATE

This option may be used to prepare self-move payment determinations for any displacee.

The Agent's Estimate (*see* Online Forms*, RAAP29*) is another option for preparing a move determination for a small or atypical self-move that is less than $4,000.00. The form includes fields for typical expenses. Many times, this can be completed with printed information from a moving truck rental company and a map showing mileage.

COMBINATION MOVE

This option is available to any displacee.

Any displacee may choose to move some of their personal property themselves and hire a professional to move the remainder for them. This is considered a Combination Move. The determination techniques described for Self-Moves, Actual Cost and Professional Movers still apply.

It is critical to keep records of what will be moved by the displacee(s) and what will be moved for them. This should be clearly communicated (in writing) both to the displacee(s) and to the movers

so that a) nothing is left out, and b) nothing is counted and paid for twice. This may be a good situation in which to create two separate inventory presentations or a chart that itemizes what each party is responsible for moving. The Right of Way Agent should make it clear that all items are to be removed from the area of acquisition – personal property and trash, unwanted items and hazardous materials. The Combination Move plan should include how all these items will be taken care of.

DIRECT LOSS / SUBSTITUTE PERSONAL PROPERTY (DLPP / SPP)

This option may be used to prepare a move payment determination for business/non-profits only.

The DLPP/SPP payment allows the business to be paid an amount up to the cost of moving items that are not moved. It is really a substitute payment for personal property that is not moved but is disposed of by sale or trade-in. It is allowed when a displaced business is entitled to relocate the item but elects not to do so.

The direct loss/substitute option is particularly beneficial to businesses with outmoded or obsolete equipment or materials that are bulky, heavy, or otherwise expensive to move that may have relatively low or even negative value. This benefit provides the business operator with an opportunity to upgrade and modernize the operation with equipment that has higher productivity or a longer useful life instead of merely moving the less useful items to the replacement location. A business operator may also decide to sell certain items without replacement if the items are no longer needed.

The DLPP/SPP payment may only be made after a bonafide effort has been made by the displaced business to sell the item involved. The State may determine in advance that a sale is not necessary if there is obviously no market for the item. The direct loss formula is as follows:

Reasonable cost of attempting to sell the property
\+ Lesser of Options 1, 2, or 3
Actual Direct Loss of Personal Property

Or

Actual Substitute Personal Property amount

Options:

1. The cost to move the item
2. If the item is not replaced, the Fair Market Value for continued use less the proceeds from the sale
3. If the item is replaced, the Replacement Cost less the proceeds from the sale/trade-in value

EXAMPLE 1

The owner will replace an obsolete sheet metal press with a new sheet metal press at the replacement site.

CONDITIONS: Business to be re-established, and item to be replaced
Expense of Sale: $50.00

COMPUTATION:

Find the lesser of:

Replacement Cost	$2,800.00
Proceeds of Sale	- $850.00
	$1,950.00

OR

Estimated Cost to Move	$1,000.00

The Estimated Cost to Move is the lesser:

Expense of Sale	$50.00
Estimated Cost to Move	+ $1,000.00
Substitute Personal Property Payment	**$1,050.00**

EXAMPLE 2

The owner will not replace the obsolete sheet metal press with a new metal press at the replacement site.

CONDITIONS: Business to be reestablished - item not replaced.
Expense of Sale $50.00

COMPUTATION:

Find the lesser of

Fair Market Value for continued use	$1,500.00
Proceeds of Sale	- $550.00
	$950.00
OR	
Estimated Cost to Move	$1,000.00

The Fair Market Value minus Proceeds of Sale is the lesser:

Expense of Sale	$50.00
FMV minus Proceeds of sale	+ $950.00
Direct Loss of Personal Property Payment	**$1,000.00**

EXAMPLE 2 may be a good illustration of where the State could determine in advance that a sale was not necessary if there were obviously no market for the obsolete sheet metal press. In such case, the press could be abandoned, and the owner could claim the lesser of the FMV for continued use at the displacement site ($1,500.00) OR the Estimated Cost to Move it to the replacement site ($1,000.00).

HIGH BULK / LOW VALUE (HBLV)

This option may be used to prepare a move determination for business/non-profits and PPMOs.

When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing Agency, allowable moving cost payment shall not exceed the lesser of:

1. The amount which would be received if the property were sold at the site.

2. The replacement cost of a comparable quality and quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Agency.

Before opting for this method, the Right of Way Agent must confirm, with the assistance of the Reviewer and Relocation Supervisor, that the personal property in question may be abandoned.

PAYMENT-IN-LIEU (PIL)

This option may only be used to determine a move payment for business/farms/non-profits. It may NOT be used for Landlords.

The Payment-in-Lieu (Fixed Payment in Lieu or PIL) is intended to take the place of claiming all business relocation entitlements separately. This option is not beneficial in all situations, but can be the best option after a thorough financial analysis. The Right of Way Agent shall fully explore the possibility of a payment-in-lieu (PIL) of actual Moving and Related Expenses, Searching Expenses and Business Reestablishment Expenses for any relocated or discontinued business or farm. Additional explanation shall be given about Payment-In-Lieu when it will be more advantageous to the displacee.

A Payment-in-Lieu of moving, searching, and reestablishment expenses equals the average annual net earnings for discontinued or relocated businesses which lose patronage due to their move. This payment is based on the average annual net income of the two years preceding displacement. It is limited to a minimum of $1,000.00 and a maximum of $40,000.00.

Eligibility Requirements (RAAP 35)

To receive a Payment-in-Lieu, the State must determine that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from the displacement site

2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the State determines that it will not suffer a substantial loss of its existing patronage

3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the State, and which are under the same ownership and engaged in the same or similar type business activity

4. The business is not operated at the displacement dwelling solely for the purpose of renting the dwelling to others

5. The business is not operated at the displacement site solely for the purpose of renting the site to others

6. The business contributed materially to the income of the displaced person during the two taxable years prior to displacement

7. Landlords / Owners of rental properties are not eligible for the Payment-In-Lieu option

Determining the Number of Businesses

1. When determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which
   a. The same premises and equipment are shared
   b. Substantially identical or interrelated business functions are carried out and business and financial affairs are co-mingled
   c. The entities are held out to the public and to those customarily dealing with them as one business
   d. The same person or closely related persons own, control, or manage the affairs of the entities

2. A business that does not contribute materially to the income of the owner or operator shall not be considered as another establishment for purposes of determining eligibility for the Payment-in-Lieu

Payment Determination

The term "average net earnings" means one-half of any net earnings of the business before Federal, State and local income taxes during the two taxable years immediately preceding the taxable year in which the business is relocated.

If the two taxable years immediately preceding displacement are not representative, average annual net earnings may be based upon a different time period when the State determines it to be more equitable.

1. In Business Less Than Two Years. If the business or farm was not in operation for the full two years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site, projected to an annual rate.

2. Net Earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. In the case of an owner of an incorporated business, earnings shall include any compensation paid to the spouse or dependents of the owner of a majority interest in the corporation. For purposes of determining majority ownership, stock held by a person, their spouse, and their dependent children shall be treated as one unit.

3. A Taxable Year is defined as any 12-month period used by the business in filing income tax returns.

4. Owner Must Provide Information (RAAP 33 & 35)

   The owner of a business must provide information to support net earnings of the business in order to receive a Payment-in-Lieu. City, county, State, or Federal tax returns for the tax years in question are the best source of this information and would be accepted as evidence of earnings. Any commonly acceptable method could be used, such as certified financial statements or an affidavit from the owner stating net earnings providing it grants the State the right to review the records and accounts of the business. The owner's statement alone would not be sufficient.

Payment-in-Lieu to Farm Operators

A displaced farm operator is eligible for payments as outlined previously, except for the Payment-in-Lieu. For the owner of a displaced farm operation to be entitled to a Payment-in- Lieu, the State must determine that:

1. In the case of a total acquisition, the farm operator has discontinued his entire farm operation at the present location or has relocated the entire farm operation.

2. In the case of a partial acquisition, the operator will be considered to have been displaced from a farm operation if:
   a. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
   b. The partial acquisition caused such a substantial change in the nature of the farm operation that it constitutes a displacement.

The other eligibility requirements of the Payment-in-Lieu also apply to farms.

Payment-in-Lieu to Nonprofit Organizations

The term "existing patronage" as used for nonprofit organizations includes the persons, membership, community or clientele serviced or affected by the activities of the nonprofit organization. Such loss is assumed to occur if the organization moves unless the State demonstrates otherwise.

Any payment must be supported with financial statements for the two 12-month periods prior to displacement. The amount used for the payment determination is the average of two years annual gross revenues, less administrative expenses, i.e. their "operating income."

For non-profit organizations, **gross revenues** may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of fund collection that enables the non-profit organization to operate. **Administrative expenses** are those for administrative support such

as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

PROFESSIONAL MOVER

This option may be used to prepare move payment determinations for any displacee. There are some differences in how this option can be applied – see the end of this section for details.

Any displacee may choose to use a licensed and bonded professional mover. To avoid confusion, the Right of Way Agent must make it clearly understood that while the professional movers will move personal property, the displacee(s) are ultimately responsible for ensuring that everything is moved, including trash, unwanted items, and hazardous materials. Some professional movers have limitations for what they can transport. Be sure to identify these issues early in the process so that a satisfactory solution can be found.

Additionally, services that may not be provided by the movers, such as junk hauling, special equipment installation or piano tuning can be paid separately. Businesses and Non-Profits have a list of expenses that they can claim separately (*see* Online Forms*, Business Eligible Moving, RAAP47*). Once these costs are pre-approved by INDOT Central Office, they can be claimed separately through Actual Cost or Agent's Estimate, based on the situation.

If a move is small, it is wise to consider whether there is enough personal property to warrant paying two bid fees (and requiring time and travel from a professional mover that is expecting a larger job) – perhaps another move determination method such as the PPMO Brochure or an Agent's Estimate would be more cost-effective.

Move Determination

In order to establish the maximum payment that will be approved for a professional mover, the Right of Way Agent will need to obtain comparative bids. The Agent will arrange for two licensed and bonded professional moving companies to prepare bids based on the inventory presentation, the Bid Specifications form (*see* Online Forms*, RAAP27*), and a walk-through of the property. The Agent may accompany the mover on any walk-through appointments in order to ensure that the information given to the movers is accurate and consistent. The displacee(s) may choose any licensed and bonded mover to take care of the move – they are not required to use the movers that helped set the payment amount.

Detailed and itemized bids will be required. The Agent must compare the bids to make sure that both movers show the same scope of work. For instance, if one bid mentions special services to install a refrigerator with an icemaker, the second bid should include the installation too. If the bid amounts are drastically different, the Agent should investigate carefully to be sure that both bids are covering the same amount of work and expectations. Once it has been determined that both

bids are covering the same scope of work, the lowest bid amount will represent the maximum payment that will be made. This determination should be documented in a Right of Way Agent's Report (*RAAP8*).

Below is an example showing a portion of a move determination report:

These amounts are based on the attached commercial move bids:

LOW BID: Moving Company Name A $2,445.00

HIGH BID: Moving Company Name B $3,000.00

APPROVED COMMERCIAL MOVE DETERMINATION: $2,445.00

Bid Fees (Relocation Services)

Many times, a moving company will request a fee for preparing a move bid. Bid fees can be paid with a Relocation Services voucher only to companies that are not selected to complete themove. The bid fee amount should be set before the work is initiated. When negotiating with a moving company regarding the preparation of the bid and payment of the bid fee, the Right of Way Agent should make it clear that fees will not be paid for bids that do not meet the requirements as described in the Bid Specifications form (*see* Online Forms*, RAAP27*), or fail to include sufficient detail and itemization. The Agent should also explain that if the mover is selected by the displacee to complete the move, the contract will be between the displacee and the mover; the acquiring agency is not responsible for final payment. Lastly, the Agent should verify whether or not a W-9 *(see* Online Forms*, Vendor Information Form)* is on file for the moving company and obtain one if necessary.

Bid fees can vary, but the current limits on these fees are as follows:

Commercial Move	$150.00
Residential/PPMO	$75.00

If a moving company requests a bid fee that is higher than these set limits, the Right of Way Agent can forward any supporting information to the Reviewer for consideration. A higher bid fee would only be approved in unusual circumstances, however.

Relocation Services payments are limited to payments up to $499.00. Any fee over that amount must be paid through a contract.

The bid fee should be paid as soon as possible after the bid is received. It can be paid before the displacee has chosen their mover – it can always be deducted from the payment for the move itself. To receive payment, the moving company must submit an invoice with code, parcel, displacee

name, and name the service they provided within 14 days of submitting the bid itself. This invoice will be submitted along with all other documentation required in the *Relocation Assembly Manual* page for Relocation Services.

Residential Move Specifics

The Right of Way Agent must explain that one-time utility transfer fees are not intended to be included in this payment. These can be claimed separately.

When the move is complete and the area of acquisition is verified by a Right of Way Agent to be clear for Relocation purposes, the move payment can be released. As soon as the moving company submits their invoice, the Right of Way Agent must follow the instructions and requirements on the Residential Professional Mover page of the *Relocation Assembly Manual* and prepare a voucher. If the final invoice is less than the maximum payment determination, the payment will be equal to the invoiced amount. If the final invoice exceeds the maximum payment determination, the displacee(s) will be responsible for the remaining balance.

The voucher must be addressed to the displacee(s) first and to the moving company as a co- payee. Because the contract is between the displacee and the moving company, the displacee is responsible for co-signing the resulting check and sending it to the moving company as payment. While it is not required, many Right of Way Agents will facilitate this process by providing a stamped, addressed envelope, and a copy of the invoice with written instructions.

Business/PPMO Move Specifics

Most businesses and non-profits will be expected to pay the professional mover directly and then claim a reimbursement rather than needing a check with the moving company as a co-payee. If a hardship can be justified, a portion of the move payment may be made available ahead of time based on documentation that the replacement location has been secured by a signed lease or purchase agreement.

When choosing moving companies to prepare the move bids, it can be helpful to choose movers that have experience with the type of personal property they will be moving – they will be more able to anticipate issues and variables that could add extra expenses to the move.

It is important to prepare a detailed inventory presentation and to take an active role in making sure the scope of work is clear for all parties involved. It is always a good idea to accompany the representative from the moving company on their site visit in order to answer questions, work out personal vs. real property issues, and to help devise a logistical plan for the move.

A chart like the one shown below could help with managing a complex move:

[NAME OF COMPANY] - Displacement Site to Replacement Site Overview 7/8/2013

Specifics	Displacement Site	Replacement Site	Comment
1. Furniture			
a.			
b.			
c.			
2. Telephones			
a.			
b.			
c.			
d.			
3. Computer Stations			
a.			

PPMO BROCHURE

This option may be used to prepare self-move payment determinations for any displacee.

The PPMO Brochure (*see* Online Forms*, PPMO Brochure*) was originally prepared for Personal Property Only moves, but has since become a useful tool for small moves or atypical items for residents and businesses/non-profits too. It has set rates for common items found in Personal Property Only Moves:

1. Storage Units: This works well if the move is actually from a storage unit that fits into the prescribed sizes. However, this can also be used as a starting point for establishing a payment for storage units in different sizes, or to estimate the volume of personal property based on what size storage unit would be required to hold it.

2. Vehicles: This option is intended for stored vehicles, not the family car that will need to be driven to the new location in order to transport the occupants as well.

3. Appliances: This is commonly used for landlords who may only need to move the washer, dryer, and refrigerator in their rental unit because the remainder of the personal property in the unit belongs to the tenant.

The brochure includes a brief explanation of the entitlements that may be available to Personal Property Move Only (PPMO) displacees. This brochure can be included in the documents provided at the Appraisal / Inventory Meeting and/or the Initial Meeting for a PPMO.

RESIDENTIAL SCHEDULED MOVE

This option may be used to prepare self-move payment determinations for residential displacees.

This is the most common method for determining a self-move payment amount. In order to determine a Scheduled Move payment, the Right of Way Agent will use the inventory presentation to measure the amount of personal property that will need to be moved. When discussing this move option, the Right of Way Agent must explain that this payment is inclusive of all the *eligible*

moving expenses listed. Utility transfer fees, license fees and miscellaneous expenses cannot be claimed separately, as they are already built into this payment

The Agent will look up the move payment amount on the following schedule:

https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

Room Count

The measuring unit used for this schedule is in terms of "rooms," but it is important to note that some rooms may contain more than the average. For instance, a 3-car garage that is stacked to the ceiling will constitute more than one "room" of personal property. This schedule gives payment information for situations where the displacee has very little personal property, or does not own the furniture (sleeping room, furnished dwelling, etc.). The schedule also notes a payment for (a) A person that has minimal possessions and occupies a dormitory style room, or
(b) A person whose residential move is performed by an agency at no cost to the person.

Bathrooms, hallways, closets, vestibules, and powder rooms cannot be included in the counted rooms. Attics, basements, garages, and sheds are a normal part of a residential move and can only be counted as additional rooms of furniture if substantial amounts of residential-related personal property are documented to be present.

Here is an example of a move determination calculation for a displacee that owns the furniture:

Room Type	# of Rooms
Family Room	1 (not incl piano)
Office	1
Bedroom 1	1.5
Bedroom 2	1
Bedroom 3	1
Bedroom 4	1
Dining Room	1
Garage	5
Kitchen	1.5
Laundry	0.5
Living Room	1
Outdoors	2 (not incl pool, tramp., swings)
Storage	2
Total Rooms	
Initial 8 rooms	1900
11.5 rooms @ $200.00 each	2300
	$4,200.00

In the example above, the displacee will take a Combination Move and have specialized professionals move the piano, above ground pool, trampoline, and swing set.

Special Conditions

On occasion, a displaced person may have substantial property stored outside or used for a hobby, such as a woodworking shop. With pre-approval, these items can be counted as a room(s) and paid under the schedule for residential moves if the cost of moving them would be approximately equivalent to moving an additional room(s) of furniture.

In cases where there are atypical items such as ham radio equipment, computers, above ground swimming pool, satellite dish antenna, or other such residential items to be moved from a residential property, the room count may be increased for a displacee using the schedule to reflect the reasonable cost to the displacee of moving the items. The amount of the increase in room count for moving atypical items must be documented as reasonable. This can be done with estimates from movers or can be based on previous Actual Cost moves of similar items. The displaced resident may also choose the Actual Cost move option for either the atypical items alone or for the entire move.

SEARCHING

This option may only be used to prepare move payment determinations for business/farms/non-profits, including landlords.

The owner of a displaced business or farm operation may be reimbursed for actual reasonable expenses not to exceed $2,500.00 in searching for a replacement site. Such expenses may include:

1. Transportation expenses
2. Meals and lodging away from home
3. Time spent searching at an assumed $15.00/hour
4. Fees paid to real estate agents or real estate brokers to locate a replacement site exclusive of any fees or commissions related to the purchase of such site

All expenses claimed except value of time actually spent and mileage driven while searching must be supported by receipted bills. The mileage rate reimbursed under the **searching expense** entitlement for businesses will be the IRS mileage rate. The current mileage reimbursement rate can be obtained by going to www.IRS.gov and searching "mileage". Mileage will be reimbursed at the rate applicable for the dates the search occurred.

The standard reimbursable rate is $15.00 per hour. If the searcher's hourly rate is more than $15.00, the higher rate may be submitted for pre-approval; thorough documentation must be provided (current check stubs, taxes forms, etc.) to support the increase.

All expenses can be tabulated on the Searching Expenses Report (*see* Online Forms, *RAAP31*). Further instructions and requirements can be found on the Business Searching Expense Reimbursement page in the *Relocation Assembly Manual* that will be used as a cover sheet for the voucher packet.

REPLACEMENT HOUSING ENTITLEMENTS

REPLACEMENT HOUSING STANDARDS

A basic requirement of the relocation program is that the replacement housing made available to displaced persons meets certain qualitative standards. These standards are embodied in the term's "Decent, Safe and Sanitary housing" and "Comparable Replacement Housing."

There are three general objectives of the standards:

- To assure a safe and healthy living environment
- To satisfy basic housing and related living needs
- To provide the opportunity to occupy a dwelling which is functionally equivalent to the displacement dwelling

The first objective is fairly clear. It relates to compliance with standards that are generally found in local housing and occupancy codes. The significant content of these codes will be discussed under the heading, "Decent, Safe and Sanitary housing."

The second objective recognizes that housing choices are never made in isolation from other basic living needs such as employment and shopping. Also, the housing needs of families are frequently based on age, family size, and disabilities. In implementing the relocation program, we accept an obligation to refer displaced persons to housing that will accommodate the housing needs of the family and is reasonably close to their employment, public and commercial facilities, and utilities. This raises questions. What health or disability limitations are important to consider in relocation? Are there family size criteria for determining housing needs? What is "reasonable" proximity to employment and public and commercial facilities? These important questions will be considered in this chapter.

The third objective, functional equivalency, is an acknowledgment that fair treatment of displaced persons requires that we offer a dwelling which is at least reasonably similar to the displacement dwelling with particular attention to its principal features. While this may seem to be a routine task, there are many practical problems. What is reasonably similar in a housing market in which dwellings are dissimilar in some major respect? How do we deal with the cumulative effect of the housing standards? Strict adherence to each one may result in betterment in the overall replacement or may be in excess of the needs or desires of the family. What is the extent of States' responsibilities in such cases?

GENERAL ELIGIBILITY GUIDELINES

Eligibility for a **Replacement Housing Payment** (RHP), in the form of a Price Differential Payment, Rental Assistance Payment (RAP), or Downpayment Assistance Payment (DAP) is based on the length of time the displaced person occupied the displacement property immediately prior to the initiation of negotiations for the parcel and whether the displacement property was

owned or rented. Eligibility for a *Last Resort Housing* (LRH) payment is based on demonstrated need, as further explained later in this chapter (*pages 379 and 384*) and the *Special Topics in Housing Entitlements* chapter.

DISBURSEMENT REQUIREMENTS

Prior to disbursement of any of these payments, the Right of Way Agent must document that the replacement home has been secured (purchased or rented) and occupied, and has passed a Decent, Safe and Sanitary (DS&S) inspection (*see* Online Forms*, RAAP18*) within 12 months of the displacement date, as set by the criteria in the Entitlement Letter and 90-Day Notice (*see* Online Forms*, RAAP16, 17, 17a)*. Replacement homes purchased on contract have specific documentation requirements; see *Special Topics in Housing Entitlements*.

Advanced Disbursement

On the occasion that a displacee needs to have the funds in hand before the aforementioned requirements have been fully met, the Right of Way Agent must work with the Reviewer to obtain pre-approval for an advanced payment. Additional requirements may be requested by the Reviewer, however, the following criteria must be met:

- Signed Purchase or Lease Agreement
- Agreement for Advanced RHP (*see* Online Forms*, RAAP22 & 22a*)
- Documentation of hardship or need

INSURANCE PROCEEDS

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling due to a disaster or catastrophic occurrence (fire, flood, etc.) shall be included in the displacement price of the displacement dwelling when computing the Price Differential.

RESIDENTIAL OWNER OCCUPANT

Persons that own and occupy a displacement dwelling for at least 90 days immediately prior to the initiation of negotiations may be eligible for a Replacement Housing Payment, which includes:

1. Price Differential Payment
2. Incidental Expenses Reimbursement
3. Mortgage Interest Differential Payment

This eligibility can be transferred to a Rental Assistance Payment, based on the current rental market and not to exceed the Price Differential Payment entitlement determination.

Persons that own and occupy a displacement dwelling for less than 90 days immediately prior to the initiation of negotiations may be eligible for a Rental Assistance Payment.

A residential owner-occupant must rent or purchase and occupy a Decent, Safe and Sanitary replacement dwelling within one year from the latter of the date that:

1. The displaced homeowner-occupant is paid for the displacement dwelling
2. In the case of condemnation, the date the required amount is deposited in the court
3. The move date

The above dates may be extended by the State if there exists good cause to do so, but the payment determination will generally not change.

RESIDENTIAL TENANT OCCUPANT

Rental Assistance are available to all residential displaced persons who have occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations.

A Downpayment Assistance is available to residential tenants who occupy the displacement dwelling. Residential owner-occupants are not eligible for this payment because they should be able to take a Price Differential Payment (PDP) as part of their Replacement Housing Payment (RHP).

Residential tenant-occupants must rent or purchase and occupy a Decent, Safe and Sanitary replacement dwelling within one year from the latter of the date that:

1. The displaced tenant-occupant ,moves from the displacement dwelling
2. The person is offered replacement housing, whichever is later

The above dates may be extended by the State if there exists good cause to do so, but the payment determination will generally not change.

TENANT OF LESS THAN 90 DAYS

A displaced person who has occupied a displacement dwelling for less than 90 days prior to the initiation of negotiations may not eligible for a Replacement Housing Payment under the Uniform Act. However, they may be eligible for a Replacement Housing Payment provided as a Last Resort Housing Payment, providing comparable DS&S replacement properties are not within their financial means and there is an increase in rent necessitated by the occupancy of a comparable replacement property. Only Tenant Displacees will be given consideration of the Financial Means Test and 30% Rule.

IMPORTANT RHP TERMS

BREAKOUT/CARVEOUTS

A residential breakout/carveout, with the use of the breakout form from the Appraisal, is required to determine the acquiring agency's offer for the owner-occupied portion of the property when a dwelling:

1. Is located on lands larger than typical for residential purposes
2. Is a multi-family structure with one of the units occupied by the owner
3. Is a combination residential and business structure with one of the units occupied by the owner
4. Contains a Major Exterior Appurtenance
5. Contains items not typically found in the typical residential area market

Major Exterior Appurtenances

A basic concept of identifying a comparable replacement dwelling is to compare "apples to apples." Sometimes a displacement dwelling has a major exterior appurtenance such as a swimming pool or an outbuilding and no comparable replacement dwelling can be located which has a similar item. In order to compare "apples to apples", the Agent needs to compute the value of the displacement dwelling without the attribute. This is called a **breakout/carveout**. The value of the appurtenance is subtracted from the acquisition price of the subject dwelling. A Price Differential entitlement determination will be computed using a price breakout/carveout that excludes the value of the major appurtenance.

If the attribute is a truly major item, the contributory value should be specified in the appraisal report on the breakout sheet. Reviewing the appraisal or consulting with the appraiser or review appraiser can also establish unspecified values of major items. The value of the attribute should be fully documented in the parcel file.

BUILDABLE LOT VERSUS UNECONOMIC REMNANT ON REMAINDER

Buildable Lot

The State must have offered to purchase buildable lots that remain after acquisition of the proposed R/W before the offered amount for the buildable lot can be added to the acquisition price when computing the Price Differential entitlement. If the State does not offer to purchase the buildable lot, then the value of the buildable lot cannot be used in computing the Price Differential entitlement.

To avoid unnecessary windfalls, the Right of Way Agent should check with the Project Supervisor if an offer to purchase the buildable lot has not been made. Also, attempts should be made to find comparable dwellings on lots compatible in size to the home site being acquired.

Example for Buildable Lot

The State is widening a road and purchasing a dwellingthat is situated on the front 1/2 acre of an approximately square, one-acre lot. The R/W purchase will include the house and the 1/2-acre nearest the existing road and leave the rear 1/2- acre as a remainder. The remaining 1/2-acre meets local codes for single-family dwelling construction and is considered to be a buildable lot.

The dwelling and the 1/2-acre on which it is located are valued at $90,000.00. The 1/2-acre remainder is valued at $10,000.00.

If the State offers $100,000.00 for the dwelling and the entire acre of land, then $100,000.00 will be used as the acquisition price in RHP computations, whether the relocatee accepts the full $100,000.00 for all the land or accepts $90,000.00 and retains the ½ acre buildable lot.

If the State offers $90,000.00 for the dwelling and the ½ acre which it is situated and makes no offer to buy the other ½ acre for an additional $10,000.00, then only $90,000.00 will be used in RHP computations.

Uneconomic Remnant

The amount the State offers for an uneconomic remnant is not added to the acquisition price for Price Differential computations unless the owner decides to sell the uneconomic remnant to the State.

Example for an Uneconomic Remnant

The State is widening a road and purchasing a dwellingthat is situated on the front 3/4 acre of an approximately square, one-acre lot. The R/W purchase will include the house and the 3/4-acre nearest the existing road and leave the rear 1/4- acre as a remainder. The remaining 1/4-acre does not meet local codes for single- family dwelling construction. Therefore, it is considered to be an uneconomic remnant.

The dwelling and 3/4-acre on which it is located are valued at $95,000.00. The 1/4-acre remainder is valued at $5,000.00.

The State offers $95,000.00 for the dwelling and the 3/4-acre of land and offers $5,000.00 for the remaining uneconomic remnant. If the relocatee decides not to sell the uneconomic remnant to the State, $95,000.00 will be used as the acquisition price in RHP computations. If the relocatee decides to sell the uneconomic remnant to the State, $100,000.00 will be used as the acquisition price in RHP computations.

COMPARABLE/FUNCTIONAL EQUIVALENT REPLACEMENT HOUSING

In addition to being Decent, Safe and Sanitary, the criteria of comparability must be met. When analyzing available dwellings, the selected dwellings must be those most nearly comparable to the displacement property.

Note that the elements of Comparable Replacement Housing refer to the specific needs of the displaced person, i.e. financial means, access to employment, desirability as to access to public and commercial facilities, etc. This implies a prior determination of the displaced person's needs and circumstances, which can only be secured by personal contact with each displaced household early in the process.

Pre-acquisition interviews will be conducted at which time information is secured which will be relevant to the search for comparable housing. It is important to exercise care and patience in researching the market for comparable housing. **Excessive payments** can easily occur by the hasty selection of replacement properties that are far superior to the properties being acquired. Conversely, problems can be prevented if the search is sufficient to find the "best" comparable rather than settling on a less than comparable dwelling.

A great deal of judgment is involved in applying the standards of comparability. The criteria sometimes become subjective in application and an attitude of reasonableness must prevail.

The following categories of comparability may provide some guidance:

1. **Functionally equivalent including the number of rooms and living space**

   This does not mean that a replacement dwelling must meet a tape-measure comparison to the acquired property. The emphasis is on function. A comparable replacement dwelling is one that is "functionally similar" to the displacement dwelling. The replacement dwelling, when compared with the acquired dwelling, should perform the same function, provide the same utility, and possess like amenities. This requires that the principal features of the acquired dwelling be present in a comparable. Space should be available for comparable purposes as used in the acquired dwelling. For example, workshops in an over-sized garage instead of a basement and vice versa; ample kitchen cupboards could substitute for a pantry, and out-of-season storage could be provided either in an accessible attic or a basement area. Physical inspection of the interior as well as of the exterior of selected comparables will clarify for the Right of Way Agent as well as the displaced person, the actual functional equivalency of houses.

   Generally, functional similarity is an objective standard reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Right of Way Agent may consider reasonable trade-offs when the comparable under consideration is equal to or better than the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a dwelling is not available with a pantry, a replacement dwelling with ample kitchen cupboards may be an acceptable tradeoff. Insulated and heated space in a garage could be an adequate substitute for basement workshop space. A dining area might substitute for a separate dining room. Under some circumstances, attic space could substitute for basement storage space and vice versa. However, extra living space in a comparable without a garage would not offset a garage at the displacement dwelling since it would not serve a similar function.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequently less living space than the displacement dwelling. For example, a Decent, Safe and Sanitary replacement dwelling that fully meets the needs of the displacee may be found to be functionally similar (and therefore, comparable) to a larger but very run-down substandard displacement dwelling.

2. Available to the displaced person

The State ordinarily has no control over the availability of sale or rental housing. However, displaced persons should only be referred to housing that has recently been confirmed as being available. Likewise, in making payment determinations, only active listings should be utilized. This will require close contact with sources of housing market information and a willingness to research the market for currently available housing. If housing is in short supply, innovative measures may have to be taken to assure the availability of a comparable when an offer is made.

3. Adequate to accommodate the displaced person(s)

All relevant disabilities or special needs must be considered. If the displaced person has special limitations, particularly relating to health, mobility, or age, the replacement housing referrals should accommodate those limitations. For instance, an elderly displaced person with a serious heart condition may need a one-floor plan or a house with a bath and bedroom on the first floor. A displaced person that uses a wheelchair would need a unit with ramp access, ample hallways, and bathroom accessibility. Displaced persons should not be referred to housing that does not accommodate these special needs.

4. Within Financial Means

The Replacement Housing Payment program is designed to help bridge the financial gap when one exists between the cost of the displacement home and the cost of obtaining replacement housing. However, Replacement Housing Payments can only cover what is reasonable. When searching for comparable housing, it is important to keep in mind the financial situation of the displacee(s). The Right of Way Agent must consider questions such as “when the 42 months of Rental Assistance run out, will the displacee be able to afford the rent?” Comparable housing is ideally within a reasonable range that can be

maintained by the displacee. Furthermore, if the displacement dwelling is subsidized, the Right of Way Agent should make an effort to search for comparable replacement subsidized housing.

5. The Financial Means Test

It is assumed that owners can afford replacement housing if they are not required to spend more per month, based on comparability, toward a mortgage payment than before acquisition. On the other hand if a tenant is considered "Low Income" using the HUD Annual Survey of Income Limits, one should not have to pay more than 30% of one's gross income on rent and utilities. If replacement housing is not within the financial means of a displaced person, Replacement Housing of Last Resort may be necessary.

Note: The HUD Annual Survey of Income Limits can change periodically and must be checked prior to each project: www.huduser.org/portal/datasets/ura

6. Access to employment

This is a critical element in the choice of replacement housing and the needs of each displaced person will help determine specific distance limits. A displaced person who presently walks to work should only be offered comparable DS&S housing within walking distance or near a bus line reasonable accessible to the place of employment. Referrals should be made on the same basis. A displaced person that presently drives 20 miles to work may not be as restricted to a particular housing area. Reasonableness and good judgment are important. The objective should be to refer a displaced person to housing that does not endanger employment because of increased distance or travel time. The intent is not necessarily to keep the travel distance the same, but to be reasonable and practical. Each displaced person's needs and limitations regarding travel time and distance to the work site should be individually determined and understood early in the relocation process.

7. Commercial and public facilities

The desirability of potential replacement housing close to commercial and public facilities is a case-by-case judgment. It is important to determine for each displaced family the institutions and facilities upon which there is a strong dependency. A family with children would be concerned with schools. An elderly retired couple without a car would consider it important to be near a grocery store. Housing choice is usually related to the location of institutions and facilities used in daily life. It is an obligation of the State to make housing available that is as desirable as the displacement dwelling with regard to those places that give essential support to daily living. This does not mean that the displaced person's personal desires as to particular schools or shopping areas have to be complied with, but a sincere attempt should be made to acknowledge the displaced person's preference. Personal tastes, desires, and dislikes will properly influence a person's choice of housing; however, the Right of Way Agent need not be limited by these personal desires. What the Agent must consider is the needs and availability

DECENT SAFE AND SANITARY (RAAP18)

Decent, safe, and sanitary (DS&S) refers exclusively to standards which affect the health and safety of the occupants. DS&S does not pertain to level of luxury, price, or location. Basically, a dwelling, which meets all local criteria for housing and occupancy codes, will meet Decent, Safe and Sanitary standards as they are defined in the relocation regulations. A distinction must be made at this point, however. Housing and occupancy standards or codes are not the same as building codes. Building codes define criteria for new construction, additions, and alterations. Occupancy or habitability codes apply to all buildings or dwellings in a community. If the occupancy codes changes to require smoke detectors for example, all dwellings would be required to be brought into compliance. Occupancy codes are narrower in scope than building codes since they are concerned only with those elements influencing health and safety as opposed to appearance, marketability and conformity to current building standards.

Most local housing and occupancy codes are adaptations of one of the national model codes promulgated by code setting organizations. A popular code is that issued by BOCA (Building Officials and Code Administrators International, Inc.).

Minimum Standards

Where there are no local housing and occupancy codes such as in rural areas or small towns, or where local occupancy codes are less stringent than the standards indicated as Decent, Safe and Sanitary (DS&S) in this manual, the DS&S standards indicated herein shall apply.

The DS&S standards are minimal and basic. However, it is not unusual to find housing on the market for sale or rent that does not comply with one or more of these standards. Often the deficiency is the result of long-term deferred maintenance. Many deficiencies are correctable for a modest cost, but others could require major reconstruction and may not be economically feasible. An example of the latter would be a cracked and failed foundation wall or a structurally unsound roof.

Decent, Safe, and Sanitary Inspections

Certain parts of a dwelling should be examined carefully for DS&S problems (*see* Online Forms, *RAAP18*). Included are:

1. **Porches, stoops, and exterior stairs**

   These parts are generally wood, of light construction and exposed to the weather. They deteriorate faster than the rest of the dwelling and

2. **Roofs**

   Deterioration takes place over a 15-25 year cycle. Interior damage to the structure results if the roof is not replaced. Look for leakage on interior ceilings and walls

(water spots), signs of roof failure, missing or cupped shingles, or cracks in roof covering material.

3. Electrical System

The most vulnerable area is wiring that is homeowner installed. This is frequently done to serve new fixtures or house additions. A local electrical inspector can be consulted if you are in doubt as to the safety of any electrical installation. Be aware of aluminum wiring, frayed wires, and outlets that do not work. The presence of any one of these may be indicative of electrical problems.

4. Foundation

Not every foundation crack is significant. In older houses settlement cracks can be expected, cracks that are recent or large enough to permit the entry of water may weaken support of the house. This problem should be corrected. Check for tilting or braces added in basement, also for wet basements and crawlspaces.

5. Plumbing

Lack of water pressure from faucets, slow emptying drains, or waste lines that gurgle are definite signs of trouble. Call in a plumbing expert to check the problem and recommend any necessary corrective measures. Check the water heater for venting

6. Adequate in Size

The selected comparable and replacement dwelling must be of adequate size to accommodate the number of family members occupying the dwelling.

a. Children of the opposite sex under the age of ten (10) may occupy the same bedroom.

b. One child under the age of four (4) may occupy the parent's bedroom

c. Except for the above cases, spouses, and couples living together by mutual consent, persons of the opposite sex should not be required to occupy the same bedroom.

d. The number of bedrooms at the replacement dwelling should duplicate that of the acquired dwelling, unless more are needed to meet Decent, Safe and Sanitary standards.

ECONOMIC RENT

The Economic Rent shall be established and used for owners who choose to rent their replacement dwelling and for tenants when:

1. The average monthly rent paid exceeds the market rent for a similar dwelling

2. The tenant provides a service in lieu of paying rent

3. The rent paid does not represent an arm's length transaction between the tenant and landlord

An Economic Rent statement must be obtained by request from the Review Appraiser for that parcel. This amount will be used in place of a displacement dwelling rent in the Rental Assistance computations for an owner that will rent their replacement, or for a tenant that pays less than a fair market rent for their displacement dwelling. An example of this use can be found under "*Owner to Rent*" in the *Rental Assistance* section.

SEARCHING FOR COMPARABLE REPLACEMENT HOUSING

While searching for replacement housing, it is important to remember the overall objective of the program. The objective is fairness and equity to displaced persons. In carrying out this objective we are committed to offering every displaced person at least one replacement dwelling, and three, if available, that is at least basically similar to what he or she had before; a dwelling that is safe to occupy, meets the basic living needs of the person, and provides for the same or similar function as in the displacement dwelling.

To the extent feasible, *comparable replacement dwellings* shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher. A comparable neighborhood would be one in which housing costs are generally similar. It must be understood thatcomparable dwellings cannot be and are not required to be identical to the displacement dwelling.

The Right of Way Agent shall offer minority persons reasonable opportunities whenever possible to relocate to decent, safe, and sanitary dwellings not located in an area of minority concentration and that are within their financial means. However, it should be noted that this policy does not require the State to provide displaced minority persons a larger payment than is otherwise necessary to enable them to relocate to a comparable replacement dwelling.

No discussion concerning replacement-housing standards would be complete without reiterating the need to physically inspect the exterior and interior of selected comparables if at all possible. The Right of Way Agent needs to know that the dwelling one is offering to the displaced person is Decent, Safe and Sanitary and has amenities comparable to those in the displacement dwelling. The Agent will be "selling" the comparable or comparables to the displaced person as well as to INDOT Central Office for payment computation approval. Comparables may be reused for different displaced persons so long as they remain available, are comparable, and each person offered the comparable is given sufficient opportunity to inspect it.

REVIEW DISPLACEMENT HOME DATA

Shortly after the Appraisal / Inventory Meeting, the Right of Way Agent should have completed the first column of the Comparable Properties for Replacement Housing form (*see* Online Forms,

RAAP14 & 14t). The Agent should make sure this form is correct and complete as it will be used as the basis for comparison. In addition the Agent should review photos, the Residential Questionnaire, prior Right of Way Agent's reports and correspondence, and any relevant notes. This will help the Agent have a clear understanding of the displacee(s) needs before initiating the search.

RESEARCH THE CURRENT MARKET

The Right of Way Agent shall review the market for available sales and rental housing, as applicable. Using the information compiled on the displacement dwelling and the displacee's housing needs, the Right of Way Agent shall identify available Decent, Safe and Sanitary dwellings, which are comparable to the displacement dwelling based on the definition of Comparable Replacement Housing. If dwellings meeting those criteria are not available on the market, dwellings that exceed those requirements may be treated as comparable. An extensive search using multiple listing service information, local Real Estate offices, driving around the area, and other sources including newspaper advertisements and Internet search tools must be made to assure that housing is found at the lowest cost that meets comparability requirements.

When using an internet search tool, it is always a good idea to allow for variation in order to capture as many possibilities as possible. Property descriptions are often inconsistent, or there may be features in a new home that will functionally replace a necessary feature in the displacement home. For instance, if searching for a property comparable to a 4 bedroom, 3 bath, 2 story house with a basement on a 3 acre lot, the search parameters might include:

- 3-5 bedrooms
- 2-4 baths
- 1-3 stories
- ½ to 5 acres

This will allow the Agent to discover a property that has fewer stories but has plenty of square footage, or lacks a basement but has a large utility/storage area.

Ideally, the search phase should cover a minimum of 30 days to allow sufficient time for a thorough investigation of current market prices. A record should be kept of the dates searching was performed and what resources were used (websites, real estate agents' names and numbers, newspapers, For Sale by Owner leads, etc.). This will need to be reported in the Right of Way Agent's Report about the Comparable Housing Search that must be submitted with the Residential 90-Day Pre-Approval documentation and with voucher documentation for any housing assistance payments as indicated in the *Relocation Assembly Manual*. This information can also be recorded in the remarks section of LRS.

The Agent should also maintain documentation of all properties considered and dated notes indicating why or why not each property will be included in the final consideration as "comparable." This can take the form of a printout of an MLS sheet or rental ad with clearly legible notation on the sheet about major comparability features, the date the property was found, and dates that the Agent confirmed that the property was still available.

In the process of searching, the Agent should take note of the available utilities for each property. This is one of the comparison points on the RAAP14/14t form (*see* Online Forms*, Comparable Properties for Replacement Housing*) because the displacee may be moving appliances that are set up for gas, electric or propane specifically. Also, the variation in costs of different types of utilities can be a comparability factor. When searching for rental properties, it is especially critical to understand not only what utilities are used, but also whether the tenant or the landlord pays for them. This information will be needed to calculate the potential and actual Rental Assistance Payment determination.

It is up to the Agent to decide when to obtain photos of selected comparables. Some Agents visit every property as they find them. Others wait until they have narrowed the choices down to a smaller number. Keep in mind, though, that marketing photos can be deceiving. It is not unusual to have to eliminate a favored comparable after viewing it in person and/or visiting the neighborhood, so it is best not to leave this task until the last minute.

In the extremely rare instance that there is nothing available that can be considered Comparable Replacement Housing, an alternative procedure is to base the calculation of the potential Price Differential Payment on the cost of New Construction. An example where this option would be appropriate would be if the displacement home was recently custom-built to accommodate a specific physical disability, and the cost, effort and time required to modify an existing structure to be functionally equivalent would be unreasonable compared to that of purchasing land and building a new structure. This procedure is described under *Alternative Approaches*.

NUMBER OF COMPARABLE/FUNTIONAL EQUIVALENT DWELLINGS REQUIRED

The Right of Way Agent shall select three (3) comparable dwellings that **fully** meet the requirements of functional equivalence. Every effort shall be made to locate at least three comparable dwellings. However, fewer than three comparables may be used when three are not able to be located and the Relocation Supervisor approves using fewer than three in advance. The Agent must document why three comparables were not obtainable if less than three are used.

VERIFICATION OF COMPARABILITY AND AVAILABILITY

The Right of Way Agent shall contact the listing agent, seller, or landlord of each selected comparable to assure its current availability and to verify that **each** selected comparable meets all the requirements of comparable replacement housing. The Agent shall personally view each of the selected comparables, conducting at least an exterior inspection and taking a photograph of each for the relocation file. After verification, the Agent shall document the factors of comparability for each comparable selected and explain the rationale for selecting the comparable used to determine the housing entitlement of the displacee on the Comparable Properties for Replacement Housing form (*see* Online Forms*, RAAP14 & 14t*) and in the Right of Way Agent's Report regarding the Comparable Search.

The Right of Way Agent should periodically verify that the property is still available by either calling the selling/renting agent or checking the listing. It is a good idea to document the dates that the property was verified to be available.

EVALUATE COMPARABLE/FUNCTIONAL EQUIVALENT PROPERTIES

As the search continues, the Right of Way Agent should begin to recognize trends in what is available and what the general price range will be. Certain homes will stand out as the most comparable and reasonable. When evaluating homes for comparability and functional equivalence, keep in mind the displacee(s) that will they are intended for. Factors such as household income, family size, physical ability levels and age should always be a consideration.

When evaluating options to replace a rental home, it is important to remember that major exterior features such as a pool or a storage shed are not critical to functional equivalence in the same way as for a replacement home that will be purchased. While it is preferable to be able to find properties that offer these features, there will be no breakout value if they are not available.

However, if the replacement home is to be purchased, the need to calculate breakout/carveouts for major exterior features can be a deciding factor. In most cases, it is better to provide a comparable home that does not need breakout/carveouts. This technique is explained in further detail in the section regarding the calculation of a Price Differential Payment.

Once the Agent is able to narrow the available options down to three top choices, the remaining columns on the Comparable Properties for Replacement Housing form (*see* Online Forms*, RAAP14 & 14t*) can be completed. The final decision for a prime comparable on which to base the housing assistance entitlement should be made after the potential payment amounts have been calculated and entered into this form.

While it is not always possible, it is preferable that the prime comparable requires the least amount of breakouts while still arriving at a reasonable potential Price Differential entitlement determination.

REPLACEMENT HOUSING PAYMENT (RHP)

The Replacement Housing Payment (RHP) is actually a combination of 3 separately determined entitlements that are intended for residential owner-occupants that will own their replacement home as well:

1. Incidental Expenses Reimbursement
2. Mortgage Interest Differential Payment (MIDP)
3. Price Differential Payment (PDP)

INCIDENTAL EXPENSES

Eligible incidental expenses are those reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer. Some expenses will be incurred before the closing meeting, such as an inspection or mortgage appraisal. A copy of the report and a receipt or a zero balance invoice can be used for documentation in this situation. If the expenses are paid at closing, the Right of Way Agent must obtain a copy of the *signed* HUD Closing Statement after the closing for the replacement home is complete.

Any expense listed that can be refunded, is paid by the seller, or is related to commission, taxes or homeowner's insurance will not be eligible. Expenses such as title services, title insurance, recording fees, appraisals, mortgage surveys, and credit checks are all eligible for reimbursement. If the displacee(s) had a mortgage at the displacement property, it is possible that some of the costs associated with obtaining a mortgage on the replacement property will be reimbursable. Consult with the Reviewer to make this determination.

The *Relocation Assembly Manual* includes a page that gives instructions and requirements for this payment. Right of Way Agents that are still in the probationary period of their prequalification process must submit the voucher documentation to Central Office for review and pre-approval prior to presenting it to the displacee(s) for signature or discussing the reimbursement amount.

It is possible to prepare an advanced payment (*see* Online Forms*, Agreement for Advanced RHP, RAAP22, 22A & 23*) of a portion of the Incidental Expenses that would be incurred at closing with the use of a Good Faith Estimate. Please note that the full amount of the expected eligible closing costs will not be paid in advance. The Reviewer will assist in determining the appropriate advance amount that could be pre-approved, based on a demonstrated need.

The following example includes a portion of pages 1 and 2 of a closing statement:

J. Summary of Borrower's transaction		
100. Gross Amount Due from Borrower:		
101. Contract sales price		450,000.00
102. Personal property		
103. Settlement Charges to Borrower (Line 1400)		3,988.09
104. Payoff		
105.		
Adjustments for items paid by Seller in advance		
106. City/Town Taxes	to	
107. County Taxes	to	
108. Assessments	to	
109.		
110.		
111.		
112.		
120. Gross Amount Due from Borrower		453,988.09
200. Amounts Paid by or in Behalf of Borrower		
201. Deposit or earnest money		1,000.00
202. Principal amount of new loan(s)		222,000.00
203. Existing loan(s) taken subject to		
204.		
205.		
206.		
207.		
208.		
209. 2011 due Nov 2012 County Tax		1,168.30
Adjustments for items unpaid by Seller		
210. City/Town Taxes	to	
211. County Taxes	01/01/12 to 06/14/12	1,053.39
212. Assessments	to	
213. Seller Title Service Fee		295.00
214. Owners Policy Title Insurance		1,025.00
215.		
216.		
217.		
218.		
219.		
220. Total Paid by/for Borrower		226,541.69
300. Cash at Settlement from/to Borrower		
301. Gross amount due from Borrower (line 120)		453,988.09
302. Less amount paid by/for Borrower (line 220)		(226,541.69)
303. Cash [X] From [ ] To Borrower		227,446.40

L. Settlement Charges					Paid From Borrower's Funds at Settlement
700. Total Real Estate Broker Fees					
Division of commission (line 700) as follows:					
701. $					
702. $					
703.					
704.					
705.					
800. Items Payable in Connection with Loan					
801. Our origination charge			$ 526.75	(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen			$	(from GFE #2)	
803. Your adjusted origination charges				(from GFE #A)	526.75
804. Appraisal fee	to [redacted]			(from GFE #3)	275.00
805. Credit Report	to [redacted]			(from GFE #3)	79.60
806. Tax service	to			(from GFE #3)	
807. Flood certification	to [redacted]			(from GFE #3)	10.00
808.				(from GFE #3)	
809.				(from GFE #3)	
810.				(from GFE #3)	
811.				(from GFE #3)	
900. Items Required by Lender to Be Paid in Advance					
901. Daily interest charges from	06/14/12 to 07/01/12	17 @ $17.490000/day		(from GFE #10)	297.33
902. Mortgage insurance premium for	months to			(from GFE #3)	
903. Homeowner's insurance for	1.0 years to [redacted]			(from GFE #11) POC:B1305.00	
904. Flood Insurance	0.0 years to			(from GFE #11)	
905.				(from GFE #11)	
1000. Reserves Deposited with Lender					
1001. Initial deposit for your escrow account				(from GFE #9)	910.41
1002. Homeowner's insurance	2.000	months @ $ 108.75 per month		$ 217.50	
1003. Mortgage insurance		months @ $ per month		$	
1004. Property taxes				778.88	
County Taxes	4.000	months @ $ 194.72 per month			
1005.				$	
1006.		months @ $ per month		$	
1007. Flood Insurance		months @ $ per month		$	
1008.				$	
1009. Aggregate Accounting Adj.				$ -85.97	
1100. Title Charges					
1101. Title services and lender's title insurance				(from GFE #4)	770.00
1102. Settlement or Closing Fee				$	
1103. Owner's title insurance to [redacted]				(from GFE #5)	1,025.00
1104. Lender's title insurance to [redacted]				$	
1105. Lender's title policy limit	$ 222,000.00				
1106. Owner's title policy limit	$ 450,000.00				
1107. Agent's portion of the total title insurance premium	to [redacted]			$ 768.75	
1108. Underwriter's portion of the total title insurance premium	[redacted]			$ 256.25	
1109. TIEFF ($5.00 per policy)					
1110.					
1111.					
1112.					
1113.					
1200. Government Recording and Transfer Charges					
1201. Government recording charges	to [redacted]			(from GFE #7)	94.00
1202. Deed $ 18.00	Mortgage $ 56.00	Releases $		Other $ 20.00	
1203. Transfer taxes				(from GFE #8)	
1204. City/County tax/stamps	Deed	Mortgage			
1205. State tax/stamps	Deed	Mortgage			
1206. Sales Disclosure/Transfer Fee					
1207.					
1300. Additional Settlement Charges					
1301. Required services that you can shop for				(from GFE #6)	
1302.					
1303.					
1304. 2011 due May 2012 County Tax	to				
1305. 2011 due May 2012 County Tax	to				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)					3,988.09

The Closing Cost Certification (RAAP 20) would be completed like this:

Origination Charge -		$ 526.75
($500 underwriting, $11.75 tax transcripts, $15 wire)		$
Appraisal Fee -		$ 275.00
Credit Report -		$ 79.60
Flood Certification -		$ 10.00
Title Services & Lenders Title Insurance -		$ 770.00
Owner's Title Insurance -		$ 1,025.00
Government Recording -		$ 94.00
		$
SUBTOTAL		$ **2,780.35**
	-	$
credit: Seller Title Service Fee	-	$ 295.00
credit: Owners Policy Title Insurance		$ 1,025.00
		$
	TOTAL	$ **1,460.35**

In the example shown, the Right of Way Agent would need to obtain documentation that:

1. There was a prior mortgage

2. The Origination Charge was a flat fee and not related to the prior or replacement mortgage amounts, as shown on the second line of the Closing Cost Verification worksheet. This would be documented in a letter/email from the lender

Also, two credits were subtracted from the reimbursement total – the closing statement showed that the Seller paid these charges at the closing. These issues should all be explained in the Right of Way Agent's Report for the Incidental Expenses Voucher.

MORTGAGE INTEREST DIFFERENTIAL PAYMENT (MIDP)

Mortgage Interest Differential Payments (MIDP) may be paid as part of a Replacement Housing Payment. This benefit is available only to an owner-occupant of 180 days or more who had a mortgage at the displacement dwelling and will have a mortgage at the replacement dwelling. The payment is made to compensate the displaced person for additional costs experienced because the mortgage rate on the replacement dwelling is greater than that of the displacement dwelling. The prior mortgage must be a valid lien for at least 90 days prior to the initiation of negotiations. More than one qualifying mortgage can be considered.

While this payment is not common, the Right of Way Agent is required to document that information has been gathered to determine if the displacee is eligible. Even if the displacee is not eligible to claim this payment, the Right of Way Agent reports associated with Price Differential and Incidental Expense payments must note the following:

1. Whether there was a mortgage on the displacement home or not
2. Whether or not the mortgage interest on the replacement home was higher than the prior mortgage

If there is an increase in the mortgage rate from the displacement to the replacement home, the Right of Way Agent should obtain a copy of the mortgage AND note from the displacement home, along with evidence of the new mortgage rate (new mortgage and note or Good Faith Estimate). These should be submitted to the Reviewer with the completed Increased Interest Data Form (*see* Online Forms*, RAAP19*) so that the MIDP amount can be determined and approved by Central Office.

The *Relocation Assembly Manual* includes a page that gives instructions and requirements to generate this payment. Right of Way Agents that are still in the probationary period of their prequalification process must submit the voucher documentation to the Reviewer for pre- approval prior to presenting it to the displacee(s) for signature or discussing the reimbursement amount.

It is possible to prepare an advanced payment (*see* Online Forms*, Agreement for Advanced RHP, RAAP22, 22A & 23*) of the Mortgage Interest Differential Payment with the use of a Good Faith Estimate and a signed purchase agreement. The Reviewer will assist in determining if an advance could be pre-approved, based on a demonstrated need.

PRICE DIFFERENTIAL PAYMENT (PDP)

This entitlement represents the difference between the funds received for the acquisition of the displacement dwelling and the amount of money it should require to obtain a functionally equivalent replacement dwelling. The Right of Way Agent will determine what the maximum potential PDP can be based on housing prices in the current real estate market, but the actual payment will be based on the price of the replacement home the displacee chooses, without exceeding the PDP determination.

The *Relocation Assembly Manual* includes pages that provide instructions and requirements for the determination of the potential Price Differential entitlement amount and for the payment of the actual Price Differential Payment:

- Residential 90-Day Notice Pre-Approval
- Price Differential Payment and Owner Last Resort Housing

The *Relocation Assembly Manual* includes a page that gives instructions and requirements to generate this payment. Right of Way Agents that are still in the probationary period of their prequalification process must submit the voucher documentation to the Reviewer for pre- approval prior to presenting it to the displacee(s) for signature or discussing the reimbursement amount.

It is possible to prepare an advanced payment (*see* Online Forms*, Agreement for Advanced RHP, RAAP22, 22A & 23*) with the use of a Good Faith Estimate and a signed purchase agreement.

The Reviewer will assist in determining if an advance could be pre-approved, based on a

demonstrated need.

Administrative Settlements

In the case that a residential owner-occupant negotiates an Administrative Settlement for the amount that will be paid to acquire the displacement dwelling, the potential Price Differential or Rental Assistance entitlement could be subject to change.

Condemnation Cases

Since the dollar amounts used to calculate the Price Differential cannot be determined due to pending condemnation proceedings, a provisional Replacement Housing Payment may be calculated prior to the court proceeding by using the State's maximum offer for the property for computation purposes. Payment in such cases may be made only upon the owner-occupant signing an Agreement for Advanced RHP for Condemnation Cases (*see* Online Forms*, RAAP23*) that the Replacement Housing Payment will be recalculated upon final determination of the condemnation proceeding. If the amount of the court award for the residential property exceeds the amount used in provisional computations, the displaced owner must agree to refund from the court award the amount of the excess. The refund is not to exceed the amount of the Price Differential that was paid in advance. If the displacee will not execute such an agreement, the Price Differential Payment shall be deferred until the case is adjudicated. Then the Price Differential potential entitlement and actual payment will be computed using the court award for the residential property.

In cases other than the total purchase of a dwelling and homesite, and in the absence of the Court's specification of an amount for the residential dwelling and land in the judgment, a proportional computation shall be an acceptable manner of determining the residential portion of the court award. In the proportion, the price paid by the State for the residence would increase or decrease in direct proportion to the increase or decrease in the court award over the Uniform Offer.

Last Resort Housing

If the entitlement is determined to be in excess of $31,000.00, it is considered to be Owner Last Resort Housing (LRH-O). Additional documentation and procedures must be followed in order to gain approval for this type of payment. Last Resort Housing is discussed in further detail in *Special Topics in Housing Entitlements*.

Standard PDP Computation for Determinations and Actual Payments

The potential Price Differential entitlement is determined by subtracting the acquisition price of the displacement dwelling from the cost of the most comparable dwelling selected by the Right of Way Agent. The result is the maximum Price Differential to which the displaced person is entitled. The calculation for the prime comparable is shown on the RHP Computation form (*see* Online Forms*, RAAP15*).

The philosophy of the Replacement Housing Payment is that the displaced person must actually

incur a cost increase in order to claim a Price Differential Payment. He or she will be paid the computed amount of the Price Differential or what is actually spent for a replacement dwelling, whichever is less.

EXAMPLE: Potential Price Differential entitlement determination computation

Example 1

Cost of Replacement Comparable	$50,000.00
Displacement Dwelling Price	- $42,000.00
Price Differential Entitlement	$8,000.00

The displaced person in this example would be informed of a Price Differential Payment potential entitlement of $8,000.00 but would only receive this full amount if the actual replacement property cost $50,000.00 or more.

The actual Price Differential Payment is computed by using the lesser of (1) the cost of a comparable dwelling or (2) the cost of the actual replacement property purchased by the displaced person minus the INDOT amount paid for the displacement property. If the displaced person does not purchase a replacement property costing at least as much as the comparable, he or she will receive a payment that is lower than the determination.

The following is an example of an actual Price Differential Payment when the displaced 90-day homeowner-occupant actually spends less than the cost of the comparable dwelling.

Example 2

Cost of a Comparable Dwelling	$50,000.00
Displacement Dwelling Price	- $42,000.00
Actual Replacement Cost	$48,000.00

Payment will be the lesser of Computation (A) or (B)

(A)

Cost of Comparable	$50,000.00
Displ Dwell Price	- $42,000.00
Price Diff Entitlement	$8,000.00

(B)

Actual Replacement	$48,000.00
Displ Dwell Price -	$42,000.00
Actual Payment	$6,000.00

The Price Differential Payment would be $6,000.00.

Frequently, the displaced person will elect to purchase a replacement property, which costs more than the selected comparable. In these cases, the Price Differential Payment is limited to the computed entitlement based on the comparable. In other words, the maximum payment would be $8,000.00 in the prior example.

PRICE DIFFERENTIAL - ADJUSTMENTS IN CALCULATION

Adjustment of Comparable Dwelling Asking Price

Adjustments of asking price are **not** permitted. The actual list price should be used when determining the Price Differential entitlement amount.

Adjustments to Acquisition Amount for Potential Price Differential Determination

When either the Price Differential entitlement or the actual payment is computed, the following additional circumstances may require that adjustments be made in establishing either the acquisition price or the cost of the comparable dwelling:

- Major Exterior Attributes - Displacement
- Excess Land - Displacement or Actual Replacement
- Mixed-Use - Displacement, Comparable, Actual Replacement
- Partial Acquisitions

1. **Major Exterior Attributes**

   Major appurtenances and land improvements related to residential use may be separated from the value of the residence through a **breakout/carveout**. Examples of these are storage sheds, and swimming pools. Where available dwellings do not have these major appurtenances, the use of those dwellings as comparable is acceptable when the appropriate breakout/carveout is made. An example would be if the displacement dwelling had a swimming pool. The value of the swimming pool would be established via the appraisal and separated from the value of the residence and lot.

   The displacement dwelling in this example is valued at $75,000.00 and has an in ground swimming pool. No available comparable with a pool can be found. However, an otherwise comparable property is available for $73,500.00.

Breakout/carveout Computation of Acquisition Price:

Value of displacement, including pool	$75,000.00
Contributory value of pool	- $5,000.00
Value of displacement, minus pool	$70,000.00

Price Differential Computation:

Determined Cost of Comparable	$73,500.00
Adjusted Price of Displacement	- $70,000.00
Price Differential Payment	$3,500.00

2. Excess Land

If the displacement dwelling is located on a lot that is substantially larger than the typical lot in the project area, an adjustment must be made to the acquisition price for relocation purposes. This adjustment is also necessary to compare similar situations.

As in the previous major exterior attribute computation, the value allocated to the excess land must be determined. If the excess land value were itemized in the approved appraisal report, this would be all of the documentation necessary. If the appraisal report is silent on this item, the Appraisal Section must be requested to supply the contributory value of the excess land before the purchase Price Differential can be computed.

This concept is explained in the following example:

Excess Land Adjustment

The displacement residential property is located on a two-acre site. The appraised fair market value is $65,000.00. Typical lots in the area are one acre in size. The appraiser has allocated $5,000.00 of the fair market value to the excess land in the appraisal report.

Fair Market Value – Displacement	$65,000.00
Value of Excess Land	- $5,000.00
Displacement Residential Value	$60,000.00

Price Differential Computation

Determined Cost of Comparable	$70,500.00
Displacement Residential Value	- $60,000.00
Potential Price Differential Entitlement	$10,500.00

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3. Mixed-Use Properties

An adjustment may also be necessary when the displaced person uses a portion of the displacement property for other than residential use. One example would be a "Mom and Pop" store with living quarters behind or above the store.

An adjustment is necessary in a mixed-use situation because by law a supplement can only be paid on the residential use portion of the displacement property. Although the Price Differential Payment could be computed using a similar, mixed-use property, if available, adjustments would be necessary to both the displacement property and to the selected comparable properties. It is much easier to carve-out the residential portion and compare it to comparable residential units.

The mixed-use adjustment can be perplexing because the residential-use value may be quite difficult to establish. For example, if the subject property is a drug store and the

displaced person and his family occupies an apartment above the store, in all likelihood the majority of the fair market value for the property would be attributable to the commercial portion. If the market approach were used in establishing the fair market value and the comparables had similar apartments, the appraisal would shed no light on the value of the residential-use portion.

One answer may be to use the income approach. If the appraiser has provided the market rent for the store and for the apartment, the income approach may be used even if it was not relied upon in the final correlation of value. If the market rent for the store were shown at $750.00 per month and the apartment at $250.00 per month, the apartment would represent 25% of the gross income for the entire property.

($250.00/$1,000.00 = 25%). The appraisal section should be consulted to establish the value of the residential unit, and the file should be documented with the factors used in establishing the value.

The same situation occurs when the displaced person owns a duplex and occupies one of the units. It is necessary to establish the value of the owner-occupied unit. The Right of Way Agent should seek comparable duplex properties. However, since a supplement cannot be paid on the investment portion of the property (the portion not occupied by the owner), the Replacement Housing computation must be based solely on the value of the unit the displaced person occupies. It should disregard that portion of the asking price of the unit that would be rented to others.

a. Mixed-Use (Non-Residential) Adjustment

The displaced person owns and occupies the second floor apartment above a drug store which he or she also owns. The entire property has been valued at $200,000.00. The market rent is $750.00 per month for the drug store and $250.00 per month for the apartment.

Fair market value of entire property	$200,000.00
Drug Store Value ($750/$1,000 = 75%)	- $150,000.00
Displacement Residential Value	$50,000.00
Asking Price of Available Property	$220,000.00
Store Portion Value ($220,000 x 75%)	- $165,000.00
Comparable Residential Value	$55,000.00
Comparable Residential Value	$55,000.00
Displacement Residential Value	- $50,000.00
Potential Price Differential Entitlement	$5,000.00

b. Mixed-Use (Residential) Price Differential Computation

The displaced person occupies one side of a duplex. He or she rents the other side to a tenant.

Displacement Unit Residential Breakout	$50,000.00
Breakout value comparable duplex unit	$58,000.00
Displacement Unit Residential Breakout -	$50,000.00
Potential Price Differential Entitlement	$8,000.00

4. Partial Acquisitions

If the project limits are such that it is not necessary to acquire the entire property, a partial acquisition may be appropriate. Most partial acquisitions do not involve a displacement. However, this is not always the case. Displacement may be necessary because of the elimination of access, the acquisition of a septic system or well which cannot be replaced on the remaining property or the dwelling itself may fall within the area required for the project.

If the remainder constitutes a buildable lot and the State makes an offer to purchase the remainder, the fair market value of the remainder attributable to a residential lot is added to the acquisition cost of the displacement dwelling for purposes of computation.

To illustrate this concept, say the subject property is a lot 125'x 150'. Even though only 10 feet is needed from the front of the property, the dwelling will be purchased by the State. The 125'x 140' remainder is a buildable lot.

Value Before R/W Purchase	$60,000.00
Value of Remaining Land after R/W Purchase	- $12,000.00
Displacement Residential Value	$48,000.00

If the State makes an offer to purchase the remaining buildable lot and the owner refuses to sell, the $12,000.00 value of the lot is added to the R/W acquisition price for Price Differential computation purposes:

$48,000.00 + $12,000.00 = $60,000.00

In the case of an uneconomic remnant, which is not a buildable lot, the value of such remnant may also be added to the State's acquisition price. However, if the displaced person refuses to sell the uneconomic remnant to the State, the value may not be used in the computation for Price Differential payments.

Breakout/Carveout of Actual Price Differential Payment

As already discussed, a displaced owner-occupant must purchase and occupy a decent, safe, and sanitary replacement property costing at least as much as the State's comparable to claim the full Price Differential entitlement. If a replacement were acquired for less, then the Price Differential Payment would be reduced accordingly.

There is also another requirement. The replacement must be reasonably similar in terms of acreage and land use type. If the displacement residence was purely residential, the replacement must be residential. Any portion of the actual replacement cost that is for other than residential use must be disregarded in the actual Price Differential Payment computation. If the displacement property was a standard quarter-acre lot and the replacement property was 3 acres, the cost for the excess acreage must be disregarded. This breakout/carveout method will apply if the displaced person purchases either excess land or a mixed-use property including a duplex. If this situation arises, consult with the Reviewer.

In order to avoid problems and misunderstandings, the possibility of an actual replacement breakout/carveout should be thoroughly discussed with the displaced person beforehand.

PRICE DIFFERENTIAL - ALTERNATIVE APPROACHES

New Construction – Potential Price Differential Entitlement Determination

The estimated replacement cost of a new comparable dwelling on a comparable homesite can be used in computing a Price Differential entitlement determination provided that no comparable dwellings are available, nor will any become available in the foreseeable future. In such cases, housing that is comparable to the dwelling being acquired in all aspects except that it is not reasonably accessible to the displacee's place of employment can be used in computing the Price Differential entitlement determination if the displacee gives written concurrence in its use. Such written concurrence should be documented in the parcel file. It must also be explained to the displacee that such housing is not fully comparable and that he or she would not be required to accept its use in the entitlement determination. When "comparable(s)" properties are not available, the estimated cost to build a new dwelling on a comparable homesite would be appropriate for computing the relocation housing entitlement. Estimates from two contractors should be obtained to determine the cost of a new dwelling. The Right of Way Agent should proceed as follows:

1. Contact two builders and furnish the following information for the cost estimate:
   a. Description of the dwelling including number of rooms, baths, amount of living space, type of construction, etc. (Major appurtenances such as swimming pools, greenhouses, or additional garages, etc. will not be included in the dwelling description or cost estimate)
   b. Description of the home site, drive, and typical landscaping
   c. Description of the utilities such as sanitary facilities, water supply, electric, etc.

   NOTE: If only one bid is obtainable from a building contractor, the Right of Way Agent must request from the Appraisal Section an updated cost approach for the subject dwelling.

2. The cost estimate, excluding major appurtenances, will be used as the amount determined as necessary to purchase a comparable dwelling. The difference between this amount and the State's offer or breakout/carveout will become the Price

Differential Payment entitlement.

3. When the cost estimate procedure is used instead of the comparable method, the displacee shall not be required to vacate his dwelling unit until he or she has either by himself obtained the right of possession of replacement housing, or he/she has been offered comparable housing which is available for his immediate occupancy. If the displacee expresses an interest in a dwelling which differs from the displacement dwelling, referrals may be given to the type of dwelling which the relocatee desires.

New Construction - Actual Price Differential Payment

To determine an actual Price Differential Payment based on a newly constructed replacement home, the Right of Way Agent must use the cost of the replacement home. This cost should include costs to purchase the lot, prep the ground for building, construction, and any construction permits or inspections required by state and local regulations or by the mortgage company. All costs must be documented either through bids or invoices and shown to be actual, reasonable, and necessary in order to be included in the calculation.

The final total is used in the same way as the sale price of an existing home would be used in a traditional Price Differential Payment:

Land	60,000.00
Construction	+ 200,000.00
Permits/Inspections	+ 5,000.00
Ground Prep	+ 35,000.00
Cost of Replacement Home	$300,000.00

Payment will be the lesser of Computation (A) or (B)

(A)		(B)	
Cost of Comparable	$250,000.00	Actual Replacement	$300,000.00
Displ Dwell Price	- $230,000.00	Displ Dwell Price -	$230,000.00
Price Diff Entit	$20,000.00	Difference	$70,000.00

Actual Price Differential Payment cannot exceed the potential entitlement calculation. **Actual payment will be $20,000.00.**

New construction of a replacement home involves additional steps if the displacee obtains a construction loan that must be converted to a mortgage after the home is complete.

Many times, the displacee will request an advance on the Price Differential Payment to cover costs before the home construction is complete. An Advanced Price Differential Payment must be pre-approved by INDOT Central Office. The displacee must sign an Agreement for Advanced RHP (*see* Online Forms*, RAAP22 & 22a*) and submit a signed construction contract and a deed to the lot before the advance may be released. Lastly, an explanation of the need for the advance must be

documented in a Right of Way Agent's Report. The Agent should take care to explain to the displacee that while funds are being disbursed prior to all the Price Differential requirements being met, they are still expected to meet the requirements within the allotted time, or they may be asked to refund the full amount.

Owner-Retention of the Displacement Dwelling - Actual Price Differential Payment

If a displaced homeowner-occupant of 90-days or more elects to retain a dwelling and move it to a site which he or she already owns or purchases, the potential Price Differential Entitlement is determined using the standard three comparable method. The cost of a comparable replacement dwelling is established in the usual manner. If the relocated dwelling becomes the displaced person's replacement property, it will be necessary to determine the actual cost of the replacement property including the retention cost, moving and restoration expenses, and the replacement land value.

Certain limitations must be considered. First, the costs for moving, restoring, improving to DS&S condition, etc. must all be actual and reasonable costs. Care should be taken those extra items such as for finishing the basement when the original dwelling did not enjoy this feature are not included in the restoration total.

In owner-retention situations, no Price Differential Payment can be made unless the total replacement housing costs such as the cost of the lot, ground prep, moving, and restoring exceeds the amount the State paid for the displacement property. Experience has shown that in the vast majority of cases, the displacee will spend less than the amount the State paid for the displacement property.

RENTAL ASSISTANCE PAYMENT (RAP) DETERMINATION

The Rental Assistance Payment (RAP) is intended for displacees that had rented or owned the displacement home for at least 90 days and plan to rent their replacement home. It represent the difference between what it cost to rent and pay utilities in the displacement home and what it will cost to rent and pay utilities in a comparable replacement home for a period of 42 months. While the search for comparable housing will follow the same procedure, the methods and limits for arriving at a potential and actual entitlement amount will differ between individuals who were tenants and owners of the displacement dwelling.

The *Relocation Assembly Manual* includes pages that provide instructions and requirements for the determination of the potential Rental Assistance Payment amount and for the payment of the actual Rental Assistance Payment:

- Residential 90-Day Notice Pre-Approval
- Rental Assistance Payment and Tenant Last Resort Housing

When informing the displacee(s) of the Rental Assistance determination, the Right of Way Agent shall explain that referrals to rental properties will be made, as they become available. Since the

referrals are for the rental of replacement housing, the rental rates of the referrals shall be within the financial means of the displacee.

The Right of Way Agent shall in no way act as an agent for any landlord or Real Estate Broker. He or she will be careful in all conversations to avoid favoring one landlord over another in the recommendations made to the displacee.

Once the actual payment has been calculated based on the replacement home that has been rented, the full amount of the Rental Assistance Payment vests to the displacee immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing, except in the event of the death of a displaced person and a non- disbursed portion of a Rental Assistance Payment remains to be paid. (*see Payment After Death for further information*)

The *Relocation Assembly Manual* includes a page that gives instructions and requirements to generate this payment. Right of Way Agents that are still in the probationary period of their prequalification process must submit the voucher documentation to the Reviewer for pre- approval prior to presenting it to the displacee(s) for signature or discussing the reimbursement amount.

It is possible to prepare an advanced payment with the use of a signed lease agreement. The Reviewer will assist in determining if an advance could be pre-approved, based on a demonstrated need.

CONVERSION OF RENTAL ASSISTANCE FOR HOME PURCHASE

Residential tenant-occupants may choose to take a Downpayment Assistance Payment in lieu ofa Rental Assistance Payment. This topic is discussed in more detail later in *Downpayment Assistance*.

If a residential owner-occupant or a tenant-occupant displacee takes a Rental Assistance Payment that does not exhaust their potential Rental Assistance entitlement determination, then later choose to purchase a house within the 12 months as defined in the Entitlement Letter and 90-day Notice, they may be able to claim the remaining balance as a Downpayment Assistance or Price Differential Payment, depending on their prior occupancy status. If this situation occurs, contact the Reviewer to verify eligibility.

CALCULATING UTILITIES

The average utility costs are calculated on the Utility Allowance sheet that corresponds to the county and single-family/multi-family status of the dwelling. The most up-to-date Utility Sheets can be found on the IHDCA site: http://www.in.gov/myihcda/2430.htm. Each sheet provides a space to add the various utility types and includes a space for identifying information. A utility sheet should be completed for the displacement dwelling and for each dwelling that is evaluated for comparability. Each dwelling will vary in terms of type of fuel (gas, electric, propane, etc.), water source (well, city) and method of waste disposal (sewer, septic). Please note that the "Water" and "Sewer" line items may be included in the rent for some locations and do not need

to be counted twice. The "Trash," "Range/Microwave," "Refrigerator" and "Other" line items are not used in this calculation.

The following example shows a Utility Allowance Sheet for Marion County in a multi-family residence that has 3 bedrooms and uses natural gas for heating the home, the water heater, and for cooking.

Allowances for Tenant-Furnished Utilities and Other Services

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-016
(exp. 9/30/2010)

See Public Reporting Statement and Instructions on back

Locality	Unit Type	Date (mm/dd/yyyy)
Marion County	Multi Family	4/1/2012

Utility or Service		Monthly Dollar Allowances					
		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas	13	18	23	28	36	40
	b. Bottle Gas	77	101	138	177	227	265
	c. Oil / Electric	30	39	47	55	68	76
	d. Coal / Other	86	114	153	189	246	264
Cooking	a. Natural Gas	1	2	3	4	5	6
	b. Bottle Gas	10	14	18	23	29	35
	c. Oil / Electric	4	7	7	8	10	11
	d. Coal / Other	0	0	0	0	0	0
Other Electric		26	32	38	44	53	59
Air Conditioning		7	10	13	15	17	19
Water Heating	a. Natural Gas	17	19	21	23	26	28
	b. Bottle Gas	26	38	50	64	82	93
	c. Oil / Electric	15	17	21	24	27	30
	d. Coal / Other	0	0	0	0	0	0
Water		13	16	18	20	23	28
Sewer		29	29	29	29	29	31
Trash Collection		0	0	0	0	0	0
Range/Microwave		7	7	7	7	7	7
Refrigerator		6	6	6	6	6	6
Other -- specify	Stormwater	9	9	9	9	9	9

Actual Family Allowances To be used by the family to compute allowance.
Complete below for the actual unit rented.

Name of Family: Smith Code 2222 Parcel 123(03)

Address of Unit: 123 Apartment Street, Unit 3
Indianapolis, IN 46200

Number of Bedrooms: 3

Utility or Service	per month cost
Heating	$ 28.00
Cooking	$4.00
Other Electric	$44.00
Air Conditioning	$15.00
Water Heating	$23.00
Water	(well)
Sewer	(septic)
Trash Collection	(included)
Range/Microwave	
Refrigerator	
Other	
Total	$ 114.00

This documentation of utility computations at displacement, comparable, and replacement dwellings must be submitted with all rental entitlement determinations and Rental Assistance Payment voucher assemblies. When all utilities are included in the rent for a dwelling, the rental amount that includes all utilities may be used for rental assistance entitlement and payment purposes instead of Utility Allowance computations.

RENTER TO RENT

The Rental Assistance Payment for tenant displacees is limited to $7,200.00. If the potential entitlement determination exceeds this amount, it is considered to be Tenant Last Resort Housing (LRH-T). Additional documentation and procedures as laid out in the *Relocation Assembly Manual* must be followed in order to gain approval for this type of payment. Last Resort Housing is discussed in further detail later in *Special Topics in Housing Entitlements*.

RAP Computations

Once the comparable search has been completed and a prime comparable rental dwelling has been identified through the use of the Comparable Properties for Tenant Replacement Housing (*see* Online Forms, *RAAP14t*), the potential Rental Assistance Payment amount is determined by comparing the cost to rent and pay average utilities for the comparable rental home to the cost of renting and pay average utilities for the displacement rental dwelling. The calculations for the prime comparable will be shown on the RAP-DAP Worksheet (*see* Online Forms, *RAAP15a*).

The following is an example of a simple Rental Assistance computation for a potential entitlement followed by the actual payment eligibility based on the replacement rental home that was chosen:

Potential Rental Assistance Entitlement

Rent and Utilities for a comparable dwelling	$864.00 ($750 rent + $114 utilities)
Displacement Dwelling Rent and Utilities -	$742.00 ($650 rent + $92 utilities)
Monthly Difference	$122.00
Monthly Difference	$122.00
42 months	x 42
Potential Rental Assistance Entitlement	$5,124.00

Actual Rental Assistance Payment

Rent and Utilities for replacement dwelling	$875.00
Displacement Dwelling Rent and Utilities -	$742.00
Monthly Difference	$133.00
Monthly Difference	$133.00
42 months	x 42
	$5,586.00

Actual Rental Assistance Payment cannot exceed potential entitlement determination. **Actual payment will be $5,124.00

In the prior example, the rent and utilities for the actual replacement dwelling exceeded that of the prime comparable that was used to determine the Rental Assistance eligibility. The actual Rental Assistance Payment cannot exceed the eligibility determination.

The following example shows what the payment will be if the actual replacement rent and utilities is *less* than that of the prime comparable:

Potential Rental Assistance Entitlement

Rent and Utilities for a comparable dwelling	$864.00 ($750 rent + $114 utilities)
Displacement Dwelling Rent and Utilities -	$742.00 ($650 rent + $92 utilities)
Monthly Difference	$122.00
Monthly Difference	$122.00
42 months	x 42
Potential Rental Assistance Entitlement	$5,124.00

Actual Rental Assistance Payment

Rent and Utilities for replacement dwelling	$802.00
Displacement Dwelling Rent and Utilities -	$742.00
Monthly Difference	$60.00
Monthly Difference	$60.00
42 months	x 42
	$2,520.00

Actual Rental Assistance Payment is less than the potential entitlement determination. **Actual payment will be $2,520.00.

The comparable and the replacement home should be reasonably within the financial means of the displacee(s). While a higher rent on the comparable or the replacement could yield a higher Rental Assistance Payment, once that payment is spent, the tenant is still responsible for the rental rate. If it is unreasonably high, this could lead to financial distress in the long-run. The Right of Way Agent can point this out as part of their advisory services while the displacee searches for their replacement housing.

Financial Means Test and 30% Rule

The Right of Way Agent must show that the prime comparable home is within financial means for every residential tenant displacee. This is determined by obtaining income information in the form of tax records and pay stubs for the household. The Agent will then look at the URA Income Limits chart (www.huduser.org/portal/datasets/ura) to learn if the household qualifies as "low income." If the household income is lower than the amount listed in the chart under the appropriate county and household size, then the Agent must apply the "30% rule."

The "30% rule" requires that if the cost of renting a dwelling and paying average utilities exceeds 30% of the total household income, the Agent must use a different method to determine the potential Rental Assistance Payment amount.

The following example goes through the steps that are required for a Low Income Rental Assistance determination:

Determination of Low Income Status
Potential Rental Assistance Entitlement if not Low Income: $5,124.00

Occupant 1 income	$12,000.00/year
Child support	$1,600.00/year
Occupant 2 income	+$12,000.00/year
Total Income	$25,600.00/year

3 occupants – 2 adults and one minor
Displacees live in Indianapolis, IN

Chart Lookup: Total Income is less than $46,900.00 –
displacees qualify as "low income"
levels can change – refer to current chart

30% Rule
$25,600.00/year ÷ 12 months/year = $2,133.00/month

$2,133.00/month x 0.3 (30%) = $640.00/month can be spent on rent & utilities

Potential Rental Assistance Entitlement for Low Income

Rent and Utilities for a comparable dwelling	$864.00
30% of Income	- $640.00
Monthly Difference	$224.00

Monthly Difference	$224.00
42 months	x 42
Potential Rental Assistance Entitlement	$9,408.00 (Last Resort Housing)

Actual Rental Assistance Payment

Rent and Utilities for replacement dwelling	$855.00
30% of Income	- $640.00
Monthly Difference	$215.00

Monthly Difference	$215.00
42 months	x 42
Actual Rental Assistance Payment	$9,030.00 (Last Resort Housing)

In the prior example, the Low Income Rental Assistance Entitlement limit is $9,408.00, but the actual replacement only requires a Rental Assistance Payment of $9,030.00. Because this payment exceeds the $7,200.00 Last Resort Housing threshold, it will require further documentation and justification as indicated in the *Relocation Assembly Manual*.

If the displacee receives welfare assistance that designates an amount for shelter and utilities, the base monthly rent will be considered within their financial means, and the Rental Assistance Payment will be computed in accordance with this amount. If the public assistance does not designate a specific amount for rent the rental assistance computation will be based on the monthly rent and estimated average monthly cost of utilities for the DS&S replacement dwelling actually occupied by the displaced person. However, no person shall receive a relocation payment if that person receives a payment under Federal, State, or local law that is determined to have the same purpose and effect as the relocation payment.

In the process of collecting household income information, the Agent must take care to obtain all relevant information and to disregard sources of income that cannot be used. Please note that certain types of income must be included in the total, while other types of income are prohibited from inclusion. For instance, alimony and child support are considered part of the household income, but food stamps cannot be included as income in determining relocation entitlements. Refer to the FHWA website for a list of Federally mandated exclusions from income.

Universal Application Required

The Financial Means Test must be investigated for every tenant household that is displaced. Regardless of the results, it must be documented in LRS and in a Right of Way Agent's report that income information was requested and whether or not the household qualifies as "low income." The Comparable Properties for Tenant Replacement Housing (*see* Online Forms*, RAAP14t*) also has a space to enter either the 30% calculation or to place a notation of "see RAAP8" to refer to a Right of Way Agent Report that shows the displacee does not qualify for the 30% Rule.

On occasion, a displacee will refuse to provide income information or is delayed in providing the information before the potential Rental Assistance entitlement determination needs to be made. When this happens, the Right of Way Agent must prepare a Right of Way Agent's Report and insert a note in LRS that states that the Rental Assistance determination was made without income information, and that if the displacee(s) are able to provide information that would qualify them for low income consideration within the 18 months allowed for claims, the determination will be reviewed for possible adjustment. The Report must be shared with the displacee(s) and should be signed by them.

OWNER TO RENT

On occasion, a residential owner-occupant displacee will find that it is in their best interest to rent their replacement home rather than purchase a replacement. To accommodate this option, the Right of Way Agent must first determine what the potential Price Differential entitlement would be. This will ultimately set the limit for the potential Rental Assistance entitlement, and in turn, the actual

Rental Assistance Payment. Once the potential Price Differential entitlement has been set, the Right of Way Agent must go through the process of determining a potential Rental Assistance entitlement.

The owner-to-rent entitlement determination procedure requires two comparable searches: one for a home to purchase, and one for a home to rent, and the use of all the following forms:

1. Comparable Properties for Replacement Housing (RAAP14)
2. Comparable Properties for Tenant Replacement Housing (RAAP14t)
3. RHP Computation (RAAP 15)
4. RAP-DAP Worksheet (RAAP15a)

This procedure also requires that the Agent obtain an Economic Rent statement from the Review Appraiser. This figure will be used in place of a displacement rent amount since the displacement dwelling was owned, not rented.

The Rental Assistance Entitlement determination for owner-occupant displacees who plan to rent their replacement differs from that of tenant-occupant displacees who will rent their replacement in that the Financial Means Test or 30% Rule does not apply.

The *Relocation Assembly Manual* includes a page that gives instructions and requirements to generate this payment. Right of Way Agents that are still in the probationary period of their prequalification process must submit the voucher documentation to the Reviewer for pre- approval prior to presenting it to the displacee(s) for signature or discussing the reimbursement amount.

It is possible to prepare an advanced payment with the use of a signed lease agreement. The Reviewer will assist in determining if an advance could be pre-approved, based on a demonstrated need.

The following example shows the calculation for a potential Rental Assistance entitlement determination and actual Rental Assistance Payment for an owner that will rent their replacement home.

Potential Price Differential Entitlement

Cost of Replacement Comparable	$50,000.00
Displacement Dwelling Price	- $42,000.00
Price Differential Entitlement	$8,000.00

Potential Rental Assistance Entitlement

Rent and Utilities for a comparable dwelling	$864.00 ($750 rent + $114 utilities)
Economic Rent plus Utilities	- $742.00 ($650 rent + $92 utilities)
Monthly Difference	$122.00

Monthly Difference	$122.00
42 months	x 42
Potential Rental Assistance Entitlement	$5,124.00

Actual Rental Assistance Payment

Rent and Utilities for replacement dwelling	$875.00
Economic Rent plus Utilities	- $742.00
Monthly Difference	$133.00

Monthly Difference	$133.00
42 months	x 42
	$5,586.00

Potential and Actual Rental Assistance Payment do not exceed potential Price Differential Entitlement determination of $8,000.00, but the Actual Rental Assistance Payment cannot exceed the potential Rental Assistance Entitlement determination of $5,124.00. **Actual payment will be $5,124.00

In the prior example, the Rental Assistance Payment amount was limited by the potential entitlement determination. If the actual replacement requires a lower Rental Assistance Payment than the entitlement determination, the lower amount will be the actual payment. Please note that a Rental Assistance Payment to a residential owner-occupant displacee does not fall into Last Resort Housing at $7,200.00. The Last Resort Housing threshold for all residential owner-occupant displacees is still $31,000.00. If the Rental Assistance Payment exceeds $31,000.00, it will be considered Last Resort, and further requirements and procedures as laid out in the *Relocation Assembly Manual* and in the Last Resort Housing section in *Special Topics in Housing Entitlements*.

Conversion of remaining payment

On occasion, a displacee will take a Rental Assistance Payment that does not exhaust their potential Rental Assistance entitlement determination, and then choose to purchase a house within the 12 months allotted in the Entitlement Letter and 90-day Notice. In these situations, the displacee may be able to claim the remaining balance as a Downpayment Assistance or Price Differential Payment, depending on their prior occupancy status. If this occurs, contact the Reviewer to verify eligibility.

DOWNPAYMENT ASSISTANCE

Downpayment Assistance Payments are available to residential tenant displacees only. If a residential tenant displacee chooses to purchase their replacement home, they have the option of applying their Rental Assistance entitlement towards that purchase and to pay for any eligible incidental or closing costs that are incurred as part of the purchase.

To document and calculate the total cost of the replacement home, including the price of the home and any incidental and closing cost amounts, the Right of Way Agent should collect any paid invoices/receipts and a copy of the signed closing statement from the purchase of the home. Eligible incidental and closing costs follow the same criteria that are followed for a *Replacement Housing Payment*, as explained earlier in this chapter. Of course, a residential tenant displacee will not be eligible to claim reimbursement for any closing/incidental costs associated with a mortgage (or a Mortgage Interest Differential Payment) because as a tenant, they did not have a prior mortgage. **The Right of Way Agent must be able to document that the entire Downpayment Assistance Payment will be applied toward principal reduction of the cost of the home and/or to eligible incidental or closing costs before the payment can be released.**

The displacee is potentially eligible to claim up to $7,200.00, even if their Rental Assistance Entitlement determination is a lesser amount. If the Rental Assistance Entitlement determination is higher than $7,200.00, they can potentially claim up to whatever that determination amount is. The actual Downpayment Assistance Payment is limited by the amount that the displacee spends on the replacement home and eligible incidental/closing costs. These calculations will be shown on the RAP-DAP Worksheet (*see* Online Forms*, RAAP15a*).

It is important to explain this option to all residential tenant displacees. They should also understand that if they initially rent a replacement, but do not exhaust their entire Rental Assistance Entitlement determination on the initial rental and later decide to purchase a replacement within the 12-month limit set by the Entitlement Letter and 90-Day Notice, they may be able to claim the remaining balance of the Rental Assistance Entitlement determination as Downpayment Assistance. If this situation occurs, contact the Reviewer to verify eligibility.

The *Relocation Assembly Manual* includes a page that gives instructions and requirements to generate this payment. Right of Way Agents that are still in the probationary period of their prequalification process must submit the voucher documentation to the Reviewer for pre-approval prior to presenting it to the displacee(s) for signature or discussing the reimbursement amount.

It is possible to prepare an advanced payment with the use of a signed purchase agreement. The Reviewer will assist in determining if an advance could be pre-approved, based on a demonstrated need.

The following example shows how an actual Downpayment Assistance Payment should be calculated:

Potential Rental Assistance Entitlement

Rent and Utilities for a comparable dwelling	$864.00 ($750 rent + $114 utilities)
Displacement Dwelling Rent and Utilities -	$742.00 ($650 rent + $92 utilities)
Monthly Difference	$122.00
Monthly Difference	$122.00
42 months	x 42
Potential Rental Assistance Entitlement	$5,124.00

Potential Rental Assistance Entitlement determination is less than the minimum Downpayment Assistance Payment amount of $7,200.00. **The potential Downpayment Assistance Payment amount is $7,200.00.

Actual Downpayment Assistance Payment

Price of Replacement Home	$50,000.00
Closing Costs	+ $3,000.00
Total Cost of Replacement	$53,000.00

Potential Downpayment Assistance Payment of $7,200.00 is less than the Total Cost of the replacement home. **Therefore, the displacee is eligible to claim the full amount of $7,200.00 as Downpayment Assistance, to be paid toward the principal of $50,000 and the $3,000 in eligible closing costs**.

The prior example shows a situation where the cost of the replacement home exceeds the maximum Downpayment Assistance Payment. It is possible, however that the Rental Assistance determination (or more likely, the Tenant Last Resort Housing determination) amount is higher than the Total Cost of the replacement home that is purchased. In that case, the Downpayment Assistance Payment will be limited to the actual cost that is calculated.

The following example illustrates a payment calculation when the cost of the replacement home does not exceed the potential Downpayment Assistance entitlement that is available:

-

Potential Rental Assistance Entitlement <u>for Low Income</u>

Rent and Utilities for a comparable dwelling	$864.00
30% of Income	- $400.00
Monthly Difference	$464.00
Monthly Difference	$464.00
42 months	x 42
Potential Rental Assistance Entitlement	$19,488.00 (Last Resort Housing)

Potential Rental Assistance Entitlement determination exceeds the minimum Downpayment Assistance Payment amount of $7,200.00. **The potential Downpayment Assistance Payment amount is $19,488.00.

Actual Downpayment Assistance Payment

Price of Replacement Home	$15,000.00
Closing Costs	+ $2,000.00
Total Cost of Replacement	$17,000.00

Potential Downpayment Assistance Payment of $19,488.00 exceeds the Total Cost of the replacement home. **Therefore, the displacee is eligible to claim $17,000.00 as the amount paid for the Total Cost of the home for Downpayment Assistance, to be paid toward the principal of $15,000 and the $2,000 in eligible closing costs**.

SPECIAL TOPICS IN HOUSING ENTITLEMENTS

The nature of the relocation program is that every situation is different. Often times, it is prudent to explore a creative solution that is still within the bounds of Federal, State and local regulations. The following options can be used when the standard methods do not present a satisfactory solution.

LAND CONTRACT FOR REPLACEMENT HOUSING

Any displacee making a claim for a Replacement Housing Payment based on purchasing a replacement home through a Land Contract must provide documentation of the contract and of proof of prior ownership. A title search will be required as well.

LAST RESORT HOUSING

GENERAL DEFINITION AND USE

The Last Resort Housing provisions of the Uniform Act were designed to assure that comparable replacement housing could be made available to a displaced person when such housing could not otherwise be provided within the person's financial means. With the issuance of the government wide common rule in 1986, Last Resort Housing provisions became a part of the regulations. In the 1987 amendments to the law, Congress strengthened the Last Resort housing provisions and required justification on a case-by-case basis.

The Uniform Act states in Section 206(a) that:

> *The head of the displacing agency may take such action as is necessary or appropriate to provide such dwelling by use of funds authorized for such project...and may use this section to exceed the maximum amounts which may be paid...on a case-by-case basis for good cause…*

There are three (3) main characteristics that distinguish Last Resort Housing from regular provisions for replacement housing:

1. Monetary Limits – There are no prescribed monetary limits when using Last Resort Housing. The normal program limits of $31,000.00 for owners and $7,200.00 for tenants do not apply. Last Resort Housing is also available to occupants of less than 90 days or to any person legally in occupancy on a parcel on the date of acquisition. The monetary limits are based on the market availability of comparable housing affordable to the displaced person not exceeding 30% of his or her gross income from all sources or available at the same price as the displacement dwelling, whichever is greater. Once Last Resort Housing has been determined to be necessary, the State may spend whatever is necessary to provide the needed housing. This does not mean that the State is not

constrained by the overall need to conserve public funds by assuring cost- effective solutions. The State should always look at a variety of options before it decides to make a large relocation payment of any kind or involve itself in a costly or time consuming solution.

2. Administrative Procedures – The use of Last Resort Housing is outside the scope of regular relocation activity and requires a special need determination. This process is usually quite simple. When the State makes the determination that there is a reasonable likelihood that the project cannot be advanced to construction and completion in a timely manner because comparable replacement housing is not available to displaced person(s), the State may, on a case-by-case basis and for good cause, be authorized to take additional measures to provide the necessary housing. If there is a general lack of availability of replacement dwellings for displaced persons, the "good cause" can be for the project rather than individual cases.

3. Method – Last Resort Housing enables the State to take direct action in the housing market by constructing new homes, building additions to existing homes, rehabilitating existing homes, developing special financing arrangements, etc. In contrast, the regular relocation program limits the use of existing housing units available on the market in determining Replacement Housing entitlements. The Last Resort Housing provisions permit the use of any method legal under State law that will resolve the housing problem in a cost-effective manner.

Last Resort Housing is used more frequently to resolve replacement housing problems when there is a unique housing need or when the cost of available comparable housing would result in payments in excess of the statutory payment limits of $7,200.00 or $31,000.00.

There have been very few projects in Indiana that have necessitated Last Resort Housing other than payments exceeding the maximum Replacement Housing Payments provided by law.

The following generalizations can be made about the use of Last Resort Housing:

1. Personal circumstances such as age, health, family size, etc. influence the need for Last Resort Housing

2. The need for Last Resort Housing cuts across economic lines

3. The use of Last Resort Housing may involve a single case on a project

4. Where more than one case occurs on a project, these occurrences are generally due to unrelated circumstances

CONDITIONS REQUIRING HOUSING OF LAST RESORT

Last Resort Housing is necessitated by three broad classes of circumstances:

1. Displaced persons with needs for specialized or unusual housing that are not readily found in the housing market

2. Shortages or competing demands for housing which increases prices or limits the supply of units available to displaced persons

3. Displaced persons failing to meet the length of occupancy requirements

The open-ended nature of possible Last Resort Housing alternatives makes it impossible to provide an exhaustive list of conditions for its use. One way to illustrate how the program may be used is to consider the wide range of justifications for actual cases. The following list summarizes some of these basic situations or circumstances that may require the use of Last Resort Housing:

1. Displacement dwelling has 5 bedrooms. No comparable available on market within regular payment limits.

2. Large family size; few four and five bedroom homes available on the market.

3. Displacement dwelling is in area that has few properties available for sale.

4. Displacement dwelling is in area with rapidly escalating prices. Comparable dwellings within usual payment limits are no longer available.

5. Low-income family paying modest rent for a substandard unit.

6. Displaced person who uses a wheelchair needs a house that can accommodate a wheelchair, i.e. wide doors, special kitchen and bathroom facilities. Last Resort Housing funds can be used to make a home available that already has these features, or, if none are available, to make modifications to an otherwise comparable home.

7. Elderly person displaced from a small shed with no heat or utilities where he/she paid no rent and has income only from Social Security.

8. Emergency room nurse who needs to be within 15 minutes of the hospital as a condition of employment. No comparable dwelling is available within that critical radius and the financial means.

9. Family that needs an isolated yard to accommodate the needs of their child that has an emotional/behavioral disability. None is available within regular benefit limits.

10. Family with a poor credit rating that cannot find a landlord willing to rent to them.

11. Elderly person who is dependent on a relative living nearby for care and living needs. The only available housing was priced too high for regular payment limits.

12. Tenants of less than 90 days whose income is considered "low income" based on the HUD schedule and are unable to afford replacement housing because the cost of all available housing exceeded thirty percent of the tenant's income.

13. For others, the calculation will be rent to rent.

METHODS USED TO PROVIDE HOUSING OF LAST RESORT

Innovation and broad latitude in the choice of methods should be encouraged in the implementation of Last Resort Housing. This program is intended to respond to unique and unusual housing needs. In many cases, the best solution may be the one that does not fit a common mold. The methods of providing Last Resort Housing include but are not limited to:

1. Payments in excess of the statutory limits

   Payments in excess of the statutory limits of $31,000.00 and $7,200.00 may be made in lump sum or installment payments.

2. Removal of accessibility barriers for a person with disabilities

   The State may also remove accessibility barriers and construct special physical structures such as wheelchair ramps.

3. New construction

   The State may build new housing to be rented or sold to displaced persons at prices within their financial means.

4. The relocation of an existing dwelling

   The State may physically move a dwelling to a location beyond the newly acquired Right of Way. This venture tends to be very expensive but depending on the situation may be the most cost effective means available to the displacee.

5. Purchase, rehabilitation, or additions to an existing dwelling

   The State may purchase an existing house, make any necessary repairs, and add rooms as necessary to make an existing house usable as a replacement dwelling. The house may be sold or rented to the displaced person

There are innumerable variations that can be used to provide replacement housing under the Last Resort Housing provisions. Last Resort Housing should be considered a useful administrative tool that can provide freedom from usual procedural constraints. It is a tool that invites innovation and creativity to solve unique or difficult replacement housing problems.

CONSIDERATIONS WHEN UTILIZING LAST RESORT HOUSING

The cost-effective use of Last Resort Housing requires the exercise of sound judgment. The following paragraphs describe various items that should be considered when utilizing Last Resort Housing.

1. The funds that the State authorizes for Last Resort Housing are to provide housing for a displaced person. Last Resort Housing is a program characterized by large payments justified by a need for comparable housing that is costly to meet. The opportunity for the displaced person to utilize the funds for anything other than replacement housing should be minimized to the extent possible.

2. Investigate the desires, needs, and intentions of the displaced person before deciding on a Last Resort Housing method. In depth interviews should be conducted before planning replacement housing solutions. There may be several alternatives available for one or a group of displaced persons. Do not make assumptions about the acceptability of a particular housing alternative until all of the options have been explored, and the feasible alternatives discussed with the displacee.

3. Coordination with other agencies able to provide assistance and opportunities for cooperative agreements should be explored. Local housing may be in a better position to provide and manage replacement housing situations than the State. Last Resort Housing projects may be contracted to other agencies for management as well as construction. However, the State retains responsibility for the successful outcome of the relocation.

4. If appropriate and with the concurrence of the displaced person, consideration may be given to using a Last Resort Rental Assistance Payment to assist in making a downpayment for replacement housing.

5. All feasible housing proposals should be discussed with the displaced person before proceeding with the plan the displacee selected. The written consent of the displaced person to accept a housing proposal should be secured before the plan is implemented. In the absence of such a written agreement, the potential exists for a substantial expenditure of funds to accomplish housing, which the displaced person may be unwilling to accept and occupy.

6. Consideration should be given to the community impact of any housing solution. For instance, it may better serve the public for an existing house to be rehabilitated than for a new house to be constructed nearby. Rehabilitation could serve two goals: removal of a blighting influence and re-housing the displaced person. However, remember that the initial concern is furnishing comparable DS&S housing to the displaced person.

7. Do not limit consideration of housing solutions to those with minimum administrative involvement. People who are displaced often have unique needs. Housing solutions may have to be creative and individualized to meet those needs. Merely providing the displaced person with more money to spend on housing may be administratively simple, but this method may be more expensive than other housing solutions. It only addresses the specific need of higher cost while other needs go unassisted if they are present.

8. Last Resort Housing should be used only after all relocation benefits and services provided in the Uniform Act have been determined inadequate to meet the needs of the displacee. Last Resort Housing should not be a substitute for lack of lead-time or inadequate relocation advisory services. Some Right of Way Agents may tend to postpone contacts with displaced persons whose needs are more difficult to meet, i.e. large families, or a person with disabilities needing a one-story replacement unit. The use of Last Resort Housing to shore up an inefficient relocation program is wasteful and is perceived as inequitable by persons not receiving Last Resort Housing benefits.

9. Make every attempt to identify potential Last Resort Housing cases early. Knowing that Last Resort Housing is a possibility may focus attention on a case early enough to enable the State to resolve the problem by intensifying the relocation assistance provided. Also, if the need for Last Resort Housing is later confirmed, the advance planning will provide sufficient time for the State to consider a broad range of Last Resort Housing alternatives.

10. Be aware that the personal circumstances of a displaced person can change after relocation into Last Resort Housing. A subsequent move may be necessary due to a job opportunity in a distant location, a family illness, loss of employment, or other similar reasons. The Last Resort Housing method should not freeze a person into a dwelling. On the other hand, the State cannot incur additional costs to subsidize a subsequent move that is not project related. To the extent feasible, the State should be willing to make benefits transferable.

11. Although it is not required, a plan should be developed that defines the needs of the displaced persons, the method of providing the necessary housing, and an explanation of the level of funding necessary. The plan is a guide for action. It can protect the program from manipulation and later charges of "making up the rules as we go along."

Replacement Housing of Last Resort should be considered during the relocation planning process for any project with displaced persons who cannot be moved using the regular program benefits and procedures. Early planning as well as early contact of affected displaced persons should be emphasized when Last Resort Housing is being considered on a project. Lead-time may be needed to complete the plan and avoid costly delays.

DECENT, SAFE AND SANITARY DWELLINGS FOR THOSE WITH A DISABILITY

The American Disability Act of 1992 prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications.

An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

For a displaced person with a disability, a decent, safe, and sanitary (DS&S) dwelling shall be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. 49 CFR 24.2(a)(8)(vii). Reasonable accommodations of a displaced person with a disability may need to be made at the replacement site. When an accessible, comparable dwelling is not available, the relocation agent shall compute a replacement housing payment based on comparability standards alone. When making the relocation offer, the relocation agent shall advise the displacee that additional (last resort) funds are available to make accommodations in the dwelling the displacee actually occupies. The landlord must agree to the modifications when a displacee rents a replacement dwelling.

Last resort housing funds are used to modify a replacement dwelling to remove barriers that would preclude reasonable ingress, egress, or use of the dwelling. This payment is in addition to move and replacement housing payments outlined in this manual.

REASONABLE MODIFICATIONS

Reasonable modifications might include but are not limited to:

- Entrance and Exit Points—When necessary, reasonable modifications to the replacement dwelling to provide safe entrances and exit points, for example, including 36” doors and ramps to accommodate a person in a wheelchair
- Interior Access—When necessary, doors of sufficient width to accommodate a person in a wheelchair
- Bathroom Modifications—Grab bars and, when necessary, a raised toilet or zero-clearance shower to accommodate a person in a wheelchair, storage cabinets, vanities sink and mirrors at appropriate heights.
- Kitchen Modifications – Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access.
- Vehicle Access—When necessary, a paved loading and unloading pad so a person in a wheelchair can access transport vehicles

Consideration of other items may be needed based on the disabled person’s needs.

INSPECTION BEFORE WORK

The relocation agent shall inspect the replacement site to identify the work needed to accommodate the displacee and take photographs of items and areas requiring modification. The agent shall advise the displacee that the proposed work requires preapproval by INDOT Real Estate.

APPROVAL OF PROPOSED WORK

INDOT Real Estate, shall approve the proposed work before the relocation agent, or consultant, authorizes the displacee to proceed. The agent requests INDOT Real Estate's approval by submitting the following documents in the order listed:

- An Agent Summary Report verifying the displacee's disability, identifying and justifying the proposed work, and associated costs,
- An adequate number of photographs to document the replacement site's condition before the proposed work
- The approval of the Lowest Selected Contracting Bid

INSPECTION AFTER WORK

- Before delivering installment payments or the final payment, the relocation agent, or consultant, shall inspect the replacement site to verify that approved work was completed and take photographs of all modified items and areas.
- The Displacee and Contractor will both sign off on the Agent Summary Report (Raap 8) to confirm work was completed to the satisfaction of the Displacee.

AMOUNT OF PAYMENT

Payment is based on the Selected Lowest Contracting Bid
Note: For new construction, handicapped modification costs shall be offset by the cost of standard construction items (such as, the cost of an accessible shower less the cost of a standard shower, the cost of a 36" wide door less the cost of a standard 32" door, etc.).

TO WHOM PAYMENT IS MADE

Payment for the ADA modifications will come from the Last Resort Housing Payment to be made payable to the displacee, unless directed otherwise in writing.

LAST RESORT HOUSING PROCEDURES

Applicability

It is the Right of Way Agent's responsibility to make available a comparable replacement dwelling to enable displaced persons to relocate to their original occupancy status, i.e. tenant to tenant or owner to owner. If a change in occupancy status is desired by the displacee, that should be documented, and the Agent will be expected to make a reasonable effort to accomplish the request just as in referrals under advisory assistance. If the optional housing is available, any Rental or Downpayment Assistance Payment (RAP or DAP) will be based on the specified option and computed accordingly when it is more cost effective to do so than computing a payment based on same occupancy status. In such a requested change of occupancy status, the replacement dwelling must adequately meet the needs of the displacee, but the same comparability to the displacement dwelling that is expected for the original occupancy status is not required. However, the replacement dwelling must be functionally equivalent.

A displacee cannot be required to move from his dwelling unless at least one comparable replacement dwelling is made available to him or her. The State will take additional Last Resort Housing measures when it determines that there is a reasonable likelihood that the project will not be able to proceed to completion in a timely manner because no comparable replacement dwelling will be available on a timely basis to the person(s) being displaced. However, the Last Resort Housing provisions described herein shall not deprive any displaced person of any rights the person may have under the Uniform Act or applicable FHWA regulations. The State shall not require any displaced person without that person's written consent to accept a dwelling provided by the State under these Last Resort procedures in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

Price Differential Payments In Excess of $31,000.00

The 90-day owner is eligible for a Replacement Housing Payment which may consist of a Price Differential Payment, Mortgage Interest Differential Payment, and reimbursement of Incidental Expenses (Closing Costs, etc.). When the sum of these items is estimated to exceed $31,000.00, the Last Resort Housing provisions are applicable.

Reimbursement of closing costs and debt service fees paid out-of-pocket will usually be paid directly to the displacee. The entire balance of payments not paid directly to the displacee will be applied towards the purchase of the replacement dwelling unless the State determines otherwise.

Rental Assistance Payments in Excess of $7,200.00

When a Rental Assistance Payment is expected to exceed the $7,200.00 maximum, the Last Resort Housing provisions are applicable. Last Resort Housing Rental Assistance Payments in excess of $7,200.00 will usually be paid in lump sum. However, at the State's discretion, they may be paid on an installment basis. The consent of the displacee and landlord is required before payment to an escrow account is selected.

Payment to a Third Party

Payments made under the Last Resort Housing provisions will usually be a direct payment to the displacee. When the State considers it prudent and in the public interest, the State may authorize a payment to a third party as a co-payee with the displacee as the payee, e.g. landlord, seller, lending institution, etc. The Right of Way Agent will provide written explanation in the file of the reasons whenever the Acquisition Manager approves a Last Resort Housing payment that is not paid directly to the displacee and/or a Rental Assistance Payment paid in installments.

DOCUMENTATION AND APPROVAL FOR LAST RESORT HOUSING

Prior to discussing a Last Resort Housing determination with a displacee, the Right of Way Agent must obtain pre-approval through the Reviewer by submitting a Residential 90-Day Notice Pre-Approval packet based on the page found in the *Relocation Assembly Manual*. This page notes that additional information will be required – these requirements are as follows.

Justification for Last Resort Housing should be given when:

1. Comparable replacement housing is not available for the displaced person; or

2. Comparable replacement housing is available, but the computed entitlement exceeds the maximum amounts of $31,000.00 for residential owner-occupants (LRH-O) and $7,200.00 for residential tenant-occupants (LRH-T).

The *Relocation Assembly Manual* page for Rental Assistance and for Price Differential Payments both note that payments for Last Resort Housing require additional justification and documentation. Right of Way Agents will be required to provide a written justification in a Right of Way Agent's Report (*see* Online Forms*, RAAP8*) to include:

1. Length of time (dates and hours) spent searching for comparable housing

2. List of Real Estate agencies contacted or other resources used with dates

3. List of properties found, to include address and list price

4. Individual circumstances

5. Time frame for project letting if applicable

6. Discussion of properties that were not used and the reasons that they did not meet the requirements for comparable housing.

Right of Way Agents will be required demonstrate consideration of the following criteria:

1. For approval on a case-by-case basis, Last Resort Housing must be adequately justified for good cause, which means that appropriate consideration has been given to:

   a. The availability of comparable replacement housing in the program or project area

b. The resources available to provide comparable replacement housing

c. The individual circumstances of the displaced person

2. For approval of Last Resort Housing for an entire project area, evidence must be submitted to support a determination that:

a. There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, Last Resort Housing assistance is necessary for the area as a whole

b. A program or project cannot be advanced to completion in a timely manner without Last Resort Housing assistance

c. The method selected for providing Last Resort Housing assistance is cost effective, considering all elements which contribute to total program or project costs. By waiting for less expensive comparable replacement housing to become available it will be justifiable and cost effective in delaying a project

MOBILE HOMES

Mobile homes present one of the most complex and difficult situations with which displacing agencies must cope. Mobile homes differ from conventional housing in that their status as real or personal property varies from parcel to parcel. Also, in a mobile home situation, there may be a separation between the dwelling and the site it occupies which is not present with a conventional dwelling. For example, one may own a mobile home but rent its site or vice versa.

These differences present the displacing agency with two general problems. The first involves a decision it does not have to make with conventional housing -- whether to acquire or move the dwelling from which displacement occurs. The second is a major increase in the complexity of determining the relocation payments for which the displaced person is eligible.

In addition, mobile homes typically will have a disproportionate number of low income, elderly, and other occupants who may be difficult to relocate successfully. For all these reasons, dealing with mobile home moves will require the maximum in planning, preparation, patience, and assistance.

Lastly, finding comparable replacement housing for a mobile home occupant can be complicated because there are so many variables to consider. Some mobile homes cannot be moved safely. Some can be moved safely, but are too old to be accepted in another mobile home park. Rents and utility allowances can be drastically different from park to park. Some mobile home parks are for people who are 55 or older and will not allow families with children. If a mobile home is set up to use natural gas for heat, it may be difficult to find a park that will have natural gas available – many parks are all electric or only allow propane as fuel. The Right of Way Agent should collect all information pertinent to these variables before discussing what types of entitlements will be provided.

As noted above, moves from mobile homes present two special problems, a decision on whether to acquire or move the mobile home and increased complexities concerning relocation payments. These problems, in turn, are affected by three basic considerations:

- Real vs. Personal
- Mobile Home vs. Site
- Owner vs. Tenant

REAL VS PERSONAL

The determination of a mobile home status as real or personal governs the type of eligible relocation entitlements. In general, there are fewer problems associated with acquiring a mobile home as real if the owner-occupant of the mobile home also owns the site.

If the mobile home is real, it will be appraised in the same manner as other real property. The acquisition price of the mobile home and the site will be used as the basis for computing the Replacement Housing Payment for the owner-occupant.

If the mobile home is not acquired because it is considered personal and is relocatable, the owner is entitled to reimbursement of the cost to move the mobile home. An owner-occupant will be reimbursed for the cost to move the mobile home, but will not be entitled to a Replacement Housing Payment for the mobile home. However, he or she may be eligible for a Replacement Housing Payment for an appropriate replacement site if the site was purchased for the project.

A whole new set of circumstances is introduced if the owner-occupied mobile home is considered personal, but the State can determine it cannot be moved because of the following:

1. The mobile home is not and cannot economically be made decent, safe, and sanitary because it is structurally unsound, inadequate in size to accommodate the displaced person(s), or does not meet code requirements

2. The mobile home cannot be moved without substantial damage or unreasonable cost

3. There are no available comparable sites for the mobile home (size, available utilities, distance to work, etc.)

4. The mobile home is decent, safe, and sanitary, but mobile home park entrance requirements require extensive modifications that are not reasonable

5. The mobile home cannot be relocated because it does not meet mobile home park entrance requirements

6. Other circumstances deemed reasonable by the Relocation Supervisor.

If the mobile home is considered personal, but cannot be moved because of the above circumstances, the State may purchase the mobile home and use the purchase price as a base for

determining the Replacement Housing Payment. If the State does not purchase the mobile home, the salvage value or trade-in value of the mobile home, whichever is higher, shall be used as the acquisition cost of the mobile home for purposes of computing the Replacement Housing Payment.

Mobile homes considered personal should not be difficult to move if they are in good condition and replacement sites are available. If a mobile home needs repairs, modifications or correction of certain DS&S standards, and the State decides the costs would be reasonable, then the costs of such repairs would be reimbursable as a moving related expense. This would need to be pre-approved by the INDOT Central Office Relocation Supervisor and/or Acquisitions Section Manager.

If an owner-occupant disagrees with the State's determination that a mobile home can be relocated and refuses to move and re-occupy the mobile home, the State may use as cost of a comparable mobile home, the sum of any of the following:

1. The value of the mobile home
2. The estimated cost of any necessary repairs or modifications
3. The estimated cost of moving the unit to replacement site
4. Any necessary related expenses

The displaced persons will be responsible for removing the mobile home from the project site. If the mobile home is abandoned in place, the State may remove it in accordance with State law.

The situation noted above could best be explained by example. A displaced person who owns a mobile home with an oil-fired furnace is denied admittance to a replacement mobile home park because the park will not allow the necessary outside oil tank. The State could convert the mobile home's heating system to gas and move the mobile home for a reasonable cost. The modified mobile home provided to the displaced person will be a DS&S comparable in accordance with the regulations.

MOBILE HOME VS SITE

As discussed above, mobile homes, unlike their conventional counterparts, may be separated from their sites, i.e., one may own a mobile home but rent its site, or vice versa. Thus it is useful to think of a mobile home move as consisting of two parts, one that deals with the mobile home itself, and one that deals with the site. Fortunately, in terms of the decision whether to acquire or move, one part is simple to think about. The site is always considered acquired.

However, for the mobile home (dwelling) part of the move, the matter becomes somewhat more complicated because a mobile home may be either acquired or moved. This decision will be influenced by a number of factors, including state law.

There are four distinct possibilities. Since a mobile home move often has two distinct parts, the mobile home itself and the site, it often is necessary to compute two separate Replacement Housing Payments. For example, these payments might each reflect a different status (owner or tenant), since a person might own the mobile home but rent the site or vice versa.

OWNER VS TENANT

As in conventional homes, Replacement Housing Payments (RHP) for persons displaced from mobile homes differ, based on their status as a homeowner or tenant. **For RHP purposes, the occupant's status as an owner or a tenant is determined by his/her ownership or tenancy of the mobile home itself, not of the site on which it is located.** Thus, an occupant of a mobile home who owns the mobile home and its site and an occupant who owns the mobile home but not the site, are both homeowners for RHP purposes and are potentially eligible for an RHP of $31,000.00. Conversely, an occupant who owns the site but rents the mobile home is a tenant for RHP purposes and is eligible for an RHP not to exceed $7,200.00. The computation of actual payments is discussed below. Any amount over these respective limits must be justified under Last Resort Housing.

Eligibility for RHPs also is affected by the length of time the displaced person has occupied the mobile home and the displacement site prior to the initiation of negotiations. This parallels the requirements for occupants of conventional dwellings

MOBILE HOME HOUSING ENTITLEMENTS

The Entitlement Letter and 90-Day Notice form RAAP17a should be used when notifying a mobile home resident-displacee. Depending on ownership/tenancy and personal/real, it is possible that the tenant and owner versions of the Comparable Properties for Replacement Housing (RAAP14 & 14a) and the RHP Computation – 90-Day Owner / RAP-DAP Worksheet (RAAP15 & 15a) will all be used to determine the entitlements.

Ownership / Tenancy Requirements.

Ownership or tenancy of the mobile home determines the occupant's status as an owner or a tenant, not the site upon which it is located. The length of time the mobile home has been located on the displacement site prior to the initiation of negotiations determines the occupant's status as a 90-day owner, or a 90-day tenant.

90- Day Owner-Occupants

A displaced owner-occupant who has owned and occupied a mobile home on the displacement site for at least 90-days immediately preceding the initiation of negotiations for the acquisition of the mobile home and/or the site is entitled to a Replacement Housing Payment. Such an owner-occupant will be computed for a replacement mobile home and site, or a conventional dwelling if DS&S comparable mobile homes and sites are not available.

An alternate payment for Rental Assistance may be selected by the owner-occupant. The computed payment would be limited by the amount set by the potential Price Differential entitlement determination. This determination is limited to $31,000.00 unless Last Resort Housing is justified.

If the mobile home is real and is to be acquired, it will be appraised to determine its value and the acquisition price for the mobile home and its site may be used as the basis for computing the Price Differential portion of the payment.

Sometimes the mobile home is considered personal, but the acquiring agency determines it cannot be moved because:

1. The mobile home is not and cannot economically be made decent, safe, and sanitary because it is structurally unsound, inadequate in size to accommodate the displaced person(s), or does not meet code requirements

2. The mobile home cannot be moved without substantial damage or unreasonable cost

3. There are no available comparable sites for the mobile home (size, available utilities, distance to work, etc.)

4. The mobile home is decent, safe, and sanitary, but mobile home park entrance requirements require extensive modifications that are not reasonable

5. The mobile home cannot be relocated because it does not meet mobile home park entrance requirements

6. Other circumstances deemed reasonable by the Relocation Supervisor.

90- Day Tenants

A displacee who has rented and occupied a mobile home on a displacement site for 90 days or more immediately preceding the initiation of negotiations for the acquisition of the mobile home and/or the site is also entitled to a Replacement Housing Payment not to exceed $7,200.00 for Rental Assistance or Downpayment Assistance. Any amount over $7,200.00 must be justified under Last Resort Housing.

If the tenant-occupied mobile home is to be relocated, the tenant may elect to remain a tenant in the subject mobile home at the replacement site. If so, he/she may be eligible for a Rental Assistance Payment providing the mobile home is decent, safe and sanitary and there is justifiable increase in the rent at the replacement site. However, the payment may not exceed the State's computation for a potential Rental Assistance entitlement based on a comparable mobile home and site.

The displaced person may also be eligible for a Downpayment Assistance Payment to purchase a replacement mobile home and site, or a conventional dwelling based on the DS&S replacement property actually purchased and occupied. The total down payment may not exceed $7,200.00 for mobile home and site or conventional dwelling. If the potential Rental Assistance entitlement

determination qualified for Last Resort Housing, the Downpayment Assistance Payment would be limited to that determination. The entire Downpayment Assistance Payment must be applied to closing costs and/or principal reduction for the purchase of the replacement home.

The basic Replacement Housing Payment computed for the 90-day tenant will be a Rental Assistance Payment for a replacement mobile home and site and a replacement mobile home site, or a conventional dwelling if no comparable mobile homes and/or sites are available.

Owner or Tenant of Less than 90 Days

A displaced person who has occupied a displacement dwelling for less than 90 days prior to the initiation of negotiations is not eligible for a Replacement Housing Payment under the Uniform Act. However, they may be eligible for a Replacement Housing Payment provided as a Last Resort Housing Payment, providing comparable DS&S replacement properties are not within their financial means and there is an increase in rent necessitated by the occupancy of a comparable replacement property. Only Tenant displacees will be given consideration of the Financial Means Test and 30% Rule.

Replacement Housing Entitlements for Owners of Mobile Homes as Personal Property

An owner-occupant of a displaced mobile home classified as personal property and not acquired by the displacing agency may be reimbursed for moving and related expenses on an actual cost basis, providing the agency determines the costs are reasonable and necessary. If an owner-occupant is reimbursed for the cost of moving the mobile home and any necessary related expenses, he/she is not eligible to receive a RHP for the mobile home itself. However, he/she may be eligible for a RHP in connection with the rental or purchase of a replacement site, depending upon the length and type of occupancy on the displacement site.

A non-occupant owner of a displaced mobile home that is not acquired may be reimbursed for the actual cost of moving the mobile home from the site based on moving cost findings or estimates, documented self-move, or a commercial move. The use of business move procedures is proper in such a case because the mobile home is personal used for a business. Since the owner in this case is not an occupant, there is no eligibility for a Replacement Housing Payment.

Replacement Housing Payment Computations

Replacement Housing Payment computations for person displaced from a mobile home are usually comprised of a computation for a comparable mobile home and a computation for a comparable mobile home site.

The first step is to compare the value of the displacement mobile home to the cost of a comparable mobile home and compute a Replacement Housing Payment entitlement or a rental assistance entitlement depending upon the ownership or tenancy of the mobile home occupant.

The second step is to compare the displacement site to a comparable replacement site and compute a potential Price Differential entitlement, or a potential Rental Assistance entitlement, depending upon the ownership or tenancy of the mobile homesite.

If the displaced person owns both the mobile home and the mobile home site, the Right of Way Agent should endeavor to locate a mobile home on a site as a unit for comparison purposes, similar to the comparison of conventional dwellings. (s*ee examples*)

Mobile Home to Conventional Dwelling

There will be some cases when a displaced mobile home owner-occupant will prefer to purchase and relocate to a conventional dwelling. When this occurs, the potential Price Differential entitlement computation will be based on a comparable mobile home and site (*see examples* for a more detailed discussion and a sample computation for a mobile homeowner who purchases a conventional dwelling).

Conventional Dwelling to Mobile Home

Occasionally, a 90-day owner who occupies a conventional dwelling may decide to purchase a mobile home and site or to rent a replacement site. The Replacement Housing entitlement would be computed in the usual manner using a conventional dwelling.

If the displaced person purchases a DS&S mobile home and site, he or she can receive a Price Differential Payment up to the amount of the computed entitlement plus Incidental Expenses (closing costs, etc.) and a Mortgage Interest Differential Payment. This total amount may not exceed $31,000.00. Any amount over $31,000.00 must be justified through Last Resort Housing. (*see examples*)

Replacement Housing Payment for a Site Only.

A Replacement Housing Payment for an owner-occupant who is reimbursed for the cost of moving his or her mobile home will be computed for a replacement site. The computation for 90- day owner-occupant cannot exceed $31,000.00 for a site comparable to the displacement site, but both the mobile home and mobile home site must be considered when computing the Replacement Housing Payment. Any amounts over this limit would need to be justified under Last Resort Housing. (*see examples*)

Replacement Housing of Last Resort

Replacement Housing of Last Resort should be utilized when

1. Comparable replacement housing is not available for the displaced person

2. Comparable replacement housing is available, but the computed entitlement exceeds the maximum amounts of $31,000.00 for 90-day owner-occupants and $7,200.00 for 90-day tenants.

3. Comparable DS&S replacement properties are not within financial means for owner or tenant of less than 90 days and there is an increase in rent necessitated by the occupancy of a comparable replacement property.

MOVING COSTS AND RELATED EXPENSES

Any displaced person who owns and/or occupies a mobile home located on the property required for the project is entitled to reimbursement of moving costs and related expenses for moving the mobile home if it is considered personal property or for moving the contents of the mobile home if the mobile home, itself is not moved.

Owner-Occupants of Mobile Homes Classified as Personal

The owner-occupant of a displaced mobile home classified as personal property and not acquired by the State may be reimbursed for reasonable and necessary moving and related expenses. A licensed mover in Indiana must move mobile homes. Therefore, the cost of moving a mobile home will be reimbursed on an actual cost basis.

The following expenses may be eligible for reimbursement:

1. Moving the mobile home and other personal property. Moving expense is generally limited to a 50-mile radius unless the State determines that a move in excess of 50 miles is justified

2. Packing, crating, moving, unpacking, and uncrating personal property. If the mobile home owner-occupant performs these services, the State may, at its discretion, pre-establish a reasonable amount for reimbursement of these expenses instead of requiring documentation through use of the moving cost schedule

3. Disconnecting and reconnecting household appliances

4. The reasonable cost of disassembling, moving, and reassembling any attached appurtenances such as porches, decks, skirting and awnings which were not acquired, plus the cost of leveling the mobile home, anchoring the mobile home, and utility hookups

5. The cost of repairs or modifications to enable a mobile home that is considered personal to be moved and/or the costs necessary to make the mobile home decent, safe, and sanitary, providing the State determines the cost is reasonable and economically feasible

6. The cost of insurance for the replacement value of the mobile home and other personal property being moved during the move

7. The replacement value of the mobile home and other personal property lost, stolen, or damaged during the moving process, which is not the fault of or due to the negligence

of the displaced person, his/her agent, or employee(s), when insurance covering such loss, theft, or damage is not reasonably available

8. A non-returnable mobile home park entrance fee is also reimbursable as part of the moving cost provided that the fee does not exceed the fee charged at a comparable mobile home park. The State must also make the determination that payment of the entrance fee is necessary in order to relocate the mobile home

9. Transportation costs of mobile home occupants to the replacement site

10. Temporary lodging (including meals) for displaced mobile home occupants while a mobile home is being relocated and reestablished at a replacement site. Temporary lodging is to be used only for a short period of time and payment should be based on costs that are reasonable and necessary. This option must be pre-approved before discussing it with the displacee(s)

11. Other related moving expenses that the State determines to be reasonable and necessary which are not listed as ineligible under the Uniform Regulations

Non-Occupants of Mobile Homes Not Acquired as Real

A non-occupant owner of a displaced mobile home that is determined to be personal and is not purchased by the State may be reimbursed for the cost of moving the mobile home. A licensed mover in Indiana must move mobile homes. Therefore, the cost of moving a mobile home will be reimbursed on through a Professional Mover or Actual Cost procedure. Since the owner in this case is not an occupant, there is no eligibility for a Replacement Housing Payment.

Tenant-Occupants of Mobile Homes

A tenant-occupant of a displaced mobile home may be reimbursed for moving his/her personal property on an actual cost basis or on the basis of the moving expense schedule. The moving expense allowance depends on the number of rooms of furniture and whether the mobile home is rented furnished or unfurnished.

There may be two moving expense payments, one for the owner to move the mobile home, and one for the tenant to move furnishings and other personal property.

EXAMPLE SITUATIONS FOR MOBILE HOMES

There are many variations in payment and benefit computations for mobile home owners and occupants. These variations are generally considered to be unique and would normally only apply to mobile homes. However, they could also apply to boats or other "detachable" structures used as dwellings. The following example computations demonstrate some of the various payments for which mobile home occupants may be eligible. As a reminder, any time an owner- occupant relocates a mobile home not purchased for the project because it is considered personal, he or she

is entitled to the cost of moving that mobile home to the replacement site. This payment is in addition to the Replacement Housing Payment for the site.

The next few pages show common mobile home scenarios and how to calculate the related entitlements.

Replacement Housing Payments for 90-Day Owner-Occupants

EXAMPLE 1 – Owns Home / Owns Site / Home is Real

The displaced person owns the mobile home and site. The mobile home is considered real and the State will be acquiring both the mobile home and the site.

Since the displaced person owns both the mobile home and the site, the Right of Way Agent should try to locate comparable mobile homes and sites for sale as one unit to use for computing the Price Differential entitlement. If such comparables are not available, an alternative could be to compare the subject mobile home to comparable mobile homes and the subject mobile home site to comparable mobile home sites, then combine the two computations for the RHP entitlement.

If comparable mobile homes and sites are not available, it may be necessary for the Right of Way Agent to compute the RHP entitlement using a larger or more expensive mobile home and site or a conventional dwelling and lot.

Cost of Comparable Mobile Home	$18,000
Displacement Mobile Home Price	- $14,000
Home Price Differential Entitlement	$4,000

Cost of Comparable Mobile Home Site	$5,000
Displacement Site Price	- $4,000
Site Price Differential Entitlement	$1,000

Potential Price Differential Entitlement for Mobile Home and Site ($4000 plus $1000) $5,000

The displaced person may be eligible for a Replacement Housing Payment including a Price Differential Payment to purchase a decent, safe, and sanitary replacement mobile home and a replacement site, Incidental Expenses for purchase, and a Mortgage Interest Differential Payment. The displaced person may also purchase or rent a conventional dwelling instead of a mobile home if he or she wishes. The maximum Price Differential Payment will be $31,000.00 for a purchased replacement dwelling (and site). Any amount over $31,000.00 will need to be justified under Last Resort Housing.

If the replacement is rented, a Rental Assistance Payment will be computed based on economic rent and limited to the potential Price Differential entitlement determination.

EXAMPLE 2 – Owns Home / Owns Site / Home is Personal

The displaced person owns the mobile home and site, but only the site is being acquired. The mobile home is considered personal and will be moved to a replacement site.

In this case the displaced person may be eligible for a Price Differential Payment not to exceed $31,000.00 to purchase a replacement site. Any amount over $31,000.00 must be justified under Last Resort Housing.

If the displaced person elects to rent a replacement site instead of purchasing, the Rental Assistance Payment will be based on the economic rent of the displacement site and computed in the usual manner for a 42-month period. The Rental Assistance Payment will be limited to the amount determined for the potential Price Differential entitlement.

If a comparable replacement mobile home site is not available, the State may determine that the mobile home cannot be relocated, and the RHP entitlement will be computed in accordance with the Replacement Housing Payment section of the regulations for conventional dwellings using the salvage value or trade-in value, whichever is higher, of the mobile home as the acquisition price and the acquisition price of the site. If the total RHP exceeds $31,000.00, replacement housing of Last Resort will be required.

Replacement Housing Payments for 90-Day Tenants

EXAMPLE 3 – Rents Home / Rents Site

The displaced person rents both the mobile home and site. The State will be acquiring the mobile home and site from the owner.

The displaced person may elect to rent a DS&S replacement mobile home and site or conventional dwelling. However, the rental assistance computation will be based on the monthly rent of the displacement mobile home and site as compared to a comparable mobile home and site in the usual manner for a 42-month period.

The person in this example may also decide to purchase a decent, safe, and sanitary replacement mobile home and site or a conventional dwelling and be eligible for a downpayment not to exceed $7,200.00. Any amount over $7,200 must be justified

under Last Resort Housing.

In either case, the displaced person would also be eligible to receive a moving cost payment for moving his or her personal property from the mobile home and the mobile home site.

Changing Type of Housing for Replacement

Replacement Housing Payments for 90-Day Owner-Occupants Who Also Own the Site and Purchase a Conventional Dwelling

EXAMPLE 5 – Own Home / Own Site / Home is Realty

Cost of Comparable Mobile Home	$18,000.00
Payment for Displacement Mobile Home	- $10,000.00
Potential Price Differential Entitlement for MH	$8,000.00
Cost of Comparable MH Site	$8,000.00
Payment for Displacement MH Site	- $6,000.00
Potential Price Differential Entit. for MH Site	$2,000.00
Price Differential Entitlement for MH	$8,000.00
Price Differential Entit. for MH Site	+ $2,000.00
Total Potential Price Differential Entitlement	$10,000.00
Actual Cost of Replacement Conv. Dwelling	$45,000.00
Actual Price Differential Payment	**$10,000.00**

Replacement Housing Payments for 90-Day Owner-Occupants of Conventional Dwellings Who Purchase a Mobile Home and Site.

EXAMPLE 6 – Own Conventional Home

Cost of Comparable Replacement Property	$40,000.00
Payment for Displacement Dwelling and Site	- $35,000.00
Potential Price Differential Entitlement	$5,000.00
DS&S Mobile Home Purchased	$28,000.00
Set up charges on new lot	$1,500.00
Replacement Site (land	$8,000.00
Site Improvements (Pad/Driveway/Water/Septic)	+ $4,000.00
Total Replacement Cost	$41,500.00
Total Replacement Cost	$41,500.00

Payment for Displacement Dwelling & Site	- $35,000.00
Increased Cost of Actual Replacement Dwelling	$6,500.00
Actual Price Differential Entitlement	**$ 5,000.00**

The actual Price Differential Payment in this example would be $5,000.00. As a residential owner-occupant in the displacement home, the displaced person would also be reimbursed for eligible incidental expenses and increased interest costs if any were actually incurred.

MULTIPLE OCCUPANCY

Multiple occupants of the displacement dwelling will be considered by the State to constitute one household. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling.

This may happen in situations where a non-dependent adult lives with their parent(s) in the displacement home but decides to move to a separate replacement home. This may also happen in the case where a divorce occurs during the relocation process.

The State shall determine the prorated shares to which each person is entitled. A Right of Way Agent Report that details the split of the entitlements will be prepared and given to the displacees for their signature.

If the displacees are of the opinion that more than one household existed within the dwelling prior to displacement, it shall be the responsibility of the displacees to document the separate existence of each. Examples of separation points might include separation of living quarters, ratio of private to shared living space, separation of utility charges or payments, separate entrances, separate and adequate sources of income, sufficient amounts of separately owned furniture, living arrangements in previous dwellings, etc.

The Relocation Supervisor will determine if separate households existed prior to displacement based on a review of the documentation submitted. If the State determines that multiple households existed, such occupants will be considered to have separate entitlements to all relocation payments. A comparable dwelling for each household would be based on the amount of private space that each household occupied separately in the displacement dwelling plus that space which was shared with the other household(s).

MULTIPLE OWNERSHIP

When several persons own a single-family dwelling and the dwelling is occupied by only one or some of the owners, special Price Differential procedures are necessary. In this case, the Price Differential will be the lesser of the total displacement price and the amount determined as

necessary to purchase a comparable replacement dwelling OR the difference between the occupant(s) share of the displacement price and the actual cost of the replacement dwelling.

If the Price Differential entitlement were computed as the difference between the cost of comparable housing and only the occupant's share of the amount the State paid for the displacement residence, it would have the effect of providing a substantial windfall to the occupant(s). The displaced person(s) would become the sole owner of a comparable property in which they were only a partial owner before being displaced by the project.

The Price Differential entitlement should be computed in the usual manner by establishing the cost to a comparable replacement and deducting the amount paid for the displacement residence. This establishes the maximum Price Differential that can be claimed. In order for the displaced occupant who has partial ownership to claim the Price Differential entitlement, he or she must purchase a DS&S property costing at least as much as his or her share of the displacement residence plus the computed Price Differential Payment.

The displaced person owns a one-fourth share in a property of which he or she is the sole occupant. The acquisition price is $60,000.00, and the State has determined that it will cost $68,000.00 to purchase a comparable replacement property.

Cost of Comparable Replacement	$68,000.00
Total Displacement Price	- $60,000.00 *
Potential Price Differential Entitlement	$8,000.00

**Incorrect to use $15,000.00 as Displacement Price*

Computation of Partial Owner's Entitlement

1/4 Share of Displacement Price	$15,000.00
Price Differential Entitlement	+ $8,000.00
Purchase Price for Full Entitlement	$23,000.00

The displaced person can claim the $8,000.00 Price Differential entitlement if he or she purchases a DS&S replacement property costing at least $23,000.00. If the actual replacement property costs less than $23,000.00, the Price Differential Payment would be reduced accordingly. If the partial owner cannot secure the necessary financing, he or she may be relocated as a tenant and receive a Rental Assistance Payment.

SEASONAL HOMES

Seasonal home occupants will be eligible for moving entitlements only. Because they are not being displaced from their primary residence, they will not be allowed to claim a Replacement Housing Payment.

NON-RESIDENTIAL OCCUPANT ENTITLEMENTS

Businesses, nonprofit organizations and farms are not easy to move. They are all different; come in all shapes and sizes; employ one to thousands of people; can be retail, wholesale, manufacturers, or distributors; require no machinery or equipment or require massive equipment and machinery that requires building modifications; and enjoy different types of management. One is never like the next, even though they may appear similar. Moving a business is a real challenge for the displacee, the Right of Way Agent, the customers or clients, and for everyone else involved. It can also be enormously rewarding when it is completed.

In the Moving Entitlements chapter, all of the Moving and Related Expense reimbursements afforded to businesses, non-profits and farms are covered. However, there are several other factors that should be discussed separately. This chapter will discuss these factors in more detail.

The successful relocation of some businesses is hindered by internal limitations. Among these are:

1. Physical limitations of the owner or key employees due to age or disability

2. Lack of expertise or skill in meeting new management demands imposed by the move. Such demands could include generating new clientele, managing a larger inventory, and training an entirely new staff

3. Lack of funds needed to reestablish the business. Many small and some larger businesses generate only enough cash flow to support the present operation, and are not sufficiently capitalized to meet all the additional reestablishment costs that may be required

It is important to realize that business operators suffer the same sort of human limitations and inadequacies, as do persons displaced from residences, and are often in need of individualized assistance in moving. Businesses are a community resource in as much as they provide services, products, and employment, so more is at stake in their reestablishment than just the personal welfare of the owner/operator.

Many times, knowing which expenses can be reimbursed through the relocation program will help a displacee make an informed decision on which location to choose. It is important to have a good working knowledge of which types of projects and tasks can be considered eligible for reimbursement, and whether or not they can be covered through Moving and Related Expenses, which has no limit, or through Business Reestablishment, which is limited to $25,000.00.

EARLY PLANNING FOR SUCCESS

The time for avoiding problems is as early in the planning process as it is known that a business site will be affected by a project. If it is clearly known that a large business, i.e. a manufacturing plant, a large retail store, or the like, is to be acquired, the business should be contacted and advised

of the potential acquisition and subsequent displacement. The participation of the business in early decisions may enhance the overall planning process and will definitely permit the business additional time to make plans. Many of the small businesses will also benefit by being well informed.

PERSONAL VS REAL PROPERTY

The planning that will take place with the involved businesses may cure future problems. The determinations of which items are realty, which are owned by the tenant, and which are personal are basic to both the acquisition and relocation processes. Because these issues can be especially complicated with non-residential moves, the Right of Way Agent is required to accompany the Appraiser at the appraisal meeting to discuss personal/real property issues.

Reinstallation of such items as an advertising sign that should have been classified as real property and acquired as realty may be avoided. Personal/Real decisions are difficult and must often be made on a case-by-case basis with consideration given to State law and case law precedent after consultation with the owner. The Right of Way Agent will probably be confronted with items that are not feasible to move, items which can be moved only with substantial modification, or items that can be moved at an expense disproportionate to value.

Throughout the process, it is most appropriate for the business operator, the business or building owner, if different, and the State's appraisers, Right of Way Agents, and attorneys, when necessary, to participate in these discussions and the resultant determinations.

COMPLEX RELOCATIONS

All moves are complex to some extent, but some require elaborate planning and logistical expertise. When working with a business, non-profit, or farm relocation that will have unique needs, it is important to gather as much information as possible from the beginning and to maintain excellent communication with the displacee(s), their representatives, and the Reviewer so that all complications can be anticipated and avoided. Successful Right of Way Agents use many tools to help organize the process:

- Copious photographs of inventory and major features
- Detailed inventory table
  - Quantity
  - Types/sizes
  - Requirements
  - Specialized equipment
  - Specialized utilities
  - Hazmat considerations
  - Current location
  - Plans for replacement location

- Detailed table of tasks required
  - Responsible party
  - Bid amounts
  - Approved amount
  - Sub-tasks
  - Equipment required
  - Logistical details (order/priority)
  - Permits, inspections required
- Anticipated schedule of milestone deadlines
- Document all verbal conversations in writing (LRS, RAAP8, meeting minutes)
- Partnership with a second Agent
- Right of Way Agent consultation
- Recurring planning meetings

DETERMINING THE NUMBER OF BUSINESSES

Sometimes a Right of Way Agent will discover at the first meeting with a non-residential displacee that there might be more than one business or non-profit being displaced. The Agent must not make a determination or discuss how many entities are present at a location before consulting the Reviewer. Information pertaining to extent of the following factors should be gathered as soon as possible:

1. If and how the same premises and equipment are shared

2. If and how substantially identical or interrelated business functions are carried out and business and financial affairs are comingled

3. How the entities are held out to the public and to those customarily dealing with them as one business

4. If and how the same person or closely related persons own, control, or manage the affairs of the entities

A business that does not contribute materially to the income of the owner or operator shall not be considered as another establishment for purposes of determining eligibility for business entitlements.

BUSINESS REESTABLISHMENT REIMBURSEMENTS

A small business, farm, or nonprofit organization may be eligible to receive a payment not to exceed $25,000.00 for expenses actually incurred in relocating and reestablishing that small business, farm, or nonprofit organization at a replacement site. This is in addition to actual reasonable moving and related expenses. Small businesses are defined as businesses that have not more than 500 employees working at the site being acquired or displaced by the project. Working at the site" means that the business operation is full-time and that not more than 500 employees work at that location.

Payment to a part-time business in the home, which does not contribute materially to the household income, is also excluded.

> ***49 CFR 24.2 (7) Contribute materially.***
> *The term contribute materially means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:*
> *(i) Had average annual gross receipts of at least $5,000; or*
> *(ii) Had average annual net earnings of at least $1,000; or*
> *(iii) Contributed at least 33$^{1}/_{3}$ percent of the owner's or operator's average annual gross income from all sources.*
> *(iv) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.*

The emphasis is for the payment to be made available to those who actually operate a business on or from the displacement site. On the other hand, if there is a business that does not meet the requirements but is considered by the State to be eligible, a waiver can be requested from FHWA. This payment is also available to farms and nonprofit organizations that meet the criteria.

The payment is not to exceed $25,000.00, and it must be used for expenses actually incurred in reestablishing the small business, nonprofit organization, or farm at the replacement site. The reestablishment expenses must be reasonable and necessary as determined by the State. When increased operation costs at the replacement site are involved, estimates must be computed for next two years based on the best available data.

Outdoor advertising signs, pursuant to 49 C.F.R. § 24.2(a)(24), are not eligible for business reestablishment expenses.

ELIGIBLE EXPENSES

The Business Reestablishment Guidelines letter and the Reestablishment Expenses Determination form (*see* Online Forms*, RAAP46 & RAAP32*) provide information that should be shared with the displacee(s) to help explain how Business Reestablishment reimbursements work. These documents essentially summarize the Federal regulations.

In addition, the Reestablishment Guidelines (*see* Online Forms) are a great resource for Right of Way Agents and business displacees to understand the limits that have been set and the possibilities that are available. This document reflects how the State of Indiana interprets the general Federal guidelines for more specific understanding. Because this document is subject to change on a regular basis as unique situations arise, the Right of Way Agent should always refer to the most current version.

The following excerpts from the Uniform Relocation Act shows the major categories of expenses that can be considered for reimbursement with pre-approval and proper documentation that the expenses are “actual, reasonable, and necessary.”

49 CFR 24.304 Reestablishment expenses—nonresidential moves.
In addition to the payments available under §§24.301 and 24.303 of this subpart, a small business, as defined in §24.2(a)(24), farm or nonprofit organization is entitled to receive a payment… for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.
(a) Eligible expenses. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following:
(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
(3) Construction and installation costs for exterior signing to advertise the business.
(4) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
(5) Advertisement of replacement location.
(6) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:
(i) Lease or rental charges;
(ii) Personal or real property taxes;
(iii) Insurance premiums; and
(iv) Utility charges, excluding impact fees.
(7) Other items that the Agency considers essential to the reestablishment of the business.

The following excerpt notes the types of expenses that are considered ineligible according to Federal regulations.

49 CFR 24.304b
(b) Ineligible expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:
(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
(2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
(3) Interest on money borrowed to make the move or purchase the replacement property.
(4) Payment to a part-time business in the home which does not contribute materially (defined at §24.2(a)(7)) to the household income.

PRE-APPROVAL PROCEDURES

All Business Reestablishment claims should be based upon approval that was obtained prior to incurring the expense. It is of utmost importance that this guideline is explained to the displacee(s) at the beginning of the relocation process. The displacee(s) will benefit from knowing which expenses they can claim for reimbursement, and which expenses they will need to cover on their own. It will also eliminate any confusion and unnecessary effort that will be required to obtain approval after reestablishment project has already started or has been completed.

Categorize Projects

When first meeting with the displacee(s), the Right of Way Agent should begin to note the types of potential projects that will likely be necessary in the process of relocating a business, non- profit, or farm. The Agent can discuss in general terms some possible ideas for Reestablishment projects, but must always make it clear that there is a pre-approval process that requires documentation and justification before any payment can be guaranteed.

As the relocation process progresses, the Agent and the displacee(s) should work together to create a list of tasks that need to be completed in order to reestablishin the chosen replacement location. This list can then be evaluated to determine what can be considered a Moving expense or a Reestablishment expense, and what will not be reimbursed through the relocation program at all. Once the Right of Way Agent has initially categorized the list of tasks, he or she should verify with the Reviewer that the categories are accurate.

Gather Documentation

The Federal regulations always require that any payment be for "actual, reasonable and necessary" expenses. The Right of Way Agent is responsible for documenting evidence that covers all three criteria. Most of the documentation will be needed in order to gain pre-approval, and the rest will be required before the reimbursement can be released.

Actual

For an expense to be considered "actual," there must be evidence that the expense was incurred and paid in full. Documentation can take the form of:

1. Proof of project
   a. Photographs before project was started
   b. Photographs after project is complete
2. Proof of Cost
   a. Copies of bids/estimates
   b. Copies of bills/invoices

3. Proof of Payment
    a. Paid receipts
    b. Copies of canceled checks (front and back)
    c. Credit card bills/bank statements

Reasonable

Because most, if not all, relocation payments are derived from local, State and Federal tax dollars, it is the responsibility of the Right of Way Agent to document that the costs that are incurred are reasonable. This can be accomplished by comparing the proposed cost of the Reestablishment project with at least two competing bids. In order to guarantee that the competing bids are fully comparable in scope and quality of work, the Agent should provide a detailed description of the project and itemize all the tasks and equipment that will need to be paid for. In most cases, the lowest bid amount will be approved for reimbursement. If the displacee chooses to use a more expensive vendor or company to complete the project, they will be responsible for the remaining balance after the reestablishment reimbursement is paid.

On the rare occasion that the project is unique enough that it is difficult to obtain comparative bids, the Right of Way Agent should consult with the Reviewer to determine an alternate method.

Necessary

Documenting the necessity of a reestablishment project depends entirely on the type of project in question. If the claim involves repair and painting of an internal wall that has obvious and extensive water damage, a photograph and an explanation in a Right of Way Agent's Report (*RAAP8*) will probably be sufficient. If the claim involves upgrading the plumbing in order to satisfy local health regulations, the Agent should obtain documentation of the regulation(s), a letter from the health inspector that is requiring the upgrade, and a statement from a licensed plumber that details the work that will be necessary to meet the requirements. This documentation should be submitted along with a Right of Way Agent's Report that explains the situation in detail.

Submit for Pre-Approval

Once the basic information has been gathered to document that the project is "actual, reasonable and necessary" as much as is possible before the project has been started, the Right of Way Agent should summarize the information in a Right of Way Agent's Report (*RAAP8*). This packet can then be submitted to the Reviewer. The Reviewer must be given ample time to consider the proposal for Reestablishment, as they will need to review in detail to ensure it meets all the requirements. Until the Reviewer gives approval, the Agent should be careful not to promise any reimbursements. It is possible that the Reviewer will ask for additional information to support their decision, or they may suggest re-scoping the project in order to comply with the requirements better. In order to serve the displacee(s) best, the Agent should comply as soon as possible.

MONITOR PROJECT

Once pre-approval has been granted and a reimbursement amount has been set, the displacee is free to begin. The Right of Way Agent should keep abreast of the progress of the project in order to be able anticipate any changes in plans, resolve problems, and keep an eye on any time constraints. Sometimes it will be wise to photograph the project as it is in-progress in addition to taking photos of the "before" and "after."

If the displacee is doing any of the work for the project, the Right of Way Agent should encourage the displacee to keep a running record of time and cost in the Labor Hours and Expenses form (*see* Online Forms*, RAAP28*) and to keep their receipts organized. Many times this will be left until the end and the displacee must try to recollect what happened over the course of the project.

RELEASE REIMBURSEMENT

As soon as the project is complete, the Right of Way Agent should obtain invoices and/or the Labor Hours and Expenses form, along with any receipts for eligible supplies and equipment. Once the final amount has been calculated and verified that it does not exceed the approved amount, the Right of Way Agent can prepare a voucher packet as dictated on the Business Reestablishment page in the *Relocation Assembly Manual*. Once the payment is prepared, the Agent must obtain proof that all the invoices were paid in full by the displacee before the reimbursement can be released.

In situations where a hardship can be documented, advance Reestablishment payments can be arranged at the discretion of the Reviewer. The displacee will be required to show proof that the replacement location has been secured with either a signed lease or purchase agreement, and will likely be required to meet certain milestones in the project before a portion of the payment will be released. The Reviewer will work with the Agent to determine the best approach.

PROCEDURES FOR ADVERTISING SIGNS

SIGNS AS REAL PROPERTY

Advertising signs located on the property being acquired by the State and are owned by the property owner are included in the appraisal. They are purchased by the State as part of the real property or retained by the owner as part of the acquisition settlement and are not part of the personal property, thus are not eligible for relocation cost reimbursement.

"ON-PREMISE" SIGNS

In the event that a sign is located on the premises of a business that is a tenant of the displacement site, such sign shall normally be included in the inventory of personal property to be relocated and not treated separately. If the sign is included as a "tenant-owned improvement' in the acquisition offer, it will not be a relocation item.

Off-Premise Signs: Outdoor Advertising Signs

Please refer to the Policies for Off-Premise Outdoor Advertising Signs (OAS) at the end of the manual for appraising, buying and relocation.

FUNCTIONAL REPLACEMENT

The transportation needs for the public must be balanced with the other peace, safety, and well-being needs for the public for whom Indiana's government is instituted. When the Department of Transportation has determined that a publically owned property, essential to the peace, safety, and well-being needs of the public, must be acquired for a transportation project, fair market valuation is not the appropriate method for valuing such property, but rather, a replacement property must be provided to the public to ensure that the needs of the public does not suffer as a result of the highway project. To this end, the Department will functionally replace publicly owned properties that provide needed public services. Examples may include schools, police and fire stations, parks, recreational areas, municipal garages or maintenance facilities, libraries and city or county government buildings and other public-owned areas. For parks and recreation areas, Sec. 4(f) provisions of the US Department of Transportation (DOT) Act of 1966 may apply. The real property cannot be owned by a utility or railroad.

The functional replacement concept permits federal participation in costs of acquiring an adequate replacement site if one is required and the construction costs of the replacement improvements that duplicate the function of the acquired improvement. This concept requires that the facility must be needed by the public, must be actually replaced and the costs to presently replace the facility or cure damage to it be actually incurred by the public agency. Indiana Code Section 8-23-17-30 empowers the Indiana Department of Transportation (INDOT) to take actions as necessary in order to put into effect policies that comply with federal law and regulations, and pursuant to this, INDOT has the authority to create and implement provisions that assist INDOT with consistent application and administration of functional replacement benefits. The functional replacement concept may also be applied to state-funded projects.

The intention of functional replacement is to consider providing additional assistance when it is recognized that the Fair Market Value compensation for the acquisition of the public facility may be insufficient to restore it to the level needed to provide the same services which were being provided at the subject site. Costs of increases in capacity and other betterments or enhancements are not eligible for federal or state participation except where necessary to replace the facility's utility, unless required by existing codes, laws or zoning regulations, or related to reasonable prevailing standards for the facility being replaced. Because of the added review, oversight and approval associated with the functional replacement process, the importance of early coordination cannot be over emphasized. If you anticipate functional replacement will apply to a project, contact the Real Estate Division as soon as possible to discuss specifics. The agency owning the public facility, at its option, may choose to accept conventional Fair Market Value compensation provided through INDOT's standard acquisition process, in lieu of functional replacement.

When the department determines that functional replacement of real property in public ownership and public use may be necessary and in the public interest, state funds may participate in the payment to the public agency for:

• Functional replacement costs of improvements required to be replaced exclusive of increases in capacity or betterments; and

• Market value of land owned by the public agency when that public agency has land upon which to relocate facility; or

• Reasonable cost of acquiring a comparable, substitute site where lands owned by the public agency are not available for use in relocating the facility.

For federal participation in functional replacement, FHWA must provide prior approve for the acquisition. The provisions of 23 CFR Section 710.509 should be reviewed to assure compliance with federal regulations pertaining to functional replacement of real property in public ownership. The acquiring agency will prepare an early costs estimate of functional replacement to include all eligible costs.
Prior to the initiation of real estate services, the Project Manager should identify any parcel acquisitions that may meet the definition of functional replacement. If such a parcel is identified, the following approvals and steps must be followed:

1. The INDOT or LPA Project Manager must contact INDOT's central office acquisition section manager regarding the possibility of functional replacement when publicly owned real property, including land/or facilities, is to be acquired for a federal aid or a state funded project.

2. INDOT and FHWA, if applicable, will agree on scope of required oversight prior to initiation of functional replacement. INDOT's Real Estate Division Director will seek and provide all necessary approvals prior to initiation of functional replacement.

3. The acquiring agency should meet early in process with the public agency and inform the agency in writing of their right to just compensation based on appraisal of fair market value and of the option to choose either just compensation or functional replacement. Amount of functional replacement shall be limited to difference between approved offering price based on an appraisal of market value and actual cost to replace facility with an equivalent facility as defined in 23 CFR 710.509 provided below in this chapter.

4. Parcels approved for functional replacement, shall have a mutually acceptable course of action developed with owner via a Memorandum of Understanding (MOU) agreement. Action may include discussion on functional equivalency of facility and need to obtain bid estimates for necessary construction.

5. INDOT's Real Estate Division management will have responsibility to review and approve final costs estimates for state funded projects. If federal funds are involved, estimates must be processed through INDOT's Real Estate Division who will obtain necessary review and approval from FHWA.

6. Functional replacement funds over the approved acquisition amount will be processed through the established MOU agreement.

7. A portion of replacement funds will be held until construction is complete to ensure replacement actually takes place and costs have actually been incurred. The terms of the distribution of the function replacement funds will be outlined within the MOU agreement.

8. Total cost of functional replacement will be based on a written estimate of construction (approved by INDOT) and either market value or reasonable, actual cost of acquiring a comparable substitute site.

9. All other Real Estate service functions to include but not limited to; appraising, buying, relocation, finance, and property management services will be provided as needed and established within the INDOT Real Estate Division manual.

23 CFR 710.509 Functional replacement of real property in public ownership.

(a) *General.* When publicly owned real property, including land and/or facilities, is to be acquired for a project receiving grant funds under title 23, in lieu of paying the fair market value for the real property, the acquiring agency may provide compensation by functionally replacing the publicly owned real property with another facility that will provide equivalent utility.

(b) *Federal participation.* Federal-aid funds may participate in functional replacement costs only if the following conditions are met:

(1) Functional replacement is permitted under State law and the acquiring agency elects to provide it;

(2) The property in question is in public ownership and use;

(3) The replacement facility will be in public ownership and will continue the public use function of the acquired facility;

(4) The acquiring agency has informed, in writing, the public entity owning the property of its right to an estimate of just compensation based on an appraisal of fair market value and of the option to choose either just compensation or functional replacement;

(5) The FHWA concurs in the acquiring agency determination that functional replacement is in the public interest; and

(6) The real property is not owned by a utility or railroad.

(c) *Federal land transfers.* Use of this section for functional replacement of real property in

Federal ownership shall be in accordance with Federal land transfer provisions in subpart F of this part.

(d) *Limits upon participation.* Federal-aid participation in the costs of functional replacement is limited to costs that are actually incurred in the replacement of the acquired land and/or facility and are -

(1) Costs for facilities that do not represent increases in capacity or betterments, except for those necessary to replace utilities, to meet legal, regulatory, or similar requirements, or to meet reasonable prevailing standards; and

(2) Costs for land to provide a site for the replacement facility.

(e) *Procedures.* When a grantee determines that payments providing for functional replacement of public facilities are allowable under State law, the grantee will incorporate within its approved ROW manual, or approved RAMP, full procedures covering review and oversight that will be applied to such cases.

DEFINITIONS AND GENERAL PROVISIONS

ADVANCE PAYMENTS

If a displacee demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the acquiring agency shall issue the payment subject to such safeguards as are determined appropriate by the Acquisitions Manager to ensure that the objective of the payment is accomplished and that the payment is recoverable by the acquiring agency in the event that the displacee fails to fully complete the remaining eligibility requirements for the payment.

ALIEN NOT LAWFULLY PRESENT IN THE UNITED STATES

As defined in 49 CFR § 24.2(a)(2), this phrase means an alien who is not "lawfully present" in the United States includes:

4. An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose stay in the United States has not been authorized by the United States Attorney General

5. 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.

An alien that is not lawfully present in the United States is not eligible for relocation payments or assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.

AVAILABLE HOUSING

Shall mean that the displacee has either obtained and has the right of possession of replacement housing or the State has offered comparable decent, safe and sanitary replacement housing which is available for immediate occupancy.

AVERAGE ANNUAL NET EARNINGS

Means one-half of any net earnings of a business or farm operation before Federal, State and local income taxes during the 2 taxable years immediately preceding the taxable year such business or farm operation was displaced or other period of time that the State determines to be more equitable. Any compensation paid by the business or farm operation to the owner, his spouse or his dependents during the 2-year period shall be included in the average annual net earnings.

BASE MONTHLY RENT (BMR)

The lesser of:

1. The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement as determined by the State. (For an owner-occupant, this is the economic rent plus utilities for the dwelling. For a tenant who paid little or no rent for the displacement dwelling, this is the economic rent plus utilities unless its use would result in a hardship because of the person's income or other circumstances.)

2. Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,

3. The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

   The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA'S Web site at https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm.

4. The total amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

BID

Price stated by a person or firm to perform certain specified activities at a future date. Constitutes a commitment by the person or firm to perform those activities for the stated price, if they are awarded the work.

BREAKOUT/CARVEOUT

The part of the State's offer that was for the owner-occupied portion of a displacement residence, which is used in Price Differential entitlement and payment computations.

BEFORE VALUE

The Fair Market Value of the real property before the State acquires any interest(s) in that real property.

BUSINESS

Any lawful activity except a farm operation that is conducted

1. Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/ or any other personal property; or

2. Primarily for the sale of services to the public; or

3. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

4. By a nonprofit organization that has established its nonprofit status under applicable federal or state law.

COMBINED CORRIDOR AND DESIGN PUBLIC HEARING

A public hearing usually associated with the improvement of an existing highway. If residents or businesses will be displaced, the Relocation Assistance Program is explained at this hearing in relation to data gathered through a Relocation Survey. Relocation brochures are made available at this hearing to anyone wishing a copy.

COMPARABLE/FUNCTIONAL EQUIVALENT REPLACEMENT DWELLING

The term comparable replacement dwelling means a dwelling that is

1. Decent, safe and sanitary;

2. Functionally equivalent to the displacement dwelling;

3. Adequate in size to accommodate the occupants;

4. In an area not subject to unreasonable adverse environmental conditions;

5. In a location generally not less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance; and

8. Within the financial means of the displaced person.

If replacement dwellings meeting the above requirements are not available on the market, dwellings that exceed those requirements may be treated as comparable replacement dwellings.

CONCEPTUAL STAGE REPORT (CSR)

A Relocation Survey done as part of or in conjunction with the environmental study whereby certain required information is obtained by field observation and interviews on each of the proposed corridors or locations of the highway.

CONTRIBUTES MATERIALLY

Contributes materially means that during the two taxable years prior to the taxable year in which displacement occurs or during such other period as the State determines to be more equitable, a business or farm operation that:

1. Had average annual gross receipts of at least $5,000.00; or

2. Had average annual net earnings of at least $1,000.00; or

3. Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

If application of the above criteria creates an inequity or hardship in any given case, the State may approve the use of other criteria as determined appropriate.

CONTROL OF THE PROPERTY

Is that date when:

1. The fee owner receives payment from the State for the acquired property; or

2. When money has been posted in court for condemnation cases.

CORRIDOR

Shall mean any one, several, or combination of several proposed locations for a highway project.

CORRIDOR PUBLIC HEARING

A public hearing to display and discuss the various proposed corridors of a highway improvement. The Relocation Assistance Program is explained in relation to the estimated number of persons and businesses to be displaced on any of the proposed corridors. Relocation brochures are made available.

DATE OF DISPLACEMENT

1. Residential Owner-Occupants:
   a. *12 Months to Secure and Occupy DS&S Housing*: The latter of the date 1)comparable replacement housing is made available 2)the date final payment is received for the displacement dwelling 3)in condemnations, the date the required amount is deposited in court
   b. *18 Months to Make Claims*: The latter of the date 1)of the move from the displacement dwelling 2)the date of final payment for the displacement dwelling 3)in condemnations, the date the final judgment is paid
2. Business Owner-Occupants: The latter of the date 1)final payment is received for the real property 2)the date of move from the displacement site 3 in condemnations, the date the final judgment is paid
3. Tenants: The date of move from the displacement site

DECENT, SAFE AND SANITARY DWELLING (DS&S)

The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable federal, state and local housing and occupancy codes. First consideration is given to local housing and occupancy codes. However, if any of the following standards are not met by an applicable code, such shall apply unless waived for good cause by FHWA. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair.
2. Contain a safe electrical wiring system adequate for lighting and other electrical devices.
3. Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees for a displaced person, except in those areas where local climatic conditions do not require such a system.

4. 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 bedrooms is normally given first consideration. There must be an adequate number of bedrooms for the occupants. These decisions normally involve the correlation of the age and sex of both adults and children and the appropriateness of sharing bedroom space.

5. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

6. Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

7. For a disabled displacee, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

DESIGN PUBLIC HEARING

A public hearing to graphically display and discuss the proposed highway project at which the Relocation Assistance Program is explained in relation to data gathered on the recommended corridor. Relocation brochures are made available at this hearing. A Design Public Hearing follows the Corridor Public Hearing, if held.

DISPLACED PERSON OR DISPLACEE

1. Persons Displaced

   Any person who moves from the real property or moves his or her personal property from real property:

   a. 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;

   b. As a result of rehabilitation or demolition for a project; or

   c. 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 a displaced person applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

2. Persons Not Displaced

The following is a non-exclusive listing of persons who do not qualify as a displaced person.

a. A person who moves before the initiation of negotiations, unless the State determines that the person was displaced as a direct result of the project; or

b. A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

c. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act; or

d. A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the State in accordance with any guidelines established by FHWA.

e. Persons who are not displaced but are required to temporarily relocate due to a project will be treated fairly and equitably. Their temporarily occupied housing must be decent, safe and sanitary. They will be reimbursed for all reasonable out-of- pocket expenses incurred in connection with the temporary relocation including moving expenses and increased housing costs during the temporary relocation; or

f. An owner-occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactorily agreement of sale cannot be reached; the State will not acquire the property. However, in such cases any resulting displacement of a tenant who meets the requirements of a displaced person may constitute a valid displacement in accordance with applicable regulations; or

g. A person whom the State determines is not displaced as a direct result of a partial acquisition; or

h. A person who receives a notice of relocation eligibility and is subsequently notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the State agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

i. A person who retains the right of use and occupancy of the real property for life after its acquisition by the State; or

j. A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause under applicable law.

DOWNPAYMENT ASSISTANCE PAYMENT

A Replacement Housing Payment made to a residential tenant of 90-days or more who elects to purchase their replacement dwelling.

DUPLICATE PAYMENTS NOT PERMITTED

No relocatee shall receive any relocation payment if that person receives a payment under federal, state, or local law, or insurance proceeds which are determined to have the same purpose and effect as such relocation payment.

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 project; a non- housekeeping unit; a mobile home; or any other residential unit.

DWELLING SITE

A land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

ESTIMATE

Approximate amount for which a person or firm believes certain activities can be accomplished. Making an estimate does not constitute a commitment by the person or firm to perform the activities for that amount.

EXPENDITURE OF PAYMENTS

Payments, provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

FAIR MARKET VALUE

The State Review Appraiser's estimate of the value of the Right of Way to be acquired and any damage to the residue. This is the amount of the acquisition offer to be made to the owner of the property.

FAMILY

Two or more individuals living together in a single family dwelling 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 or 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 such quantity as to be capable of contributing materially to the operator's support. However, in instances where such operation is obviously a farm operation, it need not contribute one-third to the operator's income for him to be eligible for relocation moving payments.

FEDERAL AGENCY

Any Department, Agency or instrumentality in the Executive Branch of the Government, any wholly owned Government Corporation, and the architect of the Capitol, the Federal Reserve Banks and branches thereof.

FEDERAL FINANCIAL ASSISTANCE OR GOVERNMENT HOUSING

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.

Occupied government housing assistance before displacement; a dwelling that may reflect similar government housing assistance. In such cases any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

FUNCTIONALLY EQUIVALENT

A replacement dwelling that provides the same function, the same utility as in the displacement dwelling. A functionally equivalent replacement dwelling need not possess every feature of the displacement dwelling, but the principal features must be present. Functionally equivalent is an objective standard reflecting the range of purposes for which the various physical features of a dwelling may be used. Reasonable trade-offs for specific features may be considered when the replacement unit is "equal or better than" the displacement dwelling. For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially, less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is adequate to accommodate the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

GLOBAL SETTLEMENT

The Uniform Act and implementing regulations in 49 CFR Part 24 require that certain incidental expenses and relocation benefits including relocation housing payments be based on actual costs. These costs are not generally available at the time negotiations for the real property is completed by acquiring agencies. In addition, most residential moving costs and many business moving expenses must also be based on actual expenditures. Due to the above requirements, Global Settlements on federal and federal-aid projects is not permitted.

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. (Refer to CFR 49 Part 24 appendix A, § 24.2(a)(14) for examples of exclusions to income.)

HUD or DHUD

The area office or, where none exists, the regional office of the Department of Housing and Urban Development.

INCIDENTAL EXPENSES PAYMENT

The sum of those eligible, reasonable costs customarily paid by the buyer and actually incurred by the displaced person as a result of the purchase of a replacement dwelling.

INCREASED INTEREST PAYMENT

The amount to compensate a displaced homeowner-occupant for any increased interest costs he or she is required to pay for financing the replacement property.

INDEPENDENT REVIEWER

An independent reviewer is an individual who does not have direct responsibility or involvement in the action appealed. Thus, reviewers should not have been significantly involved in the activities under review.

INITIATION OF NEGOTIATIONS FOR THE PARCEL

The delivery of the initial written offer by the State's negotiator to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless FHWA regulations specify a different action to serve this purpose. In any case where a person moves after the State issues a notice of its intent to acquire the real property,

but before delivery of the initial written purchase offer, initiation of negotiations means the date the person moves from the property.

MOBILE HOME

The term mobile home includes manufactured homes and recreational vehicles used as residences.

MORTGAGE

Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

MORTGAGE INTEREST DIFFERENTIAL PAYMENT

Same as INCREASED INTEREST PAYMENT.

MOVES AS A RESULT OF PROTECTIVE BUYING OR HARDSHIP

A person who moves from real property which is acquired for a project by protective buying or because of hardship prior to initiation of negotiations for the project. The occupancy requirements must be computed from the date of initiation of negotiations for the parcel or the date of move, whichever is earlier. When a notice of intent to acquire is issued, the date of move will be considered to be the initiation of negotiations for the parcel.

NONPROFIT ORGANIZATION

An organization and/or business that is incorporated under the applicable laws of the State as a non-profit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code.

OWNER OF A DWELLING

A displaced person is considered to have met the requirement to own a displacement or replacement dwelling if the person holds any of the following interests in real property acquired for a project:

1. Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition
2. An interest in a cooperative housing project which includes the right to occupy a dwelling
3. A contract to purchase any interest or estates described above

4. Any other interest, including a partial interest, which in the judgment of the State warrants consideration as ownership

90-DAY OWNER

An initial occupant who has owned and occupied the dwelling from which he or she is being displaced for at least 90 days immediately prior to the initiation of negotiations.

PARTIAL ACQUISITION

The acquisition of a portion of a parcel of property.

PERCENT REQUIRED FOR DOWNPAYMENT

At the start of each project, the Right of Way Agent assigned shall survey local financial institutions engaged in home mortgages to determine the percent required as down payment for conventional financing, i.e. an uninsured loan. The percentage given by each institution in the area shall be averaged to the nearest whole percent to determine the average percent required as down payment for a conventional loan.

PERSON

Any individual, family, partnership, corporation or association.

POTABLE WATER

Water suitable for drinking.

PRICE DIFFERENTIAL PAYMENT

The difference between the acquisition price paid by the State for the displacement dwelling and the amount determined by the State as necessary to purchase a comparable dwelling or the amount actually paid by the displaced person for a DS&S replacement dwelling, whichever is less.

RENTAL ASSISTANCE PAYMENT (RAP)

A Replacement Housing Payment to reimburse a residential 90-day tenant or homeowner-occupant for the increased cost of renting a comparable replacement dwelling or the DS&S dwelling they actually rent, whichever is less, for a period not to exceed 42 months.

REPLACEMENT DWELLING

A dwelling which meets the criteria of DS&S and which may or may not be comparable to that which the displacee occupied at the time of displacement.

REPLACEMENT HOUSING PAYMENT (RHP)

This is a general term which encompasses the Price Differential, Mortgage Interest Differential, and Incidental Expenses, Rental Assistance Payments (RAP), and Down payment Assistance Payments (DAP).

REPUTABLE MOVER

A mover who regularly engages in a specific type(s) of personal property moving and who is in compliance with all applicable Federal, State and local laws and/or ordinances.

ROOM

A specifically definable area such as a bedroom, living room, kitchen, etc.

ROOM COUNT

For purposes of payment on the moving cost schedule, a room adequately furnished for the purpose to which the room is being used.

SALVAGE VALUE

The probable sale price of an item if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

SITE OCCUPANT

An owner or tenant in occupancy of the displacement property.

SMALL BUSINESS

A business having at least one, but not more than 500 employees working at the site being acquired or displaced by a program or project.

STATE

The Indiana Department of Transportation (INDOT) or comparable organization of 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, The Trust Territory of the Pacific Islands, and any political subdivision thereof, i.e. local public agency (LPA).

STATE AGENCY

Any Department, Agency of instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

TENANT

One having temporary use and occupancy of real property owned by another.

UNIFORM ACT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et. seq.; Public Law 91-646), and amendments thereto.

UNLAWFUL OCCUPANT

A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. An Agency, at its discretion, may consider such person to be in lawful occupancy.

UTILITY COSTS

Expenses for heating, cooling, other electric, water and sewer.

WAIVER OF RELOCATION ASSISTANCE

No waiver of relocation assistance is permitted. A displacing Agency shall not propose or request that a displaced person waive his or her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

WITHIN THE FINANCIAL MEANS OF THE DISPLACEE

1. 90-Day Owners Who Purchase Their Replacement Dwelling. A replacement dwelling is considered to be within the financial means of the 90-day homeowner if the homeowner is paid the full Price Differential, all increased mortgage interest costs, and all eligible incidental expenses, plus any additional amount required to be paid under the provisions of Last Resort Housing.

2. Eligible Displaced Persons Who Rent Their Replacement Dwelling. A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving a Rental Assistance Payment, the person's monthly rent and estimated average monthly utility costs do not exceed the person's base monthly rental for the displacement dwelling.

Ineligible Displaced Persons. For displaced persons ineligible to receive a Replacement Housing Payment because of failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the State pays that portion of the monthly replacement housing costs which exceeds 30% of the displaced tenant's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total amount designated for shelter and utilities. Such rental assistance must be paid under the provisions of Last Resort Housing.

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PROPERTY MANAGEMENT PROCEDURES

INDIANA DEPARTMENT OF TRANSPORTATION - REAL ESTATE DIVISION MANUAL
AUGUST 2018 – Revised August 2021

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ADMINISTRATIVE PRACTICES

Administrative practices reflect standards that satisfy requirements of the Federal Highway Administration and State statutes. Records of projects involving Federal participation are subject to review and may be audited by Federal Highway Administration representatives at any time.

PURPOSE

The purpose of this manual is to provide a guide for persons interested in INDOT procedures for managing properties acquired for transportation improvements and to ensure that the process is administered in an equitable and uniform manner to all persons affected by such projects. These procedures are determined by Indiana Statutes, Federal Highway Administration Procedures, and policies of the Indiana Department of Transportation and the Indiana Department of Administration.

Property Management has three basic objectives:

1. Deliver all payments for the acquisition of Right of Way
2. Clear the Right of Way prior to construction
3. Recover an optimum amount of expenses associated with land acquisition.

Operating procedures are prescribed for the functional areas of administrative practices, payment delivery, new acquisitions, property leasing, improvement removal, Right of Way clearance and disposal of excess land. They outline the District's responsibilities for Property Management procedures within the separate District areas prior to project lettings.

FINANCIAL TRANSACTIONS

Procedures for delivering land acquisition payments to landowners and receipts from sales, rentals, or other property transactions are prescribed by administrative directive and the State Board of Accounts. Diligent adherence to the established procedures provides standards of accountability adequate to meet requirements of the Federal Highway Administration.

ADVANCE PROGRAMMING

The nature and scope of advance programming are determined primarily by acquisition lead-time. With adequate lead-time for the acquisition of improved properties ahead of construction operations, plans can be developed for the orderly and efficient disposition of improvements. The ultimate goal and primary objective is to certify that the Right of Way is clear prior to construction.

PROPERTY INVENTORY

Property Management maintains the inventory of all improvements on land purchased for transportation projects. The fixtures and improvements (items acquired), where applicable, are posted in the Land Records System (LRS). Property Management also maintains the LRS inventory of excess land and other property acquired by the State in fee title, by the eminent domain process, or by Right of Way grant and held for wetlands or other mitigating purposes.

PARCELS PAYMENTS AND NOTICES

PARCEL FILES, SECURED AND CONDEMNED

All parcel files are routed to Property Management to identify improvements in the Right of Way that require removal, to identify and record excess land that was acquired and to deliver payment for the acquisition.

1. Secured and condemned parcel files are reviewed to identify improvements or personal property in the acquired and existing Right of Way. Personal property or improvements in the acquired Right of Way are entered in LRS as "Acquired", "Cost to Cure", "Both" or "None". A brief description of the improvement is also entered.
   a. **Acquired Improvements** in the acquired Right of Way. These improvements are INDOT property after payment. A 30 day notice to vacate is not required and INDOT has these improvements removed in its own time by various methods explained in *Acquisitions with Buildings* once possession has been secured.
   b. **Cost to Cure** improvements in the acquired Right of Way. These improvements are property for which the owner will be paid money to remove from the acquired Right of Way. A 30 Day Notice to vacate is required to be delivered to the owner. If not removed within 30 days, the improvement is considered an encroachment. If the owner fails to remove the encroachment, INDOT will remove these in its own time. The term Cost to Cure is used by appraisers as a term that also describes damages and not necessarily improvements that need to be physically removed by the owner as stated above.
   c. **Encroachments** in the existing Right of Way. These are improvements that have been illegally placed in the existing Right of Way. The appropriate District is responsible for the removal of encroachments in the existing Right of Way. An encroachment notice is sent to the District when identified in the appraisal.

2. Secured parcel files are reviewed for payment and delivery instructions, property taxes to pay, mortgage balance to pay, mortgage release to obtain, mobile home titles to obtain, etc.

3. Any necessary payment notices and closing statements are prepared for mailing or delivery with the payment for secured parcels.

4. Parcel files are reviewed to identify excess land, wetlands or any other special classification property. The Right of Way Agent's Status Report and the appraisal in the parcel file should list any excess lands or wetlands acquired on the parcel. The information needs to be reflected in the Parcel tab of the Engineering screen. The information in the Engineering screen is what populates the Parcel Asset tab in LRS.

5. Parcel files are held in Property Management until all payments have been mailed or delivered. Once all Property Management information has been extracted with Cost to Cure information sent to the District to monitor the removal and clearing the parcel files are sent to Records for filing.

DELIVERY OF PAYMENTS

When checks for property payment are received in Property Management from the Finance Section, each check is accompanied by a copy of the claim voucher. The check payee name(s) and check amount(s) are compared with the claim voucher(s) and the warranty deed(s) to insure the total compensation due is ready for delivery.

When there is a difference of information the parcel file must be reviewed to ascertain the reason for the difference. The most common reason would be the owner has elected to retain certain items which INDOT purchased. A retention letter or Right of Way Agent's Report would cite a retention value and that value should be the difference between the warranty deed amount and the check(s) total.

Checks are mailed or delivered in accordance with instructions entered in the LRS voucher screen. The information should include a contact person, their address and telephone number. All checks mailed use the USPS mailing service to assure timely service. UPS overnight delivery is primarily utilized when checks are co-payable and need endorsement from the property owner(s) and for delivery to a financial institution, assessor, etc. When requested per instructions, hand delivery will be completed by Property Management Specialists. The check delivery method, the delivering agent and the delivery date are entered in the LRS.

1. **Payments mailed to property owner without 30 day notices** The check and a closing statement are mailed to the property owner. The parcel paid date and the parcel clear date are entered in the LRS.

2. **Payments mailed to property owners with 30 day notices** The check, closing statement, and a 30 day notice are mailed to the property owner using UPS mailing service. The service provides confirmation of delivery. The paid date and the 30 day expiration date are entered in the LRS.

3. **Payments delivered by agent when necessary** The check, a closing statement and if necessary a 30 day notice are given to a Property Management Agent for delivery.

4. The delivering agent **contacts all parties by telephone**, verifies the terms of the payments, and schedules the closing. When the checks are delivered, the delivering agent dates the closing statement and has the statement signed by the check recipient. The delivering agent returns one closing statement for the records file. The parcel paid date and either the parcel clear date or the 30 day expiration date are entered in the LRS.

5. **Payments mailed to clerk of the courts** Condemned parcel payments are ordered by the court where the eminent domain case was filed. Checks for such payments are made payable to the clerk of courts of the appropriate county. The check, the Attorney General's transmittal form, a claim voucher, and a copy of the court order are received in Property Management from the Finance Section. Upon receipt of these documents, the court order is compared to the information in the LRS. The LRS information is revised to conform to the court order.

   The check and a cover letter are mailed to the clerk of the court to whom the check is made payable. The clerk of the court is requested to send Property Management a receipt. Upon obtaining the receipt from the clerk of the court the paid receipt date is entered in the LRS as the money posted paid date. The receipt and all relevant documents are forwarded to Records for filing.

NOTICES AND CLOSING ISSUES

Closing Statement A closing statement is prepared for each parcel acquired. Each payee receives the closing statement. The closing statement includes the total amount of compensation for the parcel, the name of each payee and the amount of compensation to each payee. (*See Appendix, Closing Statement*)

30 Day Notice to Vacate When a parcel involves improvements, e.g. a building, a sign, etc; a notice to vacate is sent or delivered, along with the acquisition payment, to the owner giving the owner 30 days to vacate the improvement or remove the improvements not acquired by the State from the acquired Right of Way. The 30 day expiration date is entered in the LRS. (*See Appendix, 30 Day Notice*) For condemned parcels, the 30 Day Notice is not necessary per IC 32- 24, INDOT takes possession when monies are posted to the court. Property Management will issue a 30-Day Notice with approval from the AOG. (*See Appendix, 30 Day Notice – Condemnation*)

Special Notice Letters When property owners are paid damages to replace certain items like septic systems, utility lines or livestock containment fences, special notice letters will be sent reminding them that they will soon lose the utility of those original items and that they should take steps to replace them.

Mortgages Closings may require mortgage payoffs and mortgage releases obtained from the lender. If the Right of Way Agent assigned to buying was unable to obtain a needed mortgage release, instructions will be entered in the LRS voucher screen. The instructions should include the contact person, address, telephone number and the mortgage account number. The agent mailing or delivering the payment makes prior contact by telephone and or email with the mortgage company and the property owner to verify the amounts to be received to ensure all checks and documents are accurate.

Property Taxes When property taxes are to be paid as part of the acquisition a separate check is prepared with the property owner and the appropriate county treasurer as co-payees. Before mailing or delivering any payments, the Property Management Agent will verify with the county prior to mailing or delivery that the amount of property taxes due is covered by the check and that the mailing address for the receipt of funds is accurate. If the check amount is not correct, a new check must be prepared if additional funds or a refund cannot be arranged. The property tax check will be mailed to the owner for endorsement using UPS delivery service. The check will be returned by the owner to Property Management before any other funds are mailed or delivered.

CLEARING THE RIGHT OF WAY.

The goal of Property Management is to clear all Right of Way acquired parcels prior to the project's scheduled Right of Way clear date. Bare land parcels, parcels with no improvements, are cleared upon payment.

OWNER RETENTION OF IMPROVEMENTS

An owner may opt to retain fixtures or improvements and remove them from the Right of Way purchased by INDOT. Generally this solution is the most advantageous if there is adequate lead-time to remove the fixture or improvement before the Right of Way clear date. Retentions fall into two categories, minor retentions consisting of fixtures to a building, signs, flag poles, etc. and major retentions, such as buildings on foundations.

RETAINING MINOR IMPROVEMENTS

In the case of minor retentions, INDOT's offer includes the improvement but the owner chooses to retain it. The INDOT Right of Way Agent assigned to buying determines an estimated retention or salvage value for the improvement. The estimated retention value is deducted from the original good faith offer. A 30-day Notice is issued to remove retained minor retention items and a list of retention items will be forwarded to the District.

Owners opting to retain minor improvements are responsible for leaving the site secure. All windows and doors are to be shut and locked. If windows and doors are retained, the openings must be boarded over.

RETAINING MAJOR IMPROVEMENTS

When the owner wishes to retain major improvements, the owner must complete the first two pages of the Major Retention Agreement form (*see* Online Forms). This form requires that the owner investigate and document the following considerations before requesting approval through the Acquisitions Section for the retention:

- Local by-laws and building restrictions allow the structure to be moved.
- Required setbacks, lot size needed, utilities available, zoning requirements, elevations needed and permits required are all compatible with this move.
- Contact railroad companies for costs and permits needed to cross their lines.
- Obtain roadway permits and road closures needed for moving the structure.
- Costs for any necessary permits, inspections and compliance with local ordinances
- Contact utility companies for costs and removal/ replacement of power lines and poles
- Availability of a suitable replacement site in the form of a signed and accepted purchase agreement, deed, or tax records
- County Health Department approval letter

- Statements (moving, foundation, septic/well) to verify the structure is feasible to move, that the contractors will be available for work during the specified time frame, that the moving permits can be obtained and zoning is appropriate
- Bids from moving contractor(s) or building contractor(s) for the cost to prep the replacement site, move the building/structure, construct a foundation, and install electric or other utilities and/or well and septic that existed in the previous location

The Acquisitions Section may consult with Central Office Property Management and the Project Manager regarding whether there is sufficient lead time for the owner to remove the improvement. In considering lead time, generally 180 days are allowed for removal of improvements for major retentions. Property Management, the Project Manager and the Acquisitions Section must also consider the time to process the payment as removal of improvement is not expected to begin for at least 30 days after payment. This information will help determine the date by which the owner must complete the obligations to satisfy the agreement.

A surety performance bond (*see Surety Performance Bond)* in the form of a certified check or cashier's check (payable to "The Indiana Department of Transportation") for the amount specified in the Major Retention Agreement (*see* Online Forms) form will be required. If the owner is unable to obtain a surety performance bond, the Acquisitions Section Manager may allow the requested bond amount to be held out of the acquisition payment until all items in the Major Retention Agreement are completed. A separate voucher would be prepared by the Right of Way Agent assigned to buying in lieu of requiring the bond.

If the Acquisition Section approves the retention and the owner agrees by signing the Major Retention Agreement, the Right of Way Agent assigned to buying will forward a copy of the completed and signed Agreement to Central Office Property Management, update LRS and place a note in the remarks section. Property Management will be notified when all terms noted in the Major Retention Agreement have been satisfied. At this point, any remaining funds due to the owner can be released.

COST TO CURE IMPROVEMENTS

A cost to cure improvement is one whose owner has been paid to remove or relocate it as a portion of the good faith offer. Large lawn ornaments, fencing and signs are examples of cost to cure improvements. Cost to cure means the owner is paid to cure the problem created by the project. This is not to be confused with improvements paid as cost to cure to replace an improvement. When an owner is paid cost to cure to replace, the improvement belongs to INDOT.

At the buying stage of acquiring the land, the owner signs a firm offer letter which contains the following paragraph:

> Any improvements or items within the State's proposed Right of Way which you are responsible for moving must be removed within 30 days of the date you are paid. At the end of that 30-day period, any items remaining on State Right of Way become encroachments. Pursuant to Indiana law, the Department has the right to

remove any encroachment from its Right of Way after giving the owner proper notice. If you have any questions concerning the removal of items, contact the Property Management Section ….

CLEARING COST TO CURE ITEMS FROM THE RIGHT OF WAY

1. Property Management identifies a cost to cure when the secured parcel arrives for payment. At that time, the item(s), date, and location are posted in LRS.

2. Property Management sends a 30-Day Notice, (*see Appendix*), by mail to the owner with the parcel payment. Copies are made of pictures and descriptions of cost to cure items, as well as plan sheets and sent to the District to monitor the cost to cure items and the expiration of the 30-Day Notice.

IMPROVEMENTS RETAINED BY INDOT OR OTHER STATE AGENCIES

When INDOT acquires the fixtures or improvements, the District may identify items that might be of use. If a District determines that there is a need for any of the items purchased by INDOT, a memorandum of request is prepared and signed by the District Director and forwarded to the Real Estate Division Property Management Unit. The memorandum lists the specific items requested and explains where the items will be used; pictures of the requested item(s) must be attached to the request form. Internal Affairs Division has advised that items removed by the District not be put in storage for future use. Removal of the item(s) occurs only after the Real Estate Division Director and the District Real Estate Manager (DREM) sign the approval. When the request has been approved, the District makes arrangements for the removal of the item(s). The District Real Estate Manager will, as a part of assessments, verify compliance.

Property Management may notify other State agencies of fixtures or improvements not wanted by INDOT. Whenever any of the State's agencies desire to obtain any of these items purchased by INDOT, a letter of request from the head of the requesting agency to INDOT's Commissioner through Real Estate Division Property Management is required. If the Commissioner approves, Property Management contacts the requesting agency and makes arrangements for its staff to remove the item(s).

CERTIFYING THE RIGHT OF WAY CLEAR

INDOT PROCEDURE

Property Management is responsible for certifying that Right of Way is clear for construction projects. For Right of Way to be certified clear, all occupants, "cost-to-cure" improvements and personal property must be removed from the acquired Right of Way. Certification letters are due to the Contracts Section not later than the ready for contracts (RFC) date.

Prior to preparing a certification letter, Property Management checks the LRS to determine if all parcels on a project are clear for letting. If all parcels are clear, Property Management sends the certification letter. (*See Appendix, Certification Clear*). Certification letters are signed by the Real Estate Division Property Management Certification Supervisor.

LPA PROCEDURE

The Local Public Agency (LPA) is responsible for verifying that the Right of Way is clear for construction projects according to the same criteria as a State project. The LPA will produce a Certification Letter to be submitted to the LPA Review Section at INDOT Central Office. Upon receipt of the LPA Certification Letter, the LPA Review Section will verify that all acquisition and relocation activities were deemed compliant before certifying that the Right of Way is clear.

CERTIFICATIONS WITH EXCEPTIONS

Certifications with exceptions should be compliant with Federal Regulations (23 CFR part 635.309). Certifying a project with exceptions should be kept to a minimum, only utilized when requested by the Project Manager, not by the Real Estate Division, and should only be prepared and submitted when it is in the best interest of the public. In rare instances, when all parcels have not been acquired, an exception may be requested.

> ***23 CFR 635.309 (c)***
> *A statement is received from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to relocatees adequate replacement housing in accordance with the provisions of the current Federal Highway Administration (FHWA) directive(s) covering the administration of the Highway Relocation Assistance Program and that one of the following has application:*

1. All needed Right of Way acquired, all occupants have moved;
2. Not all needed Right of Way acquired, proof of payment to all property owners has been demonstrated and/or all recorded rights of entry have been obtained on all other remaining parcels while awaiting ancillary documentation as part of proof of payment, together with the relocation of all occupants. Any parcels with the aforementioned rights of entry and/or encroachments to be removed will have been clearly defined within the contract information book (CIB), and the current status will be conveyed to the contractor prior to issuance of the notice to proceed (NTP).
3. Acquisition of Right of Way is not complete, and occupants are still on the project. Level 3 Certifications are not routinely approved for use on federal aid contracts, they are exceptions granted only when it can be demonstrated to be in the public interest. This public interest demonstrates requires a full explanation, notices in the bid proposals, and special assurances about protection of the occupant against

inconvenience, injury or any action coercive in nature. Letting a project without clear Right of Way with Level 3 certification is undesirable due to the potential to add costs and time thru claims and change orders while the project is in construction.

All Right of Way certifications must advise that Right of Way has been acquired in accord with FHWA directives. When relocations are involved, the certification also advises that relocation assistance and payment rules were followed in accordance with 49 CFR Part 24.

A certification letter with exceptions can be sent when a Project Manager requests it. If all parcels are not clear, Property Management checks with the Acquisitions Manager and/or Project Manager to estimate when the unclear parcels will be secured, paid, and clear. The Buying Manager and/or Project Manager confers with the Designers and/or Design Consultants to determine if the contractor can start work without the exception parcel(s) and whether or not work can progress until the parcels are secured and clear. If the start of construction is possible with the exceptions, a certification letter listing the exceptions is sent. (*See Appendix, Certification with Exceptions*) Updated certifications are issued by Property Management as required or when all of the Right of Way is finally clear.

The date of certification and certification with exception, if necessary, is entered in the LRS. Original certification letters are to be sent to the Contracts Division.

Before a project is certified clear, Property Management compares the Billboard Inventory with the LRS parcel listing to insure all billboards in the existing or new Right of Way have been addressed.

BILLBOARD INVENTORY

Surveyors of new Right of Way are required to locate and identify all billboards located in the existing or proposed Right of Way. The surveyors provide this billboard inventory as part of Right of Way Engineering.

The Review Appraiser compares this inventory with what is discovered at the Appraising site inspection. The Review Appraiser determines the ownership of the billboard and verifies the location of the billboard. The Review Appraiser adds this information to the inventory. The Review Appraiser's entry identifies who is responsible for removing the billboard. If a supplemental parcel is needed, the Review Appraiser creates the parcel in LRS or requests that the Engineering Section create the parcel in LRS. The Review Appraiser notifies the Real Estate Division Property Management Section of any encroaching billboards. Property Management notifies the appropriate District of all encroachments.

The Permit Manager must be notified of any actions taken on billboards. Please provide the permit number, location of the billboard, and actions taken.

ACQUISITIONS WITH BUILDINGS

The LRS (Land Records System), updated daily, and the Project and Parcel Status Report, updated monthly, identify parcels with buildings included in the acquisition.

1. In the event an occupied building is within the Right of Way to be acquired, a notation will be put into LRS (for LPA projects, use of the Daily Notice is permitted – see Online Forms) Upon receipt of this preliminary information the Property Management Parcel Maintenance fields in LRS are completed.

2. A secured parcel file is reviewed to determine if a building within the acquired Right of Way has been retained by the owner. If an owner has chosen to retain and move the building, the building is identified as a cost to cure item in the Parcel Maintenance screen in LRS. The building must be removed within the time allowed in the retention contract as determined by the Project Manager and the District to meet the project schedule.

3. At the time payment is made to the owner, a 30 day notice to vacate the property is delivered to the owner and occupant(s) of the building as explained in *Clearing the Right of Way* starting on page 374. The date of the expiration of the 30 days is entered in LRS. Renters will not be issued a 30 day notice before the owner.

4. Property Management must coordinate with Relocation on vacate notices. Even though a 30 day notice may have expired, occupants cannot be required to vacate until the Relocation 90 Day Notice has expired.

5. On or before the expiration date of the 30 day notice, the District contacts the property owner, tenant(s) and/or Relocation to find out if they have moved. An extension of time to vacate or a lease may be discussed with the owner or tenant if there is enough time prior to the construction contract letting. Again, Property Management must coordinate with the Project Manager, District and Relocation to see if there are special issues involved with having the occupants vacate.

EVICTION

If an owner occupant or tenant fails to vacate after 30 days and an extension cannot be allowed, eviction may be the only recourse for taking possession.

1. Secured Parcels.
   a. If the occupants have not vacated within the 30 days, the District contacts Property Management to have a 10 Day Letter prepared and signed by a Deputy Attorney General (DAG). After the letter is signed the DAG will send it by certified mail and copy Property Management of the expiration date and notify the District. The expiration date of the 10 day notice is entered in LRS.

b. If the occupants have not vacated within the 10 days, Property Management will ask the DAG (Deputy Attorney General's office) to proceed with eviction. Property Management will send a documentation packet containing copies of all letters sent to the occupants, delivery confirmation information, the Acceptance of Offer, recorded warranty deed and state warrant cashed by the owner. Property Management will also provide the letting date of the project.

c. The DAG will file for the eviction action and notify Property Management and notify the District of expiration date.

2. Condemned Parcels.

a. Copy of the 30 day notice should already have been sent to the DAG.

b. If the occupant does not vacate within thirty days, Property Management will notify the DAG. The DAG will prepare and send a 10 day notice letter with a copy to Property Management. The expiration day of the 10 day notice will be entered in LRS.

3. If the occupant does not vacate within 10 days, Property Management will notify the Deputy Attorney General's office and send a documentation packet containing copies of all letters sent to the property owner or legal representative and delivery confirmation information. Property Management will also provide the letting date of the project. Property Management will notify the District of expiration of the vacate notice.

4. The DAG will file for the eviction action.

PROPERTY INSPECTION

After an owner or occupant has been paid, 30-day notice expired to vacate the property, and INDOT takes possession, the Right of Way Agent assigned to Relocation contacts the District 48 hours prior to the inspection date. The responsibility to inspect the property is with the Relocation Agent and to secure the property is with the Districts. The property must be inspected and secured to prevent intrusion. Relocation must inspect and verify that moves have occurred in accordance with entitlements. It is most likely that Relocation will turn keys over to the District to be able to secure buildings. Thereafter, the Districts will monitor the property and prepare the property for demolition or add it to the prime contract.

DISTRICT RESPONSIBILITIES

(See *Statutory References* for more detail.)

1. Monitoring Cost to Cure items in Right of way

2. Inspections with Relocation agents of structures acquired

3. Securing, baiting and posting acquired structures on subsequent visits after the initial securing, baiting, and posting by the Relocation Agent
4. Ordering Utility Disconnect notices
5. Ordering Asbestos Inspections
6. Posting Right of Way clear, structure to prime, or clear demolition in LRS
7. Monitoring removal of retained major retentions
8. Trash and Weed Control
9. Police and Fire Department training agreements
10. Removal of unauthorized encroachments

HOLDOVER AGREEMENTS & LEASE AGREEMENTS

Depending on projected contract letting dates, it may be economically feasible to have property owners sign holdover agreements to allow them to stay in property acquired by the State. Factors that affect the decision to enter into holdover agreements include: the delay of the occupant in vacating the premises beyond thirty (30) days after payment is made to the owner, and adequate lead-time prior to project construction. The decision to enter into a holdover agreement is made during relocation activities with approvals of the Districts, Project Managers and Real Estate Division Director. Property acquired for a project should not be leased back during the project schedule, rather a holdover agreement should be pursued.

Leasing Process Central Office Property Management administers leases for state property that has been acquired for Right of Way or excess land. The process is similar for both excess land and Right of Way, but all Right of Way that abuts an Interstate or is on the National Highway System (NHS) must be approved by FHWA prior to a lease being executed. The steps to for this process is detailed on the following pages. Preparing the Lease Agreement

1. Central Office Property Management prepares a lease agreement and one copy. Property Management will have the lessee sign the lease and a Non-Collusion Affidavit. (*See Appendix*). Holdover Agreements on current projects are signed by the tenant and the Commissioner of the Department. After all signatures have been affixed, one copy is retained by Property Management and a fully executed copy is sent to the lessee. A copy is also sent to the District in which the property is located and to Records Section to be placed in the parcel file.

2. Property Management monitors rental collections through the period of the lease.

3. Property Management monitors the maintenance of the property and ascertains that the tenant is complying with the terms of the lease.

   Property Management with District cooperation ensures that the improvements are vacated upon completion of the term of the agreement.

4. All monies accrued by INDOT from the rental property are receipted only by the Agent Cashier, Accounting Division, Room N725, State Office Building.

   a. Payment for rent is made payable to the Indiana Department of Transportation. Cash sent by mail is discouraged. The tenant is instructed to make all payments in person or by mailing directly to:

      The Indiana Department of Transportation
      Real Estate Division
      IGCN, Rm. N642
      Indianapolis, Indiana 46204,
      ATTN: Property Management

b. The Accounting Division sets up a receivable account for the new lease, and provides invoices to Property Management to be sent to lessees.

c. Property Management maintains a record of payments made by each tenant.

d. Rental accounts are considered past due on the 10th day following the due date. Property Management then initiates a past due notice to the lessee. One copy of the past due notice is retained in Property Management.

5. In some cases, a security deposit may be collected from the tenant. It is deposited with the agent cashier and designated as a security deposit instead of income.

6. Property Management posts all pertinent information concerning the lease in the LRS.

INSURANCE FURNISHED BY LESSEE

On residential leases, the lessee is required to furnish a policy of public liability insurance in the amount of $100,000.00 against the claim of one person and $300,000.00 against the claim of two or more persons.

When leasing to a commercial business, new or holdover, the lessee is required to furnish a policy of public liability insurance in the amount of $300,000.00 against the claim of one person and $2,000,000.00 against the claim of two or more persons in one incident.

TERMINATION/EVICTION

Central Office Property Management sends out all Termination Notices to tenants. (*See Appendix, Termination Notice – Tenant*) When a lease is terminated, a notice of termination is also sent to the Accounting Division. One copy of the notice is retained by Property Management. A copy is sent to Relocation if the lessee is a holdover occupant.

1. The tenancy of the lessee under the rental agreement may be terminated at any time by either party by giving the other party not less than thirty (30) days prior notice in writing.

2. Termination of the lease by INDOT for cause, failure to pay rent or to keep any covenant of the lease is by letter stating the circumstances. Eviction for cause must conform to applicable state and local law. Any person who has lawfully occupied the real property prior to the State's acquisition, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation assistance as set forth in federal regulations.

3. Eviction action is initiated by Property Management any time the lessee fails to:

   a. Vacate the premises after 90-Day Notice from the Relocation Section and thirty (30) day written notice from Property Management have expired. (Both notices can expire on the same day.)

b. Pay rent for a period in excess of thirty (30) days from last payment.

c. Keep any covenant of the lease.

4. The eviction process described in *Rentals Leases & Use Agreements* and is used to regain possession of the property.

REFUND OF SECURITY DEPOSIT OF LEASED PROPERTY

1. A claim voucher for the release of a security deposit is prepared and coded.

2. The lessee signs the claim voucher and a W-9 form.

3. The W-9 and voucher are processed per standard procedures.

4. The refund check is sent directly to the lessee by the Accounting and Control Division.

ROW USE AGREEMENTS

DEFINITION AND PURPOSE

Per 23 CFR 710.105:

> "ROW use agreement means real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23."

The common element for successful ROW use agreements is coordination among the various interested participants. A good ROW use agreement must reflect legal, planning, environmental, design, construction, maintenance, insurance, safety, and security requirements. Participants involved in evaluating a proposal may include the proposed user, Central Office and District Property Management, Local Public Agencies (LPA), and as appropriate, the FHWA.

The following policies apply to a party utilizing the ROW on both non-Interstate and Interstate Highways unless otherwise stated. The policies specifically apply to longitudinal installations of fiber cable conduit in the Right of Way of full limited access highways (freeways and tollways), to all shared use of INDOT conduit and to all use of Right of Way for communications towers. The Utility Accommodation Policy in the INDOT Utility Manual may apply in certain situations. The following policies do not normally apply to occupancy of the Right of Way by other types of utilities, which are subject to the General Policies

Please refer to 23 CFR Part 710.405 for specific statutes and regulations.

INDOT Approval of Lease Proposals

INDOT may approve non-highway ROW use agreements where it has acquired sufficient legal right, title, and interest in the Right of Way of a highway on a Federal-aid system to grant such usage.

INDOT will grant approval for the ROW use agreement only in the form of a written lease agreement and any appropriate permits. **Permits alone are not acceptable forms of approval for ROW use agreements.**

ROW use agreements must be approved by the Commissioner or the Commissioner's designee.

FHWA Approval of ROW Use Agreements

FHWA approval is normally required only for ROW Use Agreements and leases on the Interstate system, unless the FHWA and State Oversight Agreement provides otherwise.

Security has become a significant issue to be considered when making decisions regarding ROW use agreements. All ROW use agreement requests must have prior approval by Central Office Property Management who may need to confer with other state agencies with security expertise or responsible for the state's critical infrastructure protection, and (when appropriate per the Stewardship Agreement) FHWA staff. In certain instances, due to the design, configuration, and complexity of the facility, it may be appropriate to obtain an independent safety and security analysis to assist in making a determination whether to approve the ROW use agreement request.

Lease Restrictions

Right of Way cannot be leased if it is required currently or in the foreseeable future for safe and secure operation and maintenance of the highway facility. If such conflicts exist, the existing Right of Way would be considered unavailable.

Under no conditions shall Right of Way be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by INDOT or the FHWA to be a hazard to highway or non-highway users. This would include the use/storage of gas in the area under, above or near the highway facility. This prohibition should not be construed to preclude the transverse or longitudinal installation of such items as petroleum pipelines that have been approved by INDOT and where appropriate, FHWA.

To the extent possible and within the scope of the proposed use of the facility, structures, buildings or facilities which utilize combustible materials (such as wood, wood fiber, etc.) that may be fire hazards should be prohibited.

Lease Requirements

The ROW use agreement and lease terms should be very specific and limited as to the exact rights and uses granted. Each of the following items must be included in an application:

1. Identification of the party responsible for developing and operating the ROW
2. A general statement of the proposed use
3. The proposed design for the use of the space, including any facilities to be constructed.
4. Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility.
5. Provision for vertical and horizontal access for maintenance purposes.
6. Other general requirements as term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this guidance.
7. Nondiscrimination and standard state contract requirements and language.
8. Term of lease as deemed appropriate on a case-by-case basis.
9. Any rent based upon fair market value of the ROW use agreement. (see 23 CFR 710.403)
10. Provision to prohibit the transfer, assignment, or conveyance of the real property rights to another party without prior INDOT approval *with* FHWA concurrence on Interstates.
11. Provision to revoke the agreement in the event that the facility ceases to be used or is abandoned, or becomes necessary for highway purposes.
12. Provision to revoke the agreement if the terms of the lease are breached and such breach is not corrected within a reasonable length of time after written notice of noncompliance has been given. In the event the agreement is revoked, INDOT *may* request the removal of the facility occupying the Right of Way. The removal shall be accomplished by the responsible party in a manner prescribed by INDOT at no cost to the FHWA. An exception to facility removal is permitted when the improvements revert to the State upon termination of the agreement and INDOT chooses to accept them.
13. Provision to allow INDOT and authorized FHWA representatives to enter the facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary. The manner of when and how these inspections are to be made should be specified in the ROW use agreement.

14. Provision that the facility to occupy the Right of Way will be maintained so as to assure that the structures and the area within the highway Right of Way boundaries will protect the highway's safety and appearance, and that such maintenance will cause no unreasonable interference with highway use. This will include a clear description of who is responsible for maintenance under different scenarios, including normal operations, emergencies, etc.

15. Provisions assuring that the user will be responsible for any resulting hazardous waste contamination without liability to INDOT and FHWA.

16. Provisions to assure full understanding that the user will not qualify for relocation benefits under the Uniform Act.

17. Provisions requiring adequate liability insurance for the payment of any damages which may occur during construction and use of the facilities, thus holding INDOT (or the LPA) and FHWA harmless.

    Insurance may not be required if the area is to be leased by a self-insured public or quasi-public agency. In such cases the requesting agency is assigned the responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

Fair Market Value and Net Income

INDOT must determine the fair market value of Right of Way if Federal funds have been used to acquire the Right of Way. INDOT may receive fair market income from ROW use agreements, and use it for Title 23 purposes. Credit to Federal funds is not required as long as the Federal pro-rata share of the project income is used for Title 23 eligible projects. (See 23 CFR 710.403 (e) for more details.)

If sufficient available space exists within the publicly acquired rights-of-way of an Interstate highway, FHWA may authorize INDOT to lease such space without charge to a publicly owned mass transit authority, or to another public agency for non-proprietary use for social, environmental or economic mitigation purposes.

Design Requirements

Proposed uses of real property shall conform to the current design standards of INDOT, the Federal Highway Administration, and the AASHTO Roadside Design Guide for the functional classification of the highway facility in which the property is located. Organizations are encouraged to study and familiarize themselves with the current INDOT Design Manual.

An adequately detailed three-dimensional presentation must be prepared of the space to be used and the facility to be constructed. Maps and plans may not be required if the available area is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds

description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits may be furnished in lieu of a three-dimensional description, at INDOT's discretion.

Any significant revision in the design or construction of a proposed facility shall require prior approval by INDOT. When the revision impacts an Interstate highway facility, INDOT will obtain concurrence from the FHWA.

For more specific usage, design and safety criteria and requirements, including compliance with other agencies and regulations, please refer to FHWA guidelines

ROW Use Inventory and Maintenance

INDOT and LPAs must maintain an inventory of all authorized uses of Right of Way. This inventory should include at least the following items for each authorized use of Right of Way:

1. Location by project, survey station, or other appropriate method.
2. Identification of the authorized user of the Right of Way.
3. A three-dimensional description or a metes and bounds description.
4. As-built construction plans of the highway facility at the location where the use of Right of Way was authorized.
5. Pertinent construction plans of the facility authorized to occupy the Right of Way.
6. A copy of the executed ROW use agreement.

Additionally, INDOT/LPAs should periodically inspect Right of Way facilities to ensure that the safety and security requirements specified in the lease are being properly maintained.

SPECIFIC PROJECT POLICIES

Utility Rights of Way

INDOT's Utility Accommodations Policy currently states:

> *Longitudinal installations on a highway with full access control are not permitted. Exceptions may be allowed in accordance with Section 10-3.01(05) and the following conditions:*
> *a. Individual service connections may not be permitted;*
> *b. The utility must not be installed or serviced by direct access from the limited access roadway or connecting ramps;*
> *c. The utility must not interfere with or impair the safety, design, construction, operation, maintenance, stability, or future expansion of the highway.*

For certain requests to place facilities on highway Right of Way care needs to be exercised to determine whether the facility involved is a "utility" or a "private line." This distinction is important because it may impact INDOT's ability to control rights of way and obtain cash or services in return. If the applicant is a utility, income may not be required, or otherwise not be restricted to Title 23 purposes. Furthermore, FHWA has different mechanisms for handling its review and approval actions based on whether the facility is classified as a "utility" or a "private line."

When determining whether a facility is a "utility" or a "private line," several factors may come into play. The most important consideration is how INDOT views a particular facility under its own State laws and/or regulations. A secondary, but nonetheless important consideration is the definition of a "utility facility:"

> **23 CFR 645.207**
> ***Utility Facility*** *- Privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary.*
> *For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.*

The increased demands for accommodating expensive new technologies such as ITS (Intelligent Transportation Systems) are causing many states and local governments to re-evaluate past policies and seek to gain benefits from their billions in land assets by making their rights of way available for these uses. The American Association of State Highway and Transportation Officials (AASHTO) has acknowledged a distinction between buried fiber optic cables and other types of utilities and deems it permissible to permit the longitudinal use of freeway Right of Way for fiber optics under appropriate guidelines. With this in mind, INDOT will allow the longitudinal installation of fiber optic cables and shared INDOT conduit on the Right of Way because the maintenance logistics can comply with the exceptions noted in INDOT's Utility Accommodations Policy where other utility types cannot.

Communications Towers

In addition to the requirements noted in FHWA's airspace guidelines, the following requirements also apply to non-INDOT communications towers erected in the Right of Way of INDOT highways. A "Communications Tower" is any structure for the use of wireless communications.

Location

All proposed locations for Communications Towers must meet the following requirements:

1. Facilities must be located as far from the roadway as possible. The location must provide adequate sight distance for safe ingress and egress from the tower site.

2. The tower must be located outside the highway clear zone unless protected in accordance with the INDOT Design Manual. Desirable distance is 85 feet from the edge of through traffic lanes.

3. There must be adequate space beyond the clear zone for parking, construction, maintenance and security of the Communications Tower.

Site Selection

Listed below, in descending order of preference, are the site locations that INDOT will consider for towers located in the Right of Way in accordance with the INDOT Design Manual:

1. Interstate/Freeway/Full Limited Access Control.
   a. Vehicle access to the Communications Tower site can be obtained from outside the limited access control roadway. This would include access from frontage or local roads, ramps to rest areas, weigh stations, etc. Where fencing exists, gates need to be placed at appropriate locations to provide controlled access to the towers. Gates must be sized to accommodate the type of maintenance traffic and equipment that will access the tower. All gates must be secured with locks, with keys being provided to INDOT and authorized representatives of the communications provider. All access to locked gates must be approved by INDOT's Manager of Corridor Development, or his or her designee.
   b. Within the interchange, vehicle access can be obtained from the right-hand side of the diagonal ramps. Preference is given to on-ramps over off-ramps.
   c. Within the interchange, vehicle access can be obtained from the left-hand side of the diagonal ramps. Preference is given to on-ramps over off ramps.
   d. Sites within Cloverleaf (loop) ramps should be avoided.
   e. Installations within Interstate/full limited access Right of Way that do not meet the criteria described above can only be approved through joint INDOT/FHWA concurrence.

2. Partial Limited Access Control/Non-Limited Access Control

   Sites for Communication Towers that are not in the Right of Way of full limited access control highways may be approved upon a case-by-case basis.

Multiple Providers

Multiple communication providers are encouraged to locate on a single Communications Tower, subject to safety and structural capacities. However, responsibility for maintaining the Communications Tower and all attachments will rest with the one provider that holds the permit and agreement to construct and maintain the tower.

Highway Alignment Change

Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by INDOT and the FHWA as required. INDOT or the FHWA may approve a proposed airspace facility that alters but improves existing highway operation and maintenance, but such changes will be provided without cost to Federal funds.

Exceptions to the cost requirement may be made if the lease improvements of a proposed facility or other interim uses are for public or quasi-public purposes and would assist in integrating the highway into the local environment and enhance other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund.

LEASING PROCESSES

RIGHT OF WAY USE AGREEMENTS AND JOINT USE LEASES

1. District will provide Property Management with the following:
   a. District Deputy Commissioner's Approval Letter approving the lease.
   b. Copy of the requestor's letter to lease said area with detailed intent.
   c. Plan sheets highlighting and identifying the parcel(s) requested.
   d. Copy of the Deed(s) for the parcel(s) requested.
   e. Review and supply a survey and plat of the requested property.
   f. Completed Non-Collusion Affidavit from requestor.
2. Central Office Property Management will:
   a. Request an appraisal.
   b. Prepare Lease and send to DAG for review and signature.
   c. Prepare a Commissioner's Order with all justification documents to approve the lease and the lease amount for approval and signature.
   d. Forward all justification documents to Federal Highway for FHWA APPROVAL along interstates only; non-interstate roadways do not require FHWA approval.

e. Send lease to requestor once all approvals have been received for signature. Lessee will return signed lease, along with lease monies, back to Central Office Property Management for deposit with Agent Cashier.

f. Prepare receipt letter and send to Agent Cashier for deposit.

g. Forward a copy of lease agreement to the respective District Real Estate Manager and place original lease in the Central Office file.

h. Post necessary lease data on the R/W Vegetation Lease spreadsheet and/or the LRS for tracking.

OIL & GAS UNIT AGREEMENTS ON INDOT RIGHT OF WAY

1. A petition letter and unit agreement is received by DNR from the oil company.

2. DNR presents it to its commission. If the petition letter is approved by the DNR Board of Commissioners, the unit agreement is sent to INDOT.

3. INDOT reviews the agreement.
   a. To verify that the land in question is in the Right of Way.
   b. To make sure the agreement excludes INDOT Right of Way from drilling and/or infection.
   c. To make sure no access, storage of equipment or use of land surface is allowed in the agreement.

4. An approval letter is signed by the INDOT Commissioner and the unit agreement and signed approval letter are returned to DNR for completion.

** LPA procedures will vary. Please consult the District Real Estate Manager for guidance. **

UNDERGROUND FIBER OPTIC LINES

FREEWAYS & TOLLWAYS

Historically, INDOT has rarely approved longitudinal installation of any utility lines in the Right of Way of freeways, including Interstates. Such installations are not approved because of the unique characteristics of such highways, including the high number of vehicles, the speed of those vehicles, and the potential safety hazards posed by the need to perform maintenance, especially in the event of an unplanned outage or damage to the line. However, the nature of fiber optic technology raises different issues and a much lower risk to the driving public because of the very different consequences of damage to a fiber optic cable as compared to the consequences of damage to a line carrying electrical power, liquids or gas. The former generally does not pose a hazard to the public when it is damaged, can usually be repaired at a handhole or junction rather than at the exact location of the damage, and typically does not require extensive equipment to repair.

INDOT will consider approving new longitudinal installations of conduit used for carrying underground fiber optic cables in the Right of Way of freeways and tollways, including Interstates. Such installations must meet the requirements of this section and those of other relevant sections of this policy, the INDOT Real Estate Division Manual, the Utility Accommodations Policy and other applicable policies.

The organization installing the conduit must provide an agreed-upon number of dark fibers in the conduit to INDOT and must agree that INDOT owns the handholes at each end of the conduit and that INDOT shall have access to other handholes as needed for its own purposes. In addition, the organization shall compensate INDOT for the use of the Right of Way.

A longitudinal installation will not be permitted if INDOT determines that it may pose a safety risk, create congestion, or otherwise not be in the public interest or in the interest of INDOT. A close proximity in time to construction work on the same route may be cause for denying approval.

EXCESS LAND/EXCESS RIGHT OF WAY

This chapter deals with the disposition of State owned property rights in excess land, excess rights of way and easements that are no longer required for highway use.

EXCESS LAND AND RIGHT OF WAY INVENTORY

The excess land inventory is maintained through the Land Records System (LRS). Excess land may be held by the State in fee, by Right of Way grant (easement), or by gift. The inventory also includes Right of Way that has been declared as excess, and land purchased for wetland mitigation or other mandated mitigation.

Central Office Property Management, reviews secured parcels to identify acquired excess and mitigation land. Excess land and land purchased for mitigation purposes are identified in the "Right of Way Agent's Status Report" and in the appraisal with the cost value and the area acquired. Excess Right of Way is created when a District declares land purchased as Right of Way surplus. Excess previously unidentified may also be discovered by research by other persons. All identified and discovered excess and mitigation land is entered in the LRS excess land inventory.

The information entered into the inventory comes from the acquired parcel file. Much of the basic information relevant to the excess purchase is entered in LRS when the parcel is created. This information includes the owner's name, address, county, route, project number, code number, parcel number, plan sheet information, areas to be acquired and nature of title. When the parcel has been acquired, Central Office Property Management verifies, corrects and enters this information from the acquired parcel file. At this time, Central Office Property Management also enters the cost of the excess land into LRS. Upon disposal of any part of any area of excess land Central Office Property Management enters the sale price, the date of sale, the name of buyer, the area sold, any federal participation and any federal refund.

EXCESS LAND

Excess land is land located outside the Right of Way limits on approved plans. Excess land is acquired with State funding only. By agreement, FHWA does not participate in acquiring property outside of the Right of Way limits. Land purchased as uneconomic remnants are excess land.

EXCESS RIGHT OF WAY

Excess Right of Way is land located within the limits of a highway Right of Way but no longer needed as operating Right of Way. INDOT may own this land in fee simple or by easement (Right of Way grant). Requests to declare Right of Way excess begin with investigation by the District.

Upon receipt of a request to purchase Right of Way, the District reviews the original design plans to determine whether revisions to the design features have eliminated the original need for the Right of Way. If no change in design features has taken place or if the Right of Way may be needed now or any time in the near future, the area of Right of Way is not considered excess and will not be sold.

If the design features have changed, eliminating the original need for the requested area of Right of Way, the District office responds to a request to purchase with a letter of instruction to the requestor. The requestor is required to provide documented proof of current title to the subject property and/or the abutting property in the form of a deed(s) and copy of the Auditor's plat. The requestor must provide documentation that they are the owner or successor in title to the property from which the Right of Way was originally cut and that he/she is legally authorized to purchase the excess Right of Way under IC 8-23-7-14.

Upon determining the requestor to be an eligible purchaser, the District views the proposed site with the owner to reach a common understanding of the area requested, to verify that no area beyond the requestor's extended property lines is being requested to be sold and to determine its preliminary suitability for sale. The District issues a preliminary finding of suitability and requests that the site be surveyed and a legal description and plat be submitted for review to the District Right of Way Engineering Section.

Central Office Property Management with assistance of the District, researches INDOT's title while the site is being surveyed. If the excess Right of Way request is not abutting a state road, the District verifies whether the "S" line of the Right of Way has been relinquished and whether INDOT retained any ownership. After the survey the District office inspects the staking of the requested area with the requestor to determine that it is excess Right of Way and submits a declaration of excess Right of Way letter to Central Office Property Management.

Right of Way declared excess is assigned a code and parcel number by Central Office Property Management and is entered into the LRS as excess Right of Way. Disposals of excess Right of Way is governed by IC 8-23-7-14

All Right of Way that abuts an ***Interstate*** or is on the ***National Highway System (NHS)*** and is declared excess by the District must be approved by FHWA before disposal; FHWA ***does not require*** a review and subsequent approval of non-interstate Right of Way for disposal of non-NHS. For sales of non-NHS Right of Way the FHWA requires a Notification Letter along with a receipt of sale immediately after the sale is complete (*See Appendix, Surplus Property Sale Deposit and FHWA Notification of Sale*).

Approvals, if any, will be those required by State laws, regulations, policies, and procedures. However, this does not relieve INDOT from responsibility for these areas, nor from compliance with non-Title 23 Federal requirements that remain applicable. FHWA approval on NHS is more restricted in the Stewardship Agreement.

Stewardship and Oversight

Activity	Authority	Frequency	Due Date	FHWA HQ	FHWA Division Program Manager	State DOT Responsible Program Office	Remarks
Review Safety Belt Compliance Status: NHTSA and FHWA annual review of State law compliance	23 USC 153, 23 CFR 1215.6	Annually	Oct 1	Office of Safety	Safety	Office of Traffic Safety reporting to Deputy Commissioner for Engineering and Asset Management	NHTSA
High Risk Roads (HRRR) Special Rule: If conditions warrant, State shall obligate in next federal FY additional funds as prescribed	23 USC 148 (g) (1)	Annually	Oct 1	Office of Safety	Safety	Office of Traffic Safety reporting to Deputy Commissioner for Engineering and Asset Management	After the final FARS and HPMS data are available, FHWA HQ will inform the States if the HRRR Special Rule applies for the following FY.
Older Drivers and Pedestrians Special Rule: If conditions warrant, Sate Shall include in subsequent Strategic Highway Safety Plan strategies to address the increases in those rates	23 USC 148 (g)(2)	Annually	Aug 31	Office of Safety	Safety	Office of Traffic Safety reporting to Deputy Commissioner for Engineering and Asset Management	States should include in their annual HSIP reports (due August 31st) the calculations performed, verifying whether Older Driver Special Rule applies in the State. If with Special Rule applies to a State in a given year, the State must include in its subsequent SHSP strategies to address the increases in the fatality and serious injury rates for drivers and pedestrians over age of 65.

Activity	Authority	Frequency	Due Date	FHWA HQ	FHWA Division Program Manager	State DOT Responsible Program Office	Remarks
Appropriations, Allotments, Obligations are given to States either annually or periodically when there is no Transportation Act but instead a Continuing Resolution (CR). Indiana will utilize said appropriations, allotments, and obligations by selecting the most restrictive federal codes that apply to the funding of a project.	31 USC 1341 (a)(1)(A)&(B); 31 USC 1517(a);23 USC 118(b), 23 USC 121	Annually-FFY	If a Transportation Act-October of each year. If a Continuing Resolution – first portion October of each year, following portions are dependent upon length of first notice. FY2015 is a 8 month CR; therefore the next notice is expected June 2015 Allotments are varied in nature with most appearing by February of each year. Obligations are dependent upon an ACT whereby the notice would be posted in October. FY2015 had a 2.5 month N,otice from October 1 through December 11, 2014. We have yet to see another Obligation Notice for any portion of 2015.	Office of Chief Financial Officer	Finance	Project Finance Division, reporting to Chief Financial Officer and Deputy Commissioner	State will monitor appropriations, allotments and obligations to ensure that all funding is used efficiently within each quarter and use all Obligation Authority (OA) by the end of the year.

Activity	Authority	Frequency	Due Date	FHWA HQ	FHWA Division Program Manager	State DOT Responsible Program Office	Remarks
Approval of Indirect Cost Allocation Plans (ICAPs)	49 CFR Part 18; 2 CFR 200 Subpart E (previously 2 CFR 225); ASMBC-10	Annually	Dec 31	Office of Chief Financial Officer	Finance	Director of Asset Management & Planning reporting to Deputy Commissioner for Engineering and Asset Management	The State will certify that the ICAP was prepared in accordance with 2 CFR 200 Subpart E.
Financial Integrity Review & Evaluation FIRE Program Activities	FHWA Order 4560.1B (or as superseded)	Although it is an annual review, FHWA has been conducting reviews Quarterly	Each Quarter, FHWA requests documentation and information on 10-15 projects for review to ensure that there is source documentation, the federal % requested is correct, and that payment was made in accordance with the CMIA act.	Office of Chief Financial Officer	Finance	Chief Financial Officer and Deputy Commissioner	State will continue to provide oversight and conduct reviews to ensure Federal-aid compliance. FHWA will review and monitor. State responsibilities include multiple tasks in support of risk assessments, conducting reviews and implementation of recommendations.

DISPOSAL OF EXCESS LAND AND EXCESS RIGHT OF WAY

The procedures for disposing of excess land and excess Right of Way are in accordance with Indiana Code and will be processed by Central Office Property Management as a priority with a valid request. Requests for surplus property can come in directly to District offices or Central Office Property Management. Once the parcel is determined to be INDOT owned, the parcel must be evaluated by the respective District Office to determine if the parcel is excess to INDOT's transportation needs.

DISTRICT APPROVAL PROCESS

Documentation sent to Districts includes:

1. Deed
2. Project plans with excess area highlighted
3. District Approval Letter (*See Appendix*)

The Districts must review excess parcel packets (deed, project plans, etc.), visit the sites, take pictures (if possible), make determinations if parcels can be sold or not, then sign the District Approval Letter.

It is important to determine if the land requested abuts a parcel of land from which it was separated and acquired by INDOT. This usually occurs only when Right of Way has been declared excess. Such excess Right of Way must first be offered to the owner of the abutting property from which it was separated. (IC 8-23-7-14)

After a complete investigation of the requested land, the District, with the assistance of Central Office Property Management, acknowledges in writing the receipt of the request and that the disposal process has begun and that the land must first be offered to the owner of the abutting property from which it was separated if it was deemed to be excess Right of Way.

SURVEY / EXCESS LEGAL DESCRIPTION

When necessary, Central Office Property Management engages an on-call consultant for required services.

1. Legal Descriptions/surveys are ordered after receipt of District approval
2. Legal/survey sent to District for review

Send via e-mail with a PDF of the description, plat and approval letter3. Order & completion date noted in LRS

The District reviews descriptions created by on-call contractors to ensure that the disposal would not affect operational maintenance of the Right of Way or future District improvement plans. The disposal must be approved or disapproved by the District Deputy Commissioner.

Upon District approval, the request is to be reviewed and approved by the District, Central Office Environmental Services and the Department of Natural Resources. These reviews and approvals are to ensure the land is suitable for disposition and if not restrictions or covenants may be in order.

After District approval, and while awaiting archaeological and historical clearances, the plan sheets, transfer documents of the original taking, and legal descriptions of the requested area are

forwarded by the District Real Estate staff to Central Office Property Management for the appraisal to be ordered. Excess land must be sold at or above its fair market value as determined by appraisers of INDOT. (IC 8-23-7-13)

Concurrent with District Approval, the District, with the assistance of Central Office Property Management, determines whether FHWA approval is also required for the disposal to proceed. If the disposal involves altering limited access Right of Way or if Right of Way acquired along an interstate with federal participation is declared as excess, FHWA must approve of the disposal.

Once all approvals are secured, Central Office Property Management prepares an order for the signature of the INDOT Commissioner or the appointed designee. The order declares the land excess and approves the disposal. The Commissioner or the appointed designee returns the signed order to Central Office Property Management.

The concluding procedures depend on which agency, INDOT or IDOA, has statutory authority.

DISPOSAL BY INDOT

Excess Land

1. District Deputy Commissioner's Approval letter approving the sale.
2. Copy of the requestor's questionnaire
3. Completed W-9 form from requestor
4. Plan sheets highlighting and identifying the parcel(s) requested.
5. Copy of the Deed for the parcel requested.
6. Review and supply necessary exhibits for disposal (description, survey, plats).
7. Assure that excess area has not changed do to an increase in R/W needs.
8. Archaeological, HAZMAT, & CE from Environmental. Request the DNR Clearance letter certifying the property clear of Environmental issues.
9. Appraisal requested of property.
10. Prepare Commissioner's Order with all justification documents to Designee to approve the sale and the sale amount.
11. Prepare Quitclaim Deed with all justification documents and send to INDOT Legal to sign as to "Prepared By", Legality, and Form.
12. Once signed by INDOT Legal, prepare the deed to be signed by the Governor's Office, the Attorney General's Office and the Commissioner. The parcel should be

routed through the Contract Management Supervisor to the appropriate offices for signature.

13. Advertise, contact prospective buyers and sell (or auction the property to the highest bidder if appraisal is over $4,000).

14. Collect monies and deposit; prepare the deed and Sales Disclosure Form then record deed.
    a. Checks are remitted to Agency Cashier. Original deed should be sent to Records Section to be recorded and a copy of the recorded deed should be sent to the District Real Estate Section.
    b. Post sale in Parcel Asset screen within LRS.
    c. Provide to PM for LRS entry- purchaser name, disposition date, sales amount, sell off area (acres or SF), Federal funds used (yes or no; %).

15. Property Management will post sale in LRS and forward Deed copies to Records.

Excess land acquired by Right of Way grant is an easement INDOT has for construction, reconstruction and maintenance of a highway. The ownership of the underlying fee title remains with the grantor of the easement or his successor in title. INDOT interests held by Right of Way grant are most always Right of Way as opposed to excess land. (IC 8-23-4-9)

1. When Right of Way acquired by grant is declared excess by the District, the disposal can only be processed to the underlying fee owner. The process still needs to go through the same steps as the disposal for excess Right of Way.

Excess Right of Way abutting property from which it was separated and acquired by INDOT must first be offered to the owner of the parcel that the Right of Way was initially separated from. This requirement is regardless of the appraised fair market value. Central Office Property Management makes the offer by certified mail to the last known address of the owner. If the owner accepts the offer within 30 days, Central Office Property Management prepares the closing documents and sends to legal for review and routing. Once all necessary documents are signed and the check is received the fully executed deed is sent to records for recording and the excess land is conveyed to the owner by quitclaim deed upon payment to INDOT for not less than the fair market value of the land as determined by the appraisal. (IC 8-23-7-14) If the owner of the abutting property fails to accept the offer within thirty (30) days, property will be sent to IDOA real estate contractor to utilize if valued over $4,000, if valued under $4,000 the parcel can be processed similarly to an excess land request. (IC 4-20-.5-7-2 & IC 8-23-7- 13)Disposals under IC 8-23-7-14 do not require approval from IDOA.

Excess land valued at four thousand dollars ($4,000) or less may be sold by INDOT without advertising or competitive bids for not less than the appraised value of the excess land upon approval of the INDOT Commissioner and the Governor. (IC 8-23-7-16)

DISPOSAL BY IDOA

Refer to process steps found in the *Appendix* document, Excess Land, Non Abutting Owner.

If the excess land has an appraised value of more than four thousand dollars (4000.00); or if there is more than one requestor for excess land appraised at four thousand dollars ($4000.00) or less; or the disposal will be to another State agency; or the disposal will be to a political subdivision, the sale is sent to the Indiana Department of Administration (IDOA) for processing. (IC 8-23-7-15) If there is an active INDOT Ready For Proposal (RFP) for disposals then Central Office Property Management will follow the contract

1. The order signed by the INDOT Commissioner, plan sheets, legal description, statement of appraised value, environmental categorical exclusion, DNR approval letter and any other pertinent information are sent to IDOA.

2. IDOA sells the excess land in accordance with IC 4-20.5-7. Under this code the notice of the proposed disposal is forwarded to other State agencies, State educational institutions and political subdivisions. IDOA gives priority preference to other State agencies, then State educational institutions, then political subdivisions and then to public sales by competitive bids, sealed bids or auction.

3. **Transfers to other State agencies** can be initiated by INDOT before sending the proposed disposal to IDOA or transfers can be initiated by other State agencies as a result of them being notified by IDOA of INDOT's desire to dispose of the land. (IC 4-20.5-7-7)
   a. The chief administrative authority of the receiving State agency signs a resolution finding the property necessary for that agency's use. Central Office Property Management prepares a "Declaration of Departmental Transfer".
   b. The declaration is routed to IDOA, the Office of the Attorney General and the Governor for approval and signature.
   c. This process is the same when INDOT acquires land from another State agency.

4. Appraisals are not needed to transfer property to other State agencies or to receive properties from other State agencies.

5. **Transfers to political subdivisions** can be initiated by INDOT before sending the proposed disposal to IDOA or transfers can be initiated by political subdivisions as a result of them being notified by IDOA of INDOT's desire to dispose of the land. (4-20.5-7-10)
   a. Transfers to political subdivisions can be made with or without consideration. Except for unusual circumstances INDOT will approve transfers to political subdivisions without consideration only if the land will be for public use. A clause is placed within the quitclaim deed that reverts the transferred land back to the State when it ceases to be used for public purposes.

6. **IDOA sale by competitive bidding or auction** occurs when no State agency, State educational institution or political subdivision has interest in the proposed disposal. (IC 4-20.5-7-11)

   Upon completion of the auction, IDOA allows INDOT to assess the bids. Bids can be accepted or the parcel can be retained if the bid price is too low or the parcel is needed for a future transportation need. Once bids are accepted, INDOT collects monies directly from the disposal contractor.

RELINQUISHMENTS

When a portion of state Right of Way no longer serves a state function but continues to serve a local function, INDOT may declare that portion state surplus and relinquish that portion of Right of Way to a city, county or other political subdivision for maintenance. Relinquishments are negotiated with the political subdivision by the Relinquishment Section of the Program Development Division Relinquishments usually do not transfer title, but do have a provision to do so upon request. Requests for title transfers require legal descriptions and a quitclaim deed signed by the Attorney General and the Governor.

Credit to FHWA may also be a consideration and is processed as described in *Excess Land & Excess Right of Way* starting on page 394

EXCHANGE OF LAND AND PROPERTY RIGHTS

Land or property rights owned in fee simple by INDOT can be exchanged for land or property rights needed by INDOT. Both the lands being transferred to INDOT and the lands being acquired by INDOT are appraised. Any difference in value is paid or received by INDOT.

(IC 8-23-7-17 and IC 8-23-7-18) Exchanges are either part of a negotiation to acquire new Right of Way by the Buying Section or they are initiated by a District to change ingress and egress in a limited access Right of Way.

When such an exchange involves improvements to be constructed on the land, additional steps must be taken. The parties involved in the exchange shall enter into a contractual agreement stating the terms of the exchange. All appraisals required by such an agreement shall include, as an element of value, any improvements to be constructed on the land. Before any appraisal is made and a value assigned to any prospective improvements, a construction contract, performance bond, plans and specifications are attached to and made a part of the exchange agreement. An exchange deed shall not be executed and delivered nor shall any difference in value be paid or received by the Department, until the improvements have been constructed. (IC 8-23-7-20 through IC 8-23-7-21)

ESTABLISHING A NEW OR CHANGING THE LOCATION OF A BREAK IN LIMITED ACCESS RIGHT OF WAY

TWO PART PROCESS

Establishing a new or changing the location of an existing Limited Access Right of Way (L.A. R/W) break is a two part process, which can only be approved by the INDOT Commissioner or the Commissioner's designee. Part one of the process is for the Requestor of the L.A. R/W break to apply for a permit through the applicable INDOT District Permitting Section.

Once the application requirements are met, the district permitting office notifies Central Office Real Estate Property Management through INDOT's Electronic Permitting System (EPS), and the second part of the process begins. Central Office Real Estate will work with the Requestor to process the Real Estate portion of the requested L.A R/W break. The two processes may occur concurrently at the District and Central Office.

REQUESTOR'S CHECKLIST

The requestor is required to supply all of the following items to Central Office Real Estate Property Management for the L.A. R/W break request.

- □ Request letter (which includes written explanation and justification for the new or relocated break, complete contact information and request details).
- □ Deed proving the requestor's ownership of the parcel(s) abutting the requested break.
- □ Survey and plat of the parcel abutting the requested break.
- □ Completed Real Estate W-9 Form (provided by INDOT Central Office Real Estate).

CENTRAL OFFICE REAL ESTATE PROPERTY MANAGEMENT RESPONSIBILITIES

The Central Office Real Estate will prepare/obtain the following items simultaneously:

- □ Obtain a copy of INDOT's Deed for the property originally acquired.
- □ Coordinate with the District to approve the survey and plat of the requested alteration of LA R/W.
- □ Request an appraisal. (This will be a "before and after" appraisal).
- □ Request HAZMAT & CE (Environmental Review) from Environmental Services Section.
- □ Prepare Commissioner's Order with justification documents to approve the sale and sale amount.
- □ Determine if Federal Funds were used and if so, then compute the payback percentage from the originally acquired land.
- □ Send an "Offer letter" with conditions to the Requestor giving the Requestor 30/days to respond.
- □ Prepare a Quitclaim deed and send to Requestor.
- □ Upon receipt from the requestor, the Quitclaim, deed along with a summary memo is sent to the INDOT Legal, INDOT Deputy Commissioner, Attorney General's Office and the Governor's Office for signatures.

- □ Executed copies are sent to records and to the applicable county recorder's office.
- □ Ensure monies are deposited with the Cashier and federal participation percentage noted to cashier (after deed has been executed).
- □ Prepare sales disclosure, if necessary.
- □ Send recorded deed and sales disclosure to the requestor.

If the break is approved by the District Permits Section, the Central Office Real Estate Department and the INDOT Commissioner, the Requestor will be required to pay Fair Market Value for the L.A. R/W per IC 8-23-7-13. The Fair Market Value for the break will be determined by a "before and after" appraisal completed and/or reviewed by the Central Office Appraising Section.

Please note: Permit approvals that require the Requestor to donate R/W must be handled through the INDOT Buying Section Supervisor.

CREDIT TO FEDERAL HIGHWAY ADMINISTRATION

Federal funds may not be used to acquire property that is already known to be excess land. In the case of Right of Way that is later determined to be excess and sold, FHWA must be credited any monies used to purchase it. These monies may be retained and used for Title 23 uses.

TAXES

There are three types of property related taxes associated with Right of Way acquired property. They are ditch assessments, conservancy taxes and real estate property taxes. All state property is exempt from property taxes however INDOT is not exempt from ditch assessments or conservancy taxes.

DITCH ASSESSMENTS AND CONSERVANCY TAXES

After acquisition the appropriate Central Office Accounts Payable is responsible for paying ditch assessments and conservancy taxes. Property tax statements received in Central Office Property Management should be reviewed to determine what kind of tax has been assessed. If the tax statement is for a ditch assessment or conservancy tax, the statement is given to the Accounts Payable Manager.

If the tax statement includes property taxes or penalties on property taxes, Property Management must clear those taxes first.

REAL ESTATE TAXES

Real estate taxes in Indiana are paid in arrears. In other words, taxes for the year 2017 actually become due and payable in 2018. Tax statements are usually mailed in March with one payment due in May and a second payment due in November. Penalties and interest accrue on delinquent taxes. In order to convey clear title, the real estate taxes must be paid current or paid in advance, depending upon the nature of the taking. Prior to submitting a parcel for payment, the Right of Way Agent assigned to buying is supposed to check the tax status and verify that it is current.

Upon receipt of the state's deed for recording, the county auditor will change the plat book to reflect the state's ownership. They will forward the deed to the assessor who will change the tax plat and status. The county treasurer will issue a new tax key number (on partial takings) or change the taxpayer information on a total acquisition. The State must not have taxes due on this new key number. If taxes are delinquent, the Right of Way Agent assigned to buying should ask the owners to pay the past due taxes, penalties and interest.

INDOT will accept title to partial acquisitions with the taxes only paid current as opposed to the full year. The after-value of the property must be sufficient to ensure that the owner will pay the fall installment when it is due, in order to avoid a tax sale loss of the residue.

INDOT requires that total acquisitions have all assessed taxes paid prior to making payment to the owner. The Right of Way Agent assigned to buying may arrange to have the taxes due amount deducted from the payment to the owner and vouchered to both the owner and the county for payment of the taxes.

The Indiana Tax Commissioners and the Attorney General have determined that the effective date of transfer is the date the deed is signed, not the date of payment or the date the deed is recorded (*See Appendix, Petition to Remove Property Tax*). Therefore, if a deed is signed prior to December 31, the effective date of transfer to the State will be the date of the deed and taxes for that year, payable the next year, will be forgiven.

For example, if the deed was signed October 12, 2018, the Right of Way Agent assigned to buying should have arranged for the owners to pay the November installment of the 2017 payable 2018 taxes. Even if the property payment is made January 6, 2019 and the deed is recorded February 20, 2019, the owner is not responsible for the 2018 payable 2019 taxes which will be due in May of 2019. Transfers that take place late in a calendar year may not allow enough time for the county auditor to change the ownership in the plat book before tax statements are mailed in 2019. If owners receive tax statements for 2019, they should forward those to Property Management for resolution.

> ***IC 8-23-7-31(b)***
> *Real property and interests in real property acquired for permanent highway purposes are exempt from taxation from the date of acquisition, provided that all taxes, interest, and penalties recorded on the property tax duplicates have been paid. Where real property or interests in real property are acquired after the assessment date of any year but before December 31, the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor. A property owner who on or after March 1, 1965, conveyed real property or rights in real property to the department and who after July 8, 1965, is assessed taxes upon the property or rights conveyed and who pays the taxes by reason of the failure of the department to properly record the interest in the real property conveyed with the county auditor and recorder for tax purposes may recover the amount of the taxes from the department.*

If the deed, for example, is signed after December 30, 2017 and before the 2017 payable 2018 tax statements are issued, it is not possible to pay the taxes in advance because the amount is unknown, not assessed. However, the owner is responsible for the 2017 payable 2018 taxes because they had ownership and possession of the property for the entire year of 2017. Therefore, the Right of Way Agent assigned to buying should add a clause to the deed which establishes the owner's responsibility for the taxes when they become due. The clause states:

> The Grantor(s) assumes and agrees to pay the 2018 payable 2019 real estate taxes on the above described real estate.

CLEARING PROPERTY TAX LIABILITIES

The first thing to do when receiving a property tax notice or a notice of property tax sale is to verify with Records that the property is INDOT property. If it is INDOT property, the parcel file needs to be reviewed to determine:

1. The date the deed was signed in order to establish the date of transfer
2. If the former owner was obligated to pay any taxes
3. Whether the taxes were paid current at the time of acquisition

If the taxes are valid, it must be determined who was at fault for the taxes not being paid. The state is at fault if the owners were not notified they would be liable and the warranty deed does not also say so. The owner is at fault if the warranty deed identifies an unpaid tax liability and the owner did not pay it. If the state is at fault for the unpaid taxes, process a voucher to pay the taxes. If the owner is at fault, determine if there is time to get the owner to pay before a possible tax sale. If there is time, contact the owner and attempt to get him to pay the property tax. If there is not time or the owner will not pay the property tax, process a voucher to pay the property tax and then have Accounting and Control establish a receivable account to recover the money.

If the taxes are not valid, a letter should be sent or delivered to the county auditor explaining that the taxes are not valid and should be removed from the duplicates. There is usually some confusion regarding the wording of IC 8-23-7-31(b), but the auditor will probably remove the taxes if given the code cite and explanation.

If the auditor refuses to remove the taxes, prepare a petition to the State Board of Tax Commissioners to have the taxes removed. Prepare the petition including certificate of service but do not enter the date of delivery (*See Appendix, Petition to Remove Property Tax*). Prepare a cover letter to the Commissioner explaining the petition (*See Appendix, Cover Letter to Commissioner – Remove Property Tax*). Send the cover letter and petition to the Commissioner. After the Commissioner's signature is obtained, send the petition to the Governor's office for signature. After the Governor's signature is obtained, check the property tax status one more time. If the tax is still a liability, prepare a cover letter for the petition to the Chair of the State Board of Tax Commissioners (*See Appendix, Cover Letter to Tax Board – Remove Property Tax*). Complete the service certificate. Deliver the petition with the service certificate under the cover letter to the Office of the State Board of Tax Commissioners. Mail copies of the petition with the service certification to the appropriate county treasurer and county auditor. Upon receipt of the order of the Tax Commissioners to the county auditor to remove the property taxes forward the order to Records to be put in the parcel file.

DISTRICT RESPONSIBILITIES

Improvements acquired by INDOT and not retained for use by INDOT or another State agency are removed or disposed of through a public sale, separate demolition contracts or inclusion in the primary construction contract. Consideration is given to auction sales when the value and quality of an improvement is such that a sale would be economically feasible and in the best interest of the State. Demolition contract proposals have merit when it has been determined that a public sale would not attract a sufficient number of buyers because of the poor quality or insufficient number of improvements available for the sale.

Lead time is a major factor to be considered in the disposition of improvements. Lead time is the interim period between the date the State acquires ownership of the property and the estimated date the Right of Way is to be clear for the construction contract bid letting. Sales and demolition contracts are designed to accomplish Right of Way clearance on schedule and in a manner that represents the State's best interests. It is desirable to complete the planning for sales and demolition contracts on specific projects during the acquisition phase.

Removal of improvements occurs in one of six ways. The owner may desire to retain and remove the improvement. The owner may be paid a cost to cure to remove and relocate the improvement. Improvements can be retained for use by INDOT or another State agency by requesting the items to be used by the District and must be approved by the Real Estate Division Director and Facilities Management Manager. The improvement may be sold at public auction. The improvement may be removed by a demolition contract. The improvement may be included in the primary construction contract as a demolition item.

District responsibilities include:

1. Determine if improvement(s) are subject to INDOT inspection.
2. Conduct inspection, clearing, baiting, posting and securing after the initial baiting, posting and securing by the Relocation Agent assigned to the parcel.
3. Determine that retained cost-to-cure items are removed.
4. Identify items that may be usable at District locations.
5. Determine method of removal of items by demolition or public auction.
6. Submit 10-week Letter (*see Appendix*) to INDOT Contracts section for structures to be part of the contract letting.

ACQUISITIONS WITH BUILDINGS

LRS, updated daily, and the Project and Parcel Status Report, updated monthly, identify parcels with buildings included in the acquisition. Property Management routinely queries and reviews

LRS and the report to become acquainted with new projects and to plan and prepare for taking possession and disposal of such buildings.

1. In the event an occupied building is within the Right of Way to be acquired, a notation will be placed in LRS (for LPA projects, use of a Daily Notice is allowed – see Online Forms). Upon receipt of this preliminary information the property management parcel maintenance fields in LRS are completed.

2. A secured parcel file is reviewed to determine if a building within the acquired Right of Way has been retained by the owner. If an owner has chosen to retain and move the building, the building is identified as a cost to cure item in the parcel maintenance screen in LRS. The building must be removed within the time allowed in the retention contract.

3. At the time payment is made to the owner, a 30 Day Notice to vacate the property is mailed to the owner and occupant of the building (*See Appendix, 30 Day Notice*). The date of the expiration of the 30 days is entered in LRS. Renters will not be issued a 30 Day Notice before the owner.

4. Property Management must coordinate with Relocation on vacate notices. Even though a 30 Day Notice may have expired, occupants cannot be required to vacate until the Relocation 90 Day Notice has expired.

   On or before the expiration date of the 30 Day Notice, the District contacts the Relocation Agent, property owner and/or tenant to find out if they have moved. An extension of time to vacate or a lease may be discussed with the owner or tenant if there is enough time prior to the construction contract letting. Property Management must coordinate with Relocation, the Project Manager and the District Real Estate Manager to see if there are special issues involved with having the occupants vacate.

PROPERTY INSPECTION

After an owner or occupant has vacated a property, INDOT takes possession. The property must be inspected and secured from intrusion. The District may find it beneficial to coordinate the necessary activities with Relocation with notification that they will inspect the property. The notice must be given to the District 48 hours prior to the inspection. The District and/or Relocation Agent must inspect and verify that moves have occurred in accordance with entitlements and therefore it is most likely that Relocation and/or the District will be able to secure buildings and hand over the keys, if available, to the District. The District will then have full responsibility to monitor and maintain the property until the demolition or prime contracts are implemented.

District is responsible for:

1. Verifying that the property has been vacated.

2. Verifying that all fixtures and equipment acquired by the State remains on the property and determining their condition.

3. Ascertaining if the property is clear and free of fire, safety or health hazards or take necessary steps to make it so. All refrigerators and freezers found abandoned on the property must have the doors removed.

4. Making a preliminary estimate of the sale value of fixtures and improvements and the condition of the building.

5. Protecting the vacated property from vandalism and fire by:
   a. Clearing all hazards.
   b. Posting notice of State ownership on 4 sides of the building, in windows, or on the outside in public view, if needed after done by Relocation Agent.
   c. Alerting local law enforcement agencies for security purposes, when deemed necessary.
   d. Securely locking all doors and windows.
   e. Assessing each situation for possibility of unique protection requirements.
   f. Making periodic checks of property until buildings are demolished or moved.

6. Winterizing all buildings and mobile homes by draining all water heaters, opening all faucet valves and for buildings that may be sold, applying diluted antifreeze to all toilets and drains.

7. Applying rodent control in all buildings, after initially being done by Relocation Agent.

8. Requesting an asbestos inspection from Environmental Section to have each building inspected for potential asbestos content. An Asbestos report must be received in Property Management prior to demolition of buildings and forward the reports to the Project Manager and Contracts.

9. Entering in LRS information obtained from the field inspections.

RODENT CONTROL PROCEDURES

Implementation of an effective rodent and pest control plan should start not later than the relocation of the first occupant on the project. To be effective, rodent control treatment must begin as soon as the occupant vacates the building.

The appropriate rodent control materials are purchased and kept on hand. The District shall apply the materials to all buildings and document the date of such application in the remarks section in LRS under the Property Management tab. The District applies rodent control packets to each room in the building acquired as necessary for adequate control measures.

Contracting with a qualified exterminator may be necessary in large buildings, food processing plants, restaurants, etc. When use of an exterminator is anticipated, a contract is awarded through the proper bid process prior to the first occupant leaving the project. Federal participation may be available to reimburse INDOT on Federal Aid projects, 23 CFR 710.203.

BUYER-DETERMINED MINOR RETENTIONS

In some instances, the Right of Way Agent assigned to buying may allow the seller of the property to retain minor items from the buildings acquired. He/she may compute a retention value on each item which is to be retained. Such retention shall cover only items such as bathroom fixtures, kitchen cabinets, and other items removable from the buildings without disturbing the exterior appearance of the building.

In such cases as outlined above, the Right of Way Agent assigned to buying completes a minor retention form (*See* Online Forms). One copy is placed in the project parcel file to inform Property Management as to disposition of the items. The seller is expected to have all such items removed within 30 days after he/she receives payment for the property.

COST TO CURE INSPECTION

When the 30-Day Notice expires, the District shall inspect the property to verify the item(s) have been removed:

If the improvement has not been removed within the original 30 day period, it is considered "at the owner's risk" and is an encroachment on the Right of Way. The encroachment(s) will be removed by the contractor or INDOT District employees at the direction of the District's Construction Engineer.

If there is enough lead time ahead of the Right of Way clear date, an extension may be given. Please consult with the Project Manager.

EVICTION

If an owner occupant or tenant fails to vacate after 30 days and an extension cannot be allowed, eviction may be the only recourse for taking possession. The District notifies Property Management and Property Management requests all pertinent documents (notices sent to occupant) and requests Deputy Attorney General to prepare a 10-day letter to the occupant with a vacate date.

1. Secured Parcels.
    a. If the occupants have not vacated within the 30 days, Property Management will have a 10 day letter prepared to be signed by a Deputy Attorney General. After the letter is signed the DAG will return the letter to Property Management to be sent

UPS delivery service or the DAG may send the letter. The expiration date of the 10 day notice is entered in LRS.

b. If the occupants have not vacated within the 10 days, Property Management will ask the DAG to proceed with eviction. Property Management will send a documentation packet containing copies of all letters sent to the occupants, confirmation of mailings, the Acceptance of Offer, recorded warranty deed and state warrant cashed by the owner. Property Management will also provide the letting date of the project to DAG Office.

c. The DAG will file for the eviction action.

2. Condemned Parcels.

a. Copy of the 30 day notice should already have been sent to the DAG.

b. If the occupant does not vacate within thirty days, Property Management will notify the Deputy Attorney General's office. The Office of the Attorney General will prepare and send a 10 day notice letter with a copy to Property Management. The expiration day of the 10 day notice will be entered in LRS.

c. If the occupant does not vacate within 10 days, Property Management will notify the Deputy Attorney General's office and send a documentation packet containing copies of all letters sent to the property owner or legal representative and confirmation of mailings. Property Management will also provide the letting date of the project. Property Management will communicate and provide notices to the District.

3. The DAG will file for the eviction action.

TRASH AND WEED CONTROL PROCEDURES

District is responsible for the removal of trash in cities and urban areas on Right of Way projects where it is deemed necessary for the health and welfare of the community and to be in compliance with local laws.

The District in the area of the project supplies the manpower to accomplish the maintenance for compliance if possible. Federal participation may be available to comply with local governing laws or ordinances, which includes the cutting of weeds and or removal of debris from Right of Way on which a construction contract has not been awarded, 23 CFR 710.203. Mowing contracts may need to be considered.

POLICE AND FIRE TRAINING

No training should be considered for police and fire training if the building is already listed on a demolition or prime contract. Any prime, construction, or demolition contractor seeking to allow police and fire training must gain approval via the same procedure.

SMOKE ONLY – BUILDING TO BE DEMOLISHED

The District Real Estate Manager must obtain a written request for training from police and fire agencies to use buildings on INDOT property that INDOT is going to demolish. Generally only buildings on property acquired by INDOT, not buildings on temporary easements for building removal, should be considered. A building on temporary easement can be considered only if the requesting agency has obtained written permission from the underlying fee owner.

The District reviews the request and recommends approval upon verification of the following:

1. There is adequate time to conduct the training before scheduling the demolition contract
2. The surrounding neighborhood of the building is such that disruption to residential homes and commercial businesses can be limited
3. Salvage value will not be seriously reduced by smoke, fire or damage
4. Buildings must not be suitable for resale or moving
5. Police and fire agencies execute a Liability Agreement. (*See Appendix*)
6. Police and fire agencies agree to secure all openings against entry
7. A confirmation of the dates for training has been obtained

If the District Real Estate Manager approves, the requester is notified of the approval, training dates and use of the building.

FIRE TRAINING IN BUILDINGS TO BE BURNED

The requirements in the preceding section apply to training by burning buildings. In addition, the following requirements apply:

1. The building must be suitable for burning,
2. An asbestos inspection must reveal there is no asbestos present on or within the buildings,
3. The building must be in rural locations,
4. The fire department will notify neighbors within close proximity of the buildings and notify the local media of the planned training,
5. Fire departments are responsible for any and all permits required.

DISTRICT'S SALE BY PUBLIC AUCTION

If the owner does not retain improvements as a condition of Right of Way purchase negotiations, those improvements having a positive salvage value might be offered for sale at public auction. INDOT sells improvements in the Right of Way by authority of and in accordance with IC 4-13, IC 8-23-2-1 and IC 8-23-2-6. The procedure for sales has been established by the State Board of Accounts and may not be changed except by the Board's permission. The procedure is as follows:

1. A date is selected for the auction that is at least four months prior to the Right of Way clear date or the ready for contracts (RFC) date, whichever is earlier. This allows time for advertising and gives the successful bidder at least 60 days after the auction to remove the improvement.

2. A minimum or starting bid for each improvement is established. The factors to be considered when setting the starting bid are the same as those used to determine the retention or salvage value for improvements retained by the owner. (*See* Online Forms*)*

3. A performance bond amount to be furnished by the successful bidder on each improvement purchased is determined.

4. A "Notice of Sale" letter is prepared for publication (*See Appendix, Notice of Sale for Publication*). The notice prescribes the date, time and location of the auction. The notice gives a description and location of the improvements to be sold, the minimum bid and bond required on each improvement. The terms of the sale are also published with the notice of sale (*See Appendix, Terms of Sale*).

5. The auction is advertised two times in newspapers with general circulation in the county in which the property is located. The first publication is at least 30 days before the sale. The second publication is at least two weeks prior to the sale. A cover letter is sent to the newspapers along with the notice of sale and terms.

6. Property Management forwards to the District and the District maintains a list of persons who have requested notification when improvements are sold by INDOT. Thirty days before the auction, a notice of sale letter and the terms of sale are mailed to each person on the list.

7. Prior to the sale, the Clerk's Report listing each improvement to be sold is prepared. (*See Appendix*).

8. Prior to the sale, a sales contract (*See Appendix, Contract for Sale – Personal Property*), for the individual improvement being offered is prepared. The "Terms of Sale" sheet is attached and becomes a part of the sales contract.

9. The auction is supervised by an agent from District. The bid process may be conducted by a professional auctioneer or the sales supervisor.

10. When the use of a professional auctioneer is not practical, the sales supervisor conducts the sale and accepts the bids while another District agent or District representative serves as clerk.

11. A successful bidder makes payment in full by cash, money order, cashier's check or certified check, made payable to the Indiana Department of Transportation. Payment is expected on the day of sale.

12. Upon receipt of payment from the successful bidder the sales supervisor prepares an official pre-numbered receipt. The original is given to the purchaser, the yellow copy is sent to the Accounting Division with the money from the sale and the pink copy remains in the receipt book.

13. The clerk completes the sales contract and obtains the successful bidder's signature. The sales supervisor notarizes the successful bidder's signature. The clerk also has the successful bidder complete an IRS form W-9. The INDOT commissioner signs the acceptance of the contract on behalf of the Department. The executed contract and an Executive Document Summary are sent to the Attorney General's office for approval.

14. Upon completion of a sale or a series of sales, the sales supervisor completes the prescribed Transmittal Form in duplicate for the deposit of money received from the sale. (*See Appendix*). The sales supervisor signs the form in the lower right hand corner. Within the body of the transmittal form, the sales supervisor makes an entry noting the proper breakdown of the money. The District notifies the Accounting Division by memorandum of the sale and states the percentage of participation, 100% State funds or partially funded by Federal Highway Administration.

    This example of participation may read as follows:

A.	100% State	$300.00
B.	10% State	$ 30.00
C.	90% Federal	$270.00
	TOTAL	$300.00

15. The monies are transmitted along with both copies of the transmittal form and the yellow copy of the official numbered receipt to the Division of Accounting. The Agent Cashier signs the original copy of the transmittal form and issues a receipt for the money deposited. It is ideal to have the money transmitted to the Division of Accounting within twenty-four (24) hours after the date of sale. The Division of Accounting keeps a suitable permanent record.

16. Whenever it becomes necessary to cancel a public sale which has been advertised, a letter similar to the sales letter is written and when the time interval allows, it is published in the same manner as a regular sales letter, except it is published only one time. Also, a copy is sent to each recipient on the mailing list who received a copy of

the sales letter. A memorandum setting forth the causes leading to the decision to cancel the sale is prepared. One set of the letters and memorandum is placed in the project file and one set is placed in the District's file for that particular auction.

17. When the circumstances are such that there is no time to publish the sale cancellation, the auctioneer is notified by telephone that the sale is cancelled. The sales supervisor is present at the location to notify any persons who arrive for the sale that it is cancelled and the reason for such cancellation.

18. Each successful bidder is required to post a performance bond, in the amount specified in the sales letter. The bond is furnished at the time of sale or not later than ten (10) days following the sale. The bidder is not permitted to remove the improvement until the required bond is posted. If the bidder fails to furnish the bond during the ten (10) day period, the improvements purchased may be placed on the next demolition contract or an attempt may be made on the next sale to resell them. The bidder is not liable for demolition costs, but forfeits his purchase price. A memorandum is placed in the parcel and project files setting forth all the facts as to why the improvements are on a demolition contract or the attempt is being made to resell them. The State may take action against the bond when the successful bidder fails to fulfill the terms of the contract.

SURETY PERFORMANCE BOND

The amount of a surety performance bond is determined by the estimated expense of having the improvement demolished if the successful bidder fails to comply with the "Terms of the Sale", for removal of the improvement. The bond may be a performance bond issued by an insurance company or a cash bond, which may be in the form of cash, cashier's check, or certified check payable to the Indiana Department of Transportation.

In the case of a cash bond, the sales supervisor brings the cash or check to District office and fills out a "Cash Bond Receipt" in triplicate. (*See Appendix*). The original is sent to the successful bidder, one copy is sent to the sales supervisor and one copy is retained on file in District. (District keeps a copy of the check if bond is posted by check.) The money is deposited with the Central Office Agent Cashier in the Accounting Division. They issue an original of the receipt, which is kept on file in the District office for former owners removing improvements, INDOT could withhold the bond amount from the property payment to the owner until the retaining owner removes the improvement. Upon receipt of a performance bond issued by a surety company, a copy is sent to the bidder for his files.

RELEASING SURETY PERFORMANCE BOND

At the close of each sale of each improvement, the results are entered in the LRS. Regular inspections are conducted by a field agent of any improvements sold or retained.

When circumstances are such that an extension of time is granted to the purchaser or retainer, an Extension of Time Agreement, should be drafted and signed by an INDOT official and the purchaser or retainer before the expiration of the original contract. The extension of time is noted in the LRS.

When the Right of Way has been inspected and cleared by the field agent, a bond release is provided. The original bond and original release are sent to the surety company posting the bond. A copy of the release goes to the Records Section and one copy is mailed to the insurance company. One copy of release and bond is also kept in the real estate District files.

RELEASING CASH BONDS

When the Right of Way has been inspected and cleared by a field agent, a claim voucher, is prepared in the LRS by District real estate and submitted to the Division of Accounting to release the cash bond posted by the owner. This voucher preparation and process is the same as for all payments.

DEMOLITION CONTRACTS PRIOR TO THE PRIME CONTRACT

A demolition contract is considered when an improvement has the potential to become a public nuisance or hazard. Disposal of improvements by demolition contract consists of the satisfactory removal and disposal of all improvements for each parcel designated in the contract. INDOT Standard Specifications for demolition applies and is cited for all demolition contracts. Some examples are plugging or capping all wells, filling basements and swimming pools.

The size and content of contract proposals for Right of Way clearance work are designed to promote maximum competition in bidding and maximum potential financial return to the State. A memorandum is prepared and forwarded to Contracts and Construction Division listing each item or improvement, stationing and offset of each item and an estimation of the demolition cost of each item. An asbestos report, when necessary, accompanies the memorandum with plans and specifications. Estimated costs of the work associated with demolition of each improvement in a contract proposal are determined as accurately as possible.

Contract proposals for demolition are developed in cooperation with the Specification Writer in the Division of Contracts and Construction. Follow up is required to insure the contract was awarded.

UNDERGROUND STORAGE TANKS (UST'S)

Underground storage tanks acquired by INDOT will be listed for demolition as soon as possible. When the sole purpose of the demolition contract is to remove Underground Storage Tanks (USTs), the demolition contract request lists only the parcel most recently acquired on any given project unless it is known with absolute certainty that more UST parcels will be acquired within 60 days of the first.

The demolition contract may include other improvements unless obtaining asbestos reports will delay the contract letting. The goal is to have all INDOT USTs removed within 12 months of acquisition. Circumstances that may inhibit this goal are negotiated terms, site re-configurations for uninterrupted operations or Attorney General settlements.

Upon acquiring a parcel with a UST, a notice is forwarded to the Environment Services Section and the District in preparation for an immediate demolition contract request to have all UST's in the take removed. Notice to the Environmental Services Section and the District is given at the same time and the same date as the 30-day notice to the property owner. The notification lists code, parcel number, DES number, project number, date paid, number of UST's, the capacity of each tank to be removed, contents, if known, and the anticipated letting date. A copy of the notification is placed in the parcel file.

No extensions will be granted to the owner to clear the property beyond the 90 day relocation expiration and/or the 30 day property management expiration, whichever is later. The properties must cease fuel dispensing operations immediately upon acquisition and the properties must be vacated immediately upon expiration of the later of the 90 day relocation expiration date or the 30 day notice period. Cost to cure evictions must be posted and delivered immediately. The only exception to this paragraph will be because of an order by a court.

PRIME CONSTRUCTION CONTRACTS

The disposal of improvements can most economically be accomplished by including provisions for demolition and removal as a separate item in the construction contract.

At least ten (10) weeks prior to the date that bids are to be received for a project; a list of all major improvements within the Right of Way limits is prepared. The improvements are identified individually by parcel number, location of improvements, by stationing and offset right or left of center line, house number if applicable, and a brief description of the improvement itself. An estimated demolition cost is also included.

A memorandum is forwarded to the Contracts and Construction Division containing the information identified in the preceding paragraph, and requests that necessary steps be taken to list each of these improvements in the primary road contract. It is further requested that the contractor not proceed with demolition of any individual improvement without express written authority from the Contracts and Construction Division.

STATUTORY REFERENCES

This chapter is a listing of State and Federal codes affecting the policies and procedures of the Property Management activities for the Indiana Department of Transportation.

INDIANA CODE TITLE 8

IC 8-23-2-6, Department powers; contracts and leases with transportation finance authority; confidential documents

IC 8-23-7-2, Purposes for acquiring real property

IC 8-23-7-12, Vouchers for payment; certification; payment

IC 8-23-7-13, Sale of surplus property

IC 8-23-7-14, Sale of surplus property separated from abutting parcel; offer to abutting property owner

IC 8-23-7-15, Sale of surplus property separated from abutting parcel; procedure when abutting property owner fails to accept offer

IC 8-23-7-16, Sale of surplus property valued at $4,000.00 or less

IC 8-23-7-17, Exchange of lands, rights, and easements; criteria

IC 8-23-7-18, Exchange of lands, rights, and easements; valuation; payments for differences in value

IC 8-23-7-19, Exchange of lands, rights, and easements; improvements

IC 8-23-7-20, Exchange of lands, rights, an easements; attaching construction contracts, bonds, or plans to exchange agreements

IC 8-23-7-21, Exchange of lands, rights, and easements; improvement completion requirement

IC 8-23-7-31, Acquisition of property, rights, and easements; legal description; taxation

IC 8-23-5-1, Encroachment on state highways; removal, prevention, and termination; notice; entry; costs; exception

INDIANA CODE TITLE 4

IC 4-20.5-7, Disposition of Property

IC 4-20.5-7-1, Application of chapter

IC 4-20.5-7-6, Notice of proposed transfer

IC 4-20.5-7-7.1, Transfer of property between agencies or educational institutions; notice of availability; disposal of property

IC 4-20.5-7-7.3, Priority of transfers

IC 4-20.5-7-8, Transfer to political subdivision or public utility or sale

IC 4-20.5-7-9, Appraisal

IC 4-20.5-7-10, Transfer to political subdivision by gift or sale; preference to political subdivisions

IC 4-20.5-7-10.7, Transfer of property to person for property of like value

IC 4-20.5-7-11, Sale through competitive bids or auction

IC 4-20.5-7-15, Sale at less than appraised value; grant of easement

IC 4-20.5-7-16, Cash sale; proceeds depository

IC 4-20.5-7-17, Instrument of transfer; signatures

IC 4-21.5-3, Adjudicative Proceedings

CODE OF FEDERAL REGULATIONS

23 CFR Part 710 Subpart C Reimbursement Provisions

23 CFR Part 710 Subpart D Property Management

Management of Airspace Disposal of Rights of

PROPERTY MANAGEMENT APPENDIX

10-week Letter
30 Day Notice – Condemnation
30 Day Notice
Auction Clerk's Report
Cash Bond Receipt
Certification Clear – No Exceptions
Certification with Exceptions
Certification - No RW
Closing Statement - Overnight
Closing Statement
Contract for Sale and Removal of Personal Property
Cover Letter to INDOT Commissioner – Remove Property Tax
Cover Letter to Tax Commissioner – Remove Property Tax
District Approval Letter
Excess Land Sale Deposit
FHWA Notification of Sale
Liability Agreement – Fire & Police Training
Non-Collusion Affidavit
Notice of Public Sale for Publication
Petition to Remove Property Tax
Termination Notice – Tenant
Terms of Sale

DATE

MEMORANDUM

TO:
Contracts and Construction -

FROM:
Property Management
Real Estate Division

RE: **10 WEEK LETTER,** Clearing of Right-of-Way, Demolition Items

CODE:
CONTRACT:
DES:
ROAD:
COUNTY:
CN PROJECT:
LETTING:

Please take the necessary action to include the following demolition items in the construction contract. **Please coordinate the demolition of these items with the current certification letter to determine if the parcel has been cleared for demolition,** or if you have any questions contact our office before demolition.

Parcel	Structure	Stationing	C/L	Demolition Estimate	Contractor may proceed:
		+	,-		
		to +			
		+	,-		
		to +			

cc: -
Records

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ADDRESS

RE: Code:
Parcel:
County:
Cause #:

The State of Indiana, on behalf of the Indiana Department of Transportation, has filed suit in eminent domain to acquire a portion of your client's, _____, et al., real estate under the above-referenced project to improve _____. The _____ County Court ordered appropriation of your client's real estate and appointed three appraisers to determine the value of that real estate together with any resulting damages caused by that appropriation. The amount of damages assessed under the appropriation is $_____. On DATE, the State deposited this amount with the _____ County Clerk and now, pursuant to IC 32-24, has a right to take immediate possession of that real estate appropriated through the Court.

Please instruct your client of the vacate date of _____, so that they remove their personal property, which includes a _____, remaining in the right-of-way of the appropriated real estate.

In addition, please instruct your client that _____ have been acquired in the new right-of-way and consequently there will be the loss of utility of those items.

Respectfully,

AGENT NAME
Property Management
Real Estate Division

Attorney General's Office
Acquisition
Records

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DATE

ADDRESS

Code
Parcel
County

Dear PROPERTY OWNER,

The Indiana Department of Transportation has acquired property located at:

ADDRESS IN RIGHT OF WAY

To comply with State and Federal regulations, this is your notification to move any item(s) out of the new right-of-way no later than DATE. Please adhere to these regulations and remove your property from the premises.

Items in Right-of-Way: _____

You have been compensated for replacing or relocating the items listed above. This letter is to alert you to remove your personal property and to relocate or replace any improvements from the right-of-way. This is to avoid interrupted use of the items listed above, as well as electric, water, sewer, fences, etc., if applicable.

Items left in the right-of-way after the vacate date of DATE will be at risk of damage or being removed by construction crews. Contractors will be authorized to remove these items after the vacate date and you may be charged for that expense.

If you have questions regarding what to move or where the right-of-way border is located, please contact **NAME** at **PHONE / EMAIL**.

Thank you in advance for complying with this request.

Sincerely,

AGENT NAME
Property Management
Real Estate Division

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INDIANA DEPARTMENT OF TRANSPORTATION

AUCTION CLERK'S REPORT

Project _____

Parcel _____
Buyer _____
Street Address _____
City, State, Zip _____
Phone _____
Item _____ Purchase Price _____
Bond Amount _____ Bond Received _____

Parcel _____
Buyer _____
Street Address _____
City, State, Zip _____
Phone _____
Item _____ Purchase Price _____
Bond Amount _____ Bond Received _____

Parcel _____
Buyer _____
Street Address _____
City, State, Zip _____
Phone _____
Item _____ Purchase Price _____
Bond Amount _____ Bond Received _____

Parcel _____
Buyer _____
Street Address _____
City, State, Zip _____
Phone _____
Item _____ Purchase Price _____
Bond Amount _____ Bond Received _____

REVISED 12/2014

DATE

CASH BOND RECEIPT

In receipt the cash or check amount of _____, from _____ who is the highest bidder with the Social Security Number of _____ serving as a performance bond for the removal of a building retained by the owner or purchased at auction from the Indiana Department of Transportation.

Project:
Code:
Parcel:
County:

.
Submitted by:
(Buyer, Negotiator or Sales Supervisor)

_____
(Signature)

Real Estate Division
District Office, , IN

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DATE

MEMORANDUM

TO:
Contracts and Construction

FROM:
Property Management Supervisor
Real Estate Division

RE: **CERTIFICATION CLEAR**
CODE:
CONTRACT:
DES:
ROAD:
COUNTY:
LOCATION:

This is to advise that all parcels within the limits of the above referenced project have been acquired and the right of way is clear.

In accordance with 23 CFR 635.309 all applicable rules and regulations of the Federal Highway Administration have been complied with in the acquisition of right of way.

[No relocations are involved on this project and, therefore, the relocation provisions of 49 CFR Part 24, PL 91-646, are not applicable.] [Relocation is involved on this project and, therefore, the relocation provisions of 49 CFR Part 24, PL 91-646, are being applied.]

FHWA will not participate in delay cost accrued because Right of Way was not acquired before letting.

Electronic:
, District Deputy Commissioner
, District Construction Engineer
, Right of Way Services Manager
, Project Manager
, RFC Responsible Person
, INDOT's Utilities Division
, INDOT's Contract Administration Division
, (FHWA)
, (FHWA)
, [Others as Needed]

DATE

MEMORANDUM

TO:
Contracts and Construction

FROM:
Property Management Supervisor
Real Estate Division

RE: **CERTIFICATION WITH EXCEPTIONS**
CODE:
CONTRACT:
DES:
ROAD:
COUNTY:
LOCATION:

This is to advise that all parcels within the limits of the above referenced project have been acquired and the right-of-way is clear for contract letting, with the following exceptions.

Parcel: Owner:
Approx. Sta. to , Line " ", . This parcel has been . The parcel is estimated to be by . The right of way is estimated to be clear on or before .

Parcel: Owner:
Approx. Sta. to , Line " ", . This parcel is active in . The parcel is estimated to be paid by . The right of way is estimated to be clear on or before .

Parcel: Owner:
Approx. Sta. to , Line " ", . This parcel has been . The right of way is estimated to be clear on or before .

Parcel: Owner:
Approx. Sta. to , Line " ", . This parcel is active in . The parcel is estimated to be paid by . The right of way is estimated to be clear on or before .

Parcel: Owner:
Approx. Sta. to , Line " ", . This parcel has been and is estimated that money will be posted by . The right of way is estimated to be clear on or before .

All necessary arrangements have been made for the clearing of the above parcels to be undertaken and completed as required for proper coordination with the physical construction schedules.

[No relocations are involved on this project and, therefore, the relocation provisions of 49 CFR Part 24, PL 91-646, are not applicable.] [Relocation is involved on this project and, therefore, the relocation provisions of 49 CFR Part 24, PL 91-646, are being applied.]

DATE

MEMORANDUM

TO:
Contracts and Construction

FROM:
Property Management Supervisor
Real Estate Division

RE: **CERTIFICATION (NO ADDITIONAL R/W NEEDED)**
CODE: N/A
CONTRACT:
DES:
ROAD:
COUNTY:
LOCATION:

This is to advise that NO additional right of way will be required for this contract. The project will be constructed within the limits of the existing right-of-way. No buildings or relocations involved.

Since relocation is not involved on this project, the relocation provisions of 49 CFR Part 24, PL 91-646, are not applicable

Electronic:
, District Deputy Commissioner
, District Construction Engineer
, Right of Way Services Manager
, Project Manager
, RFC Responsible Person
, INDOT's Utilities Division
, INDOT's Contract Administration Division
, (FHWA)
, (FHWA)
, [Others as Needed]

DATE

CLOSING STATEMENT

Please find enclosed the co-payee check(s) that require your endorsement and that need to be returned at your earliest convenience. Please return the check(s) using the enclosed pre-paid and self-addressed UPS envelope. Envelopes will either need to be placed in a UPS drop box or returned to a UPS Store location.

To find the nearest UPS location, visit http://www.ups.com

Please note, funds to be disbursed to the property owner, if any, will be sent after the endorsed co-payee check(s) are returned to the agency.

ADDRESS

County	Code	Parcel

Location of Property	Part of the Quarter, Sec , Twp , Rng
Area and Type of Interest Acquired	____ acre Fee Simple R/W; ____ acre Temporary R/W; ____ acre Presently Existing R/W; Access Rights

STATE WARRANTS

Co-Payee Warrants	Purchase Price	
Please endorse this co-payee check and return		
Payee Warrants		
	Total of all Warrants	$0.00

Mail Date

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DATE
CLOSING STATEMENT

ADDRESS

County	Code	Parcel

Location of Property	Part of the Quarter, Sec , Twp , Rng
Area and Type of Interest Acquired	_____ acre Fee Simple R/W; _____ acre Temporary R/W; _____ acre Presently Existing R/W; Access Rights

STATE WARRANTS

Payee Warrants	Purchase Price	
	Total of all Warrants	$0.00

DATE
Mailed Date

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Project
Parcel
County
Grantor
Removal Date

CONTRACT FOR SALE AND REMOVAL OF PERSONAL PROPERTY

THIS AGREEMENT, made this day of , , by and between the State of Indiana, acting by and through the Indiana Department of Transportation, hereinafter referred to as the Seller, and , Social Security Number , hereinafter to as Buyer, Witnesseth: That the Seller, in consideration of the amount of money, promises and conditions herein contained and in accordance with the terms of the advertising for the sale hereof, promises and agrees to sell, and does hereby sell, to the Buyer, the following personal property to wit:

The Buyer now pays to the Seller the amount of $ being the amount bid by said Buyer at the public sale of said property, receipt of which is hereby acknowledged. The Buyer promises and agrees to remove said personal property from said real estate upon which it is now located, promptly but no later than sixty ( ) days from the date of execution of the Contract for sale and Removal of Personal Property. Substantial compliance with this Contract means performance of all obligations stated herein.

Time is of the essence for all performance obligations stated herein. The performance times may be extended by a written extension, signed by Indiana Department of Transportation, given prior to the deadline and for such reasonable time as the Seller may determine, when in the Seller's sole opinion the Buyer is delayed in work progress by fire, weather, injuries, or other causes beyond the Buyer's control or which justify the delay. Buyer agrees to keep the work premises and adjoining ways free of waste material and rubbish, including shrubbery and trees which have been cut or uprooted to facilitate moving operations, caused by his work or that of his agent or employees. Buyer further agrees to remove all such waste material and rubbish, together with all of his tools, equipment, machinery, and surplus materials, promptly on termination of the project, but no later than ten days after the removal of the personal property from the real estate, leaving only concrete flatwork on the premises. Reasonable rental, storage, and removal fees will be charged for items remaining, and Seller may dispose of the same where verbal notice is given and Buyer fails to remove or pay such fees.

Buyer agrees to fill the basement and/or crawl space according to the terms of this sale and refill and level any excavation, which was made to facilitate moving operations. A copy of the "Terms of Sale" is attached to and becomes a part of this Contract.

Buyer shall have the right to enter the premises for the purpose of removing the personal property and performing other work described in this Contract for Sale and Removal of Personal Property. Buyer is permitted to store equipment and materials, used in the removal of the personal property, on the premises for a reasonable time, but in any event, for a time no longer than is permitted for the completion of the work. Buyer shall enjoy no rights upon the premises.

Buyer will execute a satisfactory Faithful Performance Surety Bond, as attached, or a Cash Bond, in the amount of $, this amount being the amount stated by the Sales Supervisor at the time of sale (minimum amount of bond being $ 500.00). A bond must be furnished on each successful bid within ten (10) days after the auction. Buyer will not remove any property until the bond has been furnished. If the bond is not furnished within the specified ten (10) days, the Buyer will be in default on the Contract for Sale and Removal of

TO:
INDOT Commissioner

THRU:
INDOT Deputy Commissioner

FROM:
Office of Real Estate

RE: Petition to Remove Property Tax

The attached is a petition to have property taxes removed from property acquired for improvements to SR 28 in Clinton County. Usually we are successful in convincing County Auditors that property taxes assessed in the year in which we acquire the property are to be removed from the tax duplicates in accordance with IC 8-23-7-31(b).

The Clinton County Auditor has refused to remove the taxes. IC 6-1.1-36-7(b) authorizes the chief administrative officer of a state agency to petition the State Board of Tax Commissioners through the Governor to have property taxes removed from state owned property.
Please return the signed petition to .

Respectfully,

Property Management
Real Estate Division

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DATE

Chair
State Board of Tax Commissioners
IGCN N1058
Indianapolis, Indiana 46204

Dear ,

Please find enclosed a petition for the cancellation of property taxes assessed against real property owned by the State of Indiana in County.

Sincerely,

INDOT Real Estate Division

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DATE

To:
District Deputy Commissioner

Thru:
,
Real Estate Manager

From: , District Outreach Team
Real Estate Division

RE: Request to Sell Excess Land and/or Right of Way

Project:
Road:
County:
Code/ Parcel:

Land the department acquired as Excess Land and/or Right of Way is not needed and should be disposed.

The District Deputy Commissioner must decide if the Excess Land and/or Right of Way at the referenced location is property the department does not need. Land the department acquired as Excess Land and/or Right of Way is not needed and should be disposed. Attached please find a right of way plan sheet for the requested referenced property.

At a minimum please address the below concerns:

- ☐ The District has inspected and supplied a photo of the area to be disposed.
- ☐ Are there bridge or pipe structures located in the Excess Land and/or Right of Way INDOT needs to maintain?
- ☐ Are there slopes within the Excess Land and/or Right of Way that INDOT needs to maintain?
- ☐ Are there other INDOT improvements, sod, concrete, paved ditches etc, within the Excess Land and/or Right of Way INDOT needs to maintain?
- ☐ Are there any building structures/wetlands/encroachments/dumping on the excess to be disposed?
  - ☐ Building Structures
  - ☐ Wetlands
  - ☐ Encroachments
  - ☐ Dumping

If there are no maintenance concerns within the requested area, and the district deputy commissioner wishes to declare the property as excess, please approve this request by signing on the appropriate line. If the property is needed now or expected to be needed in the future, please deny this request by signing on the appropriate line.

APPROVED _____ DATE _____
DISTRICT DEPUTY COMMISSIONER

DENIED _____ DATE _____
DISTRICT DEPUTY COMMISSIONER

REASON DENIED _____

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DATE

TO: Cashier
Accounting and Control
Room

FROM:
Real Estate Division
Property Management

Attached is the payment covering proceed from the sale of Excess Land

Check Amount ; Payee - Indiana Department of Transportation

Payer Name
Address

Check Number

Code-parcel
Project
Des#
Excess Land or Excess Right of Way

Federal funds were / were not involved in this acquisition

Federal funds %

State Funds %

Credit to FHWA required %

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DATE

, Division Administrator
Federal Highway Administration
575 North Pennsylvania, Room 254
Indianapolis, IN 46204
Attn: Colleen Smith

RE: Project
Road
County
Code
Parcel

Subject: Notification of the Sale of **Non-Interstate** Excess Right of Way

Dear Colleen Smith,

This is a notification to FHWA that **Non-Interstate** Excess Right of Way has been sold on State Road .

In accordance with CFR 710.401, the State of Indiana, INDOT may sell excess Right of Way on a road, which is not Federal Interstate, without prior approval of FHWA.

All procedures were followed in this sale including approval from the INDOT District Deputy Commissioner and the INDOT Deputy Commissioner (designee for the INDOT Commissioner).

Enclosed is a copy of the accounting form stating if Federal funds were used in the acquisition of this property along with the percentage of the Federal funds appropriated.

This information is being provided to FHWA as documentation of the property transfer. Please note that this property is sold and is no longer excess Right of Way owned by INDOT.

Excess Land District Outreach Team
Real Estate Division

Attachments:
Accounting Form

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DATE
CLOSING STATEMENT

ADDRESS

County	Code	Parcel

Location of Property	Part of the Quarter, Sec , Twp , Rng
Area and Type of Interest Acquired	_____ acre Fee Simple R/W; _____ acre Temporary R/W; _____ acre Presently Existing R/W; Access Rights

STATE WARRANTS

Payee Warrants	Purchase Price	
	Total of all Warrants	**$0.00**

1

DATE
Mailed Date

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NON-COLLUSION STATEMENT
State Form 47157 (R2 / 6-99)

STATE OF: _____

COUNTY OF: _____ } **SS:**

_____
NAME OF COMPANY

_____
STREET, CITY AND ZIP

DEPOSES AND SAYS UPON HIS (*OR HER*) OATH THAT:

The undersigned, being duly sworn on oath says, that he is the contracting party, or that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of the annexed contract other than that which appears upon the face of the contract.

I swear or affirm that the information I have entered on this form is correct. I understand that making a false statement on this form may constitute the crime of perjury.

_____ _____
SIGNATURE **DATE**

_____
PRINTED/TYPED NAME

DATE

PUBLIC NOTICE
STATE OF INDIANA
INDIANA DEPARTMENT OF TRANSPORTATION

, INDIANA
INDOT DISTRICT OFFICE

LETTER NUMBER
SALES SUPERVISOR
TELEPHONE

The Indiana Department of Transportation, acting for the State of Indiana as prescribed by Acts of Legislature, will offer at a Public Sale, the following described improvements at the designated location and time.
COUNTY:
PROJECT:
CODE:
PARCEL:

Sale site
SALE DATE: at AM. LOCAL TIME

It is highly recommended that all prospective bidders seek professional advice from a reputable "home moving" company before bidding.

Structure can be previewed on 20 from - PM

All structures will be sold without reserve in "AS IS" condition with no guarantees as to the structures, equipment, or appliances. THE STATE OF INDIANA RESERVES THE RIGHT TO REFUSE ANY OR ALL BIDS.

DESCRIPTION OF IMPROVEMENTS:
Sale # 1:
Suggested minimum bid: $. Bond required $.

Sale # 2:
Suggested minimum bid: $. Bond required $.

Smaller items may be sold individually and must be removed the day of sale.

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STATE OF INDIANA

BEFORE THE

STATE BOARD OF TAX COMMISSIONERS

IN THE MATTER OF THE)
CANCELLATION OF TAXES)
ASSESSED AGAINST REAL)
PROPERTY OWNED BY THE)
STATE OF INDIANA,)
COUNTY,)
INDIANA)

PETITION

Comes now , Commissioner, Indiana Department of Transportation ("Department") pursuant to the provisions of IC 6-1.1-36-7(b), as chief administrative officer of said Department, and petitions the Board to cancel certain property taxes assessed against real property owned by the State of Indiana; and, in support hereof would show the Board as follows:

1. The Department acquired property in County, Indiana, for permanent highway purposes within the meaning of IC 8-23-7-31(b).

2. The property and the dates of acquisition are as follows:

a. Parcel number acquired .

1) The property was acquired by and through the Department by Warranty Deed; were recorded in the Office of the Recorder of Marion County and in the Office of the Auditor of County; and taxes have been assessed against said real estate for taxes claimed to be due for an assessment year that is the calendar year in which the property was acquired.

2) The property is exempt from taxation for all taxes that were assessed in the year of acquisition of the property and payable in the ensuing year by reason of Indiana Code 8-23-7-31, which provides, in pertinent part, that:

Where real or interests in real property are acquired after the assessment date of any year but before December 31, the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor.

WHEREFORE, the Department prays the Board cancel the taxes on said real property.

Respectfully submitted,
, Commissioner
Indiana Department of Transportation

APPROVED:
THIS DATE:

Governor of Indiana

Termination Notice

CODE:
PARCEL:
Location:
Date:

Dear

Your referenced lease agreement with INDOT will soon terminate. As you may know the building has been sold and this letter is your only notification you will receive to vacate. Please remove all personal property from the premises by . Please contact me if you have any questions or concerns. Thanking you in advance for your cooperation.

Respectfully,

Property Management Unit

cc:
Records
File

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TERMS OF SALE

A maximum of days from the date of sale shall be allowed for removing the improvements purchased.
Sale will be for cash, certified check, cashier's check or bank draft payable to the Indiana Department of Transportation.
Personal checks cannot be accepted.

THE STATE OF INDIANA RESERVES THE RIGHT TO REFUSE ANY OR ALL BIDS.

Successful bidder will be required to execute a contract agreeing to the following conditions:

1. To supply a satisfactory faithful Performance Surety Bond, similar in language and requirements to a sample available from the Sales Supervisor, or a cash bond consisting of a cashier's check, certified check or bank draft made payable to the Indiana Department of Transportation. The amount of the bond shall be in the amount stated in the advertisement of sale and shall be a minimum of $ for a house or major structure or $ for a garage, shed or other small structure. Such performance bond or cash must be provided within (10) days of date of sale. If the buyer does not furnish the bond within the (10) specified days, the buyer will be considered to have defaulted and will forfeit the purchase price and the State of Indiana will sell, demolish or remove the improvements without incurring any liability to the buyer.

2. No improvements will be removed prior to posting of the Surety Performance Bond.

3. Forty-eight hours prior to removal of the structure, the successful bidder shall contact the District **Construction Engineer in the Indiana Department of Transportation's District Office. Phone .**

4. Notify the Indiana Department of Environmental Management and the US Environmental Protection Agency at Least ten working days before removing the structure. There will be a notification fee payable to IDEM. Notification forms will be available from the Indiana Department of Transportation, Sales Supervisor on the day of sale.

5. There shall be no burning of debris on the site.

6. All work must be done under the supervision of the District Construction Engineer. Before the Surety Performance Bond will be released, the District Construction Engineer must approve the site where the structure has been removed.

7. To remove the improvements purchased within the specified period of time normally sixty (60) days after the date of the sale. Within ten (10) days after removal of the improvement, to complete the removal of all combustible material and other rubbish, including shrubbery and trees cut or uprooted to facilitate moving operations, leaving only concrete flatwork on the premises. Any excavation made to facilitate the moving of the improvement must be refilled and leveled.

8. The successful bidder shall be responsible for backfilling the crawl space and/or basement according to the following specifications:

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POLICIES FOR OFF-PREMISE OUTDOOR ADVERTISING SIGNS

I. INTRODUCTION

The instructions within this memorandum are applicable to off-premise outdoor advertising signs that have a legal conforming or a legal nonconforming permit status. Legal conforming (L-tag) sign means a sign meets all the current criteria in the Federal and State rules and regulations. Legal non-conforming (C-tag) sign means a sign that was lawfully erected but does not comply with the provisions of Federal and State rules and regulations adopted at a later date. Legal non-conforming signs are considered 'frozen in time' and **cannot be changed in structure**; this includes but is not limited to raising/elevating and/or relocating/moving.

On-premise signs are signs that advertise or identify a) activities conducted on the property upon which it is located, or b) the sale or lease of the property. On-premise signs, along with directional and official signs and notices (transportation signs, signs put up by governments, service clubs, and religious organizations meeting certain criteria), do not fall under the scope of the assignments being discussed in this memorandum.

Illegal signs are to be handled by District permit staff, except in special circumstances. If an appraiser determines an outdoor advertising sign is illegal, the appraiser should consult with INDOT Real Estate and the District permit staff to determine what steps should be taken.

Whenever possible, an outdoor advertising sign should be compensated to move to a new location. If the sign can be moved to a point within 500 feet of its prior location, while complying with applicable spacing and zoning requirements, with INDOT's Permit staff agreeing to such an assessment, the sign can relocate under its *existing permit*. For all eligible signs, this is the preferred course of action. Otherwise, the appraiser will need to determine whether the outdoor advertising sign is personal property or real property, and based on this assessment, review the policies outlined below to determine the appropriate scope of the assignment.

SUMMARY OF POSSIBLE COURSES OF ACTION

Preferred: Relocations of Billboard Pursuant to Ind. Code § 8-23-20-25.6

These assignments will involve an appraiser and a buyer; the relocation of the sign will require approval from an INDOTPermit Manager. Even if the sign is determined to be personal property under Indiana law, since the sign will be movingunder the existing permit and will not be returning to the sign company's inventory, all compensation will be paid through the acquisition process and no relocation agent will be assigned.

Personal Property Moves for Signs under New Permit

If the sign is not eligible to be relocated under the existing permit under Ind. Code § 8-23-20-25.6, but based on an assessment of the interests, the sign has been determined to be personal property, the sign will be moved pursuant to thisprocess. These assignments will involve an appraiser, a buyer, and a relocation agent. The appraiser will not be assessingmove-related costs, but rather, will only be determining the value of the leasehold estate or easement interest, and in addition, the value of the sign structure; benefits payable under 49 C.F.R. § 24.301(f) and (g) will be handled by an INDOT relocation agent. If the sign is being moved, a new INDOT permit will have to be sought by the owner as the previous permit will no longer be considered valid.

Signs that Are Real Property

If the sign is not eligible to be relocated under Ind. Code § 8-23-20-25.6, but based on an assessment of the interest, thesign has been determined to be real property, the sign will be moved or acquired pursuant to this process. These assignments will involve an appraiser and a buyer. Compensation will be paid through the acquisition process. If a signbeing moved, a new INDOT permit will have to be sought by the owner as the previous permit will no longer be considered valid.

II. THE APPRAISING PROCESS

A. BACKGROUND INVESTIGATION REQUIRED

***Note**: It may not be possible, during the APA process, for the Review Appraiser and INDOT to determine the exact scope of the assignment for a billboard appraisal due to the fact that leases and permit information may not be obtained until theappraising process commences. If the scope of the appraising assignment needs to be altered after assignment, please reach out to the INDOT Appraising Supervisor.*

Documents Necessary for the Assignment:

- ✓ Title & Encumbrance Report (if this is a sign parcel, obtain the Title & Encumbrance Report for the fee parcel)
- ✓ Right of Way Engineering documents
- ✓ Right of Way Plans
- ✓ The permit information for the sign
- ✓ From the fee simple owner/sign owner: the appraiser must request and make reasonable attempts to obtain all lease documents related to the site (from the fee property owner, and if applicable, from all tenants, subtenants,and assignees.)

Instructions for Determining the Sign's Interest:

- ➢ Does the sign owner own the land beneath the sign in fee simple through a deed conveyance? If yes, unless thereis evidence to the contrary, the sign will be treated as a real estate interest.
- ➢ Does the sign owner own the land beneath the sign through an easement agreement? If yes, unless there is evidence to the contrary, due to Indiana's personal property tax statute, the sign will be treated as a personalproperty interest; however, the easement will be treated as a real estate interest.
- ➢ Does the sign owner lease the location where the sign is located? If yes, the sign owner has a leasehold, and unless the lease clearly states that the fee simple property owner will retain the sign at the end of the lease, without exception, the sign is to be treated as a trade fixture, i.e., a personal property interest, but the leaseholdwill be treated as a real estate interest.
- ➢ Is there no information about the type of interest that the sign owner has? If yes, the appraiser will make an extraordinary assumption that the sign owner has a leasehold interest and that the sign is a trade fixture, i.e., apersonal property interest; the leasehold will be treated as a real estate interest.

Permit Status of the Sign:

1. The appraiser should obtain the permit number from the sign, obtain an approximate address for the sign, andobtain as much information as possible about the sign owner's name.
2. The appraiser should contact the District Permit Manager, using the contact information found here, and providephotos either taken by the appraiser, or if Google street view photos are ***current***, a copy of these photos can be provided. If the District Permit Manager does not respond within three (3) business days, the appraiser should contact the permit staff at INDOT's Central Office; this contact information can be provided by INDOT Real Estate.
3. From the District staff: (1) obtain a copy of the current permit, and in addition, (2) ask that the Permit staff to provide the appraiser with information about the sign's CURRENT permit status, in case the sign's permit statuschanged after the permit was obtained from INDOT.
4. The differences between conforming signs and nonconforming signs are explained in the Indiana Department of Transportation's *Guide for Outdoor Advertising* on Pages 16 through 18.

5. The appraiser should conduct a similar investigation for any local permits that a sign owner holds from local

governments.

Zoning Status of the Land Beneath the Sign:

- The appraiser should determine the current zoning for the land beneath the outdoor advertising sign.
- If the land is unzoned, the appraiser should determine whether the land is used for commercial or industrial purposes. Indiana Department of Transportation's *Guide for Outdoor Advertising* should be used during this assessment, especially the information on Pages 11 through 12, as there are additional restrictions for outdooradvertising signs being placed on unzoned land.

If Leasehold, Determining the Length of the Leasehold Estate:

- The appraiser is to review the existing lease to determine the length of the leasehold term.
- The appraiser is not to assume that the lease will be renewed; the leasehold estate, for valuation purposes ineminent domain appraisals under Indiana law is to be limited to the existing term.
- If the appraiser is not able to obtain a copy of the lease, the appraiser should ask for payment information:
    - If payments are made on a monthly basis, the appraiser will make an extraordinary assumption that thetenancy is a month-to-month tenancy and that the lease can be terminated with one month's notice.

If payments are made on an annual basis, the appraiser will make an extraordinary assumption that the tenancy is a year-to-year tenancy, that the lease can be terminated with reasonable notice, and should value the leasehold as if it can be terminated and expired within fifteen (15) months of the effective dateof the appraisal.

- The appraisal should explain that these extraordinary assumptions are being made and why the assumptions are being made.

B. TREATMENT OF OUTDOOR ADVERTISING SIGNS

1. *Preferred Treatment*: Relocation of Sign Under Existing Permit Pursuant to Ind. Code § 8-23-20-25.6

A legal, conforming outdoor advertising sign that is regulated by INDOT, if it is "no longer visible or becomes obstructed, or must be moved or removed, due to a noise abatement or safety measure, grade changes, construction, direction sign, highway widening, or aesthetic improvement made by any agency of the state," can be relocated, subject to specified conditions outlined in this section. Ind. Code § 8-23-20-25.6.

Such a move would be a "relocation" of the sign ***under the existing permit***.

Requirements for Relocation Under Permit

1. ***Have a legal, conforming permit status. The status should be based on the District's determination of the existing status and the appraiser should not use the plate itself to determine the permit status.***
2. ***Must be located on land zoned for commercial or industrial purposes, or if on unzoned land, the land must be currently used for commercial or industrial purposes. The appraiser should review Pages 11 and 12 of the Indiana Department of Transportation's Guide for Outdoor Advertising when evaluating this.***
3. ***The sign must be capable of being elevated or moved to a point within 500 feet of its prior location while remaining in compliance with applicable spacing and zoning requirements. The new location must also be land zoned for commercial or industrial purposes, or if on unzoned land, the land must be currently used for commercial or industrial purposes. For spacing requirements, the appraiser should consult with District staff, as different types of outdoor advertising signs have different spacing requirements.***

Without regard to the type of property interest a sign has, if the sign meets the requirements outlined above, the sign can be relocated under this statute. Even if the sign is "personal property," INDOT will compensate the property owner for the cost of moving the sign as a benefit paid through the acquisition process, as a "cost-to-cure."

Expectations of the Appraiser

If the appraiser is proposing a relocation under this statute:

1. The appraiser must include information about the sign's new location in the appraisal, with a sketch.
2. The appraiser should provide for reasonable moving costs for the relocation of the sign in the appraiser's report,as a cost-to-cure payment, including reasonable costs for electrical services, if applicable. As the sign will be expected to relocate under the existing permit, no permit fee needs to be included as a part of compensation. These amounts should be included in the *Statement of the Basis of the Just Compensation*.
3. The appraiser should also evaluate the land interests involved; if the sign owns the land beneath the sign in fee simple, has an easement, or holds a leasehold estate, these interests also need to evaluated in the report based on accepted appraisal practices and procedures for these interests. The appraisers should consider all estate interests.
4. The appraiser should ensure the location changes or other adjustments of the sign will not result in a loss ofvisibility of the sign.

5. The appraiser should notify the INDOT District Permit staff regarding this proposed relocation, so that theDistrict can expressly confirm that the proposed relocation can take place and note this in the records theymaintain for the existing permit.

6. If the outdoor advertising sign is also subject to local government regulation, the appraiser should also contact andconsult with the local government to determine the sign's current permit status; if the sign is non-conforming or illegal under local law, it cannot be relocated under this process.

7. If the local government does not have a zoning ordinance or special exceptions that allows for a sign to move under these types of circumstances, the appraiser should incorporate a *hypothetical condition* into the appraisalassignment and assume that such an ordinance or special exceptions exist. For the purposes of this assignment,the appraiser will assume that no variance or other consent from the local government is needed.

2. Personal Property Moves for Signs under New Permit

Background Discussion: Signs as Realty vs. Personalty

During any appraisal assignment, it is important for an appraiser to determine what items in the acquisition area are realty and what are personalty. Advertising signs that are personal property, pursuant to the *Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs* regulations, are eligible for move-related compensation. *See* 49 C.F.R. § 24.301(f). ("The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of: (1) the depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or (2) the estimated cost of moving the sign, but with no allowance for storage.") Outdoor advertising signs, although they may meet the definition of a "small business," are ineligible for business reestablishment expenses. 49 C.F.R. § 24.2(a)(24).

If an outdoor advertising sign's right to reside in its location is based on easement, based on a lease, or is assumed to be based on a lease, unless a written agreement states that the fee simple owner will retain rights to the sign structure upon the expiration of the agreement, *the structure should be treated by the appraiser as personal property*, as it is a trade fixture, not a fixture.

If a written lease or easement grants rights to the outdoor advertising sign at the expiration of the *lease to the fee simple owner*, instead of the outdoor advertising sign company, the outdoor advertising sign cannot be acquired separately from the fee simple parcel, i.e., INDOT cannot acquire the sign using a "SA sub-parcel", and *the fee simpleowner's rights to compensation for the outdoor advertising sign must be evaluated* in an appraisal for the land being acquired in fee simple.

Expectations of the Appraiser

1. The appraiser will need to evaluate whether the lessee's interest in the leasehold estate has any value, or if thesign is in place through an easement, the value of the easement holder's interest.
2. The appraiser should obtain the permit information for the sign and include that information in the appraisal.
3. The appraiser should value the depreciated reproduction cost of the sign, less the proceeds from its sale, andinclude this information on an addendum to the report.
    a. This information will not be treated as "compensation" during INDOT's acquisition process and willnot be listed on the Statement of the Basis of the Just Compensation; this information will be provided to the relocation agent for the use of calculating relocation benefits.
4. The appraiser should evaluate whether there are any other tenant-owned improvements (or easement holder- owned improvements) that do not qualify as personal property; for example, the appraiser should evaluate the components of the outdoor advertising sign, and if certain components such as the support structure materials or the sign structure foundation are properly classified as an unmovable improvement or a fixture rather than amovable item of personal property, and cannot be re-used in another location, then the appraiser can provide compensation in the appraisal to the sign owner for these specific improvements or fixtures.

5. The appraiser should also describe in the report whether the sign uses lighting, and thus, will need the installation of electrical lines in its new location. Compensation should not be provided for in the appraisalreport, however, a relocation agent will need to consider whether the owner will be entitled to relocation benefits for connecting to available nearby utilities

6. Just Compensation: The just compensation to be offered the sign owner where the sign will be moved as personal property will be the value of the lessee's interest in the leasehold estate (or easement interest), and inaddition, the value of any tenant-owned improvements that do not qualify as personal property.

7. The appraisers report should note in the report that: *The outdoor advertising sign owner cannot retain its current INDOT's permit tag and will have to apply for a new permit tag from INDOT for the new location. The sign owner will have to comply with all applicable State and local law and agency policies for the new location in order to receive a permit for the new location. It is the sign owner's responsibility to find a newsite and the owner needs to ensure that the new location will legally qualify for a new permit.*

What is Not Expected from the Appraiser

1. The appraiser will not need to find a new site for the outdoor advertising sign. As a trade fixture, the sign will betreated as inventory of the sign owner for installation elsewhere.

2. The appraiser does need to determine the moving costs for the sign. INDOT's relocation agent will consider actual, reasonable, and necessary moving costs for moving the sign up to 50 miles from the acquired property; thedetermination of these moving costs will be made through an INDOT relocation agent.

8. The value of the lessor's estate in the leasehold should be included in any appraisal completed for the fee simpleestate pursuant to accepted appraisal practices and procedures for valuing leasehold interests but will not be provided for in appraisals completed for an "SA" parcel.

3. Real Property: Land Interests and Improvements

Income Approach: Indiana's Legal Requirements for Signs

- The Indiana Supreme Court in *State of Indiana v. Bishop* has stated that "billboards on condemned property are compensable to the extent that they enhanced the value of the property on the day of the take but not for any 'lost income' based on potential future leases."
- The Indiana Supreme Court further stated that "billboards are more akin to a restaurant than a quarrying operation because, like a restaurant, a billboard can be relocated to another appropriate location and continue toproduce the same or similar income. Unlike a quarrying operation, its value is not tied to the land itself." Income received from the billboard's *advertising operations* are not "derived from the intrinsic nature of the property itself [but] from the business conducted on the property," and the income approach is inapplicable for this specific type of income.
- The Indiana Supreme Court further stated in *State of Indiana v. Bishop* that "the 'cost valuation of [signs] coupled with the income value of the ground leases'" awards all value that could reasonably be expected to bejust compensation and that value should be "'limited here by the brevity of the leaseholds and their uncertain renewal prospects,'" and that such an approach is consistent with Indiana eminent domain law.
- Further information about the *State of Indiana v. Bishop* case can be found in "Appendix A" to this memorandum.

Directions for Leaseholds & Easements

- All interests in the land should be evaluated, and if there are any leasehold interests or easements, the appraiser should use acceptable appraising practices and processes to evaluate these interests in order to determine whether there is just compensation owed to the fee simple owner, to the lessee, or to the holder of the easement.
- If the outdoor advertising sign owner owns the land in fee simple, and the sign improvement, but *leases* to an outdoor advertising company for use, this lease should be examined using acceptable appraising practices andprocesses in order to determine whether the fee simple owner is entitled to just compensation for the value of this leasehold interest. Questions of legal interpretation of the lease should be brought to an agency attorney.
- For leasehold interests, compensation for the ***leasehold is limited to existing term of a lease and the appraisershould not assume that the lease will be renewed or that the owner will enter into a new lease with another party upon the expiration of the existing term***. Pursuant to Indiana law, compensation is only owed for the unexpired term of an existing lease.
- The fee owner and/or the sign owner should provide you with leases; you should also consider any lease documentation in the Title & Encumbrance Report provided to you. If leases are not provided to you, youshould ask about payment information, to evaluate whether the lease might be a month-to-month, based onpayments being made monthly, or a year-to-year lease, based on payments being made yearly.
- If written evidence of the current term of the lease is not provided after an appraiser's reasonable attempts to obtain a copy of the lease, extraordinary assumptions should be made in the appraisals that the leasehold is a month-to-month lease, based on when payments are being made, with the ability to terminate with one month'snotice, or a year-to-year lease, based on when payments are being made, with the ability to terminate with threemonths' reasonable notice, with a result of one year remaining on the lease.

Expectations of the Appraiser

1. Any land beneath the sign, owned by the fee owner, in fee simple should be appraised pursuant to INDOT'sstandard appraising policies and procedures, State and federal law, and USPAP.
2. Even if the sign is an improvement, i.e., not personal property, the appraiser will need to determine whether theoutdoor advertising sign can be moved without substantial or permanent damage to the sign. The appraiser willalso need to determine if there is a residue the sign can be moved to, or in the alternative, if the owner has additional property within the same market area where an outdoor advertising sign could be placed.
3. When the sign can be moved, the cost of moving the sign is the appropriate measure of damages for the sign as acost-to-cure. If the sign can be relocated under the existing permit, pursuant to Ind. Code § 8-23-20-25.6, the guidance of that section of this memorandum should be followed; if it cannot be relocated under the existing permit, the owner will need to obtain a new permit for the new sign location.
4. If INDOT Permits has determined that a sign structure is a legal, non-conforming sign, the sign cannot be movedto a new location and the improvements will need to be acquired.
5. Moving costs for signs considered to be a real estate interest should be provided for in the appraisal as a cost-to-cure.
    a. Estimated moving expenses should include both an estimate for removing the sign, and in addition, anestimate reinstalling the sign, and if applicable, costs for installing electrical service.
    b. Other reasonable costs can be included in the estimate; permit fees should include permit fees for a permitfrom INDOT, and in addition, an estimate for permit fees that could be incurred to a local county or city government.
6. Consideration of the new location for the sign will be required for appraisals being completed under these guidelines and the appraiser should determine if the owner has other nearby land ***within the same market area***that can be used as a new sign location.
    a. If the sign is being moved to a location on the residue of the area of taking, a sketch of the new locationshould be provided in the appraisal.
    b. The appraiser should ensure the location changes or other adjustments of the sign will not result in a lossof visibility of the sign.
7. The appraiser should consult with the District Permit Manager to ensure that (a) the sign's improvements would qualify for a new permit, and (b) that the new location for the sign will comply with spacing requirements for a new permit. In addition, the appraiser will need to ensure that the new location is zoned appropriately for an outdoor advertising sign, in that it must be zoned for commercial or industrial uses, or if the land is unzoned, the appraiser should determine whether the land is used for commercial or industrial purposes. Indiana Department of Transportation's *Guide for Outdoor Advertising* should be used during this latter assessment, especially the information on Pages 11 through 12, as there are additional restrictions for outdoor advertising signs being placedon unzoned land.
8. *Even if the appraiser believes the sign can be moved to a new location*, the appraiser should provide a value forthe sign improvements in the appraisal in case it is later determined that the sign cannot be moved.
9. The appraiser will need to determine the depreciated reproduction cost of the sign less the proceeds from its salein order to determine the value of the sign improvement.
10. The report will need to separately include a salvage value estimate for the improvements in the report.
    a. Salvage value is defined, under federal law, as "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(i.e., not eligible for relocation assistance)." 49 C.F.R. § 24.2(a)(23).

11. Compensation for the Sign Improvements:

    a. If the sign can be moved to a new location, the measure of damages for the sign will be the allowed movecosts described above, unless these costs exceed the depreciated reproduction cost of the sign less the proceeds from its sale, in which case the compensation to be offered will be the depreciated reproduction cost of the sign less the proceeds from its sale.

    b. If the sign cannot be moved, the compensation to be offered will be the depreciated reproduction cost ofthe sign less the proceeds from its sale.

    c. If an offer is made to acquire the improvements, the sign owner will be provided an opportunity to retainthe sign improvements pursuant to 49 C.F.R. 24.103(c) at their salvage value

III. ACQUISITION PROCESS UNDER THE UNIFORM ACT

Expectations for the Buyer

The negotiator ("Buyer") assigned to a parcel to acquire real estate interests for INDOT should ensure that they understand:

1. What interests are being acquired with the acquisition, so these interests can be appropriately released with aquitclaim;
2. Whether the sign is:
    a. Expected to move under its existing permit
    b. Will move as a "personal property move" and will obtain a new permit;
    c. Will move as a real property move and obtain a new permit; or
    d. Will be acquired;
3. The breakout of the compensation being paid for through the acquisition process;
4. Whether there is a relocation agent who will be involved who will be managing the move process and arrangingfor relocation benefits; and
5. If a sign is relocating under its existing permit or is a realty interest and moving as a cost-to-cure, the Buyershould communicate the project's move deadlines to the sign owner.

Communications with the Owner

- The Buyer should review the entirety of this memorandum and ensure that inaccurate information is not providedto the owner about INDOT's policies regarding signs.
- If a sign must be moved, the Buyer should not make any assurances that a permit will be granted.
- The Buyer should explain that, if the sign is being moved to a new location, that all legal permitting requirementsshall have to be complied with, and in addition, that permitting questions should be directed to INDOT Permits and the local jurisdiction (if a local permit is also required).

IV. RELOCATION BENEFITS UNDER THE UNIFORM ACT

Relocation Entitlements for Outdoor Advertising Signs that are Personal Property

The owner of an outdoor advertising sign moving as personal property will be eligible for a relocation benefit paymentpursuant to 49 C.F.R. § 24.301(f) that is be the lesser of: (1) the depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or (2) the estimated cost of moving the sign, but with no allowance for storage. In addition, the owner will be eligible for reimbursement for actual expenses, not to exceed $2,500, as the Agency determines to be reasonable, for searching for a replacement location. 49 C.F.R. § 24.301(g)(17).

Outdoor advertising signs, although they may meet the definition of a "small business," ***are not eligible for business***

For signs that are considered personal property and cannot be moved under Ind. Code § 8-23-20-25.6, INDOT will assign a relocation agent to make assist with the process of arranging relocation benefits under the Uniform Act, to provide assistance with the moving process, and to provide advisory services by helping the sign owner connect with the Permit Manager of the appropriate District to help with permit related questions.

Information for Relocation Agent

1. Signs being moved under this process that cannot be relocated under the existing permit, meaning they cannot beelevated or relocated within 500 feet of the current permitted location, will be treated as personal property movesto a replacement site for which a new permit from INDOT (and possibly a local government) will need to be sought.
2. Legal Non-Conforming and illegal outdoor advertising signs are not eligible for relocation benefits.
3. Pursuant to 49 C.F.R. § 24.301(f), the sign owner is to receive the lesser of:
    a. the depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from itssale; or
    b. the estimated cost of moving the sign, but with no allowance for storage.

    INDOT's appraiser will provide a value for the depreciated reproduction cost of the sign, less the proceeds from its sale, however, the relocation agent will have to evaluate the estimated moving cost for the sign.
4. As a trade fixture, the sign will return to the inventory of the sign owner for installation elsewhere; similar to other personal property moves, INDOT will consider actual, reasonable, and necessary moving costs for movingthe sign up to 50 miles from the acquired property, but due to federal law, cannot pay for storage costs for the sign.
    a. Non-conforming signs cannot move to a new location, although for the purpose of determining appropriate benefits, moving costs should be estimated.
    b. Moving costs should include the cost for removing the sign, for moving the sign, and for reinstalling thesign.
5. The sign owner will be eligible for actual allowed reasonable searching expenses not to exceed $2,500.00; the costs of obtaining a new permit from INDOT and/or a local government can be included as a searching-relatedexpense.
6. If the outdoor advertising sign was utilizing electrical services, the costs of connecting to nearby utilities at the replacement site can be considered if actual, reasonable, and necessary.

7. The relocation agent should ensure that clear communications are provided to the sign owner regarding thepermitting process.

    a. The agent should explain to the owner that: *"The outdoor advertising sign owner* ***cannot retain its current INDOT's permit tag*** *and will have to apply for a new permit tag from INDOT for the new location. The permit tag is required to be returned to INDOT's Central Office Permits. The sign owner will have to comply with all applicable State and local law and agency policies for the new location in order to receive a permit for the new location. It is the sign owner's responsibility to find a new site andthe owner needs to ensure that the new location will legally qualify for a new permit."*

    b. This explanation should be documented in an Agent's Report.

8. Vacate notices shall be issued to the sign owner. The vacate notice shall also include the following:

    a. You cannot retain your current INDOT permit tag and will have to apply for a new permit tag for the newlocation. Please return the permit tag to INDOT's Central Office Permits. All applicable State and local law and agency policies will have to be complied with at the new location for a new permit to be issued. It is your responsibility to find a new site that will legally qualify for a new permit.

9. Relocation agent will notify the appropriate INDOT District Permit Manager of each sign when a sign has beenremoved so that the permit file for sign can note that the existing permit should be "terminated."

APPENDIX "A"

APPLICABLE LAW WITH LEGAL CITATIONS FOR USE BY APPRAISERS AS NEEDED

Ind. Code § 8-23-20-25.6:

(a) This section applies only to a conforming outdoor advertising sign located along the interstate and primary system, asdefined in 23 U.S.C. 131(t) on June 1, 1991, or any other highway where control of outdoor advertising signs is required under 23 U.S.C. 131 .

(b) If a conforming outdoor advertising sign is no longer visible or becomes obstructed, or must be moved or removed, due to a noise abatement or safety measure, grade changes, construction, directional sign, highway widening, or aesthetic improvement made by any agency of the state along the interstate and primary system or any other highway, the owner oroperator of the outdoor advertising sign, to the extent allowed by federal or state law, may:

(1) elevate the outdoor advertising sign; or

(2) relocate the outdoor advertising sign to a point within five hundred (500) feet of its prior location, if theoutdoor advertising sign complies with the applicable spacing requirements and is located in land zoned forcommercial or industrial purposes or unzoned areas used for commercial or industrial purposes.

(c) Subject to subsection (f), the county or municipality, under IC 36-7-4, may, if necessary, provide for the elevation orrelocation by ordinance for a special exception to the zoning ordinance of the county or municipality.

(d) The elevated outdoor advertising sign or outdoor advertising sign to be relocated shall be the same size as theprevious outdoor advertising sign and, to the extent allowed by federal or state law, may be modified to:

(1) elevate the sign to make the entire advertising content of the sign visible; and

(2) an angle to make the entire advertising content of the sign visible.

(e) This section does not exempt an owner or operator of a sign from submitting to the department any application or feerequired by law.

(f) If the county or municipality does not amend its zoning ordinance as necessary to provide for a special exception to the zoning ordinance under subsection (c), notwithstanding IC 8-23-20-10 , the county or municipality is responsible forthe payment for just and full compensation to an owner under IC 32-24.

Importance of Determining Interest to be Valued

"Consideration must be given to the *nature of the property* affected and the *extent of the interest acquired*. 'Value' is aterm which is relative in character." 800 N.E.2d 918 (Ind. 2003)(emphasis added).

Real Property Interest (Fixture) vs. Personal Property (Trade Fixture)

"To determine whether a specific article of property is personalty or realty, three factors must be considered: 1. its annexation to the realty, which may be either actual or constructive; 2. its adaption to the use of the realty or the part thereof to which it is connected; and 3. whether the party annexing it intended thereby to make the article a permanent accession to the freehold." *Lau v. Indiana National Bank*, 506 N.E. 2d 70 (Ind. Ct. App. 1987)

"In order to determine whether a particular article has become so identified with real property as to become a fixture, Indiana uses a three part test which considers: 1) actual or constructive annexation of the article to the realty, 2) adaptation to the use or purpose of that part of the realty with which it is connected, and 3) the intention of the party making the annexation to make the article a permanent accession to the freehold. It is the third part of the test which is controlling.

If there is doubt as to intent, the property should be regarded as personal." *Dinsmore v. Lake Electric Company, Inc*. 719N.E.2d 1282 (Ind. Ct. App. 1999).

Trade Fixtures: Further Guidance

"As between landlord and tenant, the general rule is that the tenant may remove trade fixtures within the term of his lease, if they are capable of being detached without the material injury to the freehold or themselves, and of being set up and used elsewhere." The removal of the trade fixture can cause injury to the property, however, the removal cannot cause "substantial or permanent damage to the premises." *Roebel v. Kossenyans*, 629 N.E. 2d 241 (Ind. Ct. App. 1994).

A trade fixture is an article of personal property placed by a tenant on the leased property for the purpose of furthering hisuse of the leased property for the trade or business for which it was leased. *J.K.S.P. Restaurant, Inc. V. Nassau County*, 513 N.Y.S.2d 716 (1987); *R & D Amusement Corp. v. Christianson*, 392 N.W.2d 385 (N.D. 1986).

Outdoor Advertising Signs: Property Taxation Statutes

Pursuant to Ind. Code § 6-1.1-1-11: "'Personal property' means…billboards and other advertising devices which arelocated on real property that *is not owned by the owner of the devices*."

Ind. Code § 6-1.1-3-24 provides the assessment values for outdoor advertising signs. Current assessment values: https://www.in.gov/dlgf/files/pdf/180424%20-%20Wood%20Memo%20-%20Outdoor%20Advertising%20Sign%20Valuation.pdf

Valuing the Leasehold

The value to be paid based on a leasehold is to be limited "by the brevity of the leaseholds and their uncertain renewal prospects." *State v. Bishop*, 800 N.E.2d 918 (Ind. 2003).

Billboards are not compensable for "any 'lost income' based on potential future leases." *State v. Bishop*, 800 N.E.2d 918 (Ind. 2003).

"Generally, a tenant is entitled to compensation for an unexpired term of a lease terminated by condemnation." *BurkhartAdvertising, Inc. v. City of Fort Wayne*, 918 N.E.2d 628 (Ind. Ct. App. 2009).

"An estate in land which could be cancelled at any time does not seem to be an interest which would have a compensablevalue in a condemnation suit." *Burkhart Advertising, Inc. v. City of Fort Wayne*, 918 N.E.2d 628 (Ind. Ct. App. 2009).

Presumed Leasehold Estates

Ind. Code § 32-31-1-2: "A general tenancy in which the premises are occupied by the express or constructive consent of the landlord is considered to be a tenancy from month to month. However, this section does not apply to land used for agricultural purposes."

Ind. Code § 32-31-1-3: "A tenancy from year to year may be determined by a notice given to the tenant not less than three (3) months before the expiration of the year."

Ind. Code § 32-31-2-1 (b): "Not more than forty-five (45) days after its execution, a lease of real estate for a period longer than three (3) years shall be recorded in the Miscellaneous Record in the recorder's office of the county in which the real estate is located."

Ind. Code § 32-31-2-2 (b): “If a lease for a period longer than three (3) years is not recorded within forty-five (45) days after its execution, the lease is void against any subsequent purchaser, lessee, or mortgagee who acquires the real estate in good faith and for valuable consideration.”

Applicability of Income Approach

“Capitalization of income evidence is allowed only in limited circumstances." Income from property is an element to be considered in determining the market value of condemned property when the income is derived from the intrinsic nature of the property itself and not from the business conducted on the property." *Jones*, 173 Ind. App. at 252-53, 363 N.E.2d at 1024 (quoting *State v. Williams*, 156 Ind. App. 625, 635, 297 N.E.2d 880, 886 (Ind. 1973)). Jones involved the appropriation of land suitable for quarrying which was part of an ongoing quarrying operation. The court distinguished thefacts of that case from those in Williams, which involved a restaurant business being conducted on the land, because the quarrying business "derive[d] its income by processing material which is an intrinsic part of the land" *Id*. at 253, 1024. Billboards are more akin to a restaurant than a quarrying operation because, like a restaurant, a billboard can be relocated to another appropriate location and continue to produce the same or similar income. Unlike a quarrying operation, its value is not tied to the land itself. The income approach is also limited to situations where the property is being operated as a going concern, is in good condition, and is capable of producing the income to be capitalized. *J.J. Newberry Co. v. City of East Chicago*, 441 N.E.2d 39, 42-43 (Ind. Ct. App. 1982). We do not mean to say that capitalization of income is never appropriate for determining the fair market value of billboards, but the circumstances will be rare. While it might be appropriate to consider the anticipated income from an existing lease when calculating fair market value, attempting to determine the potential future profits of an unleased billboard is inherently speculative.” *State v. Bishop*, 800 N.E.2d 918 (Ind. 2003).

“The New Hampshire Supreme Court has held that the "cost valuation of the signs coupled with the income value of the ground leases awarded all the value that could reasonably be expected to accrue to the [owner]" and "that value is limited here by the brevity of the leaseholds and their uncertain renewal prospects." *State v. 3M Nat'l Advertising Co*., 653 A.2d 1092, 1094 (N.H. 1995). This approach is consistent with current Indiana eminent domain law.” *State v. Bishop*, 800 N.E.2d 918, 925 (Ind. 2003)

Uniform Act Regulations49 C.F.R. §

24.2(a)(23):

Salvage Value. The term salvage value means 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 (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.”

49 C.F.R. § 24.2(a)(24):

Small business. A small business is a business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of § 24.304.

49 C.F.R. 24.103(c)

Owner retention of improvements. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(a)(24)) of the retained improvement.

49 C.F.R. § 24.301(f):

Advertising signs. The amount of a payment for direct loss of an advertising sign, which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from itssale; or
(2) The estimated cost of moving the sign, but with no allowance for storage


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