

***RIGHT OF WAY INFORMATION PACKET***  
***For Local Public Agency Federal/State-Aid Projects***

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**NOTE:** The goal of this manual is to provide current information in an ever changing world. Providing this manual through an electronic format allows updates and modifications to be added much faster than through paper manuals. If you are using a paper version of this manual please consult the electronic version for the most current information. Should you wish to contact someone concerning the manual please visit our web site at [www.dot.state.ia.us/rightofway/propertymanage/lpac.html](http://www.dot.state.ia.us/rightofway/propertymanage/lpac.html) or contact the Property Management Section, Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, or (515) 239-1300.

**NOTE:** This manual has been developed for projects receiving state and/or federal highway funding in any portion of the project. While the information contained within this manual may be applicable for other public improvement projects, we recommend contacting the appropriate funding agency prior to initiating right of way processes to ensure the appropriate funding sources are not jeopardized.

**NOTE:** This manual contains links to other sites providing additional information for the various topics. These links have been located at the end of individual discussions and highlighted in blue. Please click on the links to be routed to the additional resources.

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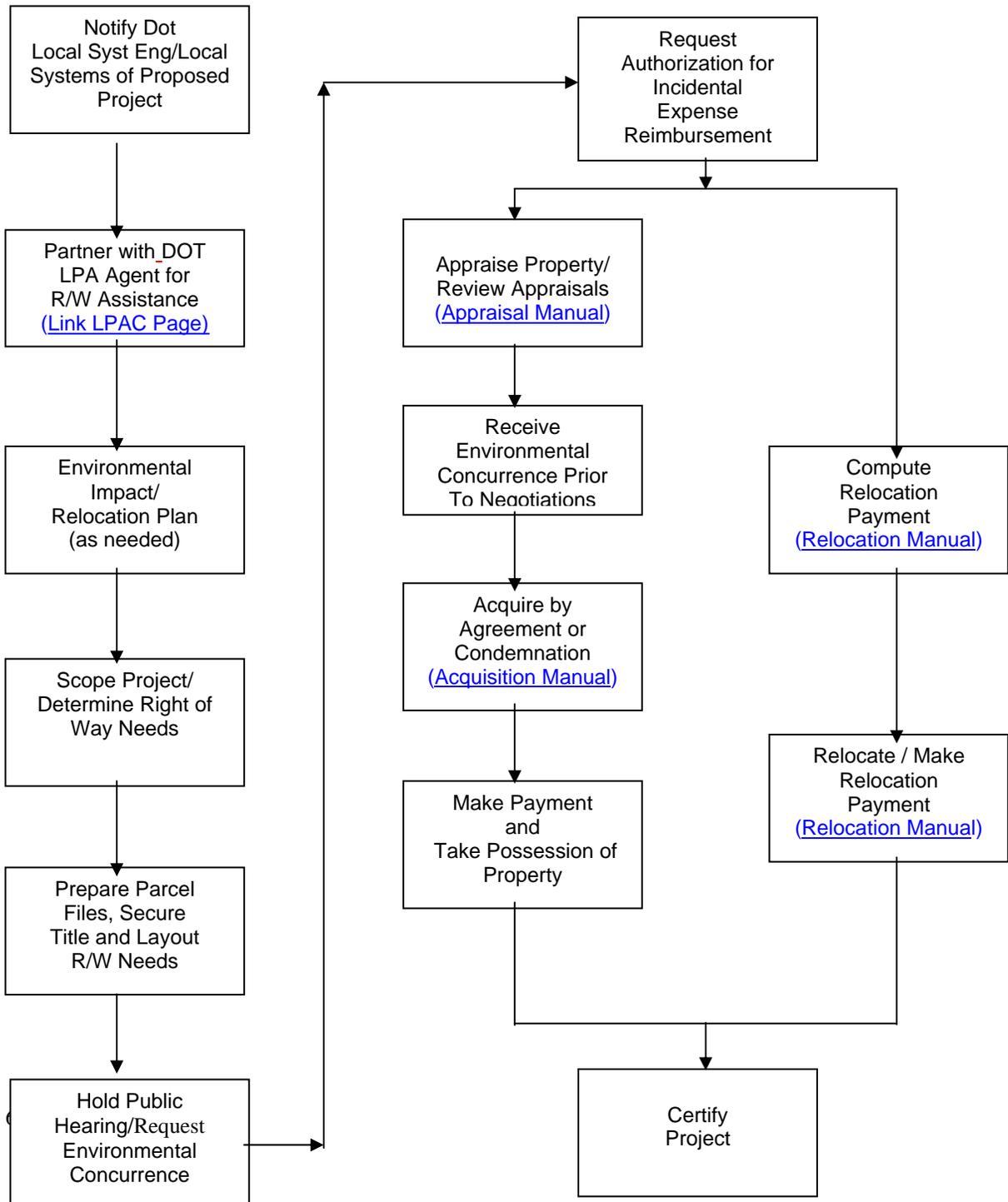
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# Right of Way Process

## Work Flow Chart



# **RIGHT OF WAY INFORMATION PACKET**

## **For Local Public Agency Federal/State-Aid Projects**

### **FOREWORD**

We hope to become your partner as you proceed through the portion of your project involving right of way. So that we might start our partnership off on the right foot, this manual has been written in an informal style. We hope you will find this manual easy to read and a valuable resource in the future.

This instructional manual has been prepared to help Local Public Agencies (LPAs) in the development of their right of way programs. *We* (the DOT) want to develop a partnership with *you* (the LPA). Our goal is to provide assistance enabling right of way to be acquired in a manner that will not jeopardize federal funding for your projects.

The Work Flow Chart of the Right of Way process shows the major steps involved.

All of us would like to improve processes, make our work easier, and accomplish our goals faster. Unfortunately, there are no "short cuts" to accomplish the right of way portion of your project. Even if there is no federal or state funding in the acquisition of right of way, these procedures must be followed if any federal-aid is used in the project, and State Law applies to all projects.

If you need help the Property Management Section of the Office of Right of Way, Iowa Department of Transportation, is ready and willing to help you.

# INTRODUCTION

Iowa laws relating to highways and acquisition are included in Iowa Code Chapters 6A, 6B, 28E, 306, 306A, 306B, 306C, 313, and 316. Iowa Administrative Code (IAC) 761, Chapter 111.

Federal statutory requirements for right of way programs are contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (referred to as the Uniform Act). Regulations implementing the requirements of the Uniform Act are contained in 49 CFR, Part 24 (Title 49, Part 24, Code of Federal Regulations) titled Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs. Title 23 USC -- Highways, covers other regulations from the Federal Highway Administration.

State law and implementing regulations do not distinguish between federal-aid and non federal-aid right of way projects. The Uniform Act applies if there is Federal funding, or if the use of federal funds is anticipated, in any phase of project costs. The Iowa DOT and local public agencies (LPAs) acquiring property or causing displacements from real property must comply with the Uniform Act and implementing regulations to receive funds from a federal grant, contract or agreement. Compliance by LPAs is found as a stipulation of the funding agreement for each project.

This manual is divided into nine chapters and six indexes. The manual will take you through the right of way process from start to finish. The authors and editors of this manual hope that you, the reader, will find the information of value. If you have comments on the content, please direct them to the address and/or phone number found in the Summary ([link](#)).

## Additional Resource Links

Federal Guidelines ([link](#))

State of Iowa, Iowa Code ([link](#)).

Iowa DOT, Office of Right of Way Policies and Procedures Manuals ([link](#))

# **CHAPTER ONE**

## **General Guidelines**

### **Goal of This Chapter:**

This chapter is designed to provide general guidelines to consider when planning right of way activities for Federal/State -Aid projects. This chapter will discuss the following topics:

- everyone's role
- planning and lead time
- federal funding guidelines
- environmental and public involvement requirements
- contracting work and agreements
- qualifications of right of way personnel, and
- authorization for right of way activities

### **Everyone's Roles in the Process:**

We all have a stake in your project, so we should start by exploring everyone's roles and responsibilities.

- *Involving our Federal Partner*

Acquiring right of way for a public project often requires several partners. Your next project may require a cooperative effort involving you at the local level, the Iowa DOT at the state level and the Federal Highway Administration (FHWA) at the federal level. The Iowa DOT has already developed a partnership with FHWA for the benefit of everyone. This partnership has evolved to the point where FHWA holds the DOT responsible to ensure that right of way on all federally funded street and road projects in Iowa is acquired in accordance with federal guidelines.

FHWA has already reviewed the Iowa DOT right of way processes to ensure compliance with federal laws and regulations. So, if you develop your right of

way processes in compliance with Iowa DOT policies, you will automatically comply with state and federal requirements. As a result FHWA is a “silent partner” in the vast majority of local projects.

➤ *Guidance*

In order for your project to receive state and federal funding there are a multitude of laws and regulations to which you must adhere. One of our primary functions is to help you ensure that your federal funding is not jeopardized as a result of right of way activities. In other words, we hope to explain not only what should be done, but also what should not be done. For example, following procedures from any of the Iowa DOT right of way manuals will point you in the right direction and limit future problems. Your LPA Coordinator will be happy to supply any of these manuals at your request. In addition links have been provided throughout this manual to provide access to these manuals electronically.

From time to time LPAs decide that they want to develop their own written policies and procedures manuals. Should you elect to develop your own manual, please be aware that your policies and procedures manual will be subject to DOT and FHWA review and acceptance *prior* to use on a federal-aid project.

The exchange of information is vital to the success of any partnership. You and your LPA Coordinator will need to communicate to ensure your project's success. Your project will determine the extent of communication necessary but, when in doubt, contact your LPA Coordinator.

From time to time you or your LPA Coordinator will request a face-to-face meeting. This type of meeting may be used as a “brainstorming” session where new ideas can be discussed. Both of us may learn a new way of doing things through this effort. We believe there is a critical need to have these meetings **early** in your project to avoid problems in the future.

➤ *Monitoring*

Monitoring provides a challenge for both you and the DOT. If all of us view monitoring from a positive perspective, our partnership will be more successful. We are charged with monitoring your projects. Our primary objective in the monitoring effort is to ensure that you do not jeopardize the federal funding you

have requested. We want to ensure that monitoring does not develop into an adversarial relationship, but we can only succeed with your cooperation.

The areas to be monitored include management, design, appraisal, acquisition, relocation assistance, title and closing, condemnation and property management. Obviously your project may not include all of these disciplines.

One of our early monitoring concerns involves ensuring that you have the necessary resources to adequately address the right of way issues of your project. We would like to assist you in reviewing your resources and provide ideas for accommodating any shortfalls. We are also available early in your project to help in your assessment of lead time and project scoping issues. These topics will be covered in greater detail later in this manual.

Should monitoring discover areas that require attention, we will point out the potential problems and offer alternatives for remedy. You may utilize our suggestions or develop your own resolutions, provided all partners agree.

➤ *Your Responsibility*

Your agency is responsible for acquiring the necessary right of way for the construction and maintenance of the proposed facility in accordance with all applicable federal and state laws and regulations. You must consider not only right of way acquired in fee simple, but also permanent easements (slopes, drainage, etc.), temporary easements (construction, borrow, etc.), licenses and any other agreements required for entering onto or use of land or property rights for construction and maintenance activities.

You may or may not choose to involve federal funds in your right of way efforts. In case federal funds are utilized in *any* portion of the project, all requirements of the *Uniform Act* apply. We are available to assist you with compliance, but remember, ultimately ***this is your project and compliance is your agency's responsibility.*** Your agency is expected to certify compliance with all applicable laws and regulations. Failure to comply will jeopardize your funding requests.

**Planning/Lead Time:**

What Local Public Agency has enough time in today’s world? We’re sure that you are no exception. To compound your time management concerns, one of the most significant challenges in acquiring right of way is that we're dependent on factors over which we may have little or no control. Delays may be encountered from property owners, title companies and the court system, just to mention a few. If you or your staff has other duties in addition to your project right of way assignments, time management becomes an even larger problem. We believe the only reasonable answer to these time management problems is to provide yourself with enough lead time to succeed, rather than set yourself up for failure.

The following is a schedule estimate of right of way activities for an average project such as a widening job containing ten or so parcels. Some time frames for functions may overlap, and complex projects will require much more time. We have not provided estimates for Relocation Assistance, as these types of parcels can only be estimated on a case-by-case basis. Please remember, Relocation Assistance *will* require significant time, and your LPA Coordinator is available to help you estimate the time needed.

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<b>R-1</b>	Layout & Legal - Preparation of the right of way plans, plats, legal descriptions and title reports.....	4 Months
<b>R-2</b>	Appraisal and Appraisal Review - Time to prepare and review appraisals. ....	4 Months
<b>R-3</b>	Negotiations - Notice of Proposed Public Improvement and Authorization to Acquire (per Iowa Code § 6B.2A) Negotiator making contact, securing signatures on contract, and closing transaction.....	7 Months
<b>R-4</b>	Condemnation - Preparation of Condemnation notice, requesting selection of commissioners, serve notices as required, and making payments. Filing necessary notices, required publications and property owner mailings. ....	6 Months
		<b>TOTAL .....21 Months</b>

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## **Federal Funding Guidelines:**

Title 23, U.S.C. requires that costs for appraisal, negotiation and condemnation *will not* be eligible for federal funding *without prior authorization from the FHWA* to proceed with the activity. This authorization request is made through the Iowa DOT's Administering Office. Costs incurred prior to the appraisal phase such as right of way estimates, title work, preliminary survey and plat, and description preparation may be eligible for federal participation and reimbursement as a preliminary engineering activity, or as an incidental right of way expense, only if the authorization to proceed is received from FHWA prior to commencing work.

Costs eligible for reimbursement include but are not limited to: real property acquisition, incidental costs of the acquisition, pro rata taxes and/or special assessments, permanent and temporary easements, damages to remainder of real property, court awards and cost of tenant-owned improvements, uneconomic remnants, and construction in exchange for donation. All documents relating to acquisition of the right of way must be available for inspection. Plans, contracts, deeds, appraisals, options, vouchers, correspondence and all other documents must carry the federal-aid project number for identification.

### Additional Resource Links

Federal Guidelines ([link](#))

## **Environmental and Public Involvement Requirements:**

Federal-Aid projects require securing applicable environmental approvals. State and federal funding will require public involvement when right of way acquisition is necessary. Details, outlines, flow charts and step by step procedures involving environmental and public involvement are available in the Office of Local Systems “*Project Development Informational Packet*” ([link](#)) For example, Iowa Code § 6B.2A, ([link](#)) prescribes public involvement requirements for agricultural land as described in Iowa Code § 6A.21 ([link](#))

Sometimes projects must impact environmentally and/or historically protected properties. In those cases mitigation may be required including acquiring

replacement lands. The acquisition of mitigation properties will require long term management plans. Your agency may be required to acquire, manage, or transfer these properties to another agency.

If federal dollars and/or a federal action are involved compliance with the National Environmental Protection Act (NEPA) will be necessary. For example, even if there are no federal funds involved in your project, if an U. S. Army Corps of Engineers 404 permit is required, then NEPA and all that it entails is required.

#### Additional Resource Links

Iowa DOT, Office of Local Systems Project Development Information Packet ([link](#))

### **Contracting Work/Intergovernmental Agreements:**

When you are ready to proceed with your project, your agency may or may not have the internal resources available to complete the necessary right of way functions. We at the DOT often find ourselves in a situation where we need additional resources. Two options available to all of us include contracting with private contractors or other governmental agencies. If you contract with outside resources do not forget to allow additional coordination time in your overall schedule.

#### ➤ *Contracting Work*

If you decide to hire private consultants to perform a right of way function, your LPA Coordinators maintain a list of consulting firms willing to perform this work. These services should be contracted for in compliance with the applicable requirements for contracting with private contractors, fee appraisers or other specialists. We provide lists of consultants for informational purposes only, and do not warrant the services supplied by consultants. You should make sure that the consultant you select can deliver the necessary services in a satisfactory manner.

#### ➤ *Intergovernmental Agreements*

Chapter 28E, Code of Iowa, permits state and local governments to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies and to cooperate in other ways of mutual advantage. ([Code of Iowa link](#))

Don't overlook your neighboring agencies, such as city or county staff. The assistance you need may be right next door! Let your LPA Coordinator help you "think outside of the box" when you are looking for additional resources.

It may be possible that we have sufficient staff available to assist you with your project. Our assistance may be provided in appraisal, appraisal review, acquisition, relocation, condemnation, and property management, plus miscellaneous tasks such as preparing right of way plans, estimates, and title documents. Unfortunately, the DOT can only offer these services when the workload permits. As a result, contracting with the DOT may or may not be an option for you.

If you decide to hire our staff you must submit a written request to the Office of Right of Way specifying the function for which you are requesting help. We also ask for information pertinent to the scope of the requested function, as well as the projected completion schedule.

If we have staff available to complete your assignment within your time frames we will prepare a cost estimate for you. We will then prepare an Intergovernmental Agreement outlining the functions we will perform for your agency along with our estimated costs. But, should the actual costs be greater than estimated, your agency will still be responsible for the actual costs incurred. Sample copies of Intergovernmental Agreements may be obtained from your LPA Coordinator.

### **Qualifications of Right of Way Personnel:**

All of us want to ensure that we have qualified personnel performing the services we need. We have provided what we believe to be minimum qualifications for persons performing right of way program functions. There are right of way functions for which no qualifications have been provided, including property management, land plat and description preparation, and condemnation and project management. If you find you require any of these services, or others, consult with your LPA Coordinator for assistance in determining the necessary qualifications.

Your LPA Coordinator maintains a list of firms offering appraisal, appraisal review, negotiation and relocation assistance services. This list may not include all other qualified consultants that may be available.

We have provided a brief overview of minimum qualifications for staffing state and/or federally funded projects.

*Appraisers must*

- have successfully completed technical appraisal training and have experience in appraising the type of property to be appraised. When in doubt, a sample appraisal should be requested.
- have previous experience preparing appraisals for eminent domain right of way acquisition.
- if a detailed appraisal is required and a consultant is used, the consultant must be a State of Iowa certified appraiser if the project is federally funded or if the land is to be acquired in the name of the State of Iowa.

*Review Appraisers must*

- as a minimum, have the qualifications listed above for appraisers.
- possess the ability to logically analyze the appraiser's approach to value and recognize deficiencies in the appraisal report.
- be certified, if a certified appraiser is required.

**NOTE:** Should you decide to utilize the services of a fee review appraiser your agency retains the responsibility to approve the amount believed to be just compensation.

*Negotiators must*

- possess a current Iowa Real Estate license or be a full-time employee of the LPA or the DOT or otherwise be excepted from the requirements of Iowa Code § 543B. ([link](#))
- be familiar with federal and/or state acquisition requirements.
- demonstrate the ability to understand appraisals and appraisal reviews.

- know how to research courthouse records and understand legal title.
- demonstrate the ability to interpret right-of-way plans.
- possess effective communication skills.

*Relocation Assistance Agents must*

- have documented experience in performing relocation assistance which complies with the applicable state and/or federal requirements.
- have sufficient right of way knowledge in other disciplines to work within a team.

**Authorization for Right of Way Activities:**

You may not begin the acquisition of right of way before a written notice of FHWA Environmental Concurrence is issued. This approval is provided by the Iowa DOT's Office of Location and Environment. In some instances, preliminary right of way work may begin prior to the receipt of this approval. But it is possible that future changes may create revisions causing additional work and expense for your agency.

Preliminary appraisal work may begin as long as there are no owner contacts made by the appraiser prior to the public notice/involvement. After the public involvement an initial right of way contact letter is sent to the owner explaining that an appraiser will be contacting them soon. *No actual negotiations with property owners may begin before environmental concurrence is received.* The only exception is in the case of advanced acquisitions. Please see discussion of Advanced Acquisitions in Chapter 2, Overview. ([link](#))

Additional Resource Links

Office of Local Systems Project Development Information Packet ([link](#))

## **CHAPTER TWO**

### **Overview**

This chapter is designed to provide an overview of items, issues, and processes that you may wish to consider while planning the Right of Way activities for your project. This chapter will discuss the following topics:

- Advanced Acquisitions
- Donations
- Easements
- Minimal Value Purchases
- Procedural Guidelines
- Title Search
- Legal Descriptions and Plats
- Records/Parcel Files

### **Advanced Acquisitions:**

An advanced acquisition is the acquisition of right of way before the final environmental document is approved or before the environmental concurrence for a project has been approved. There are two main types of advanced acquisitions - hardship acquisition and protective buying. The Office of Local Systems “Project Development Informational Packet” provides several flow charts describing the entire process in detail. Please use the attached link to view those flow charts.

[\(link\)](#)

If federal funds are to be used in the acquisition of right of way, the Iowa DOT and FHWA must approve both hardship and protective buying acquisitions. Neither hardship nor protective buying acquisitions may be approved before:

- (1) public notice has been given of the preferred location of the facility or
- (2) public involvement/notification requirements have been met.

You will still need prior approval for advanced acquisitions even if there is no federal funding in the right of way. However, as emphasized earlier in this manual, when federal funds are involved in any part of the project, all applicable federal and state regulations must be followed during the acquisition of the parcels.

➤ *Hardship Acquisition*

Hardship acquisitions usually occur when a property owner makes a written request to the LPA for acquisition of the property in advance of the normal time scheduled for acquisition due to some "hardship". The hardship acquisition request to the Iowa DOT by the LPA must include the estimated cost of the acquisition, relocation and incidental costs, along with supporting documentation.

Justifications must include reasons why the project causes a condition for the owner that is different from or disproportionate to the inconvenience suffered by the majority of those in the project area. Also, a statement is necessary indicating that reasonable alternatives are not open to the property owner that would accomplish relief of the situation without acquiring the property at this time.

Once your agency initiates the acquisition process a serious commitment has been given to the property owner. Your agency has accepted an obligation and Federal participation is dependent upon your agency's commitment to seeing the acquisition through to conclusion. Several activities must be accomplished prior to the agency receiving the ability to condemn. Many of these activities cannot be accomplished in the early stages of the project when hardship acquisitions are necessary. Therefore, requests from owners for hardship acquisitions should contain a waiver of all impediments to a condemnation and an agreement to be condemned should negotiations prove unsuccessful.

➤ *Protective Buying*

Protective buying is purchasing property in advance of the project to preserve a preferred or essential location for the proposed project. Requests to the Iowa DOT for protective buying must include the estimated cost of the acquisition. Your agency must give reasons why the request should be considered, for example, the costly development or physical alteration of a property is imminent; a zoning change is occurring which will add substantial costs to the parcel acquisition; or a reconstruction of improvements damaged by fire or natural disaster is imminent.

Care must be taken to ensure that the final project design is not changed or influenced as the result of an advanced acquisition. If the early acquisition of a parcel is approved but the right of way is ultimately not needed for the project, your agency will be responsible for the total cost of the acquisition.

Please note if the property is acquired prior to receiving Federal Authorization the costs incurred are not eligible for federal participation. However, the value of the property may still be eligible for use in match purposes. Please consult your Administering Office, or LPA Coordinator for further details.

## **Donations:**

There are occasions when property owners have expressed a willingness to donate land or rights to land, especially when the project will provide a benefit to the property and the community in general. You may also accept an owner's offer to donate the right of way, in exchange for services rendered that will benefit the owner.

In either event, the owner must be fully informed of the right to be paid just compensation for the acquisition, as determined by an appraisal. If agreeable to the donation, the owner can waive the right to an appraisal. This must be in writing and the waiver, or a copy of it, must be kept in the parcel file.

A further discussion of Donations is located in Chapter 3, the Valuation Process. [\(link\)](#)

## **Easements:**

Easements are interests in real property that permit the use, not ownership, of land. Easements are rights to perform specific acts on land. They may be temporary or permanent in nature. Temporary easements may be held for a specific or indefinite time period.

The purposes of easements are as varied as there are uses for real estate. In some cases they may not cause damage or reduction in the value of property. For example, a permanent sewer easement may cause temporary damage to a property, but after the sewer is constructed and the area re-sodded, the value of the property may be equal to its value before. Conversely, a temporary easement for borrow purposes may substantially reduce the value of a property. Each easement must be examined to determine the reduction in value to the property and estimate the fair and just compensation due to the owner.

All easements, whether temporary or permanent, must be considered a right in land which must be acquired. All necessary easements, including temporary easements such as small shaping easements, must be acquired and certified prior to construction of the project.

### **Minimal Value Purchases:**

When the cost of securing right of way for a parcel approaches or exceeds the value of the acquisition itself, the procedure for acquiring right of way may have become disproportionate and cumbersome. Processes such as minimum value purchase procedures have been developed in an effort to reduce cost and time necessary for uncomplicated, low value acquisitions.

Minimal value purchases are uncomplicated acquisitions estimated not to exceed \$10,000 in value, excluding fence and crops. Procedures have been developed for cost-effective acquisition of minimal value purchases, which includes waiving the requirement for an appraisal to determine just compensation. The DOT's Appraisal Waiver Provision has been approved by FHWA, so when you properly utilize the DOT's Appraisal Waiver Provision you may be assured you will remain in compliance with state and federal guidelines.

You may make a minimal value payment offer to a property owner without the necessity of an appraisal. An administrative estimate, called a compensation estimate, is used to establish the amount to be offered as just compensation. The format for a compensation estimate is described in Chapter 3, ([link](#)) section of this manual.

### **Procedural Guidelines:**

Title III of the Uniform Act states that its goal is to encourage and expedite the acquisition of real property by agreement with the owner, avoid litigation and relieve congestion in the courts, assure fair and equal treatment for all owners, and promote the confidence of the public in land acquisition for public use.

We have provided a thumbnail sketch of what needs to be done to avoid jeopardizing state and federal funding. The activities are listed in the approximate order in which they should be done. Checklists have been provided as a helpful tool in Index 1. Also, a Work Flow Chart has been provided which graphically shows the major steps involved. -

- Contact the DOT's administering office to inform and perform preliminary startup procedures and to determine the scope of the project including what, if any, additional right of way will be needed.
- Prepare the parcel files, secure title information, plot existing and proposed right of way lines on construction plans, calculate the acquisition areas, and review access control needs. Estimate the acquisition amount for each parcel to determine the complexity of the valuation issue and appropriate valuation procedure. One item to be wary of is the presence of hazardous waste and contaminated properties (see discussion of Hazardous Waste/Contaminated Properties in Chapter 9) ([link](#)).
- Complete the public notification and involvement requirements and apply for environmental concurrence.
- Request authorization for reimbursement of right of way and/or incidental expenses, including appraisals, from the DOT and FHWA, if participation in expenses is sought.
- Comply with notification requirements per Iowa Code § 6B.2A. ([link](#))
- Determine the amount to be offered as just compensation by an appropriate method (appraisal or through the appraisal waiver process).
- Acquire the right of way and close each transaction.
- If relocation is involved, ensure that all displaced persons are assisted. Please note that per Iowa Code § 6B.42 and Iowa Code Chapter 316, all acquiring agencies are required to provide relocation assistance on all projects. ([link](#))
- If necessary, complete Condemnation proceedings.
- Certify the project. ([link to Proj. Dev. Form 730002](#))

A one-page guide to much of the right of way process entitled “*Right of Way Record Checklist*” may be found in Index 1. This form is a helpful tool in managing the right of way process. At any time in this process, if right of way

related issues need to be discussed, contact your LPA Coordinator or Administering Office

#### Additional Resource Links

Federal Guidelines ([link](#))

State of Iowa ([link](#)).

Office of Local Systems Project Development Information Packet ([link](#))

### **Title Search:**

There must be an examination of the county records and title report requested for each parcel to determine the owner of the property, including mortgage holders and other interested parties. This title report is used to determine the status of title so merchantable title for the land required can be obtained. The report is also used as an information source for describing land and identifying all persons or entities with an interest in and/or authority to contract for deed and/or release real estate interests. These records are maintained as part of the parcel file.

### **Legal Descriptions/Plats:**

Legal descriptions and plats are to be prepared and certified by an Iowa Licensed Land Surveyor. Minimum standards for descriptions may be found in §6A.20, Code of Iowa ([link](#))

### **Records/Parcel Files:**

Your agency will need to maintain a separate parcel file for each acquisition of real property and all people displaced (see discussion of Parcel - What Is It? in Miscellaneous Topics). Your records must be sufficient to demonstrate compliance with applicable laws and requirements and be available for inspection by the DOT, FHWA, and possibly other divisions of state and federal government. You will need to retain your records for at least three years after the final payment of any phase of the project.

For your convenience we have provided a list of the minimum records you will need to retain.

- All Correspondence
- Title Documents

- Design Summary Information and Plat
- Appraisals and Review Appraisals
- Negotiator's Notes
- Administrative Settlement (if used)
- Copy Signed Contracts
- Title Opinion
- Conveyance and Closing Documents
- Relocation Forms
- Relocation Agent's Notes
- Condemnation Documents (if used)
- Right of Way Record Checklist

## **CHAPTER THREE**

### **The Valuation Process**

This chapter is intended to serve as a brief description of the Valuation Process. The DOT Office of Right of Way, Appraisal Section maintains detailed Appraisal Operations Manual providing additional information. ([link](#))

When you have received authorization from FHWA to acquire right of way for your project the Valuation Process will be your next step. The cornerstone of any right of way acquisition and the fundamental responsibility of every acquiring agency is to ensure fair and just compensation has been offered for all interests in the property rights to be acquired. The Valuation Process provides the documented assurance that fair and just compensation has been considered.

The Valuation Process may be described in five basic areas.

- To Appraise or Not to Appraise
  - ❖ Owner is Donating the Property
  - ❖ LPA Determines the Appraisal Problem is Uncomplicated and Low Value.
- Appraisal Waiver Provision
- Appraisal Process
- Review Process
- Agency Establishment of Approved Offer

The balance of this chapter will discuss the five areas of the Valuation Process.

#### **To Appraise or Not To Appraise:**

Before the initiation of negotiations, the property must be appraised. There are two general exceptions: (1) if a donation is indicated and the owner(s) waive their right to an appraisal; or (2) if the magnitude and complexity of the acquisition indicate that an appraisal is not necessary. When the property owner receives notice indicating that an appraiser will be contacting them (or even earlier), that owner may indicate a willingness to donate the land without the requirement of an appraisal. An additional discussion of Donations is located in Chapter 2 ([link](#))

This chapter provides detailed information concerning the appropriate use of both the Appraisal and Appraisal Waiver Provision. The following information provides the basis for determining which is the appropriate valuation process to use for specific parcels. If you are uncertain which process to use, please contact your LPA Coordinator for assistance.

## Donations

Iowa Code § 6B.54 (9) and Title 23 of the U. S. C. Section 323, provide that a person whose real property is acquired in connection with a Federal-aid highway project may offer a gift or donation of such property, or any part thereof, or of all or part of the "just compensation" paid for the property, to a Federal Agency, a State or a State Agency, or to a Political Subdivision of a State, as determined by that person. Such donation may only occur after the person has been fully informed of their right to receive "just compensation" for acquisition of the property.

When property is acquired by donation, no appraisal is required. However, owners must also be fully informed that they are entitled to an appraisal of the property along with an offer of just compensation. It is not unusual for an owner to insist upon receiving an appraisal, even though the property is ultimately to be donated, for accounting and tax reasons.

Even if an owner wishes to donate land, the Acquiring Agency is still obligated to appraise and offer just compensation for the acquisition of property unless the owner(s) waive their rights to an appraisal and/or compensation. Please refer to Chapter 2, Donations. ([link](#))

Please remember, the property may still require valuation, should your agency wish to use the value of the donated land for project match purposes. Depending upon the specific valuation problem the property may be valued for match purposes through the Appraisal Process or the Appraisal Waiver Provision. Consult with your LPA Coordinator regarding your individual situations.

### **The Appraisal Waiver Provision:**

The first decision you and your agency will need to make during the Valuation Process is whether to obtain an appraisal or utilize the appraisal waiver provision. This chapter will discuss both types of valuations, but you may need help. Your

LPA Coordinator is available to assist you in making this determination and, of course, there is no charge for this service.

You may also rely on your agency staff or hire a consultant to provide assistance in making this determination. Care should be taken to ensure the decisions are made in compliance with all state and federal criteria on this subject to avoid conflicts that may adversely affect federal eligibility for your project.

The Appraisal Waiver Provision is used to determine just compensation, and has also been referred to as a compensation estimate. Federal rules authorize the use of an Appraisal Waiver Provision on federal funded projects in 49 CFR § 24.102. The use of an Appraisal Waiver process is authorized in Iowa Code § 6B.54 (2). The implementation process is provided in 761 IAC 111.102(3)(b) (c). The compensation estimate is not an appraisal and is used only with uncomplicated minimal value purchases. It requires only a one-page form such as Iowa DOT Form 633-402 that has been provided in Index 2, Valuation Forms.

The purpose of the appraisal waiver provision is to provide a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions.

In order to make the determination whether to use this provision, the person making the decision must have enough understanding of appraisal principles to answer the following:

- ❖ Is estimating value difficult due to a lack of sufficient market data (comparable sales)?
- ❖ Is the anticipated value of the proposed acquisition over \$10,000?
- ❖ Is the anticipated value of the proposed acquisition anything more than a strip acquisition?
- ❖ Are buildings, wells, signs, etc. affected?
- ❖ Is the anticipated value of the proposed acquisition severing any buildings from the remainder?
- ❖ Are trees, shrubs or any other landscaping involved?
- ❖ Does moving the proposed right of way line require analysis of possible proximity damages?
- ❖ Is access to the property changed or limited?
- ❖ Is the current highest and best use of the property going to be changed as a result of the proposed acquisition?

- ❖ Does a significant amount of the total compensation involve items other than land value?
- ❖ Are there any borrow areas?
- ❖ Is there reason to believe this parcel will proceed to Condemnation?
- ❖ Is more land than actually needed being acquired?
- ❖ Does the proposed acquisition impact the sewage disposal system or property drainage?
- ❖ Are there any other considerations that complicate the valuing of this parcel?

If the answer to one of these questions is “yes”, the acquisition could still be considered a non-complex acquisition, but further analysis is needed.

Multiple “yes” answers would indicate that the proposed acquisition is not considered to be non-complex and an appraisal is required.

Things to remember:

- ❖ The compensation estimate is not an appraisal and, as such, the Uniform Act appraisal requirements and USPAP standards relating to appraisals do not apply.
- ❖ The intent is that non-appraisers prepare the compensation estimate, freeing appraisers to do more sophisticated work.
- ❖ The compensation estimate must be prepared by a knowledgeable person who is aware of the general market values in the project area.
- ❖ Since the compensation estimate is not an appraisal, the requirement for offering the owner the opportunity to accompany the appraiser does not apply.
- ❖ An appraisal review is not required.
- ❖ There must be a process to assure a basis for not preparing an appraisal is appropriate and that the compensation estimate is used to determine what is believed to be just compensation.

The compensation estimate is a one-page form to report an estimate of compensation to the property owner not to exceed \$10,000. This amount is exclusive of payments for cost of tillage, fertilizer, growing crops, agricultural right of way fence, and the legislated \$20 per lineal foot of lengthened residential driveway. Although this is not an appraisal, and it is therefore not a requirement that the estimator offer the property owner, or the owner’s representative an

opportunity to be present during the property inspection, it is strongly recommended.

Please note that the selection of parcels for which the need for an appraisal is being waived is made before any parcels are assigned to specific appraisers.

This list of questions is not intended to be all-inclusive. The key to the use of this method of determining compensation is that impacts of the acquisition are minimal or can be easily measured by their cost to cure and that the value of the land acquired plus any damages to the remaining property does not exceed \$10,000.

All items of acquisition are to be listed, including those for which compensation is zero. Access control, when acquired, should be listed as "Access Rights" under "Other Considerations." (See discussion of Access Control in Chapter 9, Miscellaneous Topics.) ([link](#))

The basis for land value estimates shall be any one of the following in descending order of acceptability.

- ❖ Identification of at least one specific sale of a similar property in the general community. This sale must be identified so that the property can be located by a reader. Sales price per comparable unit must also be stated.
- ❖ Reference to at least one specific sale or a value analysis indicated in a "Project Data Book" recently prepared on any project in the general community. If a data book is used on a project different from the subject, that project number must be listed.
- ❖ Compensation for items easily measured or estimated on the basis of the cost-to-cure. The source of the estimates should be noted.

The estimator will also acquire the necessary right of way upon completion of the estimate. However, administrative approval must be obtained before payment is made to the property owner. Administrative approval must be provided by someone other than the person creating the compensation estimate who is an employee or official of the acquiring agency.

A "Checklist for Determining Complex Parcel for Appraisal Purposes" has been provided in Index 1 Checklists. This sheet can help you in determining if an acquisition is complex enough to require an appraisal or, if a compensation estimate may be used.

To maximize the agency's resources, the estimator is encouraged to also serve as the acquisition agent. An administrative approval must be obtained at some point. The administrative approval must be provided by an official of your agency other than the person making the compensation estimate. If your agency maintains a right of way staff, you might assign your own qualified appraiser to approve these estimates. Although you are not required to do so, you may wish to maintain a listing of approved compensation estimates along with who approved the estimates. We have provided a sample form called "*Log of Approved Compensation Estimates*" located in Index 3, Acquisition Forms.

The approved Appraisal Waiver Provision has been developed to be very fluid so that a wide range of needs may be accommodated. Please consult with your LPA Coordinator to ensure the process implemented by your agency does not jeopardize your state/federal funding.

#### Additional Resource Links

Federal Guidelines ([link](#))

State of Iowa, Code of Iowa ([link](#)).

Iowa DOT, Office of Right of Way Policies and Procedures Manuals ([link](#))

761 Iowa Administrative Code (IAC) Chapter 111 ([link](#))

### **The Appraisal Process:**

The format and level of documentation in an appraisal depends on the complexity of the appraisal problem. For a detailed discussion and further information please see the Iowa DOT's Appraisal Operational Manual. There are three appraisal report formats that satisfy Iowa DOT and FHWA standards; value finding, residential, and detailed narrative. The appraiser is expected to use the most appropriate format. The format to be used should generally be specified in the appraisal assignment.

#### ➤ *Value Finding Appraisal Report*

This format does not provide a before and after value. This report format is to be used for simple partial acquisitions when damages to the remainder are non-existent or relatively minor, easily measured or explained, or measurable by cost-to-cure.

An example of a "simple partial" acquisition would be a strip acquisition from a large property which is not close enough to any improvements to cause possible proximity damages. Any partial acquisition which necessitates reconfiguration of improvements or reduces value of the improvements could not use this format. Any partial acquisition which changes the highest and best use of remaining property could not be appraised using this format.

There is no limit to the total value of land and damages when using this format. Use of this format is limited only by the complexity of the acquisition or the property being appraised. This type of report does not express before and after values, but only indicates compensation due to the property owner and/or lessee. Value of the land and/or improvements acquired must be supported by applicable data. Any large cost-to-cure items must also be appropriately supported.

A brief narrative discussion must be included covering the overall property, acquisition, and the acquisition's effect on the remainder. The extent of documentation is to be commensurate with the significance of the appraisal and values involved. In the event of condemnation, the appraiser may be asked to provide before and after values of the property.

The determination of just compensation arrived at in a value finding appraisal report reflects the appraiser's opinion of the difference between the before and after values. It is assumed that the appraiser would not have a different estimate of just compensation, if doing a before and after appraisal.

The standard three approaches should be considered, but often only the Sales Comparison Approach will be developed. The land valuation requires a minimum of two sales - documented, identified, and confirmed in the same manner as comparable sales for a detailed appraisal report.

All items of the acquisition are to be listed, even those with a compensation value of zero. Access control, when acquired, should be listed as "Access Rights" under "Damage to the Remaining Property" on this form.

➤ *Residential Appraisal Report*

The Uniform Residential Appraisal Report (URAR), with certain additions, may be used for appraising residential properties when a "Total Acquisition" is involved, or when a "before value" must be developed for a partial acquisition. Photographs

of the interior and exterior, as well as a floor plan sketch with approximate dimensions, are recommended for any building to be acquired, along with comparable sales sheets with photographs and sales location map.

All or part of this format may be used to value a residential portion, as defined, of a multi-use property and then incorporate it into a larger report covering the entire property.

➤ *Detailed Appraisal Report*

Detailed Appraisal Reports are required on either total or partial acquisitions of properties when other less detailed formats are not applicable. In the case of partial acquisitions, this report is referred to as a “Before and After” appraisal.

This type of report should include all applicable approaches to value. Reasons for omitting any traditional approach to value should be clearly stated in the report. The Appraiser may be instructed to limit appraisal analysis to a specific valuation approach or approaches. This may be when inclusion of additional approaches to value would not significantly add to reliability and support of final value estimates, or when recommended by legal counsel or the Acquiring Agency.

It is not acceptable to produce an after acquisition value by subtracting the estimated value of acquisition and damages from the before acquisition value conclusion.

➤ *Opportunity to Accompany the Appraiser*

Regardless of the formats used, the appraiser **must** offer the property owner, or their designated representative, a reasonable opportunity to be present during the inspection of the property. All appraisals are prepared in conformity with the "Uniform Standards of Professional Appraisal Practice" (USPAP) as promulgated by the Appraisal Foundation, except when they conflict with the state and federal requirements for eminent domain, in which case the jurisdictional exception provision and/or supplemental standards of USPAP is applicable.

We have provided some items for your consideration when determining fair market value, including appraiser selection and qualifications, some general requirements, number of appraisals, and appraisal updates.

➤ *Appraiser Selection and Qualifications*

Prior to the selection of an appraiser, each parcel to be acquired must be reviewed to determine the complexity of the valuation problem and the desired appraisal format. This type of determination must be provided by someone with sufficient expertise and knowledge to make this type of decision. The appraiser you select should be a qualified member of your agency's staff, one of our appraisers, or a qualified private consulting appraiser (fee appraiser). A qualified appraiser must have demonstrated real estate experience, successful completion of real estate appraisal training, experience in eminent domain appraisals, and experience appraising the type of property being acquired.

For federally funded projects, or if land is to be acquired in the name of the State of Iowa, the appraiser employed to perform the appraisal assignment must be State of Iowa certified in accordance with Iowa Code chapter 543D.

When the services of an Iowa DOT appraiser or a fee appraiser are being used, the LPA should enter into a written agreement for the purchased services. If a fee appraiser is hired, the agreement should contain a schedule of the fees, itemized by parcel, which will be paid. The fee appraiser's proposal for services should be based on the LPA's determination of what type of value report is required. It is advisable that the agreement also contain a completion date and payment schedule for possible court testimony.

➤ *Conflict of Interest*

No appraiser or review appraiser may have any interest, direct or indirect, in the real property being appraised for your agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal cannot be based on the amount of the valuation (a percentage of or on a charted basis, for example) and an appraiser cannot act as a negotiator for a property they have appraised.

LPAs must establish an appeal procedure for all contractors who feel they have not been treated fairly during the selection process and/or administration of a contract.

➤ *Required Number of Appraisals*

In general only one appraisal is required for each parcel. In the event that there is an extremely controversial or complex appraisal, a change in highest and best use occurs, or a high dollar purchase is contemplated, the LPA may determine that a second appraisal or review appraisal is necessary. If federal funds are used in the appraisal costs, you will need to obtain prior approval from us before obtaining the second appraisal if you plan to request reimbursement.

➤ *Appraisal Update*

An appraisal should be updated or a new appraisal obtained if: (1) additional value information is presented by the owner, (2) a material change in the property or proposed acquisition indicates the need to modify the appraisal, or (3) a significant delay (depending on market conditions) has occurred since the date of the original appraisal.

Additional Resource Links

Iowa DOT, Office of Right of Way Appraisal Operation Manual ([link](#))

**The Appraisal Review Process:**

If you do not have a qualified review appraiser on staff you will need to secure the services of a review appraiser. The review appraiser's responsibility is to ensure consistency of property values on a project, adequate investigation of the local market to support the appraisal, and the appraisal conforms to applicable eminent domain appraisal standards. If your agency uses an independent fee reviewer your agency will need to designate a local official to subsequently approve the amount to be offered as just compensation. See the discussion "Agency Establishment of Approved Offer" at the end of this Chapter.

All appraisals require review by a qualified review appraiser. The person performing the appraisal review function must be thoroughly familiar with the eminent domain requirements under the law. No appraisal review may be performed by the appraiser who made the appraisal of market value. The review appraiser will examine the appraisal to determine that it:

- ❖ has been completed in accordance with the approved appraisal specifications,

- ❖ follows accepted appraisal principles and techniques in valuation of real property in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) and state law for eminent domain acquisitions,
- ❖ contains information necessary to explain and substantiate the conclusion and estimate of market value,
- ❖ includes consideration of compensable items and damages, if any, but does not include compensation for items not compensable under state law,
- ❖ contains an identification of the buildings, structures and improvements on the land, as well as fixtures which were considered as part of the real property (see discussion of Tenant-Owned Improvements and Leasehold Interests),
- ❖ contains an estimate of market value for the acquisition and, where appropriate in the case of a partial acquisition, an allocation of the estimate between the real property and damages to the remaining property.

Upon completion of the review, and any corrections or modifications necessary by the appraiser to make the appraisal conform to these guidelines, the review appraiser will place in the parcel file a signed and dated statement setting forth the following:

- ❖ the approved amount recommended to be offered as just compensation,
- ❖ the understanding that the determination is to be used in connection with a federal-aid highway project,
- ❖ the extent of the visual inspection of the parcel to be acquired and applicable comparable sales,
- ❖ that no direct or indirect, present or contemplated future personal interest in the property exists, nor that any benefit from the acquisition of the property appraised will occur,
- ❖ that this determination has been reached independently, based on appraisals and other factual data of record without collaboration or direction,
- ❖ the determination shall be documented to show its basis.

#### Additional Resource Links

Iowa DOT, Office of Right of Way Policies and Procedures Manuals ([link](#))

## **Agency Establishment of Approved Offer:**

The acquiring agency must determine the amount of the approved offer of just compensation. This responsibility cannot be transferred to a consultant or contractor. Each file should be documented by a determination of the approved offer signed by an official of the acquiring agency.

Iowa Code § 6B.54 (3) ([link](#)) requires the acquiring agency to establish an opinion of just compensation and offer the full amount believed to represent just compensation.

Iowa Code § 6B.45 ([link](#)) requires that the acquiring agency shall mail to all owners of the property the approved appraisal “in its entirety” a minimum of 10 days prior to contact by the agency.

## **Summary of Valuation Process:**

The following steps have been provided as a quick guide to help you through the valuation process.

- Determine the appropriate type of valuation needed.
  - ❖ Consult with your LPA Coordinator.
  - ❖ Rely on staff expertise.
  - ❖ Obtain advice from other areas.
  
- Assign the work to the appropriate people.
  - ❖ Appraisers with expertise in the type of appraisal problem.
  - ❖ Acquisition agents with sufficient expertise to develop compensation estimates.
  - ❖ If appraiser completes the compensation estimate they should also serve as acquisition agent.
  
- Complete the necessary review.
  - ❖ Qualified review appraiser for appraisal review.
  - ❖ Qualified staff for administrative review of compensation estimates.
  
- Establish your agency's approved estimate of fair and just compensation.
  - ❖ Must be an official of the acquiring agency.
  - ❖ Amount must be, at a minimum, the lowest appraisal received.
  - ❖ Should be written and documented in parcel file.
  
- Mail approved appraisal to owners.
  - ❖ Mail at least 10 days before initiation of negotiations.
  - ❖ Iowa Code § 6B.45.

## **CHAPTER FOUR**

### **The Acquisition Process**

The Acquisition Process has presented challenges for many acquiring agencies and property owners alike. The nature of this manual limits the amount of specific information that may be made available. The Iowa DOT Office of Right of Way Acquisition Section maintains a policies and procedures manual for this process. [\(link\)](#) The Acquisition Manual is also available through your LPA Coordinator.

The Acquisition Process is very different from what you may think of as a negotiation process. Every acquiring agency **must** ensure that all persons with an interest in the property are offered all the rights and benefits to which they are entitled. The open market may consider each party has the responsibility to protect their own interests, but this attitude is not appropriate in the public Acquisition Process.

This chapter has been divided into specific areas. The areas we will review are:

- Overview and Getting Started
- Offers/Notices
- Contracts/Agreements
- Notes/Documentation
- Administrative Settlements

Sample forms have been provided in the Appendixes. All our forms are available electronically. Please contact your LPA Coordinator for the electronic version.

#### **Overview and Getting Started:**

- *Title Information*

Prior to the initiation of the acquisition process adequate title information must be obtained. You will need to recognize early in the process all interests to be acquired including owners, leinholders, tenants, easement holders, and taxing authorities, to name a few.

➤ *Good Faith Negotiations*

Iowa Code §6B.2A (1) (f) requires that the acquiring agency negotiate in good faith and present each owner with a statement of rights prepared by the Iowa Attorney General.” We have included the Statement of Rights as part of the DOT pamphlet “*Highways and Your Land*”. The Statement of Rights should be a part of a packet that is automatically provided to every property owner.

Negotiating in good faith is not the same as bartering. Negotiating in good faith is providing all parties the opportunity to discuss their views, opinions, and concerns. All parties should also have the opportunity to have their thoughts seriously considered, and their questions answered. All parties must be provided adequate time to consider the information and seek counsel if they wish. At the end of good faith negotiations all parties will need to determine what they believe to be an appropriate resolution.

Any knowledgeable and qualified member of your staff may be the negotiator. If a consultant is used, that person must be a real estate salesperson or broker licensed by the Iowa Real Estate Commission. It is also helpful if the negotiator is a Notary Public so they may notarize documents signed by property owners.

Your negotiator must personally contact the property owner and tenant of each property on the project. Your initial contact with the owner(s) as part of the Acquisition Process will depend on which form of the Valuation Process you have selected. Remember, the Valuation Process is completed either by an appraisal or the Appraisal Waiver Provision.

Prior to this initial contact, the entire approved appraisal, unless a compensation estimate is being used, must be sent by standard mail to the owner(s) with a description of the 10-day waiting period. After the 10-day waiting period, or if the waiting period is waived, the negotiator will contact the owner. If the owner lives out of state or is not available for personal contact, phone or mail contacts may be used.

If the Appraisal Waiver Provision is used for valuation purposes, the initial contact may be when the acquisition agent completes the compensation estimate form with the owner. Compensation estimates need not be completed by one representative and delivered by another. Remember, the goal of the Appraisal Waiver Provision is to reduce the time and expense for the owner and acquiring agency.

If, after reasonable efforts have been made and an agreement still cannot be reached, your agency may be forced to institute eminent domain (condemnation) proceedings to acquire the property. The negotiator cannot do or say anything that may be construed as being coercive in nature to obtain the owner's agreement. However, a brief explanation of the eminent domain procedure may help the owner.

➤ *Miscellaneous Acquisition Expenses*

State and federal regulations require all acquiring agencies to reimburse expenses incidental to and necessary for the transfer of property. A partial list of these expenses includes: recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, penalty costs and other charges for prepayment of any preexisting recorded mortgage encumbering the real property entered into in good faith. These and other eligible expenses may be reimbursed to the owner or, preferably, paid directly to the person(s) entitled to payment.

Your agency should establish an administrative review process to settle disputes in the event a disagreement arises over whether or not an expense or the amount of an expense is reimbursable.

➤ *Items to Take Along*

Your negotiator should be prepared to explain the project plans and the impact of the project on the owner's property. As required by Iowa law the following must also be presented and explained:

- ❖ The written offer for not less than the full amount of the reviewed and approved appraisal, with the amounts for land, improvements, fence and damages separately listed. Please refer to Forms located in Index 3, Acquisition Forms. If a displacement is involved a statement should be provided informing the displacee that they will not be required to move earlier than 90 days from the date of the notice, nor earlier than 30 days from the date compensation has been made available. The 90-day notice may be made on each written offer, as shown on the forms found in Index 3.

- ❖ An informational brochure, such as the DOT’s “*Highways and Your Land*” or an approved alternative. The documents to be signed by the owner in accepting your agency’s offer.

#### Additional Resource Links

State of Iowa, Code of Iowa ([link](#)).

Iowa DOT, Office of Right of Way Policies and Procedures Manuals ([link](#))

Federal/State Aid Projects, Index 3 ([link](#))

### **Offers/Notices:**

Owners and tenants are entitled to written offers reflecting your agency’s approved estimate of fair and just compensation. Owners and tenants are also entitled to notices informing them of when they will be required to move from the property. Forms Index 3 ([link](#)) has been developed to satisfy these requirements.

Should your agency subsequently approve a different amount estimating fair and just compensation, a revised offer must be provided to the owner/tenant. Forms in Index 3 ([link](#)) have been developed for this requirement.

The date of the offer must reflect the date the offer was made and notice provided.

Hopefully your offer will be acceptable and the owner and tenant will ultimately sign documents necessary to transfer title to your agency. Your agency must pay the agreed purchase price before requiring surrender of possession of the property.

### **Contracts/Agreements:**

The goal of the Acquisition Process is to reach a mutually agreeable resolution. The contract or agreement becomes the vehicle for the agreement. What the agreement looks like is a decision for you and your agency. Our partnership is only concerned that the agreement acquires the property rights necessary for the construction and maintenance of your project.

As a tool for your reference, we have provided samples of contracts and contract clauses. These samples are for your reference only and are not an attempt to direct how your agreements should look. We recommend you consult with your legal counsel as to your specific contract and conveyance needs.

In Index 3 “Acquisition Forms” we have included the samples of different types of contracts and contract clauses that have been regularly used by the DOT.

### **Notes/Documentation:**

It is important that after each call your negotiator complete a negotiator's contact report, sometimes called negotiator's notes, summarizing the interview with the property owner. We have provided a sample in Index 3 “*Acquisition Forms*” Each report should contain, at a minimum:

- project number,
- parcel number,
- date of contact,
- type of contact (phone or in person),
- name, address and telephone number of person contacted,
- special instructions, if necessary, for locating that person,
- names of all other persons present,
- names, addresses and phone numbers of attorney or other representatives,
- main points discussed and commitments made by agent,
- principal objections to offer or taking,
- whether offer was accepted or rejected,
- requests made by owners,
- any other feature of the contact including special instructions for closing, relocation or property management,
- negotiator's signature and date.

- In order to utilize these reports they need to remain in your parcel file. Remember that these reports will eventually become available for inspection by the public.

### **Administrative Settlements:**

The Uniform Act requires that "The head of a federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation."

Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. There is no requirement that offers to purchase should reflect a "take it or leave it" position. The inexact nature of the process by which just compensation is estimated should be recognized. Further, the law requires agencies to attempt to expedite the acquisition of real property by agreements with owners to avoid litigation and relieve congestion in the courts.

You and your agency may determine that it is in the public's best interest to make a negotiated settlement with the owner for more than the approved appraisal amount if new valuation or extent of damage information is presented. A revised offer must be made and presented to the owner in writing for consideration. We have provided a sample in Index 3 "*Acquisition Forms*" ([link](#)). So that proper documentation may be found in your files, a written report called an administrative settlement will need to present documentation pertaining to why this settlement is in the public's best interest.

Administrative settlements should describe the acquisition, state the offer of just compensation and proposed negotiated settlement, introduce information which supports the settlement, and request approval from the proper authority. The settlement may also include information on recent court awards for similar type property, the property owner's appraisal data, an estimate of trial cost, or an opinion of legal counsel. The settlement must be approved by an officer of your agency having responsibility for the right of way acquisition (not the negotiator). The person approving the settlement must be able to judge the risk/benefit issues of a potential court action.

## **Summary of Acquisition Process:**

The following steps have been provided as a quick guide to help you through the acquisition process.

- Overview and getting started
  - ❖ Title information, ensuring everyone that has an interest in the property is considered.
  - ❖ Good Faith Negotiations, providing the opportunity, time, and consideration to attempt an agreeable resolution.
  - ❖ Miscellaneous Acquisition Expenses, costs incurred by the owners as a result of the acquisition.
  - ❖ Things to take along, the materials necessary to provide good faith negotiations.
  
- Offers/Notices
  - ❖ Provide written offers in the amount of the agency's approved estimate of fair and just compensation.
  - ❖ Provide written notices of when the property must be vacated.
  
- Contracts/Agreements
  - ❖ A written instrument that secures the property rights needed for your project.
  - ❖ We have samples available upon request.
  
- Notes/Documentation
  - ❖ Provides written resource for future
  - ❖ Provides documentation for future inquiries
  - ❖ Future problem solving resource
  
- Administrative Settlements
  - ❖ Describe acquisition
  - ❖ Describe reasons for settlement
  - ❖ Provides documentation for state and federal participation

## **CHAPTER FIVE** **Relocation Assistance**

Iowa Code § 6B.42 requires *all* acquiring agencies to provide relocation assistance benefits to *all eligible* persons on *all* projects. Whenever you anticipate displacements requiring Relocation Assistance will occur please let your LPA Coordinator know so that you may start to resolve these issues immediately.

Rights and entitlements of individuals, families, businesses, farms and nonprofit organizations displaced by federal-aid projects are defined by and discussed in 49 CFR part 24. State Relocation requirements for all other projects being acquired under the threat of eminent domain are provided in Chapter 316 of the Iowa Code. Acquiring agencies must comply with the Iowa Administrative Code, 761 IAC 111 and the “*Uniform Manual, Real Property Acquisition and Relocation Assistance*” (Copies are available from your LPA Coordinator.) Generally, all persons occupying property to be acquired on the date negotiations begin who are required to move are eligible for relocation assistance and payments to reimburse the costs of moving personal property to locations off the right of way. In addition, residential displacees who meet minimum occupancy requirements may qualify for replacement housing payments to offset increased costs of obtaining replacement housing payments. A sample personal property move form is included Index 4, “*Relocation Assistance Forms*”

Remember, no person lawfully occupying real property shall be required to move from a dwelling, business or farm operation without at least a 90-day written notice of the date by which the move is required from the acquiring agency. See Iowa Code § 6B.54 (4) When the landowner’s residence, dwelling house, outbuildings (if the residence or dwelling house is also acquired), orchard, or garden are condemned and the owner appeals the condemnation to district court, they may not be required to move until the compensation has been finally determined and paid. See Iowa Code § 6B.26. Since time for right of way acquisition is a major concern for your project, relocatees must be dealt with as early as possible.

Acquiring agencies are required to provide an appeal process for displaced persons that disagree with the acquiring agencies actions as described in IAC 761, Chapter 111.6. An example of a Relocation Assistance appeal process may be found in the Iowa DOT’s Office of Right of Way Policy and Procedures Manual.

Relocation Assistance is a fascinating Right of Way discipline that requires an in-depth discussion to adequately cover the material. The DOT Office of Right of Way maintains a policies and procedures manual approved by FHWA. We recommend you work closely with your LPA Coordinator on Relocation Assistance matters, retain a consultant with the necessary experience, and/or download the DOT Relocation Assistance Manual.

Relocation Assistance has been described as a reimbursement program. The program has been developed with the goal of reimbursing the costs incurred by people displaced as a result of a public project. Remember, the term displaced person applies to owners **and** anyone else lawfully occupying the property.

#### Additional Resource Links

Federal Guidelines ([link](#))

State of Iowa, Iowa Code <http://www.legis.state.ia.us/IowaLaw.html> ([link](#)).

Iowa DOT, Office of Right of Way Policies and Procedures Manuals ([link](#))

761 Iowa Administrative Code (IAC) Chapter 111 ([link](#))

### **Personal Property Move:**

Quite often personal property is located on the land being acquired. The owner of the personal property is entitled to relocation assistance and payment of the actual and reasonable costs to move the personal property. The owners of personal property may or may not be the owners of the real estate.

Personal property moves may be as uncomplicated as a few bales of hay to as complex as the inventory and equipment of a manufacturing storage yard. The personal property may be simply moved back on remaining land or require moving to a new location. Typically the move may be reimbursed through itemized bills and receipts paid to a contractor for the move, or a self-move based upon an agreed to amount considered reasonable.

Please remember the 90 and 30 day notices discussed in the Acquisition Section of this manual apply to these types of moves. Sample forms have been provided in the Appendixes of this manual.

## **Residential Move:**

The Residential Relocation program was intended to leave the displaced person(s) in a similar situation after the displacement. Eligibility is determined by occupancy, not ownership. The owner of the property may or may not be the displaced person. Only displaced persons are eligible for the payments to be discussed.

This manual provides only a brief discussion and is not intended to provide all the necessary information pertaining to Residential Moves. Please refer to the DOT Relocation Assistance Manual or your LPA Coordinator for more specific information. ([link](#))

### ➤ *Replacement Housing Requirements*

Comparable replacement housing must be made available before a displaced person can be required to move from their home. Comparable replacement housing must be functionally similar, in as good or better condition and in a similar area to the house being acquired. The replacement housing must also meet decent, safe and sanitary criteria.

### ➤ *Replacement Housing Payments*

The purpose of this payment is to provide funds if a shortfall exists between the fair market value and the cost of replacement housing. Replacement housing payments may be calculated as supplemental purchase payments or supplemental rental payments.

Supplemental purchase payments are developed for owner occupants by studying the local market to determine what is available at the time of displacement. The cost of replacement is compared to the amount paid for the house by the acquiring agency with the difference considered the Replacement Housing payment. Specific criteria for developing payments, establishing limits and describing requirements are available through your LPA Coordinator.

Supplemental rental payments are available for displaced non-owner occupants and owner occupants that elect not to purchase replacement housing. The present market rent of the property being acquired is compared to adequate replacement housing present for lease in the local market. The present lease value is then

compared to the replacement lease value, with the difference considered the supplemental rental payment.

Displaced tenants may in certain situations apply their supplemental rental payments as down payment for the purchase of replacement housing. Specific criteria for developing payments, establishing limits and describing requirements are available through your LPA Coordinator.

Please note the replacement dwelling considered by the Relocation Agent is only for establishing the amount of payment the eligible displacee is entitled to. The displacee shall always choose the replacement housing they will occupy. The reimbursement shall be made based upon the amount actually spent by the displacee, not to exceed the relocation agent's study.

➤ *Increased Mortgage Payments*

This payment is calculated when displaced owner occupants must refinance at a higher mortgage rate than the mortgage on the property being acquired. The payment is limited to the amount owed and the remaining life of the original mortgage.

➤ *Normal and Customary Closing Costs*

These are costs that are normal and customary for real estate transactions in the local market. Qualifying expenses may include abstracting costs, recording fees, and credit reports. Certain other expenses may be excluded, such as "points" or prepaid interest. Ask your LPA Coordinator about specific expenses.

➤ *Moving Expenses*

In addition to other payments, displaced persons are entitled to reasonable moving expenses. These payments may be based upon reimbursement of itemized bills and receipts from qualified movers, or a scheduled payment system. Contact your LPA Coordinator for current federally approved payment schedules and criteria.

**Non-Residential Moves:**

Displaced farms, businesses, and non-profit organizations are also eligible for Relocation Assistance benefits, but the benefits are different from residential moves.

The basic concepts of the major benefits are provided in this manual. You will need further information from your LPA Coordinator before attempting to provide all the appropriate benefits to a displaced farm or business.

➤ *Re-establishment Expenses*

These payments are designed to reimburse the actual expenses incurred to re-establish the concern in the new location. Offering and providing these services will require specific knowledge and experience. We recommend requesting additional assistance from your LPA Coordinator or other qualified relocation resource.

➤ *Searching Expenses*

In some cases the displacee is entitled to searching expenses in the search for a new location for their farm, business, or nonprofit organization. Offering and providing these services will require specific knowledge and experience. We recommend requesting additional assistance from your LPA Coordinator or other qualified relocation resource.

➤ *Incidental Expenses*

Other costs incurred in the move may also be eligible for reimbursement. For example, the reprinting of stationery presently on hand with the new address; loss of personal property as a result of the move or discontinuance of the operation; or the purchase of subsequent personal property required as part of the move. Implementation of and offering these services will require specific knowledge and experience. We recommend requesting additional assistance from your LPA Coordinator or other qualified relocation resource.

➤ *Moving Expenses*

The displaced non-residential occupant is entitled to actual and reasonable moving expenses. The payments may be based upon itemized bills and receipts from a qualified mover, or payments may be made to the displacee as part of a self-move. In order to ensure eligibility and federal participation we encourage you to consult with your LPA Coordinator before establishing the amount of the payment for a self-move.

➤ *Fixed Payment*

This type of payment is in lieu of all other payments and only available to non-residential displacements. The minimum payment is presently \$1,000 with a

maximum payment of \$20,000. The amount of the payment is based upon the average net income of the displacee over the last two years. There are instances where exceptions may be applicable. Please refer to the Iowa DOT, Office of Right of Way Relocation Assistance Manual for further information. [\(link\)](#) Offering and providing these services will require specific knowledge and experience. We recommend requesting additional assistance from your LPA Coordinator or other qualified relocation resource.

## **Summary of Relocation Process:**

- *Types of moves*
  - ❖ Personal property move
  - ❖ Residential move
  - ❖ Non-residential move
  - ❖ Displacee may be eligible for all three types on the same property.
  - ❖ More than one displacee may be involved on the same property.
  
- *Personal Property move*
  - ❖ Costs to remove personal property from land being acquired.
  - ❖ Fixed payment or reimbursement for qualified mover.
  
- *Residential move*
  - ❖ Decent, safe and sanitary replacement housing must be available.
  - ❖ Replacement housing payments
  - ❖ Replacement rental payments
  - ❖ Customary and usual closing costs
  - ❖ Moving expenses
  
- *Non-residential move*
  - ❖ Re-establishment expenses
  - ❖ Searching expenses
  - ❖ Incidental expenses
  - ❖ Moving expenses
  - ❖ In lieu of payment

## **CHAPTER SIX** **Fiscal and Title**

This chapter will discuss the Title and Closing and the Condemnation Processes. Both processes may be described as the act of converting possession and/or ownership of property. Title and closing concentrates on transactions where there is a mutual agreement, while Condemnation focuses on those situations where an agreement is not achieved.

### **Title and Closing:**

Title and Closing involves examining the legal title to property, determining what actions must be taken to obtain clear title to the right of way, and working with the owner to complete the transaction. The desired results are to secure all the documents necessary to ensure that clear title of the land is conveyed to the LPA.

You may have your City or County Attorney handle this work. Some LPA offices may have real estate specialists who are experienced in this area of the right of way process. Still others will hire this work done by a local attorney or professional title and closing agent. The closing agent should be someone other than the person who negotiated and/or drafted the agreement with the property owner.

The type of title to be acquired will depend on property rights needed for each specific project. Your agency's process for addressing all the interests in the property will involve standard title procedures, but may also involve the application of risk management. Ultimately the acquiring agency is responsible to ensure the necessary property rights for the construction and maintenance of the project have been secured.

The Iowa DOT will share information as to how the DOT might handle specific situations. Your LPA Coordinator will obtain examples of how the DOT has handled similar situations in the past. However, defending title and responding to disputes will be the responsibility of each acquiring agency's legal counsel. Therefore each LPA should seek advice and approval from their agency's legal counsel in developing title criteria and a risk management program. Keeping your LPA Coordinator involved and informed will help ensure continued funding eligibility for your project.

Providing payment to the owners is an integral part of your Title and Closing process. The timing of the payment must ensure title has been passed to your agency, but the owner of the property cannot be required to surrender possession until payment has been received.

Iowa Code § 427.2 ([link](#)) requires acquiring agencies to assist in the collection of property taxes and assessments when the property is acquired for a public use. Applicable taxing authorities should be included during your title and closing process.

All conveyances should be recorded in the office of your County Recorder. Further considerations involve payment to the owner along with U.S. Internal Revenue Service (IRS) reporting requirements.

Since 1991, all real estate transactions have been subject to reporting requirements of the IRS. The acquiring agency must provide appropriate 1099's to the IRS and all interests receiving payments. Even when State funds are used for payment (for example, Farm to Market Road money), the 1099 reporting responsibility remains with your agency. IRS guidelines for this reporting are available from your LPA Coordinator.

### **Summary of the Title and Closing Process:**

- *Examine Title*
  - ❖ Secure qualified closing assistance
  - ❖ Research county records
  - ❖ If necessary, update abstract
  
- *Seek advice and approval from City/County Attorney*
  - ❖ *Establish desired title criteria*
  - ❖ *Develop risk management parameters*
  
- *Ensure all interests addressed*
  - ❖ Leaseholds
  - ❖ Lien holders
  - ❖ Mortgages
  - ❖ Easement holders
  - ❖ Taxing authorities

- *Record applicable conveyances*
  
- *IRS Notification/1099's*
  - ❖ Acquiring agency responsibility
  - ❖ Provide to IRS
  - ❖ Provide to all parties receiving payments

## **Condemnation:**

Condemnation is the term used when exercising the power of eminent domain. This power has been reserved to the state, municipalities, political subdivisions and others by federal and state constitutions and law. Guidelines, authorities and procedures are outlined in the Iowa DOT Condemnation Manual, which has been prepared by the DOT Office of Right of Way, Fiscal and Title Section. The Condemnation Manual and forms are available by contacting your LPA Coordinator.

Condemnation in Iowa begins as a quasi-judicial procedure. The amount of just compensation is determined or awarded by compensation commissioners at a compensation commission hearing. After this hearing, every party to the condemnation has the right to appeal the compensation commission award to district court. If appealed, the parties may decide to settle out of court. If the agency intends to claim federal participation in the payment of any money over and above the originally approved offer, the parcel file must be adequately documented to justify all actions taken.

The acquiring agency is responsible to ensure the necessary property rights for the construction and maintenance of the project have been secured. As in the case of the Closing Process, you will need to ensure that all interests in the property have been identified and addressed, including those that may not have a market or compensable interest. The acquiring agency may elect to address all interests in the property in one hearing, or the acquiring agency may elect to address all interests through separate hearings, agreements, or risk management strategies.

The Iowa DOT will share information as to how the DOT might handle specific situations. Your LPA Coordinator will obtain examples of how the DOT has handled similar situations in the past. However, defending title and responding to disputes will be the responsibility of each acquiring agency's legal counsel.

Therefore each LPA should seek advice and approval from their agency's legal counsel in developing the condemnation process to be implemented by the agency.

Providing payment to the owners is an integral part of the Condemnation process. The compensation commission award must be deposited with the sheriff before the acquiring agency can require the owner to surrender possession of the property. The award must be deposited, regardless of any appeals to District Court.

Iowa Code § 427.2 ([link](#)) requires acquiring agencies to assist in the collection of property taxes and assessments when the property is acquired for public use. Applicable taxing authorities should be included as part of the condemnation hearing.

The Condemnation Process requires several documents to be recorded in the office of your County Recorder.

As previously discussed, an acquiring agency cannot require surrender of possession of the property prior to providing payment to the owners. Once all concerns are satisfied, payment to the owner can be made and possession given.

Further considerations involve payment to the owner along with U.S. Internal Revenue Service (IRS) reporting requirements. Since 1991, all real estate transactions have been subject to reporting requirements of the IRS. The acquiring agency must provide appropriate 1099's to the IRS and all interests receiving payments. Even when State funds are used for payment (for example, Farm to Market Road money), the 1099 reporting responsibility remains with your agency. IRS guidelines for this reporting are available from your LPA Coordinator.

### **Summary of the Condemnation Process:**

- *Identify all interests in the property.*
  - ❖ Leaseholds
  - ❖ Lien holders
  - ❖ Mortgages
  - ❖ Easement holders
  - ❖ Taxing authorities
  
- *Ensure all interests in the property are addressed.*
  - ❖ Obtain releases before hearing

- ❖ Acquire as part of hearing
- ❖ Seek advice and approval of LPA Counsel prior to implementation of condemnation process.
  
- *Deposit money with Sheriff.*
  
- *Record applicable documents.*
  
- *IRS Notification/1099's.*
  - ❖ Acquiring agency responsibility
  - ❖ Provide to IRS
  - ❖ Provide to all parties receiving payments

## **CHAPTER SEVEN**

### **Property Management**

A well planned property management program can enhance the efficiency of your project by avoiding construction delays involving demolition work and maximizing the value of your agency's assets.

Whenever federal funds are used in the acquisition of real estate a federal interest is created. Property Management options involving a federal interest is found in 23 CFR, Part 710 subpart D. [\(link\)](#) Generally acquiring agencies are required to receive market value for the sale and rental of public assets. The criteria and exceptions are also discussed in 23 CFR, Part 710 subpart D. [\(link\)](#) Iowa law provides for the sales, leasing, and transfers of right of way in Chapter 306 of the Code of Iowa. [\(link\)](#) Further discussion of sale and leasing of real estate is provided throughout this chapter.

You and your agency will encounter three phases in managing property: pre-construction, post-construction and airspace management.

#### **Pre-Construction:**

##### ➤ *The Inventory*

An inventory of land and buildings can be developed as the right of way is laid out for your project. The inventory may then be used throughout the project to identify the assets your agency has acquired. The inventory should recognize which improvements and what land, if any, will become excess after completion of the project. The inventory should also include how improvements are disposed, an account of management expenses, rental receipts, and payments received for the sale of improvements.

##### ➤ *Planning*

Pre-construction planning involves the time period between property acquisition and beginning project construction. During this time your agency will be responsible for the management of the property in a manner consistent with public safety and, acting as a steward of the public's assets, defray or reduce overall costs to the public. There are three basic approaches to property management.

## ❖ Leasing

Land and/or buildings may be leased prior to being needed for construction or ultimate disposal. Authority to lease may be found in 23 CFR, part 710, subpart D and in Code of Iowa § 306.38 ([link](#)) Residential buildings must conform to decent, safe, and sanitary criteria to be leased if federal funds are to be used in any part of your project.

Section 6B.60, Code of Iowa ([link](#)) prohibits the leasing of land prior to payment for the premises. Code of Iowa § 6B.54 (5) ([link](#)) allows for lease payments after payment for the land has been made. The lease amounts shall not exceed fair market value rental rates for short term leases.

Leasing may reduce your overall maintenance expenses, as the tenant assumes responsibility for mowing, snow removal and other types of normal expenses. Market rent should be received for the properties.

## ❖ Sale of Improvements to be Moved

If leasing the acquired improvements is not desirable you may wish to consider selling the improvements to be moved. The DOT routinely sells houses, buildings, bins, and other types of improvements. The successful purchasers are then required to move the improvements from the required right of way.

## ❖ Demolition

The other option is demolition. Incorporating a demolition design that allows for efficient, ongoing maintenance such as mowing and snow removal should be considered. Appropriate asbestos abatement, waste removal and Iowa Department of Natural Resources notifications must be scheduled prior to demolition activities.

## **Post-Construction:**

This phase covers the disposal of right of way no longer required for a federal-aid highway project. Authority to sell land may be found in 23 CFR, part 710, subpart D ([link](#)) and in Code of Iowa § 306.22 ([link](#)) The Iowa DOT and FHWA will expect excess land to be disposed upon completion of the project if a state and/or federal interest exists in the property. Value is to be determined by an

appraisal process or public sale. The Iowa Code prescribes how unused right of way is to be disposed. Please see “Disposal Requirements” later in this Chapter.

### **Management of Airspace:**

Regulations provide for use of airspace of the right of way for non-highway purposes as stated above, at, or below the highway's established grade line. Airspace can be put to both public and private uses, such as parks or parking. When an LPA contemplates use of airspace, specific approval from the DOT is required and rates for leasing airspace are to be determined based upon fair market rental rates. Credits may, or may not be required from funds derived from the leasing of airspace. For information concerning your specific situation please refer to 23 CFR, Part D, ([link](#)) or consult with your LPA Coordinator.

### **Other Useful Information:**

#### ➤ *Federal Credits*

When federal money is used in the acquisition of property a federal interest is created. The federal interest remains in the property, unless specifically extinguished. The federal interest does not require an action, unless the property is used for a purpose other than the direct project purpose. For example, if the land is acquired for highway/road/street purposes, as long as the land is used for highway purposes, no action is required.

If the property is used for other purposes, a federal credit may be required. A non-proprietary use generally does not require federal credits, while proprietary uses generally do require a federal credit. A brief discussion of the two uses is as follows.

- ❖ Non-proprietary uses – These are uses within the normal agency operations such as city storage and vehicle parking, free parks, and agency material storage.
- ❖ Proprietary uses – Uses that involve commercial benefit or gain by the agency or third parties such as paid parking lots, any commercial use, and economic development incentives.

If a federal interest exists in the right of way, the LPA will be responsible for credits owed the federal government regardless of the amount of money the LPA received for the property rights. For example, should the LPA sell land for \$1.00 to entice economic development, the federal credit will still be based upon the *market* value of the property sold. Consult your LPA Coordinator for further details.

For information concerning your specific situations please refer to 23 CFR, Part 710, subpart D, or consult with your LPA Coordinator. *Disposal Requirements*

Iowa Code § 306.23 controls how unused right of way is disposed. If property was condemned and not used for the purpose stated in condemnation Iowa Code Section 6B.56 controls the disposal process.

Iowa Code § 306.23 requires the agency in control of the land acquired for highway purposes to offer the owner(s), at the time of acquisition, and the owner(s) of the remaining land from which the tract was acquired, the first opportunity to buy the property. The agency is to establish market value for the property to be disposed through an independent fee appraisal.

We recommend assistance from your agency's legal staff to ensure the applicable code provisions are implemented correctly. If an acceptable offer is not received from a party with purchase preference, as stated in these code sections, the property may be sold to another public entity or private purchaser.

Iowa Code § 6B.59 details when additional payments must be made if land is sold by your agency for a higher price at the time of disposal than what was paid at the time of acquisition.

➤ *Lead Based Paint Requirements*

Residential buildings constructed prior to 1978 are subject to Environmental Protection Agency (EPA) rules. If pre-1978 residential dwellings are sold or leased, your agency will need to comply with notification requirements.

All prospective purchasers or tenants must be informed of any knowledge the LPA has concerning the presence of lead based paint. The LPA does **not** have to inspect the property to determine if lead based paint is present.

The LPA must provide a brochure outlining the EPA rules. The pamphlet must be approved by EPA. You may obtain brochures from your LPA Coordinator.

Any prospective buyer or tenant must be provided an opportunity to have a pre-1978 residence inspected to determine if lead based paint is present. The cost of the inspection is the responsibility of the buyer or tenant. Forms documenting this offer are available from you LPA Coordinator.

### **Summary of Property Management Process:**

- *Pre-Construction*
  - ❖ Develop Inventory
  - ❖ Lease
  - ❖ Sell improvements to be moved
  - ❖ Demolition
  
- *Post Construction*
  - ❖ Dispose of excess right of way
  - ❖ Should occur within two years of project completion.
  
- *Managing Airspace*
  - ❖ Consider uses for right of way that must be held.
  - ❖ Maximize the use of assets
  
- *Federal Credits*
  - ❖ Document reasonable administrative expenses
  - ❖ Return applicable federal credits
  
- *Land Disposals*
  - ❖ Ensure compliance with 306.23 or 6B.56
  - ❖ Should dispose within two years after project completion
  
- *Lead Based Paint*
  - ❖ Applies to pre 1978 residential housing
  - ❖ Provide known information
  - ❖ Provide opportunity to buyers or tenants to test, at their expense.

## **CHAPTER EIGHT**

### **Project Development Certification**

A Project Development Certification is required from your agency prior to advertising for construction bids to build your project. We must receive this certificate signed by your agency by the date specified in the Critical Path for Project Development Memorandum provided in the Project Development Information Packet ([link](#))

This form is used by the DOT to verify that the project is ready to proceed to the letting process. Please note that it is the responsibility of the LPA to ensure that the information submitted on this form is accurate. If inaccurate information is submitted, serious consequences can result, including project delays and possible loss of federal funding. The LPA or their designated representative should review this form carefully before it is submitted.

Complete instructions for completing the Project Development Certification are available in the Project Development Certification Instructions ([link](#)) in the Project Development Information Packet, the Iowa DOT Administering Office for your project, or your LPA Coordinator.

## **CHAPTER NINE**

### **Miscellaneous Topics**

This portion of the manual discusses miscellaneous topics which the authors and editors felt needed an expanded discussion. These include:

- access control,
- hazardous waste/contaminated properties,
- Parcel -What is it?, and
- tenant-owned improvements and leasehold interests.
- frequently asked questions
- where do I find?
- summary

#### **Access Control:**

Access rights are the rights of adjoining property owners to have unrestricted access to and from the highway. Access Control is the term used when these rights are restricted or controlled. Controlled-access highways are discussed in the Iowa Code in Chapter 306A. ([link](#))

Cities and highway authorities may establish controlled-access facilities. When such facilities are established, property owners adjoining the road do not have the right to enter or leave this road unless specifically granted by the highway authority at the time of, or subsequent to, the establishment. For existing roadways that have not been previously designated controlled-access, the rights of the adjoining property owner(s) must be acquired. State law specifically states that these rights may not be acquired by prescription or adverse possession -- they must be acquired.

In general, acquiring the rights of access to a property does not reduce its market value as long as reasonable access remains after the acquisition. Therefore, quite often the value or worth of restricting access across a property, and allowing access at certain specific locations, is zero dollars. There are some cases though where a change in potential property use and market value occurs and the appraiser must determine the difference in the value before and after the acquisition, due to the restriction of access.

We should consider the difference between exercising the right of police power vs. acquiring the legal right to access. Police power deals with a city, county or other government agency regulating activities of individuals without actually "taking" a legally compensable right or rights of those individuals. Either may be exercised when dealing with access rights -- police power in the construction of raised medians or curbs, or an acquisition of access rights. The question as to whether an action by a city or county is police power or an exercise of eminent domain depends upon whether the law prescribes compensation to the public for that action. Your attorney should be consulted when questions in this area arise.

A discussion of valuing Access Rights may be found in the Iowa DOT Appraisal Operation Manual. [\(link\)](#) A copy of the Iowa DOT's Access Policy is available through the Administrating Office for your project.

### **Hazardous Waste/Contaminated Properties:**

Contamination of property by hazardous materials has become an area of great concern in the development of highway projects. Early detection of contamination of the right of way to be acquired is extremely important in determining project cost, project timing, and potential agency liability. There must be a visual inspection of the possible contamination very early in project development. Contaminants may be as common as petroleum products, battery waste, building material containing asbestos, certain paints and their residues, and many other very common materials.

Contamination may appear as soil which is oozing, an area bare of vegetation, an area which is sunken, an area containing junk containers or other less obvious junk material, and less obvious ways. Signs of contamination or awareness of prior uses (such as gas station, manufacturing plant, dry cleaner, body shop, etc.) should lead to further study of the possibility of contamination.

In the event there are signs of contamination, or if there are underground storage tanks present on the property, good business practices require the property be further tested and all necessary remediation accomplished prior to proceeding with the acquisition of the property. In addition, state and federal laws administered through the Iowa Department of Natural Resources and the Environmental Protection Agency may need to be considered. Should a property already be acquired at the time contamination is verified, former owners may be determined

to be responsible for the clean-up costs, but recouping such costs may prove difficult.

If you encounter any indications of contamination of any necessary right of way, ***IMMEDIATELY*** contact your LPA Coordinator for further advice and assistance on how to proceed. Discussion concerning the valuation and acquisition of real estate with environmental issues is available in the Iowa DOT Appraisal Operations Manual and the Acquisition Manual. ([link](#))

### **Parcel - What is it?:**

A parcel may be described as a tract or tracts of land, an improvement, a legal property right owned by a single entity or multiple entities, and operated as a single unit. All or part of the larger unit may be required for highway right of way or damaged by highway construction or maintenance.

There are three tests used to determine what constitutes a parcel; unity of use, proximity, and unity of ownership. Unity of use is not limited to the existing use but it is also the highest and best use to which the property may be put. Proximity is not limited to tracts abutting each other, but rather tracts within proximity that a larger parcel is still a practical, economic unit. Unity of ownership may or may not prove indicative of what makes up a parcel. For further information please see the Iowa DOT ROW Design Manual. ([link](#))

### **Tenant-Owned Improvements and Leasehold Interests:**

Tenants are owners of an interest in real property and must be considered. Their interests cannot be overlooked and should be identified as early as possible. Leases are either oral or written. Leases transfer the rights to use land and/or improvements to the tenant for a specified rent and period of time. The first step in determining a leasehold interest is to obtain a copy of the lease. Other items to look for and consider are sales tax permits (commercial property) and asking who "owns" the crops on agricultural land or who resides in residential property.

Compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. Iowa Code § 6B.55 (2). The appraiser should secure the signatures of both the owner and tenant of the land on a written agreement stating the improvements owned by each party. This agreement will be included in the appraisal with a suggested allocation of the appropriate amount for the improvement to be purchased. The tenant is entitled to accompany the appraiser during an inspection of the tenant-owned improvements.

If the landowner and tenant don't agree on who owns what, then you may want to include names of all owners and tenants together on the same contract and/or acquisition proceeds check, permitting the parties to divide the total amount themselves. The appraiser's suggested allocation of the estimate of just compensation for the tenant and landlord is just that -- a suggestion only.

Where there is no dispute on who owns what, the tenant may sign a tenant contract separate from the owner's. This serves as a release of the tenant's interests in the lease. If there are tenant-owned improvements being acquired, these should be itemized on the contract and a subsequent Bill of Sale signed by the tenant transferring ownership of the items to your agency.

You may not want to accept contracts from an owner or tenant unless an agreement has been reached with both. If an agreement cannot be reached, both interests can be combined and acquired in a single condemnation proceeding, although either the tenant or owner are entitled to ask for separate awards at the condemnation hearing. Exceptions may include minor acquisitions, tenants with 30-day verbal leases or farm year-to-year leases for either cash or crop share would have a minimal financial interest. In these cases the acquisition may be accomplished by having the tenant sign a separate tenant contract.

A key issue involving the acquisition of land is possession. Without possession a project cannot be constructed. When dealing with landowners and tenants separately you will need to coordinate the surrender of possession from the various interest holders.

For example, a tenant may agree to relinquish their rights of possession on January 1 and the landowner has not agreed to settle. On January 1, the owner is in a precarious position since the tenant has left the property and rent is no longer being paid. The owner may decide to find a new tenant and collect rent until settlement is reached with the acquiring authority. Relocation payments made to tenants are not payments of just compensation. In the situation described above, a new tenant may be entitled to relocation payments. It will be necessary to determine what relocation benefits, if any, the new tenant qualifies for.

## **Frequently Asked Questions (FAQ's):**

In this section of your manual we have included frequently asked questions and answers. We have organized these questions by categories for easier reference.

### *General Questions*

- If there is no Federal funding in right-of-way acquisition, must I follow these procedures?

Ans. Yes, if there is Federal funding in any phase of the project State law now requires many of these procedures to be followed regardless of federal funding involvement. It is recommended that these procedures be followed in all projects.

- Do we have to acquire temporary easements before we can let our project?

Ans. Yes, these interests must be acquired and certified prior to the construction of the project. (See the Easement section under Miscellaneous Topics.)

- When is possession of condemned property secured?

Ans. When the proceeds of the condemnation proceeding are deposited with the Sheriff, unless an owner-occupied house is condemned (see Iowa Code § 6B.25 and 6B.26). ([link](#)) In this event, possession occurs as soon as the final payment is made to the property owner. If an appeal occurs, possession will not occur until the appeal is finally resolved. Only in the case of the Iowa DOT condemning the owner-occupied house can the 180-day limit on the retained possession of the property owner be imposed (see Iowa Code § 6B.26). ([link](#))

- How do I find an appraiser, a relocation agent or some other right of way professional?

Ans. Your LPA Coordinator can provide a list of right of way services consultants who perform and who are familiar with federal and state policies/guidelines. These agents will provide several names from which you can select.

- Can the LPA use its own legal staff for condemnation in the name of the state?

Ans. Yes, if a 28E agreement (see Iowa Code Chapter 28E) ([link](#)) has previously been signed.

### Valuation or Appraisal Questions

- Can I use a local appraiser?

Ans. If qualified to do eminent domain appraisals, a local appraiser can be used.

- Can an employee of the LPA do an appraisal?

Ans. It depends on the complexity of the appraisal problem and qualification of the employee. For more information, contact your LPA Coordinator.

- How long does it take to do an appraisal?

Ans. Depending on the complexity of the parcel, and the availability of appraisers, the process may take from 6 to 8 weeks, or longer.

- How long does it take to review an appraisal?

Ans. Depending on the complexity, it can take from 3 to 4 weeks.

### Acquisition Questions:

- Who can act as the agency's negotiator?

Ans. A qualified full-time employee of the LPA, or a fee negotiator.

- Can the negotiator offer less than the approved appraisal?

Ans. No.

- Can the final agreed compensation exceed the approved appraisal?

Ans. Yes, provided written documentation in the form of an Administrative Settlement is furnished. It is recommended that the Iowa DOT be consulted prior to the LPA's commitment to the increased amount.

### Where Do I Find....?

We have included a list of references and an abstract of what is contained in those resources. These references may be obtained from the Iowa DOT Office of Local Systems, Iowa DOT Office of Right Way, or the FHWA.

- *Iowa DOT Office of Right of Way Policies and Procedures Manuals* -- These manuals collectively cover all aspects of the right of way process. Sections covered include Right of Way Design, Appraisal, Acquisition, Relocation Assistance, Condemnation Hearing Coordinator's Manual, Fiscal & Title and Property Management. ([link to manuals](#)) Procedures directing Advertising Control may be found in 761 IAC ([link](#)) 116, 117, 118, 119 and 120. Links have been provided for those resources available

electronically. Please request hard copies of those resources without links from your LPA Coordinator.

- *Iowa Code* -- The Iowa Code has many chapters and sections which apply to the purchase of right of way for highway purposes. The manner prescribed for most procedures are found in Chapters 6A, 6B, 28E, 306, 306A, 306B, 306C, 313 and 316. ([link](#))
- *Federal Regulations* -- The primary ones here are 23 CFR and 49 CFR Part 24 ([link](#)) -- 23 CFR deals with highways in general -- 49 CFR Part 24 is the implementing regulation covering the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
- *Iowa Administrative Code* -- The Iowa Administrative Code is a set of rules which, similar to federal regulations, implement laws passed. In particular, 761 IAC 111 ([link](#)) is the section of the Iowa Administrative Code which implements the right of way processes in Iowa. Paper copies of the “*Uniform Manual, Real Property Acquisition and Relocation Assistance*” are available from your LPA Coordinator upon request.
- *Department of Treasury, Internal Revenue Sec. 1.6045-4* -- The IRS regulations describing the reporting of real estate transactions are found in this section.

## **SUMMARY**

All aspects of Right of Way have not been discussed in this manual. Our goal was to provide you with a guide to the operations and functions you may frequently encounter and the priorities which must be followed.

The Iowa DOT Office of Right of Way maintains an LPA Unit within the Property Management Section. The Property Management Section is currently staffed with full-time employees to provide guidance and monitor LPA activities. The Office of Right of Way also has other specialized sections available to assist you in expediting your projects. For coordination and specific guidance, please contact the LPA Coordinators in the Property Management Section at (515) 239-1300.

### **ADDRESS:**

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Property Management Section  
Office of Right of Way  
Iowa DOT  
800 Lincoln Way  
Ames, IA 50010  
(515) 239-1300

Those of us who created this manual wish to extend our thanks to the Federal Highway Administration and the efforts of all those individuals from the private and public sectors that served on this manual team.