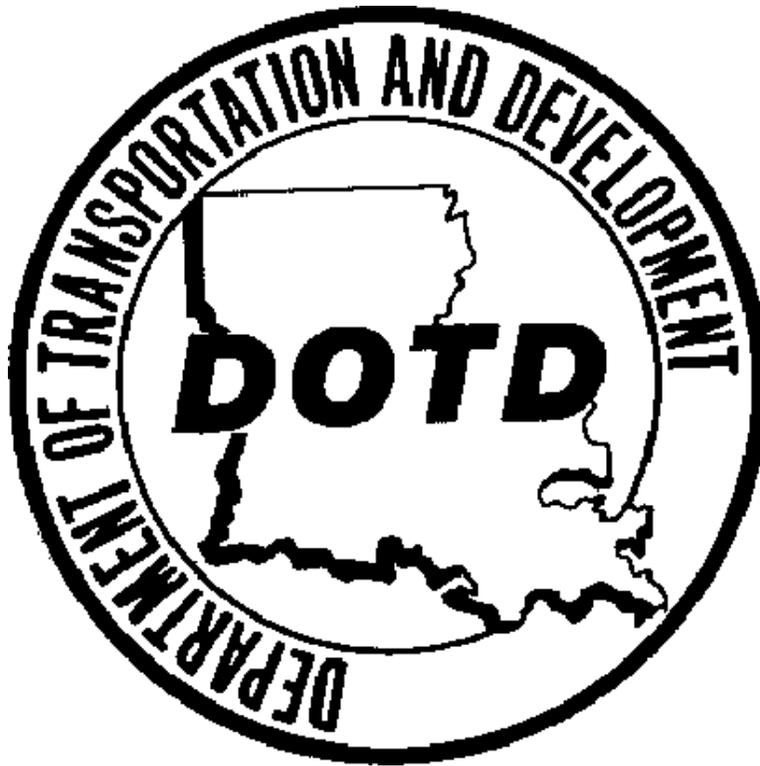


L P A  
RIGHT OF WAY  
MANUAL



OFFICE OF RIGHT OF WAY  
BATON ROUGE, LOUISIANA

REVISED: APRIL 30, 2009

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## **Introduction**

Acquiring right of way for a public project often requires several partners. Your project may require a cooperative effort involving you at the local level, the Louisiana Department of Transportation and Development (LADOTD) at the state level and the Federal Highway Administration (FHWA) at the federal level. This guide is intended to serve as a basic reference for local public agencies and others who receive Federal-aid highway funds for projects involving the acquisition of real property.

Eligibility to receive Federal funds depends upon compliance with Federal and State laws, regulations, and policies. FHWA holds LADOTD responsible to ensure that right of way on all federally funded street and road projects in Louisiana is acquired in accordance with federal guidelines. Local Public Agencies as referred to herein include parish governing authorities, such as police juries; urban governing authorities, such as cities or municipalities; and airport authorities. Local Public Agencies will hereinafter be referred to as LPA'S.

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. Following procedures from the LADOTD Right of Way Operations Manual will limit any problems. There is work plan on page 39 and a checklist beginning on page 43 to help guide you.

Concern for equitable treatment in acquiring private property for public purposes goes back to the beginnings of the United States. The founding fathers placed a high value on the protection of private property. The United States Constitution expresses this philosophy in the Fifth Amendment:

***"No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."***

The 14th Amendment to the Constitution extends to States the requirement of following due process when they acquire privately owned property. There are several reasons that the Federal Government retains a deep interest in the acquisition of real property for federally assisted projects. The most important is ensuring that the Fifth Amendment mandates of due process and just

compensation are met when property owners are affected by Federal-aid projects. Another is the goal of acquiring property without delaying the project for which it is needed. Finally, the Federal government is concerned that Federal tax dollars used to fund public improvement projects are spent in an appropriate fashion.

## **The Uniform Act**

Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on Federal or federally assisted projects and programs.

Other Federal, State and local laws also govern public project and program activities. Federal Right of Way acquisition statutes and regulations include:

### **United States Code**

- Title 23 — Highways
- Title 42, CHAPTER 61 — Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs
- Title 49 — Transportation

### **Code of Federal Regulations**

- 23 Part 710
- 49 Part 24

For further information, go to:

<http://www.fhwa.dot.gov/realestate/index.htm>

As stated, the basic regulation governing acquisition and relocation activities on all Federal and federally assisted programs and projects is 49 CFR Part 24, the government wide Uniform Act regulation. The Uniform Act is divided into three major sections or “titles.”

**Title I, "General Provisions,"** primarily covers definitions.

**Title II, "Uniform Relocation Assistance"** contains provisions relating to the displacement of persons or businesses by Federal or federally assisted programs or projects. A basic overview of the relocation requirements is provided in this manual. However, relocation under the Uniform Act is a specialized and

complex subject. **If you do not have staff qualified to administer a relocation program, you should seek assistance from LADOTD to insure that displaced persons are provided all appropriate assistance and payments.**

**Title III, "Uniform Real Property Acquisition Policy"** pertains to the acquisition of real property for Federal or federally assisted programs or projects. One of the purposes of Title III is to encourage and expedite the acquisition of real property through negotiation with property owners, thereby avoiding litigation and relieving congestion in the courts. Other purposes include assuring consistent treatment for property owners in Federal programs and promoting public confidence in Federal land acquisition practices. Louisiana has provided assurances - by the passage of enabling legislation - that they can fully comply with the Uniform Act. Local acquiring agencies must certify that they have followed Louisiana's Uniform Act assurances when acquiring real property.

**Note: The LPA is required to provide for the acquisition of rights of way and related services for their projects in accordance with State and Federal Laws, the Uniform Relocation Assistance and Real Property Act of 1970, as amended, LADOTD's Right of Way Operations Manual, Federal Regulations and particularly Title 23 Part 710 and 49 Part 24 of the Code of Federal Regulations ("CFR"), as amended, and any additional written instructions given by the STATE. Failure to do so will jeopardize funding!**

Agencies receiving funds from the FHWA are also subject to the regulations found in 23 CFR, which is entitled "Highways." These regulations are found at various locations in 23 CFR, mostly in part 710. These regulations address highway-related issues not covered by the Uniform Act. For example, 23 CFR 710.201 requires that LADOTD insure that there will be procedures in place to provide necessary technical assistance and advice to Local Public Agencies, as well as a system of monitoring to assure that property and property rights are acquired by the Local Public Agencies in accordance with Federal and State Laws.

One of our primary 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.

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 full ownership, but also permanent servitudes, temporary servitudes, 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. Please note that if 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.

Generally speaking, there are four types of LPA projects:

- 1. Off-System Bridge Projects** - undertaken by parish governing authorities
- 2. Urban System Projects** – undertaken by municipalities classified as Urban (populations in excess of 5,000.) However, these projects are generally done only by municipalities with populations in excess of 50,000.
- 3. Airport Projects** - undertaken by airport authorities for improvement and expansion projects of general aviation facilities or commercial air facilities.
- 4. Enhancement Projects** – sidewalks, trails, bike paths, etc.

Regardless of the type of project, all acquisition activities must be handled using the same policies and procedures. When an LPA establishes the need for a project that will involve federal funding, it should contact LADOTD for coordination. Urban System Projects require the execution of a City-State Agreement between LADOTD and the municipality. This agreement will set forth, among other matters, the scope of the project and the manner in which the municipality intends to acquire the right of way, if any is required for the project.

Not every project will require acquisition of property or property rights. If the project will be built in the existing right of way with no property or property rights being required for the project, the LPA must notify the LADOTD Office

of Right of Way in writing whether or not the right of way in which the project will be constructed was acquired prior to June 19, 1980. If it was acquired before June 19, 1980, the appropriate LADOTD Headquarters Right of Way Acquisition Manager must be notified immediately, at which time an audit will be necessary to insure compliance with applicable laws.

If additional property or property rights are needed for the project, the required property and property rights will normally be acquired in the name of the LPA. In certain circumstances, if LADOTD's workload and time permit, the LADOTD Office of Right of Way may perform the acquisition activities, but this method should not be depended upon by the LPA's.

Depending upon the specifics of funding, acquisition costs may be paid directly by the municipality and reimbursed by LADOTD through periodic billings, and then reimbursed to LADOTD by FHWA; or paid directly by LADOTD for reimbursement by FHWA. Generally, whichever entity is performing the acquisition activities will pay the acquisition costs directly.

### **Assurances**

If a project is undertaken by an LPA that has not provided assurances to DOTD, the LPA must furnish the assurances before any acquisition activities begin. If the LPA lacks experience in acquisition activities, all deeds, whether for donation or sale, should be approved by the respective Regional Right of Way Manager prior to execution and recordation. (For examples, see pages 58 - 73)

**Each LPA that anticipates seeking Federal participation in any transportation-related projects must furnish the necessary assurances to LADOTD's Office of Right of Way prior to March 1 of each calendar year. The Assurance Letter will be sent to the respective Regional Right of Way Manager for transmittal to Headquarters. (See page 42)**

### **Title VI of the 1964 Civil Rights Act**

It is the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving federal financial assistance and authorizes and directs the appropriate federal departments and agencies to carry out this policy.

An overview of Title VI can be viewed online at:  
[http://www.fhwa.dot.gov/environment/title\\_vi.htm](http://www.fhwa.dot.gov/environment/title_vi.htm).

The text of the statute itself can be viewed online at  
<http://www.usdoj.gov/crt/cor/coord/titlevistat.htm>.

The LADOTD Office of Right of Way complies with all aspects of Title VI, and shall insure that all employees, sub recipients (Local Public Agencies, cities and municipalities over which it has oversight), as well as its consultants are adequately trained to insure compliance with all aspects of the regulations.

Beginning December 1, 2005, the Office of Right of Way and LPA's shall collect the following information on owners and displacees on all new projects:

***Race, Color or National Origin, Sex, and Disability***

Negotiators will advise owners and displacees that Title VI requires them to collect this information. For displacees, the information will be collected at the time of the Occupant Inventory. If the subject declines to supply this information, the interviewer will indicate his/her best assessment. This information will be made a part of the Negotiator's Report. For property owners, the information will be collected at the first face-to-face contact.

**DISCRIMINATION COMPLAINTS**

The Assistant Right of Way Administrator of the Administrative and Field Services Office shall serve as the Title VI Coordinator of the Office of Right of Way and, as such, will be notified of any allegations of Title VI violations by its employees, sub recipients or consultants, and will forward them to the Compliance Programs Section for investigation.

## Louisiana Department of Transportation and Development

### Title VI Discrimination Complaint Form

Name	Phone	Name of Person(s) Who Discriminated Against you.	
Address (Street No., P.O. Box, Etc.)		Location and Position of Person (If known)	
City, State, Zip		City, State, Zip	
Discrimination Because Of:  __Race/Color/National Origin    __Sex    __Disability    __Age  __Retaliation		Date of Alleged Incident	
Explain as briefly and clearly as possible what happened and how you were discriminated against. Indicate who was involved and witnessed the discrimination. Be sure to include how other persons were treated differently than you. Attach any written material pertaining to your case.			
Signature		Date	

Please return this form to: **Compliance Programs Office**  
**P.O. Box 94245**  
**Baton Rouge, LA 70804-9245**

**Telephone Number :** (225) 379-1382  
**Fax Number :** (225) 379-1865

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

For projects requiring right of way, LPA's may use qualified staff to acquire the right of way or they may hire qualified consultants. The LPA must submit a service plan detailing which individuals they propose to employ to provide all right of way related services. Approval of this service plan by LADOTD's Office of Right of Way must be obtained prior to issuance of a "Notice to Process." LADOTD approval of the LPA's consultant selection process and the contract itself is also needed if participation in the right of way cost and/or reimbursement of the cost of the consultant contract is being requested.

Contracts between the LPA and the consultant should specify the particular activities to be performed as well as the scope of those activities, including but not limited to acquisition, relocation assistance, property management, legal activities, etc. It is advisable that LADOTD be involved in the contract preparation and/or consultant selection process in order to insure that all necessary requirements are met so as not to jeopardize Federal participation in the construction of the project.

To ensure that we have qualified personnel performing the services we need, LADOTD Office of Right of Way maintains a list (panel) of individuals and firms offering title abstracting, appraisal, appraisal review, negotiation and relocation assistance services. There are specific requirements for each discipline that must be met to be included on the panel. Please consult with the LADOTD Office of Right of Way for further guidance.

**NOTE:** Inclusion of an individual or firm on any of the LADOTD Office of Right of Way panels should not be construed as a recommendation from LADOTD Office of Right of Way as to the abilities and or suitability of any of the individuals or firms to perform any service. Their appearance on these lists simply indicates that these individuals and firms have met the minimum qualifications for inclusion on the panel.

## **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 LADOTD's Environmental Section. 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 clearance is received.** The only exception is in the case of advanced acquisitions.

## **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:

1. Contact LADOTD 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.
2. 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.
3. Complete the public notification and involvement requirements and apply for environmental concurrence.
4. Request authorization for reimbursement of right of way and/or incidental expenses, including appraisals and appraisal review, from LADOTD and FHWA, if participation in expenses is sought. Determine the amount to be offered as just compensation by an appropriate method (appraisal or through the compensation estimate process).

5. Acquire the right of way and close each transaction.
6. If relocation is involved, ensure that all displaced persons are properly relocated.
7. If necessary, complete Expropriation proceedings.
8. Certify the project.

**Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

For additional information, go to:

<http://www.fhwa.dot.gov/legsregs/legislat.html>

## **Title Research**

There must be an examination of the Parish's real estate conveyance records and a Title Research Report must be prepared in accordance with LADOTD's Title Research Manual for each parcel to determine the owner of the property, including other interested parties. This title report is used to determine the status of title to ensure that good, clear 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 title reports are maintained as part of the parcel file.

## **Legal Descriptions/Plats**

Legal descriptions and plats are to be prepared and certified by a Louisiana Licensed Land Surveyor.

## **Hazardous Materials or Contamination**

If the LPA suspects the presence of environmentally hazardous materials in or near the area required for construction of the project, LADOTD should be

contacted immediately for special instructions for handling the possible contamination.

## **Records/Parcel Files**

Your agency will need to maintain a separate parcel file for each acquisition of real property and all people displaced. **Your records must be sufficient to demonstrate compliance with applicable laws and requirements and be available for inspection by the LADOTD, FHWA, and possibly other divisions of state and federal government.**

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

- All Correspondence
- Title Reports
- Design Summary Information and Plat
- Appraisals and Appraisal Reviews
- Negotiator's Log of Contacts
- Administrative Settlement Form (if used)
- Copy of Signed Contracts
- Conveyance and Closing Documents
- Relocation Forms
- Relocation Agent's Log of Contacts
- Expropriation Documents (if used)

**Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

## **The Valuation Process**

When you receive authorization to acquire right of way for your project the appraisal 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.

This is intended to serve only as a brief description of the valuation process. The LADOTD Office of Appraisal maintains a detailed Operations Manual providing additional information.

Before the valuation process begins, all owners on the project shall be issued a Project Notice letter advising them of the LPA's interest in acquiring the property or property rights. (See page 45) The Department's brochure entitled "Acquisition of Right of Way and Relocation Assistance" must be included with the Project Notice. The owners shall also be informed of their basic protections, including the right to have the required property rights appraised.

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

Before the initiation of negotiations, the property must be appraised. There are two exceptions however: (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 indicates that an appraisal is not necessary.

When the property owner receives the Project Notice letter (or even earlier), that owner may indicate a willingness to donate the land without the requirement of an appraisal. Title 23 of the U. S. C. Section 323, provides 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.

As stated, when property is acquired by donation, an appraisal is not required. However, owners must 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.

Therefore, a donation can only occur after the person has been fully informed of their right to receive an appraisal and an offer of "just compensation" for acquisition of the property and the owner specifically declines by signing a Donation Certification, formally waiving the right to be appraised of current fair market value.

<p><b>NOTE:</b> A signed Donation Certification must be obtained prior to execution of the donation instrument. (See page 74)</p>
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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 Compensation Estimate Provision. Consult with LADOTD regarding your individual situations.

### **The Compensation Estimate Provision**

**NOTE:** See legal opinion concerning appraisal waivers. (See page s 78 .. 89)

The first decision your agency will need to make during the valuation process is whether to obtain an appraisal or utilize the compensation estimate provision. It is strongly recommended that LADOTD be consulted before you make this determination. Care must 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.

Federal rules authorize the use of a compensation estimate on federally funded projects in 49 CFR § 24.102. The compensation estimate provision is used to determine just compensation, and may be referred to as a compensation estimate. The compensation estimate is not an appraisal and is used only with uncomplicated minimal value purchases. Louisiana law allows political subdivisions to utilize a compensation estimate when the property is valued at \$3,000.00 or less.

The purpose of the compensation estimate 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 a thorough understanding of appraisal principles.

The compensation estimate is not an appraisal and, as such, the Uniform Act appraisal requirements, UASFLA 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.

As stated, the compensation estimate must be prepared by a knowledgeable person who is aware of the general market values in the project area. Although

it is strongly recommended, the requirement for offering the owner the opportunity to accompany the preparer does not apply, since it is not an appraisal. An appraisal review is not required either. Please note the selection of parcels for which the need for an appraisal is waived is made before any parcels are assigned to specific Appraisers. All items of acquisition are to be listed, including those for which compensation is zero. **(See pages 52 and 53)**

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.

Although you are not required to do so, you may wish to maintain a listing of approved Compensation Estimates along with who approved them. The approved Compensation Estimate Provision has been developed to be very fluid so that a wide range of needs may be accommodated. **Please consult with LADOTD to ensure the Compensation Estimate process implemented by your agency does not jeopardize your state/federal funding.**

## **The Appraisal**

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 required appraisal format. This type of determination must be provided by someone with sufficient expertise and knowledge to make this type of decision. All Appraisers must be on the LADOTD's Approved Appraiser Panel. Additionally, LADOTD must formally approve both the appraisers and the appraisal contracts in advance. The format and level of documentation in an appraisal depends on the complexity of the appraisal problem. There are three appraisal report formats that satisfy LADOTD and FHWA standards; Form A, Form B, and Form C. **(See page 48)** Please see LADOTD's Appraisal Handbook for a detailed description of each form. The format should be specified in the appraisal assignment.

**NOTE:** Regardless of the format, the Appraiser must formally (in writing) offer the property owner, or their designated representative, a reasonable opportunity to be present during the inspection of the property. **(See page 46)**

All appraisals must be prepared in conformity with the "Uniform Standards of Professional Appraisal Practice" (USPAP) and the "Uniform Appraisal Standards For Federal Land Acquisition" (USFLA), except when they conflict with the state requirements for eminent domain, in which case the jurisdictional exception provision is applicable.

When the services of 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 scope of services, appraisal format, and 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. Again, LADOTD must formally approve the Appraiser and the Appraisal Contract in advance.

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 chartered basis, for example) and an Appraiser cannot act as a negotiator for a property they have appraised. **Please consult with LADOTD to ensure the appraisal process implemented by your agency does not jeopardize your state or federal funding.**

### **The Appraisal Review Process**

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.

All Review Appraisers must be on LADOTD's Review Appraiser panel. 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.**

The Review Appraiser will examine the appraisal to determine that it has been completed in accordance with the approved appraisal specifications and follows accepted appraisal principles and techniques in valuation of real property in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), Uniform Appraisal Standards For Federal Land Acquisition (USFLA), and state law for eminent domain acquisitions.

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 prepare a signed and dated statement setting forth the amount recommended to be offered as just compensation. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

**NOTE:** The acquiring agency must determine the amount of the approved offer of just compensation. This responsibility cannot be transferred to a consultant or contractor. Said just compensation must be approved by LADOTD's Office of Right of Way. Each file must be documented with a copy of the approved offer signed by an official of the acquiring agency.

## **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 can be presented. The LADOTD Office of Right of Way maintains an Operations Manual for this process which is available to you.

The acquisition process is very different from what you may think of. 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 responsible for protecting their own interests, but this attitude is not appropriate in the public acquisition process.

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

negotiate in good faith and present each owner with a written offer. (See page 54) A Summary of Just Compensation must be attached to this written offer. (See page 57) Additionally, copies of right of way and construction plans and a copy of the Department's brochure "Acquisition of Right of Way and Relocation Assistance" should be a part of the information provided to every property owner. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize state/federal funding.**

## **Negotiating**

All Negotiators must be on the LADOTD's Approved Negotiator Panel. LADOTD must formally approve both the Negotiators and the Negotiator contracts in advance.

Prior to negotiations, the agent should verify and document that the owner was afforded the opportunity to accompany the Appraiser during the Appraiser's inspection of the property, unless a Compensation Estimate was used in the valuation of the property. The Negotiator will document this in the Negotiator's log. If the owner was not contacted by the appraiser, the negotiator must take corrective action before proceeding with negotiations.

If, after being advised of the property's just compensation amount, the owner wishes to donate the property, he/she shall sign a Donation Certification prior to executing the instrument.

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 have the opportunity to have their thoughts seriously considered, and questions answered. All parties must be provided adequate time to consider the information and seek counsel if they wish.

The Negotiator must personally contact the property owner and tenant of each property on the project. If the owner lives out of state or is not available for personal contact, phone or mail contacts may be used. During negotiations the agent will maintain a written log of all contacts made with the owner. This log must contain the dates, places, and persons present at these contacts and must be signed by the agent. The log should present a brief summary of what was discussed, and document that the owner was afforded the opportunity to accompany the appraiser unless a compensation estimate was used.

During negotiations the Negotiator will explain the offer of just compensation and the project. The owner shall be given a reasonable opportunity to consider the offer and present information which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the sale. The Negotiator and/or the LPA shall take no coercive action in order to induce an agreement with the property owner.

If the owner disagrees with the amount of just compensation and presents a counter offer to the LPA, an Administrative Settlement may be made if the settlement is determined to be reasonable, prudent and in the public interest. If the LPA is bearing the costs of the right of way, no approval of the administrative settlement need be obtained. If there is federal participation in right of way, the LPA can adjudicate counter offers without DOTD participation, but risks the determination upon later review that the administrative settlement was unjustified, and therefore non-reimbursable. To assure participation in all Administrative Settlements, the LPA can forward all counter offers to the Office of Right of Way Regional Manager. DOTD will then handle the counter offer according to its usual procedures.

An owner may file a written appeal with the LPA in any case in which he or she believes that the LPA has failed to properly determine eligibility for, or the amount of, any payment in connection with transfer of title or litigation expenses. The LPA should contact the respective LADOTD Office of Right of Way Regional Manager in the event of such an appeal.

### **Uneconomic Remainders**

If the acquisition of only a portion of a property would leave the owner with an uneconomic remainder, or if an improvement located totally or partially outside the required taking area is adversely impacted, the LPA shall offer to acquire the uneconomic remainder or adversely impacted improvement along with the portion of the property needed for the project. The Department's Policy dealing with uneconomic remainders and adversely impacted improvements will be followed and the LADOTD Office of Right of Way Property Management Office must be notified of any acquisition of uneconomic remnants or adversely impacted Improvements. **Please consult with LADOTD to ensure the process**

**implemented by your agency does not jeopardize your state/federal funding.**

### **Amicable Acquisitions**

If after reasonable efforts have been made and an agreement still cannot be reached, your agency may be forced to institute eminent domain (Expropriation) 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.

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.

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 the owner to surrender possession of the property. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

### **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.

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 additional damage information is presented. So that proper documentation may be found in your files, a written report called an Administrative Settlement Report 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. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

## **Relocation Assistance**

Whenever you anticipate displacements requiring Relocation Assistance will occur, please let LADOTD 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. 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.

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. 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.

Relocation Assistance is a fascinating Right of Way discipline that requires an in-depth discussion to adequately cover the material. The LADOTD Office of Right of Way maintains a policies and procedures manual approved by FHWA. We recommend you work closely with your LADOTD on Relocation Assistance matters.

Relocation Assistance is 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. The term displaced person applies to owners **and** anyone else lawfully occupying the property.

### **Personal Property Moves**

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 this manual apply to these types of moves.

### **Residential Moves**

The Residential Relocation program is 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 LADOTD Right of Way Operations Manual for more specific information.

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 a replacement housing 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.

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 presently 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.

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 replacement housing offer.

## **Other Eligible Expenses**

**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 are excluded, such as “points” or prepaid interest.

**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 LADOTD 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 LADOTD before attempting to provide all the appropriate benefits to a displaced farm or business.

**Re-establishment Expenses** - These payments (up to \$10,000) 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 the LADOTD Office of Right of Way or another 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 LADOTD Office of Right of Way or another 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 recommend requesting additional assistance from LADOTD Office of Right of Way before establishing the amount of the payment for a self-move.

**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 LADOTD Office of Right of Way or another qualified relocation resource.

**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. We recommend requesting additional assistance from LADOTD Office of Right of Way or another qualified relocation resource. **Please consult with LADOTD to ensure the Relocation Assistance process implemented by your agency does not jeopardize your state/federal funding.**

## **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 Parish 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 out this work to be done by a local

attorney or professional title and closing agent. 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. All title research must be done in accordance with LADOTD's Title Research Manual and procedures.

The LADOTD Office of Right of Way will share information as to how you might handle specific situations. 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 LADOTD 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. The owner of the property cannot be required to surrender possession until payment has been received. Applicable taxing authorities should also be included during your title and closing process. All conveyances should be recorded in the office of your Parish Recorder.

Further considerations involve payment to the owner along with the 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. **Please consult with LADOTD to ensure the closing process implemented by your agency does not jeopardize your state/federal funding.**

## **Expropriation**

Upon failure to reach an amicable settlement with the property owner, the LPA will promptly begin expropriation proceedings to deposit with the court, for the benefit of the owner, the amount set as just compensation. If the non-appraisal value estimate procedure was used for negotiations, a complete appraisal must be obtained at this time. If twelve months have elapsed since the date of the appraisal on which negotiations were based, the LPA will obtain an updated appraisal at its own expense prior to beginning expropriation proceedings. If the amount of the just compensation changes, a new offer of just compensation must be made to the owner. The owner shall be reimbursed for reasonable expenses incurred because of condemnation proceedings only in the following cases:

- a. The final judgment of the court is that the LPA cannot acquire the real property by expropriation.
- b. The expropriation proceeding is abandoned by the LPA other than under an agreed-upon settlement.
- c. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the LPA effects a settlement of such proceeding.

If a judgment in expropriation proceedings awards attorney fees to the owner, LADOTD will not reimburse the LPA for such costs, even though the LPA may be liable for such costs. If the LPA's expropriation procedures require a deposit of an amount established as just compensation prior to the time of judgment, interest on said amount of original deposit due at time of final judgment will be reimbursed to the LPA by the Department, but is limited to interest from the date of deposit to 45 days after final adjudication. Interest after 45 days from the date of final adjudication (date when judgment becomes final) will not be reimbursed.

Defending title and responding to disputes is 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 expropriation process to be implemented by the agency. **Please consult with LADOTD to ensure the expropriation process implemented by your agency does not jeopardize your state/federal funding.**

## **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. <http://www.fhwa.dot.gov/legsregs/legislat.html> 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. You and your agency will encounter three phases in managing property: pre-construction, post-construction and airspace management.

**Pre-Construction** - 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.

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. 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. 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 LADOTD routinely sells houses, buildings, 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 should be considered. Appropriate asbestos abatement inspections 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 <http://www.fhwa.dot.gov/legsregs/legislat.html>. The LADOTD and FHWA will expect disposal of excess land 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 LADOTD Office of Right of Way operations manual prescribes how unused right of way is to be disposed.

### **Management of Airspace**

Regulations provide for use of airspace of the right of way for non-highway purposes **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 LADOTD 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, <http://www.fhwa.dot.gov/legsregs/legislat.html> or consult with LADOTD. **Please consult with LADOTD to ensure the property management process implemented by your agency does not jeopardize your state/federal funding.**

### **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. For information concerning your specific situations please refer to 23 CFR, Part 710, subpart D, or consult LADOTD for further details.

## **Disposal Requirements**

Louisiana law controls how unused right of way is disposed. If property was expropriated and not used, Louisiana law requires the agency in control of the land acquired for highway purposes to offer the owner(s), at the time of acquisition, his heirs, or his successors in title 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 in accordance with Louisiana law. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

### **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. 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. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

### **Project Development Certification**

If the project is being acquired by DOTD personnel in the same manner as a highway project, certification will be the responsibility of the Department. (See page 75) If any other method of acquisition is used the LPA will prepare a Right of Way Certification. Any items not applicable to the project should be marked “n/a”, not left blank. This certification will be forwarded to the Office of Right of Way Manager who is responsible for reviewing the files of the LPA to insure that all applicable rules and regulations were followed in the acquisition process. If everything is in order, the LADOTD Office of Right of Way Manager will recommend the certification for approval and forward to the Right of Way Administrator for approval and transmittal to the Federal Aid Administrator. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

### **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. 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.

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. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

### **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 Louisiana Department of Environmental Quality and the Environmental Protection Agency 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 LADOTD for further advice and assistance on how to proceed. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize your state/federal funding.**

### **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 right 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. Relocation payments made to tenants are not payments of just compensation. **Please consult with LADOTD to ensure the process implemented by your agency does not jeopardize state/federal funding.**

### **Servitudes**

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

The purposes of servitudes 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 servitude 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. Each servitude must be examined to determine the reduction in value to the property and estimate just compensation due to the owner.

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

### **Advance 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.

If federal funds are to be used in the acquisition of right of way, LADOTD 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 Acquisitions**

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 LADOTD 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.

### **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 LADOTD 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 LADOTD for further details.

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

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

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 servitudes before we can let our project?***

Yes, these interests must be acquired and certified prior to the construction of the project.

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

LADOTD's Office of Right of Way can provide a list of right of way services consultants who perform and who are familiar with federal and state policies/guidelines.

***Can I use a local appraiser?***

If qualified and approved by LADOTD, a local appraiser can be used.

***Can an employee of the LPA do an appraisal?***

It depends on the complexity of the appraisal problem and qualification of the employee. For more information, contact LADOTD.

***How long does it take to do an appraisal?***

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?***

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

***Who can act as the agency's negotiator?***

A qualified full-time employee of the LPA, or a fee negotiator, as long as they are approved by LADOTD.

***Can the negotiator offer less than the approved appraisal?***

No.

***Can the final agreed compensation exceed the approved appraisal?***

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

**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 LADOTD

Office of Right of Way has specialized sections available to assist you in expediting your projects. For coordination and specific guidance, please contact the LADOTD Office of Right of Way Section at:

**Louisiana Department of Transportation and Development  
Office of Right of Way  
8545 United Plaza Boulevard, Suite 300  
Baton Rouge, Louisiana 70809  
(225) 237-1200**

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## **WORK PLAN**

The GRANTEE agrees to provide for the acquisition of rights of way and related services for the PROJECT in accordance with State and Federal Laws, the Uniform Relocation Assistance and Real Property Act of 1970, as amended, STATE'S Right of Way Operations Manual, Federal Regulations and particularly Title 23 Part 710 and 49 Part 24 of the Code of Federal Regulations ("CFR"), as amended, and any additional written instructions given by the STATE.

The GRANTEE further acknowledges that no acquisition of rights of way shall proceed until all applicable archaeological, environmental and historical preservation clearances have been approved and "Notice to Proceed" is issued. More specifically, the GRANTEE shall:

- a. Prepare preliminary title reports for all parcels to be acquired.
- b. Prepare and provide cost estimates that shall be approved by LDOTD. Additionally, LDOTD shall approve Right of Way consultants hired by LPA's (appraisers, review appraisers, negotiators, relocation Assistance agents, title abstract agents, construction cost estimators, etc.). **The Local Public Agency shall not begin any formal appraisal, acquisition or relocation activities until notified by the LDOTD that FHWA has authorized the project.**
- c. If using the Compensation Estimate (limited to \$3,000 or less), prepare and submit an original and two (2) copies of a project data book. The data book shall include but not be limited to a description of the area and confirmed and noted comparable sales with photographs. All forms used in the data books shall be supplied to the State's Right of Way Appraisal Office for review and approval.
- d. Prepare and provide to the STATE the type and number of Appraisals required for the PROJECT. These Appraisals should list all (marketable) interest in each parcel, including but not limited to Leasehold/Leased fee interest, option to purchase and Life estates.
  1. Prepare and submit to LADOTD Appraisal Office, an original and one (1) copy of an appraisal report estimating the compensation for each tract to be appraised. Appraisal reports shall be prepared in conformance with the State's Right of Way Guidelines for Appraisers and shall include but not be limited to: inspection detail, a description of the PROJECT requirements and influences, cost to cure narrative and benefit/damage comments, sign appraisals, highest and best use, explanation of adjustments, plats and photographs, title work, certification of appraiser, and limiting conditions form. Additional or less

information and forms may be required according to the State's Right of Way Guidelines for Appraisers in accordance with the type of appraisal form utilized. All forms used in the appraisal reports shall be approved by the STATE. Any specialty contractor employed by the GRANTEE to prepare sign appraisals and cost to cure reports must be approved by the STATE.

2. Appraisals shall be prepared by an Appraiser who is a Licensed Certified Real Estate Appraiser in the State of Louisiana, at the appropriate level of certification/license, and who has been approved by the DOTD Right of Way Administrator.
- e. Provide all relocation services for those parcels where relocation is required. The GRANTEE shall prepare and submit to the State's Right of Way Regional Manager two (2) copies of property inventories, computation of moving payments, relocation studies, comparable housing, determination of Replacement Housing payments, incidental costs, and mortgage interest differential payments. All inventories and reports shall be submitted to the STATE for review and approval.
  - f. Upon approval by the STATE, prepare negotiation packages which will include the State's Acquisition of Right of Way and Relocation Assistance brochure, Letter of Offer, Statement of Estimated Values, availability of incidental payments, and if required, availability of relocation assistance letter and other relocation related correspondence.
  - g. Make all offers to purchase property and make all offers for moving payments, replacement housing payments and other payments required to owners or tenants. All offers and relocation benefits will be explained in detail and negotiations shall be conducted in accordance with the State's Right of Way Operations Manual.
  - h. Prepare and maintain individual parcel files, including appraisal reports, purchase documents, and all related correspondence and reports in connection with and incidental to the performance of this Agreement, and to make said files available at any time for inspection by the STATE and the Federal Highway Administration. The GRANTEE further agrees that all information gained regarding the appraisals and the acquisitions on this PROJECT shall be kept confidential and not be publicly disclosed without prior written authorization by the STATE.
  - i. Recommend counter offers for the State's Approval or Rejection and provide the necessary written justification.
  - j. If an approved option is obtained, prepare for and close as follows:

- (1) Submit check request, with approved option attached, to the STATE.
  - (2) Prepare all closing documents including Right of Way deeds, descriptions, plats, Settlement & Disbursement statements, IRS W-9 and any other documents required by the STATE.
  - (3) Prepare and secure executed Quit Claim deeds or releases necessary to acquire full ownership title or such other interest in the property as may be required for the PROJECT.
  - (4) Provide for a closing to be handled by the Grantee's attorney and furnish the STATE with a copy of the final title certificate for each parcel closed by deed.
- k. Be responsible for making all copies of right of way plan sheets needed in acquisition of the PROJECT.
- l. Prepare and submit to the STATE a Right of Way Certification and Relocation Advisory Assistance Certification prior to the certification date listed in the Agreement. These certifications will be prepared in a form approved by the STATE.
- m. Provide STATE with one (1) set of prints of right of way plans and provide any revised plan sheets thereafter.

**ASSURANCE LETTER**

Mr. Lloyd P. Scallan  
Right of Way Administrator  
Louisiana Department of Transportation and Development  
P.O. Box 94245  
Baton Rouge, Louisiana 70804

Attention: J. Harvey Blanchard  
Assistant Right of Way Administrator

Re: Assurances – Uniform Relocation Assistance and Real Property  
Acquisition Act

Dear Mr. Scallan:

The (name of LPA) assures that it will comply with the Uniform Relocation Assistance And Real Property Acquisition Policies Act, as amended (Uniform Relocation Act), 42 U.S.C. 4601-4655, and with implementing Federal regulations in 49 C.F.R. Part 24. Specifically, (Name of LPA) assures that:

1. Whenever Federal financial assistance is used to pay for any part of the cost of a program or project which will result in the displacement of any person:
  - a. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons in accordance with the Uniform Relocation Act.
  - b. Relocation assistance programs offering the services described in the Uniform Relocation Act shall be provided to displaced persons.
  - c. Within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced person in accordance with the Uniform Relocation Act.
  
2. Whenever Federal financial assistance is used to pay for any part of the cost of a program of project which will result in the acquisition of real property;
  - a. In acquiring real property the City will be guided by the land acquisition provision of the Uniform Relocation Act.
  - b. Property owners will be paid or reimbursed for necessary expenses as specified in Uniform Relocation Act.

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**LOCAL PUBLIC AGENCY CHECKLIST**

<b>QUESTION</b>	<b>YES</b>	<b>NO</b>
1. Have assurances been provided to LADOTD?	<input type="checkbox"/> If yes, go on to #2.	<input type="checkbox"/> If no, contact LADOTD immediately.
2. Is additional right of way required?	<input type="checkbox"/> If yes, go on to #3.	<input type="checkbox"/> If no, advice LADOTD of date of acquisition of existing right of way.
3. Has the Office of Right of Way contacted?	<input type="checkbox"/> If yes, go on to #4.	<input type="checkbox"/> If no, contact LADOTD immediately.
4. Are right of way maps needed?	<input type="checkbox"/> If yes, go to #5.	<input type="checkbox"/> If no, make sure construction plans are sufficient to acquire right of way and go to #5.
5. Have right of way maps and/or construction plans been approved by LADOTD and FHWA?	<input type="checkbox"/> If yes, go to #6.	<input type="checkbox"/> If no, contact LADOTD immediately.
6. Are there potential displacees on the project?	<input type="checkbox"/> If yes, go to #7.	<input type="checkbox"/> If no, go to #8.
7. Has Relocation Plan been prepared and approved by LADOTD?	<input type="checkbox"/> If yes, go to #8.	<input type="checkbox"/> If no, contact LADOTD immediately.
8. Have all necessary environmental documents been approved by FHWA?	<input type="checkbox"/> If yes, go to #9.	<input type="checkbox"/> If no, contact LADOTD immediately.
9. Is the presence of hazardous materials suspected in or near the required area?	<input type="checkbox"/> If yes, contact LADOTD immediately.	<input type="checkbox"/> If no, go on to #10.
10. Is there sufficient title work to prove ownership of required property or property rights?	<input type="checkbox"/> If yes, go to #11.	<input type="checkbox"/> If no, contact LADOTD immediately.
11. Have Project Notice Letters been sent to all owners advising of project acquisition and their rights?	<input type="checkbox"/> If yes, go to #12.	<input type="checkbox"/> If no, send letters before taking further action.
12. Will the non-appraisal value finding be used on properties valued less than \$3,000.	<input type="checkbox"/> If yes, go to #15 for those parcels, and #13 for all others	<input type="checkbox"/> If no, go to #13.
13. Has LADOTD approved the appraisers and the appraisal contract?	<input type="checkbox"/> If yes, go to #14.	<input type="checkbox"/> If no, contact LADOTD immediately.
14. Were the owners of all formerly appraised properties afforded the opportunity to accompany the appraiser.	<input type="checkbox"/> If yes, go to #15.	<input type="checkbox"/> If no, do not proceed until such opportunity has been offered.
15. Was Just Compensation for all properties set by a qualified Reviewer?	<input type="checkbox"/> If yes, go to #16.	<input type="checkbox"/> If no, contact LADOTD immediately.

Louisiana Department of Transportation  
Office of Right of Way

16. Is there adequate qualified staff to perform negotiation, relocation and property management?	<input type="checkbox"/> If yes, go to #18.	<input type="checkbox"/> If no, go to #17 or contact LADOTD immediately.
17. If using consultants, have they been approved by LADOTD?	<input type="checkbox"/> If yes, go to #18.	<input type="checkbox"/> If no, contact LADOTD immediately.
18. Was Just Compensation Offer and summary presented to each owner?	<input type="checkbox"/> If yes, go to #19.	<input type="checkbox"/> If no, do not proceed until proper offers are made
19. Was <i>Acquisition of Right of Way and Relocation Assistance</i> brochure given to each owner?	<input type="checkbox"/> If yes, go to #22	<input type="checkbox"/> If no, contact LADOTD immediately.
20. Are Negotiator Summary reports all properly completed and signed?	<input type="checkbox"/> If yes, go to #21 if money involved or #28 if donation	<input type="checkbox"/> If no, do not proceed until properly completed.
21. Did the owner accept the offer?	<input type="checkbox"/> If yes, go to #22.	<input type="checkbox"/> If no, go to #24.
22. Were the incidental costs of title transfer paid by the LPA either directly or by reimbursement?	<input type="checkbox"/> If yes, go to #23.	<input type="checkbox"/> If no, do not proceed until eligible costs are reimbursed.
23. Was the closing properly handled?	<input type="checkbox"/> If yes, go to #28.	<input type="checkbox"/> If no, contact LADOTD immediately.
24. Did the offer present a counter offer?	<input type="checkbox"/> If yes, go to #25.	<input type="checkbox"/> If no, go to #26.
25. Was an administrative settlement made on the property and approved by LADOTD?	<input type="checkbox"/> If yes, go back to #20 for revised offer.	<input type="checkbox"/> If no, go to #26.
26. Was the property expropriated?	<input type="checkbox"/> If yes, go to #27.	<input type="checkbox"/> If no, go back to #21.
27. Were proper expropriation procedures followed?	<input type="checkbox"/> If yes, go to #28.	<input type="checkbox"/> If no, contact LADOTD immediately.
28. Were major improvements acquired?	<input type="checkbox"/> If yes, go to #29.	<input type="checkbox"/> If no, go to #30.
29. If occupied, were persons given proper notice to vacate?	<input type="checkbox"/> If yes, go to #30.	<input type="checkbox"/> If no, do not proceed until proper vacate notices are given.
30. Were uneconomic remainders (UR) or adversely impacted (AI) improvements acquired?	<input type="checkbox"/> If yes, go to #31.	<input type="checkbox"/> If not, go to #32.
31. Was LADOTD advised of any UR and AI acquisitions?	<input type="checkbox"/> If yes, go to #32.	<input type="checkbox"/> If no, contact LADOTD Property Management Officer.
32. Were acquired improvements disposed of and/or managed property?	<input type="checkbox"/> If yes, go to #33.	<input type="checkbox"/> If not, contact LADOTD immediately.
33. Has Project Certification Letter been sent to LADOTD?	<input type="checkbox"/> If yes, you have completed acquisition activities. Congratulations!	<input type="checkbox"/> If no, prepare Project Certification Letter immediately.

**PROJECT NOTICE**

Date

STATE PROJECT NO. \*

F.A.P. NO. \*

\*

ROUTE \*

\* PARISH \_\_\_\_\_

\*

SUBJECT: Parcel No. \*

\*

Dear Property Owner:

The (*Name of LPA*) announces that the captioned project has been programmed for construction and that negotiations for acquisition of rights of way are proposed.

Our records indicate that you own property which may be required as right of way for the project.

A representative will contact you during negotiations to discuss any questions you have concerning the project.

Enclosed is the brochure entitled ***Acquisition of Right of Way and Relocation Assistance***, prepared by the Department of Transportation and Development which provides valuable information to property owners affected by federally funded projects.

As soon as the right of way acquisition schedule permits, you will be contacted concerning this project.

Yours very truly,

\*

\*

XXX/vm

Attachment

**PROPERTY OWNER NOTICE**

(Date)

State Project Ownership No.:

F.A.P. No.:

Highway:

Route:

Parish:

Dear Sirs:

The Department is planning construction of the above referenced project, which will affect property owned by you. It is our policy to notify you, as a property owner, in advance of making an on-site inspection and an appraisal of your property. We plan to begin inspections on this project in the near future. This offer is a courtesy to you but it is not mandatory that you accompany us on our site inspection. If there is any occupied building affected by or located in the proposed right of way, it will be necessary for someone to accompany us. If you wish to accompany us on our site inspection of your property or if you do not wish to meet but would like for us to contact you, please so indicate at the bottom of this letter.

It should be understood that we would not be in a position to discuss the value of the property or to tell you when an offer will be made. If we have not heard from you within two (2) weeks of receipt of this letter, we will conclude that you choose not to accompany us on the site inspection.

The right of way maps are available and may be inspected at the Regional Office by contacting:

Name:

Address:

Telephone No.:

Yours truly,

Real Estate Appraiser

Louisiana Department of Transportation  
Office of Right of Way

Please check the appropriate blank and return the original letter in the enclosed envelop.  
The copy of the letter is for your files.

\_\_\_\_\_ I do wish to accompany the appraiser(s), please contact.  
\_\_\_\_\_ I do not wish to accompany the appraiser(s).  
\_\_\_\_\_ I do not wish to accompany the appraiser(s) but would like to be contacted.

Signature: \_\_\_\_\_  
Daytime Phone No.: \_\_\_\_\_ Cell Phone No.: \_\_\_\_\_  
\_\_\_\_\_

Are there any leases pertaining to this ownership? Yes \_\_\_\_\_ No \_\_\_\_\_  
Lessee or Representative Name: \_\_\_\_\_ Daytime Phone No.: \_\_\_\_\_  
\_\_\_\_\_

## **APPRAISAL FORMATS**

### **FORM A**

- A. The form is designed as a complete, detailed appraisal of an ownership, including all land and improvements, using all applicable approaches. In effect, this is two separate appraisals, “before” the acquisition and “after” the acquisition, pertaining to partial acquisition only. Each segment, before and after, is to be completed in detail and separate from the other. All approaches to value are to be utilized in detail when applicable. Any feasibility study shall be included within the report.
- B. This form will include the following pages or reasonable facsimiles of them within the report. All pages from the title page to the required exhibits shall be included. At the discretion of the appraiser, additional pages may be included. The following pages required are:
1. **Before Acquisition Analysis:**
    - a. Title Page;
    - b. Table of Contents;
    - c. Letter of Transmittal;
    - d. Summary of Salient Facts and Conclusions;
    - e. Basis for Summary of Fair Market Value;
    - f. Title Data;
    - g. Discussion of the Appraisal Problem;
    - h. Photos of the Subject Property;
    - i. Neighborhood Data;
    - j. Site Data;
    - k. Statement of Highest and Best Use;
    - l. Comparable Land Sales and Listings Analysis;
    - m. Correlation and Indication of Land Value;
    - n. Improvements;
    - o. Floor Plan;
    - p. Cost Data Approach to Value;
    - q. Source and Justification of the Cost Approach;
    - r. Market Data Approach to Value;
    - s. Income Data Approach to Value;
    - t. Correlation of the Whole Property Value and Allocation of Value;
    - u. Required Right of Way;
  2. **After Acquisition Analysis;**
    - a. Site Data;
    - b. Statement of Highest and Best Use;
    - c. Comparable Land Sales and Listing Analysis;
    - d. Correlation and Indication of Land Value;
    - e. Improvements;

- f. Floor Plan;
- g. Cost Data Approach;
- h. Source and Justification of the Cost Approach;
- i. Market Data Approach to Value;
- j. Income Data Approach;
- k. Correlation of the After Value and Allocation of Value;
- l. Analysis of Other Considerations (Additional Compensation);
- m. Final Estimate of Value;
- n. Certificate of the Appraiser;
- o. Addenda;
  - i. Assumptions and Limiting Conditions;
  - ii. Vicinity, Strip and Remainder Maps;
  - iii. Property Inspection Report;
  - iv. Owner Notification Letter;
  - v. FIRM Maps;
  - vi. Comparable Sales and Maps;
  - vii. Zoning Maps (if applicable);
  - viii. Estimate of Compensation;
  - ix. Others at the discretion of the Appraiser and/or Review Appraiser.

## **FORM B**

- A. The form is designed as a complete, detailed appraisal of an entire ownership, including all land and improvements using all applicable approaches unless instructed to do otherwise by the project review appraiser. This format is utilized most often to value an ownership that will be totally within a require area.
- B. The following pages shall be required within the form. Other pages may be included at the discretion of the appraiser:
  - 1. Title Page;
  - 2. Table of Contents;
  - 3. Letter of Transmittal;
  - 4. Summary of Salient Facts and Conclusions;
  - 5. Basis for Summary of Fair Market Value;
  - 6. Title Data;
  - 7. Discussion of the Appraisal Problem;
  - 8. Photos of the Subject Property;
  - 9. Neighborhood Data;
  - 10. Site Data;
  - 11. Statement of Highest and Best Use;
  - 12. Comparable Land Sales and Listing Analysis;
  - 13. Correlation and Indication of Land Value;
  - 14. Improvements;

15. Floor Plan;
16. Market Data Approach to Value;
17. Income Data Approach to Value;
18. Cost Data Approach to Value;
19. Source and Justification of the Cost Approach;
20. Correlation of the Whole Property Value and Allocation of Value;
21. Required Right of Way;
22. Analysis of Other Considerations (Additional Compensation);
23. Final Estimate of Value;
24. Certificate of Appraiser;
25. Addenda:
  - a. Assumptions and Limiting Conditions;
  - b. Vicinity, Strip and Remainder Maps;
  - c. Property Inspection Reports;
  - d. Owner Notification Letter;
  - e. FIRM Maps;
  - f. Comparable Sales and Maps;
  - g. Zoning Maps (if applicable);
  - h. Estimate of Compensation;
  - i. Others at the discretion of the Appraiser and/or Review Appraiser.

## **FORM C**

- A. The form is designed to be used only on simple acquisitions. The form does not require detailed discussions of the items listed, but the determinations made by the appraiser must be conclusive and based upon market support.
- B. If during the appraisal assignment the appraiser finds that there are damages or benefits to the ownership by reason of the project, the appraiser is not to proceed with Form C but is to notify the project review appraiser. The review appraiser will then decide which form to utilize and will amend the appraisal contract to reflect those changes by format and fee schedule. Furthermore, when utilizing this form, it will be necessary for the appraiser to include the following statement within the body of the certificate:

“No damages or loss to the remainder of the Owner’s property resulted from this partial acquisition, therefore, pursuant to LA R.S. 48:453 B, no after appraisal is required.”

- C. The following pages are to be included within the report and may include others upon the discretion of the Appraiser:
  1. Title Page;
  2. Table of Contents;
  3. Letter of Transmittal;
  4. Summary of Salient Facts and Conclusions;

5. Basis for Summary of Fair Market Value;
  6. Title Data;
  7. Photos of the Subject Property;
  8. Neighborhood Data;
  9. Site Data;
  10. Statement of Highest and Best Use;
  11. Comparable Land Sales and Analysis;
  12. Correlation of Land Value;
  13. Required Right of Way;
  14. Certificate of the Appraiser;
  15. Addenda:
    - a. Assumptions and Limiting Conditions;
    - b. Vicinity, Strip and Remainder Maps;
    - c. Property Inspection Report;
    - d. Owner Notification Letter;
    - e. FIRM Maps;
    - f. Comparable Sales and Maps;
    - g. Zoning Maps (if applicable);
    - h. Estimate of Compensation;
    - i. Others at the discretion of the Appraiser and/or Review Appraiser.
- D. All of the above-described forms are guides for submittal of acceptable reports. The appraiser may develop his/her own form, within reason. However, the form developed must include the information and detail required above and should be of the same basic format.

**COMPENSATION ESTIMATES**

FORM 1

**State Project No.:** \_\_\_\_\_  
**F.A.P. No.:** \_\_\_\_\_  
**Highway:** \_\_\_\_\_  
**Route:** \_\_\_\_\_  
**Parish:** \_\_\_\_\_

In accordance with Section 24.102© of 49 CFR, I have administratively determined that appraisals are unnecessary on the parcels listed below, since the valuation problem is complicated and the compensation estimate and recommended offer is estimated at \$10,000 or less. I have based this administrative determination on my review of the project right of way maps, construction plans, and the project right of way cost estimate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**RIGHT OF WAY MANAGER**

\_\_\_\_\_  
**DATE**

**COMPENSATION ESTIMATE**

FORM 2

State Project No: \_\_\_\_\_

Parcel No: \_\_\_\_\_

F.A.P. Number: \_\_\_\_\_

Owner: \_\_\_\_\_

Highway: \_\_\_\_\_

Route: \_\_\_\_\_

Acquisition:  Total

Parish: \_\_\_\_\_

Partial

Land: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Improvements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Damages: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TOTAL JUST COMPENSATION AND RECOMMENDED OFFER**

**\$ -**

**REMARKS**

\_\_\_\_\_

I hereby certify that the Compensation Estimates as I have set out above are supported by project cost estimates which are documented in the Department's Right of Way files, which includes sales and/or other information in the project area.

\_\_\_\_\_  
RIGHT OF WAY AGENT

\_\_\_\_\_  
DATE

**JUST COMPENSATION OFFER**

Date

Caption

Addressee

Subject: Parcel No(s) \_\_\_\_\_

Owner(s) Name(s) \_\_\_\_\_

Dear \_\_\_\_\_

Project No. \_\_\_\_\_ has been programmed for construction and the property rights bearing Parcel No(s).\_\_\_\_\_ shown on the project right of way plans are required for construction of the project.

The plans for the project were approved by the Louisiana Department of Transportation and Development in accordance with public announcements. The property rights comprising Parcel No(s). \_\_\_\_\_ have been valued according to established procedures consistent with legal requirements, and the Just Compensation for the Parcel(s) has been determined to be \$ \_\_\_\_\_.

*Name of LPA* does hereby make a firm offer of \$\_\_\_\_\_ for the purchase of all interest in parcel(s)\_\_\_\_\_, free and clear of all mortgages, judgments, liens or other encumbrances, including payment of pro-rata taxes, if applicable. It is the responsibility of the property owner to clear any mortgages, judgments, liens or other encumbrances. The summary of the offer is attached.

(IF MORE THAN ONE JUST COMPENSATION OFFER LETTER IS BEING PREPARED FOR THE SAME PARCEL(S), (undivided interest owners), THE FOLLOWING PARAGRAPH SHOULD BE INCLUDED):

A search of the conveyance records of \_\_\_\_\_ Parish, Louisiana, indicates that you are entitled to \_\_\_\_\_ of the total offer, and your interest amounts to \$\_\_\_\_\_.

(IF AN UNECONOMIC REMAINDER OFFER WILL BE PRESENTED TO THE OWNER, THE FOLLOWING PARAGRAPH SHOULD BE INCLUDED):

Should you consider the \_\_\_\_\_ remainder of your property to be an uneconomic remnant, the Department does hereby offer to purchase all interests in said remainder, together with the required parcel(s) for a total of \$\_\_\_\_\_.

(IF AN ADVERSELY IMPACTED OFFER WILL BE PRESENTED TO THE OWNER, THE FOLLOWING PARAGRAPH SHOULD BE INCLUDED):

Should you feel that your improvement is adversely impacted by the taking and wish to sell the improvement to the *Name of LPA*, we offer to purchase the improvement together with the required land for a total of \$\_\_\_\_\_.

(IF THE REQUIRED PROPERTY IS SUBJECT TO AN ORAL OR WRITTEN LEASE, THE FOLLOWING PARAGRAPH SHOULD BE INCLUDED):

Our information indicates that the referenced property is subject to an oral or written lease, and the amount of money specified herein represents the total payment to both lessor and lessee, and is apportioned as follows:

Payment to lessor/owner \$\_\_\_\_\_  
Payment to lessee \$\_\_\_\_\_  
Total \$\_\_\_\_\_

If the above apportionment is not agreeable to both lessor and lessee, and if lessor and lessee cannot resolve their differences, we will expropriate the interest not acquired.

The procedure for determining Just Compensation includes gathering market data in the general area of the project and is based on a Compensation Estimate of value, or one or more appraisals made by qualified and competent Appraisers. Generally, any fencing and/or driveways which you presently have will be replaced during construction. If applicable, the exact location of these items will be discussed with you by the Department's representatives who meet with you. Our representatives who meet with you will freely discuss with you any questions you have concerning the project requirements. For any commitments and/or agreements to be considered as valid and binding upon the Department, such commitments and/or agreements must be set forth in writing.

Should the proposal not be acceptable, the *Name of LPA* will have no alternative other than to acquire the property rights through expropriation in accordance with applicable State law.

Yours very truly,

\_\_\_\_\_  
(name and title)

*(THE FOLLOWING CERTIFICATION BELOW GOES ON THE COPIES ONLY – NOT ON THE ORIGINAL GOING TO THE OWNER)*

This is to certify that I have this day delivered to the addressee the original of this letter together with the Louisiana Department of Transportation and Development's Brochure "Acquisition of Right of Way and Relocation Assistance."

\_\_\_\_\_  
(name and title)

\_\_\_\_\_  
(date)

\*FOR FULL OWNERSHIP, RIGHT OF WAY DEED, OR ACCESS RIGHTS:

"the purchase of all interests in Parcel No(s). \_\_\_\_\_ free and clear of all mortgages, judgments, liens or other encumbrances, including payment of pro-rata taxes, if applicable"

\*FOR SERVITUDE OF DRAIN:

"the use of Parcel No(s). \_\_\_\_\_ on a permanent basis for drainage purposes"

\*FOR CONSTRUCTION SERVITUDE:

"the use of Parcel No(s). \_\_\_\_\_ on a rental basis during construction of the project"

**SUMMARY OF JUST COMPENSATION**

STATE PROJECT NO. \_\_\_\_\_  
PARCEL NO. \_\_\_\_\_

VALUE OF PARCEL TAKEN \$ \_\_\_\_\_  
DAMAGES \$ \_\_\_\_\_  
TOTAL AMOUNT OF OFFER \$ \_\_\_\_\_

**LAND:**

Parcel No.	Area	Interest Acquired
_____	_____	Full ownership, less mineral rights*
_____	_____	Full ownership, less mineral rights

**IMPROVEMENTS:**

1. The following items are considered as real property and are included in the above value:  _____	2. The following items are considered as personal property and are <u>not</u> included in the above value:  _____	3. The following items of real property are located outside the required R/W and are <u>not</u> included in the above value:  _____	4. The following items are owned by others and are <u>not</u> included in the above value:  _____
--	---	---	---

**REMARKS:**

**NOTES:**

The amount of the offer as shown above:

1. is based on the just compensation for the property,
2. is the approved value of the property, and
3. disregards any decrease or increase in the value of the property caused by the project for which the property is being acquired.

\*OR Construction Servitude, OR Drainage Servitude, OR Permanent Servitude, OR Access Rights

**RIGHT OF WAY DEED**

STATE PROJECT NO. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PARCEL NO(S). \_\_\_\_\_

STATE OF LOUISIANA:

PARISH OF \_\_\_\_\_:

BE IT KNOWN, \_\_\_\_\_ (Insert S.S. NO. OR FEDERAL I.D. NO. after name), being hereinafter referred to as "Grantor", in consideration of the benefits, uses and advantages accruing to Grantor by reason of the location of the \_\_\_\_\_ (complete caption) \_\_\_\_\_, and for and upon such other terms and conditions or considerations hereinafter expressed does hereby grant, transfer, assign, set over and deliver unto the (*Name of LPA*), herein represented by (*Name of Authorized Official*), accepting and acknowledging delivery and possession for (*Name of LPA*) all and singular a right of way on, over and across the following described property, to-wit:

**DESCRIPTION**

\_\_\_\_\_ (\_\_\_\_) permanent servitude(s) on, over and across \_\_\_\_\_ (\_\_\_\_) certain tract(s) or parcel(s) of land, together with all the improvements situated thereon, \_\_\_\_\_\* \_\_\_\_\_, situated in Section(s) \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, \_\_\_\_\_\*\* \_\_\_\_\_ Parish, Louisiana, identified as PARCEL NO(S). \_\_\_\_\_ as shown on Sheet No(s). \_\_\_\_\_ of the property map for STATE PROJECT NO. \_\_\_\_\_, \_\_\_\_\_ (Complete Caption) \_\_\_\_\_, LOUISIANA, prepared by

\_\_\_\_\_(Name and Title)\_\_\_\_\_, dated \_\_\_\_\_(Revision date also)\_\_\_\_\_, said map being attached hereto and made a part hereof, which property is more particularly described as follows:

\*THIS BLANK WILL BE MUNICIPAL ADDRESS, LOT NUMBER, BLOCK NUMBER, OR OTHER KNOWN SUBDIVISION REFERENCES.

\*\*THIS BLANK WILL REFER TO THE LAND DISTRICT (SUCH AS "GREENSBURG LAND DISTRICT") IF SUCH REFERENCE IS GIVEN ON THE RIGHT OF WAY MAP, AS WELL AS THE PARISH IN WHICH THE PROPERTY IS LOCATED.

**CONSIDERATION PAGE FOR RIGHT OF WAY DEED**

It is expressly understood that this grant and transfer of the above described right of way is made solely for the construction and maintenance of the said transportation improvement and for such other purposes as may be authorized by the laws of the State of Louisiana, and is a conveyance of a servitude across the lands hereinabove described and not a conveyance of the full ownership thereto, and the Grantor by these presents especially does not transfer any right to oil and gas minerals lying beneath the area herein subjected to said servitude for right of way purposes; it being specifically understood, however, that while no exploration, drilling nor mining of oil or gas minerals of any kind shall be conducted upon the area covered by said servitude of right of way, there may be directional drilling from adjacent lands to extract the oil or gas minerals from under the area subject to said servitude.

It is understood and agreed that, in the construction and maintenance of said highway improvement, (*Name of LPA*) may move to or remove from the property herein described earth or other material in accordance with usual construction and maintenance practices.

Grantor acknowledges and agrees that the consideration provided herein constitutes full and final settlement for the right of way herein granted and for any and all diminution in the value of Grantor's remaining property as a result of the granting of this right of way for transportation purposes.

- CLAUSE FOR INSERTION IN CONSIDERATION PAGE IF MONETARY CONSIDERATION IS BEING PAID FOR RIGHT OF WAY

This grant and transfer is made for and in consideration of the price and sum of \_\_\_\_\_(\$\_\_\_\_\_ ) DOLLARS, which price the Department hereby binds and

obligates itself to pay to Grantor upon the approval by (*Name of LPA*) of Grantor's good and unencumbered title to the hereinabove described property.

- CLAUSE FOR INSERTION IN CONSIDERATION PAGE OF ALL DONATION RIGHT OF WAY DEEDS

It is expressly agreed and understood that Grantor has been afforded the right and opportunity to receive just compensation for the aforementioned property, and that Grantor has elected to forego, waive and extinguish such right and opportunity in favor of donation to the (*Name of LPA*).

- CLAUSE FOR INSERTION IN CONSIDERATION PAGE OF ALL DONATION RIGHT OF WAY DEEDS WHERE DOTD IS ATTEMPTING TO SECURE DONATIONS OF ALL REQUIRED RIGHT OF WAY

It is expressly and specifically agreed by and between all parties to this donation of right of way that, while the (*Name of LPA*) will attempt to secure donations of all needed right of way for the It is expressly and specifically agreed by and between all parties to this donation of right of way that, while the (*Name of LPA*) will attempt to secure donations of all needed right of way for the proposed transportation improvement, if it finds it necessary to buy any portion of the right of way, such fact will not be available to any donor herein to revoke this donation or otherwise to change the conditions hereof.

#### **CONSIDERATION PAGE FOR RIGHT OF WAY DEED**

CLAUSES FOR INSERTION IN PROPERTY DESCRIPTION OF SALE OR RIGHT OF WAY DEED IF THERE ARE CONSTRUCTION SERVITUDE PARCELS

Concomitant with the sale and transfer of the hereinabove described property, Vendor does also grant unto (*Name of LPA*) temporary construction servitude on, over and across Vendor's property to accommodate construction of the said State Project No. and which temporary construction servitude(s) (*IS OR ARE*) described as follows:

It is understood and agreed by all parties that the (*Name of LPA's*) rights to the use of the above-described temporary construction servitudes) shall terminate upon the date of completion and final acceptance of State Project No. and the property traversed thereby shall be left free of construction scars.

CLAUSES FOR INSERTION IN PROPERTY DESCRIPTION OF SALE OR RIGHT OF WAY DEED IF THERE ARE DRAINAGE SERVITUDE PARCELS

Also included in this present sale and conveyance (*IS OR ARE*) drainage servitudes) on, over and across vendor's property to accommodate proper drainage for said

State Project No. and which drainage servitude(s) *(IS OR ARE)* described as follows:

The earth material excavated from said drainage servitude shall be used in the construction of the highway embankment or disposed of as directed by the *(Name of LPA)*.

STATE PROJECT NO.  
PARCEL NO(S).

**S A L E**

STATE OF LOUISIANA:  
PARISH OF :

For the price and on the terms and conditions hereinafter set forth, \_\_\_\_\_, being hereinafter sometimes referred to as the "Vendor", have bargained and sold and do hereby grant, bargain, sell, transfer, assign, set over, convey and deliver under all lawful warranties and with substitution and subrogation to all of my rights and actions of warranty, unto the *LPA Name* herein represented by *Name of Authorized Official of LPA Name*, who accepts this sale on behalf of the *LPA Name*, the following described property, situated in the Parish of , Louisiana, to-wit:

**D E S C R I P T I O N**

() certain tract(s) or parcel(s) of land, together with all the improvements situated thereon, and all of the rights, ways, privileges, servitudes and advantages thereunto belonging or in anywise appertaining, , situated in Section(s) Township , Range , Parish, Louisiana, identified as PARCEL NO(S). as shown on Sheet No(s). of the property map for STATE PROJECT NO. \_\_\_\_\_, LOUISIANA, prepared by, dated, said map being attached hereto and made a part hereof, which property is more particularly described as follows:

PARCEL NO.

• **TEMPORARY SERVITUDE**

Concomitant with the sale and transfer of the hereinabove described property, Vendor does also grant unto the LPA () temporary construction servitude(s) on, over and across Vendor's property to accommodate construction of the said State Project No. , and which temporary construction servitude(s) described as follows:

\_\_\_\_\_

It is understood and agreed by all parties that the LPA's rights to the use of the above described temporary construction servitude(s) shall terminate upon the date of completion and final acceptance of State Project No. , and the property traversed thereby shall be left free of construction scars.

- **DRAINAGE SERVITUDE PARCELS**

Also included in this present sale and conveyance, ( ) drainage servitude(s) on, over, and across Vendor's property to accommodate proper drainage for said State Project No. \_\_\_\_\_, and which drainage servitude(s) described as follows:

\_\_\_\_\_

The earth material excavated from said drainage servitude(s) shall be used in the construction of the highway embankment or disposed of as directed by the LPA.

- **UNECONOMIC REMAINDER PARCEL(S)**

And also the (northerly, southerly, easterly, westerly) remainder of Vendor's property which has been determined to be uneconomic to the owner and which, for the purpose of property identification, is assigned the parcel No. UR ( ) (which is not so identified on the right of way plans) and such remainder being described as:

\_\_\_\_\_

*Property description should describe total taking as described in title, less and except required right of way parcel.*

This sale and conveyance is made for and in consideration of the price and sum of DOLLARS, which price the LPA hereby binds and obligates itself to pay to Vendor upon the approval by the LPA of Vendor's good and unencumbered title to the hereinabove described property.

Vendor acknowledges and agrees that the consideration provided herein constitutes full and final payment for the property hereby conveyed and for any and all diminution in the value of the Vendor's remaining property as a result of the transfer of this property for highway purposes.

The consideration recited herein represents full and final settlement of all claims of any kind to the full extent of the Vendor's loss, except relocation assistance claims where applicable, and specifically represents a compromise by all parties to avoid formal expropriation proceedings and the added expenses of litigation.

All ad valorem taxes assessed against the above-described property for the four (4) years immediately preceding the current year have been paid. Taxes for the current year will be prorated in accordance with the provisions of Act No. 123 of the Legislature of the State of Louisiana for the year 1954.

It is understood and agreed that Vendor reserves unto himself, his heirs and assigns, all oil and gas minerals beneath the area hereinabove described, it is specifically understood, however that while no exploration, drilling, nor mining of oil or gas minerals of any kind shall be conducted upon said area, there may be directional drilling from adjacent lands to extract the oil or gas minerals from said area.

**OPTIONAL CLAUSES FOR USE IN CONSIDERATION PAGES**  
**Insert on previous page after oil and mineral reservation paragraph**

• **CLAUSE IF PROJECT IS A CONTROLLED ACCESS FACILITY**

The Vendor acknowledges by these presents that the property hereinabove described is being acquired for the purpose of constructing a controlled access facility and that all direct access to said facility from Vendor's remaining property and from said facility to Vendor's remaining property will be limited to such access as may be provided by frontage roads, if any are constructed, and this provision shall be and remain binding upon the said Vendor, his heirs, successors and assigns forever.

• **CLAUSE IF PARCEL IS FOR SIGHT CLEARANCE PURPOSES**

The Vendor acknowledges by these presents that a portion or portions of the hereinabove described property is being acquired for sight clearance purposes and that no direct access shall be permitted to and from the adjacent property across that portion or portions of property designated for sight clearance purposes on the construction plans for said project, and this provision shall be binding upon the said Vendor, his heirs, successors, and assigns forever.

• **CLAUSE FOR USE IF THERE ARE CONSTRUCTION SERVITUDE PARCELS**

The temporary construction servitude(s) hereby granted shall be for a term of () years at DOLLARS per year and shall commence upon the date a Work Order is issued to the contractor, for construction of the respective construction project for which the servitude(s) required. Should the above-recited term not be sufficient to complete construction activities, the Vendor grants to the LPA the option to extend the servitude(s) for an additional () year(s) at the same terms, conditions and rental as herein specified. This extension shall be automatic and without additional compensation unless Vendor notifies the LPA.

• **CLAUSES FOR USE IF THERE ARE IMPROVEMENTS IN THE TAKING**

There is specifically included in this present sale and conveyance all of the improvements situated wholly or partially on the hereinabove described property, including but not necessarily restricted to Vendor's together with the appurtenances thereto.

There is specifically included in the above-recited consideration the value of all merchantable timber located on the hereinabove described property.

There is specifically included in the above-recited consideration the value of all lignite coal located below the hereinabove described property.

- **CLAUSES FOR REPLACING FENCES, DRIVEWAYS, CATTLE GUARDS, ETC.**

The LPA shall construct approach(es) within the limits of the property herein conveyed, from the roadway to the Vendor's remaining property to the of the centerline opposite approximate Highway Survey Station(s) \_\_\_\_\_.

The LPA shall construct a new standard fence along the limits of the property herein conveyed to the \_\_\_\_\_ of the centerline between approximate Highway Survey Station \_\_\_\_\_ and approximate Highway Survey Station \_\_\_\_\_.

The LPA shall remove Vendor's fence from within the limits of the property herein conveyed, and shall rebuild same along the limits of said property, to the of the centerline between approximate Highway Survey Station \_\_\_\_\_ and approximate Highway Survey Station \_\_\_\_\_.

The LPA shall construct a new cattle guard on the limits of the property herein conveyed, to the \_\_\_\_\_ of the centerline opposite approximate Highway Survey Station(s) \_\_\_\_\_.

The LPA shall remove the cattle guard from within the limits of the property herein conveyed, and shall relocate said cattle guard along the limits of said property, to the of the centerline opposite approximate Highway Survey Station(s) , and shall use whatever new material necessary, of the same kind and character of said existing cattle guard, to leave said cattle guard after relocating in as good or better condition than now exists.

The LPA is hereby authorized to enter upon Vendor's property beyond the limits of the property herein conveyed for the purpose of constructing adjacent to and immediately adjoining the limits of the herein conveyed property to the of the centerline between approximate Highway Survey Station and approximate Highway Survey Station to replace Vendor's existing absorbed within the limits of said property.

- **CLAUSE FOR SUGARCANE IN RIGHT OF WAY**

The LPA hereby binds and obligates itself to pay Vendor and/or Intervener by separate Sugar Cane Agreement for the loss of that portion of Vendor's existing sugar cane crop destroyed during highway construction within the limits of the property herein conveyed and also within areas to be utilized for the construction of new headlands on the basis of the appraised value of . It is agreed however, that should construction not commence for a length of time sufficient to allow harvesting of the final crop and should Vendor herein elect to replant the area with plant cane, no payment will be made for such plant cane or any of its succeeding crops. It is also understood that Vendor herein shall be permitted to continue use of the property herein conveyed for the limited purpose of growing the existing crop or any

of its succeeding yields, including the use of the headlands until the LPA requires the property herein conveyed for actual construction of the highway project, but it is expressly understood that the LPA in no way warrants or insures the fitness of the property and in no way assumes responsibility for any acts performed thereon.

• **CLAUSE FOR IRRIGATION SYSTEMS IN RIGHT OF WAY**

The LPA agrees not to disturb Vendor's irrigation systems during the period between March 1<sup>st</sup> and October 15 of any year to the extent of interfering with the proper operation of the systems, and should the LPA deem it necessary to effect, during said period, the relocation and/or alteration of Vendor's irrigation facilities, LPA binds and obligates itself unto Vendor to provide at LPA's expense, an alternate or temporary adequate and proper provision for the continued and uninterrupted operation of said facilities during such relocation and/or alteration; it being understood and agreed that such alternate or temporary method shall not be undertaken by the LPA, its Agents, Employees and/or Contractors without first having obtained Vendor's approval of the method of so providing for the continued and uninterrupted operation of said irrigation system.

- **CLAUSE IF VENDOR WILL RETAIN A MINOR IMPROVEMENT. *(If the improvement being retained is major (residence, building, etc.), use the "RETENTION CONSIDERATION PAGE FOR ACT OF SALE".)***

As part of the consideration above recited Vendor agree(s) to retain, remove and relocate the outside the required right of way and to relieve, release and hold harmless the LPA from any liability in connection therewith; said to be removed within thirty (30) days from the date hereof and failure to so remove same within thirty (30) days will result in the becoming the property of the LPA, to be demolished, removed or relocated at the LPA's election without any liability to Vendor therefore.

• **CLAUSE FOR SIGN OWNED BY OTHER THAN VENDOR**

Vendor declares that located wholly or partially on the hereinabove described property is a sign described as follows:

SIZE	STYLE	LEGEND
_____	_____	_____

Vendor does hereby declare that he is not the owner of the said sign, claims no ownership rights thereto, and declares the said sign is owned by \_\_\_\_\_.

• **CLAUSE FOR ADVERSELY IMPACTED IMPROVEMENT PURCHASED WITHOUT PURCHASING THE LAND ON WHICH IT IS LOCATED**

Also included in this present sale and conveyance is the located on the remainder of the hereinabove described Parcel No., which improvement has been determined to

be adversely impacted by the project. The LPA, its agents, engineers, successors and assigns are hereby authorized to enter upon Vendor's remainder property beyond the limits of the property herein conveyed for the purpose of removing said improvement.

- **CLAUSE FOR ALLOWING DOTD TO ENTER REMAINDER IF PART OF IMPROVEMENT IS ON REMAINDER**

The LPA, its agents, engineers, successors, and assigns are hereby authorized to enter upon Vendor's remainder property beyond the limits of the property herein conveyed for the purpose of removing that portion of the which lies on said remainder.

- **CLAUSE IF THERE ARE UNDERGROUND STORAGE TANKS IN THE TAKING**

Vendor, in further consideration of the above amount recited in this document, hereby agrees to hold the LPA harmless for any costs, expenses or attorney fees in the event of the necessity of any further removal of underground storage tank(s) not acquired by the LPA in this document, and for any future removal of hazardous and/or harmful waste from the property herein acquired by the LPA, and further understands that no reduction in the consideration for this Act of Transfer has been made in anticipation of the cleaning or removal of hazardous and/or harmful waste from the property subject of this sale.

- **CLAUSES FOR USE IF A PORTION OF THE CONSIDERATION IS FOR DAMAGES**

The parties hereto do hereby acknowledge and declare that of the aforesaid price and sum of DOLLARS, the amount of DOLLARS constitutes full and final payment for any and all damage to and diminution in value of Vendor's remaining property as a result of the taking of the property hereby conveyed and the construction of the transportation improvement thereon.

- **CLAUSE FOR COST TO CURE FOR ITEMS OUTSIDE RIGHT OF WAY**

The parties hereto do hereby acknowledge and declare that of the aforesaid price and sum of DOLLARS, the amount of DOLLARS constitutes full and final payment for labor and materials to and for any and all damage to and diminution in value of Vendor's remaining property as a result of the taking of the property hereby conveyed and the construction of the highway improvement thereon.

- **CLAUSE FOR COST TO CURE WHERE PART OF IMPROVEMENT IS LOCATED WITHIN THE RIGHT OF WAY**

The parties hereto do hereby acknowledge and declare that of the aforesaid price and sum of DOLLARS, the amount of DOLLARS constitutes full and final payment for labor and materials to \_\_\_\_\_. The removal of the \_\_\_\_\_ by Vendor shall be completed within ( ) days from receipt of payment of the above recited consideration. Failure of Vendor to so remove said \_\_\_\_\_ within the aforesaid period of time will result in the LPA removing said \_\_\_\_\_ in any manner deemed expedient, without recourse to Vendor even as to salvage. Further, in the event of such failure, Vendor hereby agrees and grants the LPA the right to enter on the remainder of the property herein conveyed for the purposes of said removal, and Vendor shall be liable unto the LPA for any and all costs incurred by the LPA in connection therewith.

- **CLAUSES FOR USE IF THERE ARE INTERVENORS**

NOW UNTO THESE PRESENTS comes, \_\_\_\_\_ a Corporation, duly authorized to do business in the State of Louisiana, represented herein by \_\_\_\_\_ its, \_\_\_\_\_ duly authorized to act herein by virtue of a Resolution dated \_\_\_\_\_, a copy of, which is attached hereto and made a part hereof, \_\_\_\_\_ appearing herein by virtue of Lease recorded \_\_\_\_\_, in \_\_\_\_\_ of the official records of Parish, Louisiana, who declares that said corporation does hereby accept, ratify, and affirm this sale and conveyance in all of its terms and conditions.

NOW UNTO THESE PRESENTS comes, \_\_\_\_\_ appearing herein by virtue of \_\_\_\_\_ who declares that \_\_\_\_\_ does hereby accept, ratify, and affirm this sale and conveyance in all of its terms and conditions.

- **CLAUSE IF ENTIRE CONSIDERATION BEING PAID TO VENDOR**

Intervener herein does hereby authorize the LPA to pay over unto the said Vendor the consideration as herein stipulated.

- **CLAUSE IF CONSIDERATION BEING PAID TO PERSON HAVING USUFRUCT**

The parties hereto agree and authorize the LPA to pay over unto \_\_\_\_\_ the consideration as herein stipulated in accordance with the right of usufruct obtained in \_\_\_\_\_ recorded \_\_\_\_\_, in \_\_\_\_\_ of the official records of Parish, Louisiana.

- **CLAUSE IF PART OF CONSIDERATION WILL BE PAID TO VENDOR, AND PART TO INTERVENOR**

It is understood and agreed by and between the parties hereto that of the above recited consideration of \_\_\_\_\_ DOLLARS, the amount of DOLLARS will be made

payable to Vendor; and the amount of DOLLARS will be made payable to as full and final payment for the located on Parcel No(s).

## **DONATION CLAUSE**

It is expressly agreed and understand that Grantor has been afforded the right and opportunity to have this property appraised and has been afforded the right and opportunity to receive just compensation for such property, and that Grantor has elected to forego, waive and extinguish such rights and opportunities in favor of this donation to the LPA.

### **• RETENTION CONSIDERATION PAGE FOR ACT OF SALE**

This sale and conveyance is made for and in consideration of the price and sum of DOLLARS, which price LPA hereby binds and obligates itself to pay to the Vendor upon the approval by LPA of Vendor's good and unencumbered title to the hereinabove described property.

The Vendor acknowledges and agrees that the consideration provided herein constitutes full and final payment for the property hereby conveyed and for any and all diminution in the value of Vendor's remaining property as a result of the transfer of this property for transportation purposes.

There is specifically included in this present sale and conveyance all of the improvements situated wholly or partially on the hereinabove described property, including but not necessarily restricted to Vendor's and all appurtenances thereto.

It is understood and agreed that of the above described improvements the Vendor shall retain the following:, and as a part of the consideration of said retention, the Vendor hereby binds and obligates himself to furnish all labor and materials and to remove to ground level all improvements and appurtenances retained by Vendor from the property herein conveyed within thirty (30) days after receipt of the consideration hereinabove stated. In the event the improvements are tenant occupied the Vendor, and Vendor's successors, heirs and assigns shall not require the tenant-occupant to vacate until authorized to do so by the LPA.

Upon failure of the Vendor to effect the removal of these improvements and appurtenances within the said period of time, the improvements and appurtenances shall become the property of the LPA to be disposed of as directed by the LPA, without recourse to the Vendor even as to salvage, and the Vendor shall become and remain liable unto the LPA for any and all costs incurred by the LPA in connection with such disposal.

The Vendor shall remove each item, including all appurtenances, down to ground level. Concrete slabs and other foundation material below ground level may be left in place. The removal shall include all wiring, plumbing and accessories above the

ground which are attached to or a part of a building; all sheds; garages; outhouses; and other appurtenances; except that while fences, shrubs, plants and other growth are classified as accessories, their removal shall be optional. After removal, the site shall be left in a condition satisfactory to the LPA.

The Vendor shall observe all rules and regulations of the State Board of Health, and of all local health officials, and must take such precautions as are necessary to avoid unhealthy conditions.

The Vendor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful removal of the buildings and appurtenances.

The Vendor shall save harmless the LPA and all its representatives from all suits, actions, or claim of any character brought on account of any damages sustained by any person or property in consequence of any neglect in safeguarding the work.

The Vendor shall be responsible for the preservation of all public and private property, trees, monuments, etc., along and adjacent to the right of way on which the buildings and appurtenances are located and shall use every precaution to prevent damage or injury thereto. He shall use suitable precaution necessary to protect carefully from disturbances or damage all land monuments and property or right of way markers until an authorized agent has witnessed, or otherwise referenced, their locations, and shall not remove them until directed. The Vendor shall not injure or destroy trees or shrubs nor remove or cut them without proper authority.

The Vendor shall be responsible for any damage done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or on account of defective work or material, and he shall restore at his own expense, such property to a condition similar or equal to that existing before damage was done, by repairing, rebuilding, or otherwise restoring same, or he shall make good such damage or injury in an acceptable manner.

Upon the failure of the Vendor to remove all debris from the site after the removal of the said improvements and appurtenances, the LPA is hereby authorized to remove the debris and leave the site in a sightly condition in any manner deemed expedient by the LPA, and the Vendor shall become and remain liable unto the LPA for any and all costs incurred by the LPA in connection with the removal of said debris.

It is understood and agreed that Vendor reserves unto himself, his heirs and assigns, all oil and gas minerals beneath the area hereinabove described; it is specifically understood, however, that while no exploration, drilling, nor mining of oil or gas minerals of any kind shall be conducted upon said area, there may be directional drilling from adjacent lands to extract the oil or gas minerals from under said area.

All ad valorem taxes assessed against the above described property for the four (4) years immediately preceding the current year have been paid. Taxes for the current year will be prorated in accordance with the provisions of Act No. 123 of the Legislature of the State of Louisiana for the year 1954.

**ANY OPTIONAL CLAUSES FROM THE REGULAR CONSIDERATION PAGE MUST  
BE ADDED TO THE RETENTION CONSIDERATION PAGE**

**SIGNATURE PAGE**

IN TESTIMONY WHEREOF, the parties hereto have signed and executed and acknowledged this instrument as their free and voluntary acts, in triplicate originals in the presence of the undersigned competent witnesses, as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_  
NAME OF VENDOR OR GRANTOR

\_\_\_\_\_

\_\_\_\_\_  
(NAME OF LPA)

BY: \_\_\_\_\_

\_\_\_\_\_

AFFIDAVIT

STATE OF LOUISIANA  
PARISH OF

BEFORE ME, the undersigned authority this day personally appeared \_\_\_\_\_, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as an attesting witness, who being first duly sworn on his/her oath, says: That he/she subscribed his/her name to the foregoing instrument as a witness, and that he/she knows \_\_\_\_\_, who executed the same and saw \_\_\_\_\_ (him/her/they) sign the same as \_\_\_\_\_ (his/her/their) voluntary act and deed, and that he/she, the said \_\_\_\_\_, subscribed his/her name to the same at the same time as an attesting witness.

\_\_\_\_\_  
AFFIANT

SWORN TO and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**Project Caption:**

**Parcel(s) No.:**

**Owner:**

**DONATION CERTIFICATION**

I have been informed of the acquisition process and hereby certify I waive the following right(s) in connection with the acquisition of my property for the captioned project:

Check the boxes which apply:

- To have the acquiring agency appraise my property.
- To receive payment of the established Just Compensation Amount for the acquisition of said property.

\_\_\_\_\_  
Owner Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Witness**

**RIGHT OF WAY PROJECT CERTIFICATION**

**Project Caption**

RIGHT OF WAY ADMINISTRATOR

ATTENTION:

Re: Right of Way Project Certification

In accordance with the provisions of Titles 23 and 49 CFR, I certify the following:

**Acquisition**

All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession and the acquisition was in compliance with current FHWA directives covering the acquisition of real property. Trial or appeal cases may be pending in court but legal possession has been obtained.

*(Any exceptions must be explained.)*

**Relocation**

All relocations required for this project have been completed in accordance with FHWA directives covering the Relocation Assistance Program, all occupants have vacated the lands and improvements and all relocation payments have been made.

*(Any exceptions must be explained.)*

OR

There were no displacees resulting from this project.

**Improvement Clearance**

All improvements have been cleared for this project, with the following exceptions:

*(Itemization of remaining improvements and method of disposition.)*

OR

There were no improvements to be cleared for this project.

**Uneconomic Remainders**

Following is a list of all uneconomic remainders acquired on this project:

Parcel No. Area Acquisition Price

OR

No uneconomic remainders were acquired for this project.

\_\_\_\_\_  
LPA Official

\_\_\_\_\_  
DATE

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
RIGHT OF WAY REGIONAL MANAGER

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
RIGHT OF WAY AGENT

APPROVED:

\_\_\_\_\_  
RIGHT OF WAY ADMINISTRATOR



BOBBY JINDAL  
GOVERNOR

STATE OF LOUISIANA  
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

P. O. Box 94245  
Baton Rouge, Louisiana 70804-9245  
www.dotd.la.gov



SHERRI H. LEBAS, P.E.  
SECRETARY

RE: Legal Opinion Concerning Appraisal  
Waivers  
(Opinion No. 2011-OP-02,  
DOTD Office of the General Counsel)

Dear (Local Public Agency):

Federal regulations at 49 CFR Part 24, Section 102 allow for “appraisal waivers” when the valuation problem (to value rights-of-way for highway projects) is “uncomplicated” and the “anticipated value of the proposed acquisition is estimated at \$10,000.00 or less, based on a review of available data”. The Federal Highway Administration (FHWA) is in the process of making the determination on a state-by-state basis whether appraisal waivers are legal in the respective state, and if so, are the appraisal waivers practical and likely to save money. FHWA requested DOTD’s Right-of-Way and Legal Sections review and research this issue and advise whether Louisiana law would allow the use of appraisal waivers by the State of Louisiana and its political subdivisions.

Enclosed please find a Legal Opinion, dated March 17, 2011, from Mr. Brandon Brown, General Counsel of DOTD. This opinion states that based on Louisiana statutory and Constitutional provisions, the State of Louisiana and its political subdivisions **may not** utilize “appraisal waivers” in acquisitions of rights-of-way (by sale or expropriation) for highway projects. The opinion goes on to state the State of Louisiana and its political subdivisions **may** use the appraisal waiver process when the property owner donates the property and gives informed consent to waive the appraisal and compensation requirements.

Please read and be guided by the prohibitions of this opinion.

Another issue is addressed but not decided by the opinion is whether there is a conflict between L.R.S. 33:4712.10 and other statutory or Constitutional law, in that it requires political subdivisions to obtain appraisals for purchases of all immovable property with a value greater than \$3,000.00. It appears there may be a conflict, which will require Legislative action to resolve. Once this situation is clarified by the Louisiana Legislature, we will advise you on the clarification.

If you have any questions, please feel free to contact me.

Sincerely,

Lloyd P. Scallan  
Right-of-Way Administrator



IN REPLY REFER TO  
FILE NO.

**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**INTRADEPARTMENTAL CORRESPONDENCE**

REFERRED TO

- \_\_\_\_\_ REFERRED FOR ACTION
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- \_\_\_\_\_ FOR FILE
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**MEMORANDUM**

BY \_\_\_\_\_ DATE \_\_\_\_\_  
 BY \_\_\_\_\_ DATE \_\_\_\_\_  
 BY \_\_\_\_\_ DATE \_\_\_\_\_

**DATE:** March 17, 2011

**TO:** Lloyd P. Scallan  
Right of Way Administrator

**FROM:** Brandon Brown  
General Counsel *CBS*

**RE:** Request for Legal Opinion concerning:

- (1) The prohibitions, if any, under Louisiana Law, to the use of "Appraisal Waivers" by the state or its political subdivisions when acquiring rights of way for Federally funded highway projects; and
- (2) The conflict, if any, between L.R.S. 33:4712.10 and other Louisiana Statutes or the Constitution (Opinion No. 2011-OP-02)

My office is in receipt of your request for an opinion as to: (1) whether there are any statutory or Constitutional prohibitions in Louisiana law to the use of "appraisal waivers" by the State or its political subdivisions when acquiring rights of way for federally funded highway projects; and (2) whether there is conflict between L.R.S. 33:4712.10 and other Louisiana statutes or the Constitution.

My appreciation for the facts and circumstances surrounding your request are as follows: 49 CFR Part 24, Section 102 allows for "appraisal waivers" when: the owner is donating the property and releases the acquiring agency from its obligation to appraise the property; or when the valuation problem is "uncomplicated" and the "anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data." FHWA may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the property owner is offered the option of receiving an appraisal. If the property owner elects to receive an appraisal, then an appraisal must be performed and there is no appraisal waiver involved.

FHWA must determine on a state-by-state basis whether appraisal waivers are allowed. For its applicability to Louisiana, I respond to your request as follows:

**Question 1:** Does Louisiana have any statutory or Constitutional provisions that would prohibit the use of appraisal waivers by the State or its political subdivisions in acquiring rights of way for federally funded highway projects?

Your inquiry requires a general review of L.R.S. Title 48, Louisiana Constitution Article I, Section 4, and 49 CFR Section 24.102.

DOTD cannot file a “quick take” expropriation suit without appraisal(s) of the property to be acquired. L.R.S. 48:443 requires either one or two appraisers to be appointed, depending on whether the value of the property is less than or greater than \$30,000.00, or whether the reason for the expropriation is solely to clear title problems unrelated to the amount of compensation.

L.R.S. 48:453 requires that a “before and after” appraisal must be done in order to compensate the property owner to the full extent of his loss. The value of the property acquired and any damages resulting to the remainder property cannot be determined without performing an appraisal.

Therefore, it is clear under Title 48 that an expropriation cannot be filed by the State without the proper appraisal(s) having been done.

For acquisitions other than expropriation, i.e., for amicable sales or for donations, the Constitution provides that:

“In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.” [Louisiana Constitution, Article I, Section 4(B)(5), as amended in 2006].

Because Article I, Section 4(B)(5) covers expropriations as well as (an) “action to take property,” it must be interpreted to include amicable sales or sales which are made under threat of expropriation. Therefore, it is my opinion that the Louisiana Constitution requires property to be appraised in order to determine just compensation to the property owner, when the property is acquired by a sale or by an expropriation.

However, since a donation of property is neither an expropriation nor an “action to take property, Article I, Section 4(B)(5) should not prohibit donations of property, without appraisal, as long as the owner is affirmatively apprised of his right to have his property appraised; he fully understands that right; and he thereafter gives his informed consent in waiving the appraisal.

The appraisal requirement applies to political subdivisions of the State as well:

“Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. . .” [Louisiana Constitution, Article I, Section 4(B)(1), as amended in 2006].

The two (2) quoted Constitutional provisions, read together, make it clear that the appraisal requirement applies to political subdivisions as well as to the State itself, for sales and expropriations, but not for donations.

Therefore, my opinion, based on the statutory and Constitutional provisions discussed above, is that the State and its political subdivisions may not utilize “appraisal waivers” in acquisitions of rights of way (by sale or expropriation) for Federal highway projects. The State and its political subdivisions may use “appraisal waivers” when the property owner donates the property, is aware of his right to obtain an appraisal and receive compensation for his property, and gives his informed consent to waive the appraisal and compensation.

**Question 2:** If these are prohibitions to using appraisal waivers, does L.R.S. 33:4712.10 (“Purchase of immovable property by political subdivisions; appraisal required”) conflict with other statutes or Constitutional provisions, in that it requires political subdivisions to obtain appraisals for purchases of all immovable property with a value greater than three thousand dollars?

L.R.S. 48:443 and Article I, Section 4 of the Louisiana Constitution require both the State and its political subdivisions to purchase or expropriate immovable property using appraised values. The statute and Constitutional provision do not set forth a minimum amount of money necessary to trigger the appraisal requirement. How could an acquiring entity know the value will be “greater than three thousand dollars” unless an appraisal is done? Therefore, it appears that L.R.S. 33:4712.10 conflicts with both statutory and Constitutional law, in that it sets a minimum threshold dollar amount to trigger the appraisal requirement. Perhaps the conflict created by L.R.S. 33:4712.10 should be examined by the Louisiana Legislature in light of the 2006 Constitutional amendments and existing statutes.

Scallan/Opinion No. 2011-OP-02  
March 17, 2011  
Page 4

I trust that this discussion answers your questions. However, if you need further assistance, please do not hesitate to contact me.

BB/DCE

RECOMMENDED FOR APPROVAL \_\_\_\_\_ DATE \_\_\_\_\_

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3-22-11



1 of 1 DOCUMENT

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LOUISIANA REVISED STATUTES  
TITLE 33. MUNICIPALITIES AND PARISHES  
CHAPTER 13. PROPERTY AND BUILDINGS

**GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY**

*La. R.S. 33:4712.10 (2010)*

§ 33:4712.10. Purchase of immovable property by political subdivisions; appraisal required

Notwithstanding any other provision of law to the contrary, no political subdivision shall purchase immovable property with a value greater than three thousand dollars unless prior to such purchase the property has been appraised by a qualified appraiser. No such appraisal shall include the value of improvements proposed to be made to the property after purchase by the political subdivision.

**HISTORY:** Acts 2007, No. 346, § 1, eff. Aug. 15, 2007.

C

Effective: June 1, 2005

Code of Federal Regulations Currentness

Title 49. Transportation

Subtitle A. Office of the Secretary of Transportation

Part 24. Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Refs &amp; Annos)

Subpart B. Real Property Acquisition

→ § 24.102 Basic acquisition policies.

(a) Expedient acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) Notice to owner. As soon as feasible, the Agency shall notify the owner in writing of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See § 24.203.)

(c) Appraisal, waiver thereof, and invitation to owner.

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

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to ap-

praise the property; or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

(C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. (See appendix A, § 24.102(c)(2).)

(d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to

acquire the property for the full amount believed to be just compensation. (See appendix A, § 24.102(d).)

(e) Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) Basic negotiation procedures. The Agency shall make all reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The

Agency shall consider the owner's presentation. (See appendix A, § 24.102(f).)

(g) Updating offer of just compensation. If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) Coercive action. The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. (See appendix A, § 24.102(i).)

(j) Payment before taking possession. Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the

condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. (See appendix A, § 24.102(j).)

(k) Uneconomic remnant. If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(a)(27).)

(l) Inverse condemnation. If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) Fair rental. If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. (See appendix A, § 24.102(m).)

(n) Conflict of interest.

(1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency.

Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

(2) No person shall attempt to unduly influence

or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.

(3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. (See appendix A, § 24.102(n).)

[70 FR 22611, May 2, 2005]

SOURCE: 70 FR 612, Jan. 4, 2005, unless otherwise noted.

AUTHORITY: 42 U.S.C. 4601 et seq.; 49 CFR 1.48(cc).

49 C. F. R. § 24.102, 49 CFR § 24.102

Current through March 10, 2011; 76 FR 13099

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END OF DOCUMENT

**C**

West's Louisiana Statutes Annotated Currentness  
Constitution of the State of Louisiana of 1974 (Refs & Annos)  
    ☐ Article I. Declaration of Rights (Refs & Annos)  
        → § 4. Right to Property

Section 4. (A) Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

(B)(1) Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Except as specifically authorized by Article VI, Section 21 of this Constitution property shall not be taken or damaged by the state or its political subdivisions: (a) for predominant use by any private person or entity; or (b) for transfer of ownership to any private person or entity.

(2) As used in Subparagraph (1) of this Paragraph and in Article VI, Section 23 of this Constitution, "public purpose" shall be limited to the following:

- (a) A general public right to a definite use of the property.
- (b) Continuous public ownership of property dedicated to one or more of the following objectives and uses:
  - (i) Public buildings in which publicly funded services are administered, rendered, or provided.
  - (ii) Roads, bridges, waterways, access to public waters and lands, and other public transportation, access, and navigational systems available to the general public.
  - (iii) Drainage, flood control, levees, coastal and navigational protection and reclamation for the benefit of the public generally.
  - (iv) Parks, convention centers, museums, historical buildings and recreational facilities generally open to the public.
  - (v) Public utilities for the benefit of the public generally.

(vi) Public ports and public airports to facilitate the transport of goods or persons in domestic or international commerce.

(c) The removal of a threat to public health or safety caused by the existing use or disuse of the property.

(3) Neither economic development, enhancement of tax revenue, or any incidental benefit to the public shall be considered in determining whether the taking or damaging of property is for a public purpose pursuant to Subparagraph (1) of this Paragraph or Article VI, Section 23 of this Constitution.

(4) Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question.

(5) In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.

(6) No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or halting competition with a government enterprise. However, a municipality may expropriate a utility within its jurisdiction.

(C) Personal effects, other than contraband, shall never be taken.

(D) The following property may be forfeited and disposed of in a civil proceeding, as provided by law: contraband drugs; property derived in whole or in part from contraband drugs; property used in the distribution, transfer, sale, felony possession, manufacture, or transportation of contraband drugs; property furnished or intended to be furnished in exchange for contraband drugs; property used or intended to be used to facilitate any of the above conduct; or other property because the above-described property has been rendered unavailable.

(E) This Section shall not apply to appropriation of property necessary for levee and levee drainage purposes.

(F) Further, the legislature may place limitations on the extent of recovery for the taking of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities.

(G) Compensation paid for the taking of, or loss or damage to, property rights for the construction, enlargement, improvement, or modification of federal or non-federal hurricane protection projects, including mitigation related thereto, shall not exceed the compensation required by the Fifth Amendment of the Constitution of the

United States of America. However, this Paragraph shall not apply to compensation paid for a building or structure that was destroyed or damaged by an event for which a presidential declaration of major disaster or emergency was issued, if the taking occurs within three years of such event. The legislature by law may provide procedures and definitions for the provisions of this Paragraph.

(H)(1) Except for the removal of a threat to public health or safety caused by the existing use or disuse of the property, and except for leases or operation agreements for port facilities, highways, qualified transportation facilities or airports, the state or its political subdivisions shall not sell or lease property which has been expropriated and held for not more than thirty years without first offering the property to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value, after which the property can be transferred only by competitive bid open to the general public. After thirty years have passed from the date the property was expropriated, the state or political subdivision may sell or otherwise transfer the property as provided by law.

(2) Within one year after the completion of the project for which the property was expropriated, the state or its political subdivision which expropriated the property shall identify all property which is not necessary for the public purpose of the project and declare the property as surplus property.

(3) All expropriated property identified as surplus property shall be offered for sale to the original owner or his heir, or, if there is no heir, to the successor in title to the owner at the time of expropriation at the current fair market value, within two years after completion of the project. If the original owner, heir, or other successor in title refuses or fails to purchase the surplus property within three years from completion of the project, then the surplus property may be offered for sale to the general public by competitive bid.

(4) After one year from the completion of the project for which property was expropriated, the original owner or his heir, or, if there is no heir, the successor in title to the owner at the time of expropriation may petition the state or its political subdivision which expropriated the property to have all or any portion of his property declared surplus. If the state or its political subdivision refuses or fails to identify all or any portion of the expropriated property as surplus, the original owner or the successor in title may petition any court of competent jurisdiction to have the property declared surplus.

#### CREDIT(S)

Amended by Acts 1989, No. 840, § 1, approved Oct. 7, 1989, eff. Nov. 7, 1989; Acts 2003, No. 1295, § 1, approved Oct. 4, 2003, eff. Nov. 6, 2003; Acts 2003, No. 1304, § 1, approved Oct. 4, 2003, eff. Nov. 6, 2003; Acts 2006, No. 851, § 1, approved Sept. 30, 2006; Acts 2006, No. 853, § 1, approved Sept. 30, 2006; Acts 2006, No. 859, § 1, approved Sept. 30, 2006; Acts 2010, No. 1052, § 1, approved Nov. 2, ~~2010~~  
2006.

Current with amendments through January 1, 2011

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