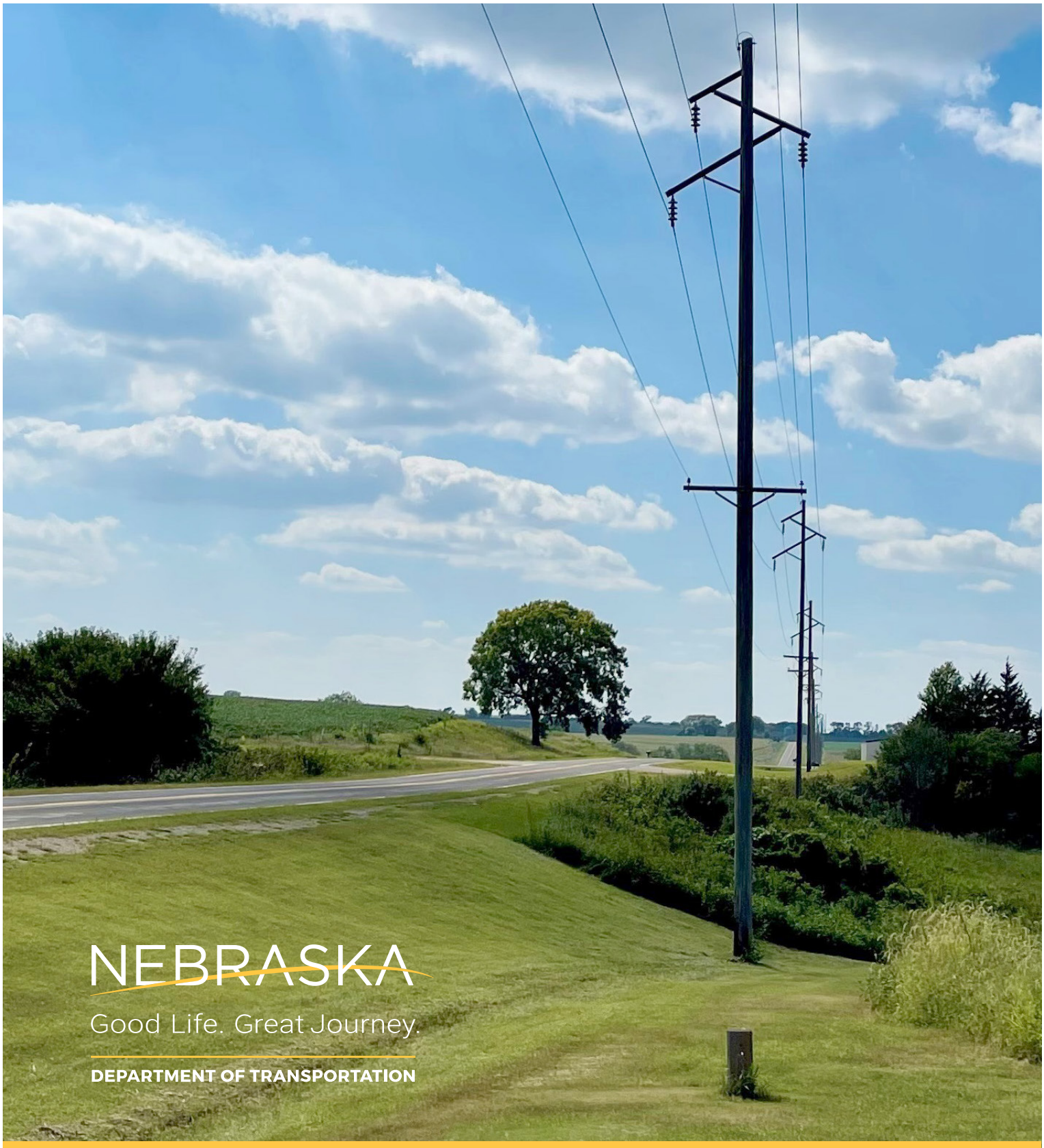

Right-of-Way Manual

Approved April 2025

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RIGHT OF WAY MANUAL
NEBRASKA DEPARTMENT OF TRANSPORTATION
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207	Estimate of Hours – ROW Design Phase I
208	Estimate of Hours – ROW Design Phase II
301	Preliminary Estimate
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CHAPTER 1
ORGANIZATION, RULES, POLICIES AND DEFINITIONS

1.01 DEPARTMENT OF TRANSPORTATION ORGANIZATION

1.01A The Legislature in Section 39-1301 of the Nebraska Revised Statutes has declared its interest relative to the State highway system, the powers and duties of the Director-State Engineer, and the responsibilities of the Nebraska Department of Transportation (NDOT). This section states in part, that the design, construction, maintenance, operation, and protection of adequate State highway facilities, sufficient to meet present demands as well as future requirements, will of necessity, require careful organization, with lines of authority definitely fixed, and basic rules of procedure established by the Legislature.

1.01B Section 39-1301 further states that subject to constitutional limitation and legislative mandate, it is the intent of the Legislature to designate the Director-State Engineer, and the NDOT acting under his or her direction, as direct custodian of the State highway system. He or she is to have full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the State highway system.

1.01C In order to fulfill the legislative intent, the NDOT has been organized to carry out the basic functions of Planning, Administration, Engineering and Operations. These functions are divided into sub-functions headed by the Director-State Engineer and their deputies.

1.01D FHWA Stewardship & Oversight Agreement
FHWA has delegated to NDOT or retained by FHWA specific right of way activities according to 23 CFR 710.201 (h). These activities concerning acquisition, disposal, and other uses of right of way on the Interstate and National Highway System (NHS), are noted in the current Stewardship & Oversight Agreement.

1.02 THE RIGHT OF WAY DIVISION ORGANIZATION

1.02A The Right of Way Division (ROW) is divided into five sections to carry out its responsibilities. The Right of Way Division Engineer, who is accountable to the Deputy State Engineer-Engineering Services, directs the ROW Division and is responsible for:

1.02A1 Providing all real estate services to the NDOT.

1.02A2 Creating right of way plans and developing legal descriptions to describe all real estate that is acquired for construction and maintenance programs.

1.02A3 Making and reviewing appraisals establishing the value of land and interests in land.

1.02A4 Negotiating for and closing the acquisition of real estate needed by the NDOT.

1.02A5 Managing the NDOT's newly acquired property until project construction begins.

1.02A6 Disposing of surplus real estate.

1.02A7 Providing relocation assistance payments and services to those displaced by the NDOT.

1.02A8 Managing the NDOT's highway beautification program.

1.02A9 Issuing use and occupancy permits to those wishing to occupy the NDOT's right of way.

1.02A10 Monitoring Local Public Agency's right of way activities to ensure compliance with applicable Federal and State law and rules and regulations.

1.02B DESIGN SECTION

1.02B1 The Right of Way Design Engineer who is accountable to the Right of Way Division Engineer, supervises the Right of Way Design Section and is responsible for:

1.02B1a Obtaining and processing right of way information.

1.02B1b Entering new projects into the Automated Right of Way Management System (ARMS) database.

1.02B1c Researching public records to determine ownership of land along selected corridors or abutting proposed highway projects.

1.02B1d Preparing corridor protection plans and ownership plans.

1.02B1e Determining the right of way needs for highway projects.

1.02B1f Creating right of way plans to identify the size and type of property needing to be acquired for highway use.

1.02B1g Developing legal descriptions to geographically describe property rights needing to be acquired.

1.02B1h Preparing condemnation plats, legal descriptions, and other displays to be used in eminent domain proceedings.

1.02B1i Preparing, distributing and maintaining permanent right of way plans showing all property rights acquired and disposed of, including access rights.

1.02B1j Provide oversight, coordination, and advisory services for the ROW Design aspects of the project on behalf of he FHWA.

1.02C APPRAISAL SECTION

1.02C1 The Chief Appraiser, who is accountable to the Right of Way Division Engineer, supervises the Appraisal Section with the assistance of the Appraiser Review Supervisors. Is responsible for:

1.02C1a Providing ROW cost estimates to aid in developing highway alignment and design alternatives.

1.02C1b Preparing ROW cost estimates on a project basis after Appraisal Plans are available.

1.02C1c Creating and reviewing appraisals and valuation documents to acquire all right of way needed for the NDOT's construction and maintenance programs.

1.02C1d Creating and reviewing appraisals and valuation documents for advertising signs affected by construction projects and wind damaged signs. Included in this is determining the percentage of loss for wind damaged signs.

1.02C1e Creating and reviewing appraisals and valuation documents needed for the disposal of excess real estate including access rights and market rents for leases.

1.02C1f Preparing "Rodent Control" and "Improvements in the Part Taken" documents to assist the Property Management Section in performing their responsibilities.

1.02C1g Creating and reviewing appraisals and valuation documents under contract with Local Public Agencies (LPA).

1.02C1h Oversight of Local Public Agency (LPA) projects. The Appraisal Section will provide a cursory review of the following valuation documents as submitted by the LPA: Preliminary Estimates, Appraisals and Appraisal Reviews.

1.02C1i Assisting the Department's Legal Staff in making decisions regarding settlement and appeal of eminent domain cases and providing expert testimony as needed.

1.02C1j The review appraiser will determine the amount of compensation established by the Department to be just compensation for real property to be acquired.

1.02D NEGOTIATION/RELOCATION SECTION

1.02D1 The Chief Negotiator/Relocation Supervisor is responsible for the Negotiation/ Relocation Section and is accountable to the Right of Way Division Engineer. This person is assisted by the section staff, which

includes ROW Project Managers, ROW Agents, Accountant, ROW Associates and Office Clerk, and when necessary Fee Acquisition Consultants.

1.02D2 The Negotiation/Relocation Section is responsible for:

1.02D2a The acquisition of property rights for a public purpose.

- Preparing all documents needed to present offers on, and to close, real estate transactions.
- Verifying ownership on all parcels to be acquired before making offers.
- Contacting all property owners to make the purchase offers and to inform the owners of their rights, duties and obligations.
- Closing all real estate transactions involving the acquisition of new right of way.
- Providing files to Legal Counsel for filing of condemnation actions.
- All payments made by ROW.

1.02D2b Administration of the relocation program.

- Providing Relocation Cost Estimates.
- Making preliminary studies and formulating plans to provide for the orderly and humane relocation of families and businesses.
- Preparing relocation assistance studies to determine eligibility for and amount of relocation assistance payments.
- Providing advisory services to those displaced by highway projects.
- Monitoring the relocation assistance activities of local public agencies and providing them with technical assistance.

1.02D2c All payments made by ROW.

1.02D2d Central supply and record storage for all of ROW.

1.02E HIGHWAY BEAUTIFICATION SECTION

1.02E1 The Highway Beautification Supervisor, who is accountable to the Right of Way Division Engineer, supervises the Highway Beautification Section and is responsible for:

1.02E1a Administering the Highway Beautification Section in accordance with Federal and State law and rules and regulations.

1.02E1b Controlling the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to control routes.

1.02E1c Controlling location and maintenance of junkyards in areas adjacent to control routes.

1.02E1d Issuing permits for signs, displays, and devices that are allowed to exist adjacent to control routes.

1.02F PROPERTY MANAGEMENT SECTION

1.02F1 The Property Management Supervisor, who is accountable to the Right of Way Division Engineer, supervises the Property Management Section and is responsible for:

1.02F1a Providing Demolition Cost Estimates.

1.02F1b Preparing Right of Way Certificates.

1.02F1c Managing newly acquired right of way until Project letting.

1.02F1d Leasing of excess right of way.

1.02F1e Lease of Tower Sites for Department use.

1.02F1f Sale of Excess right of way.

1.02F1g Maintenance Yard records and Plats.

1.02F1h Managing Oil and Gas leases.

1.02F1i Providing for the Abandonment and Relinquishment of roads no longer on the State Highway System.

1.02F1j Issuing Permits for the Use and Occupancy of Highway right of way.

1.02F1k Providing for the clearance of new right of way prior to construction of the project.

1.02F1l Manage the Corridor Protection Program.

1.02F1m Manage the Access Control Policy.

1.02F1n Monitoring the procedures of local government in the acquisition of right of way on Federal-aid projects, to insure that the procedures set out in this manual and relevant Federal Highway Administration (FHWA) directives are followed.

1.03 LEGAL COUNSEL

1.03A The Legal Counsel, whose attorneys are representatives of the State Attorney General's office, Transportation Section, is responsible for the acquisition of right of way when necessary through the process of eminent domain. The Legal Counsel prepares and files necessary documents for a condemnation hearing

before County Judges and represents the Department at all condemnation hearings.

1.03B The Chief Counsel, with the advice of the Chief Appraiser and Right of Way Division Engineer, determines whether an award is appealed to the District Court and supervises the preparation of briefs and arguments in cases appealed from the decision in the District Court.

1.03C The Chief Counsel and his/her staff furnish legal advice to all of the Divisions of the NDOT.

1.03D The Chief Counsel is directly accountable to the Attorney General of the State of Nebraska.

1.04 RULES AND POLICIES OF THE RIGHT OF WAY DIVISION

The Right of Way manual is updated periodically as circumstances warrant, but at a minimum, once every five years. The date on the cover is the date it was approved for use by FHWA.

1.04A WAIVER OF POLICIES

1.04A1 Many of the policies noted in this manual are as a result of Federal regulation found in 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs. Rule 24.7 under this part states the Federal Agency funding the project may waive any requirements in this rule not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part.

1.04A2 The ROW Section responsible for the matter involved will prepare such requests for waiver, on a case by case basis, under this procedure and provide the necessary justification to support the request. The Right of Way Division Engineer will, after approval, forward the request to the FHWA's Nebraska Division office program delivery team lead for approval.

1.04A3 Requests for wavier of Right of Way Policies that do not implement some Federal regulation found in 49 CFR Part 24 will follow the same procedure as noted, except the Right of Way Division Engineer is not required to forward the request to FHWA; but, will instead approve the request if he/she determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person. A courtesy copy will be sent to FHWA.

1.04B COOPERATION WITH LOCAL UNITS OF GOVERNMENT

1.04B1 Sections 39-1306, 39-1307, and 39-1308 of the Nebraska Revised Statutes authorize the Department to enter into contracts with political or governmental subdivisions or public corporations of the State, to enable them to benefit from funds made available by the Federal government for roads and streets. The Department is also authorized to enter into contracts with the Federal

government for the same purpose, and to enter into agreements with any political or governmental subdivision or public corporation of the State respecting planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating highways, roads, streets, connecting links, or rights of way for utilities owned by those subdivisions and utilities. Finally the Department is authorized to act in an advisory capacity upon request, to any political or governmental subdivision or public corporation, in matters pertaining to planning, locating, constructing and maintaining roads, highways, and streets and other related matters.

1.04C PREVENTION OF WASTE, FRAUD AND ABUSE

1.04C1 ETHICS

ROW personnel are engaged in an acquisition program that involves the expenditure of large sums of money. All those engaged in the individual steps required to determine the basis for the payment of those sums, as well as those who make such payment, are charged with a very high degree of trust. Because of this trust, the actions of all employees of ROW must be honest, open to public scrutiny and above suspicion. Failure to perform assigned duties in compliance with NDOT's policies shall result in discipline based on the violation and could lead to termination.

1.04C2 CONFLICTS OF INTEREST

1.04C2a Employees are urged to keep their every action above suspicion. It is incumbent upon each and every employee to immediately report to their supervisor, any instance in which they believe that there may be a conflict of interest between their employment and their other interests. This conflict may result from a relationship, personal friendship, ownership, or other interests which could be construed to conflict with their work. In case of doubt as to whether a given situation involves a conflict of interest, a full disclosure shall be made by the employee to the employee's supervisor.

1.04C2b A conflict of interest could result from a ROW employee's financial interest in companies performing work for the NDOT, or it might be brought about by other employment of the ROW employee that is directly related to the duties and responsibilities of their work with ROW.

1.04C2c An appraiser, review appraiser or person performing a waiver evaluation shall not have any interest, direct or indirect, in the real property being valued for the agency. Compensation for making an appraisal or waiver evaluation shall not be based on the amount of the valuation estimate.

1.04C2d No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or wavier evaluation preparer regarding any evaluation or other aspect of an appraisal, review or waiver evaluation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing an appraisal

or appraisal review work, except that FHWA may waive this requirement if it determines that it would create a hardship for the NDOT. (The intent of this provision is to insure appraisal/valuation independence and to prevent inappropriate influence.)

1.04C2e No appraiser shall act as a negotiator for real property which that person has valued except that an acquiring agency, with its own right of way staff, may permit the same staff person to both value and, after the report is reviewed, negotiate an acquisition where the value of the acquisition is $15,000 or less.

1.04C2f No employee of ROW, who is authorized to negotiate, to accept or to approve, or to take part in negotiating, accepting or approving, any contract or subcontract in connection with a project, shall have directly or indirectly, any financial or other personal interest in any such contract or subcontract.

1.04C2g No person performing services for ROW in connection with a project shall have directly or indirectly, a financial or other personal interest, other than their employment or retention by ROW, in any contract or subcontract in connection with such project.

1.04C2h No employee or officer of a company or person retained by ROW shall have, directly or indirectly, any financial or other personal interest in any real property acquired for a project unless such interest is openly disclosed upon the public records of the NDOT, and such officer, employee or person has not participated in such acquisition for and in behalf of ROW.

1.04C2i No employee or officer of a company or person retained by ROW shall have a personal or family relationship with present or past owners/tenants, has been involved in the sales history or the land involved, or has had a business association with any party of interest in the property to be acquired.

1.04D NO DUPLICATION OF PAYMENT

No person shall receive any payment from the NDOT pursuant to the Uniform Relocation and Assistance Act if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the NDOT to have the same purpose and effect as such payment under the Act. An exhaustive search for such other payments is not required. However, a duplicate payment must be avoided based upon the NDOT's knowledge at the time payment is computed.

1.04E MANNER OF NOTICES

As required by 49 CFR part 24.102, each notice which the NDOT and/or the Local Public Agency, is required to provide to a property owner or occupant shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the NDOT and/or the Local Public Agency files. Each notice shall be written in plain understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

1.04F PAYMENT BEFORE TAKING POSSESSION OF PROPERTY

Before requiring the owner to surrender possession of real property, the NDOT will pay the agreed purchase price to the owner/tenant, or in case of a condemnation, deposit with the court, for the benefit of the owner/tenant, an amount not less than the NDOT's approved appraisal of the 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 NDOT may obtain a right of entry (Attachment 501.1 or Attachment 501.2) from the owner/tenant for construction purposes before making payment available to the owner/tenant. However, as stipulated in the State's acquisition contracts, the State is granted immediate right of entry to the property upon execution of those documents.

1.04G INVERSE CONDEMNATION

If the NDOT intends to acquire any interest in real property by exercise of the power of eminent domain, it shall bring 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.

1.05 AUTHORITY FOR THE ACQUISITION OF PROPERTY

1.05A In the following paragraphs, reference is made to certain sections of the highway laws of Nebraska as basis for authority granted the NDOT in several areas of operation. These references are not to be considered complete but simply as an indication of the authority under which the NDOT operates. Right of Way personnel should become familiar with all of Chapter 39, Article 13, of the Nebraska Highway and Bridge Law, keeping in mind, however, that interpretation and opinions should be left to the Legal Counsel.

1.05A1 STATUTORY AUTHORITY FOR THE ACQUISITION OF PROPERTY BY NEGOTIATION OR CONDEMNATION

The Department is granted authority to acquire right of way in Section 39-1320 which states in part: "(1) The Department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future State highway purposes by gift, agreement, purchase,

exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price." Subsection (2) lists specific activities, facilities, and authorities that are included as falling under the term "State highway purposes" as used in Subsection (1).

1.05A2 STATUTORY AUTHORITY FOR CONDEMNATION OF EDUCATIONAL OR STATE LANDS

The authority to acquire educational land or lands owned, occupied, or controlled by a State institution, board, agency or commission is set forth in Section 39-1323 of the Nebraska Statutes.

1.05A3 STATUTORY AUTHORITY FOR COOPERATION WITH FEDERAL GOVERNMENT

1.05A3a As required by Act of Congress, legislative assent was given to Public Law 156 approved July 11, 1916, and to Congressional Federal-Aid Acts, Federal Highway Acts, and Federal-Aid Highway Acts approved subsequent to July 11, 1916 in Sections 39-1304, 39-1304.01, 39-1304.03 of Nebraska Statutes.

1.05A3b Section 39-1305 authorizes the Department "to make all contracts and do all things necessary to cooperate with the United States government" in matters relating to the cooperative construction or improvement of the State highway system and other specified roads and streets.

1.05A4 STATUTORY AUTHORITY FOR COOPERATION WITH CITIES AND COUNTIES

1.05A4a Section 39-1306, Nebraska Statutes authorizes any political or governmental subdivision or any public corporation of this State to enter into contracts through or with the Department to enable them to participate in all the benefits to be secured from Federal-Aid funds, or funds made available from the Federal government to be used on roads and streets. Section 39-1306.01 gives the intent of the Legislature relative to the redistribution of unused funds from the original allotment of Federal-Aid funds for use on roads and streets.

1.05A4b Section 39-1307, Nebraska Statutes authorizes the Department and any political or governmental subdivision to enter into agreements with each other respecting the planning, designating, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of highways, roads, streets, connecting links, rights of way, including but not limited to canals, ditches or power, telephone, water, gas, sewer and other service lines owned by such political or governmental subdivision or public corporation.

1.05A4c Section 39-1308 authorizes the Department to act in an advisory capacity, upon request, to any political or governmental subdivision or

public corporation of the State in matters pertaining to the planning, locating, constructing, and maintaining of roads, highways, and streets and other related matters. In such instances, the Department may provide services on such terms as may be mutually agreed upon.

1.05A5 ACQUISITION OF PROPERTY FINANCED BY STATE FUNDS

Authority to begin acquisition activities and expend Project funds occurs when the Chief Appraiser submits the Preliminary Estimate described in Section 3.03 of this Manual. The Controller Division receives a copy of the estimate and takes those actions necessary to provide that expenditures for ROW acquisition activities are allowed on the Project.

1.05A6 ACQUISITION OF PROPERTY WITH FEDERAL PARTICIPATION

1.05A6a Federal funds may participate in right of way costs incurred in accordance with 23 CFR Part 710.203 which may be summarized as follows:

- The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP).
- The NDOT has executed a project agreement; and
- Costs have been incurred in conformance with State and Federal law requirements.

1.05A6b The Program Management Division take the necessary action to obligate Federal Funds upon receipt of their copy of the Preliminary Estimate. The Controller Division also completes the process described in Section 1.05A5.

1.05A6c The Nebraska Department of Transportation (NDOT) role in representing and managing the development and construction of local projects will be to act as the Responsible Charge (RC) and Project Manager on behalf of the LPA for local projects outside of the MAPA and LCLC areas. For those projects inside the MAPA and LCLC areas, projects will continue to be managed by the local public agency. The Local Public Agency must have a ROW Office to acquire ROW or must have a certified Responsible Charge and will use approved Fee Appraisers and ROW Acquisition Consultants off NDOT's approved lists.

Except for duties delegated to the LPA, NDOT will be responsible for completing and overseeing all stages of the development of the Federal-aid project on the LPA's behalf including planning, environmental, public involvement, design, right of way, utilities, railroad, construction, and construction engineering.

1.05A7 GRANTEE AND SUBGRANTEE RESPONSIBILITIES

The grantee may enter into written agreements with other State, county, municipal, or local public land acquisition organizations, conservation organizations, private consultants, or other persons to carry out its

authorities. Such organizations, firms, or persons must comply with the grantee's ROW manual. The grantee shall monitor any such real property interest acquisition activities to ensure compliance with State and Federal law, and is responsible for informing such persons of all such requirements and for imposing sanctions in cases of material non-compliance. Non-SDOT grantees, and all subgrantees, design-build contractors, and other acquiring agencies carrying out a project funded by a grant under Title 23, United States Code, must demonstrate that they will use FHWA-approved ROW procedures for acquisition and other real estate activities, and that they have the ability to comply with current FHWA requirements, including this part.

1.06 EARLY ACQUISITION OF REAL PROPERTY

1.06A REAL PROPERTY INTEREST ACQUISITION

The NDOT may initiate acquisition of real property interests at any time it has the legal authority to do so based on project considerations.

1.06A1 Based on program and property considerations, the Department may choose to initiate the acquisition of real property interests at any time after it has the legal authority. This type of early acquisition will be paid with State funds and does not require any Federal action at the time of purchase. Subsequent Federal participation cannot occur unless all conditions and requirements included in 23 CFR 710.501 are met.

1.06B ELIGIBLE COSTS

1.06B1 Acquisition costs incurred by the agency prior to executing a project agreement with FHWA are not eligible for Federal-aid reimbursement. However, such costs may become eligible for use as a credit towards the agency's share of a Federal-aid project, or Federal Reimbursement, if the following conditions are met:

1.06B1a The property was lawfully obtained by the NDOT.

1.06B1b The property was not land described in 23 U.S.C. 138 (Preservation of Parkland).

1.06B1c The property was acquired in accordance with the provisions of 49 CFR Part 24 (Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs).

1.06B1d The NDOT complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4).

1.06B1e The NDOT determined, and FHWA concurs, that the action taken did not influence the environmental evaluation for the project, including.

- The decision on need to construct the project.
- The consideration of alternatives.

- The selection of the design or location.

1.06B1f The property will be incorporated into a Federal-aid project.

1.06B1g The original project agreement covering the project was executed on or after June 9, 1998.

1.06C REIMBURSEMENT

1.06C1 In addition to meeting all provisions in 1.06B of this section, FHWA approval for reimbursement for early acquisition costs, including costs associated with displacement of owners or tenants, requires the NDOT to demonstrate that:

1.06C1a Prior to acquisition, the NDOT made the certifications and determinations required by 23 U.S.C. 108(c)(3)(C) and (D); and

- ***For reference 23 U.S.C. 108(c)(2)(C) and (D) are noted as follows:***
- *(C) the State has a mandatory comprehensive and coordinated land use, environment, and transportation planning process under State law and the acquisition is certified by the Governor as consistent with the State plans before the acquisition.*
- *(D) the acquisition is determined in advance by the Governor to be consistent with the State transportation planning process pursuant to Section 135 of the Statewide Transportation Improvement Program (STIP).*

1.07 PROTECTIVE BUYING AND HARDSHIP ACQUISITION

1.07A GENERAL CONDITIONS

1.07A1 Prior to the NDOT obtaining final environmental approval, the NDOT may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition), provided the following conditions are met:

1.07A1a The project is included in the currently approved Statewide Transportation Improvement Program (STIP).

1.07A1b The NDOT has complied with applicable public involvement requirements in 23 CFR Parts 450 (Planning Assistance and Standards) and 771 (Environmental Impact and Related Procedures).

1.07A1c A determination has been completed for any property subject to the provisions of 23 U.S.C. 138 (Preservation of Parkland); and

1.07A1d Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 U.S.C. 470(f) (historic properties).

1.07A2 Both these types of acquisitions are typically made with State funds. Federal participation is not requested so as to avoid the necessity of obtaining Federal approval for the acquisition in advance of all the customary Federal requirements.

1.07B PROTECTIVE BUYING

1.07B1 Protective buying is purchasing property in advance of the normal project schedule, usually as a result of Corridor Protection as described in Section 6.06 of this Manual. The intent is to acquire vacant land or property with relatively minor improvements prior to development of the land or the construction of extensive improvements. This helps to preserve or "protect" the project location.

1.07B2 The NDOT must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

1.07C HARDSHIP ACQUISITIONS

1.07C1 Hardship acquisition is purchasing a property in advance of the normal schedule for the project. It usually involves an owner-occupied residential property and a necessity or desire by the owner-occupant to sell the property and move from their residence. An example would be the owner needing to move to another city because of their employment. To truly qualify as a hardship acquisition, the owner-occupant should be able to describe and document a life altering change in circumstances which requires that they move from the subject property.

1.07C2 However, it could be argued that the simple fact of having the NDOT announce that the property will be taken for the project at some unspecified time that could be far in the future in and of itself creates a hardship on the owner-occupant. For this reason, it is the general policy of the NDOT to make reasonable efforts to accommodate the requests of owner-occupants wishing to sell their homes and relocate in advance of the normal project schedule.

1.07C3 Other owners of property, such as vacant land or commercial property will be required to provide appropriate documentation describing their particular hardship and distinguishing their circumstances from all the other owners of property along the project.

1.07C4 The NDOT must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

1.07C4a Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

1.07C4b Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

1.07C5 An objective evaluation is required by ROW to determine whether the health, safety or financial requirements are satisfied. General knowledge of an upcoming project may affect the ability to sell a property; however, this knowledge affects every property owner along the proposed project and is not a justifiable reason for accepting and concurring in a property owner's hardship acquisition request.

1.07C6 For financial hardship, the owner should document an inability to sell the property for fair market value within a typical period of time. Whether the price at which the property has been offered for sale is, in fact, representative of fair market value is a key part of this test. If the property has been offered at an unrealistic price, then it is not possible to find that the requirements have been met. Factors we usually like to consider include whether:

1.07C6a The owner openly marketed the property through a realtor, a listing service or through other means.

1.07C6b The owner or realtor conducted a market analysis to determine a listing price disregarding any increase or decrease in value caused by the project.

1.07C6c The property has been on the market for an amount of time typical in the area and available for inspection by prospective buyers.

1.07C7 When ROW determines that a hardship exists and elects to proceed with hardship acquisition, the offer of just compensation must be based on an appraisal of fair market value.

1.07C8 Negotiations must be in good faith with sufficient information provided to the property owner for making an informed decision. ROW will follow all of the customary acquisition procedures.

1.07C9 ROW will not proceed to early condemnation if agreement on price cannot be reached for a hardship acquisition request. If negotiations are terminated, ROW will provide written notice to the property owner that further negotiations and condemnation, if necessary, will be deferred until the time they would occur in the normal project schedule.

1.07D ENVIRONMENTAL DECISIONS

Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

1.08 RECORD KEEPING AND REPORTS

1.08A RECORDS

ROW will maintain adequate records of all of our activities noted in this manual in sufficient detail to demonstrate compliance with the policies.

1.08B CONFIDENTIALITY OF RECORDS

1.08B1 These records are to remain confidential regarding their use as public information, unless applicable law provides otherwise.

1.08B2 Any individual requesting information must do so in writing and be specific in their request. Each request for information will be discussed with the Chief Counsel for the NDOT to determine if the information requested is indeed public information.

1.08C REPORTS

1.08C1 Each ROW Section will maintain records to produce those reports that are customarily produced in the course of their business and provide other reports requested, if the information is readily available.

1.08C2 FHWA Federal Fiscal Year Report

Annually at the end of each Federal fiscal year (September 30th) ROW will prepare a report of our real property acquisition and displacement activities as required by 49 CFR Part 24 Section 24.9 and Appendix B to Part 24 – Statistical Report Form. This report shall be submitted to the FHWA Division Administrator.

1.08C3 Public Benefits to a Person Not Lawfully Present in the United States (Neb. Rev. Stat. §§ 4-408 to 4-113).

1.08C3a The purpose of this statute is found in Neb. Rev. Stat. § 4-408, which states: "Notwithstanding any other provisions of law, unless exempted from verification under Section 4-110 or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States," as specified in 49 CFR 24.208.

1.08C3b Public Benefits is defined in this legislation as "means any grant, contract, loan, professional license, commercial license, welfare benefit, health payment or financial assistance benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit involving direct payment of financial assistance, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are provided to an individual, a household, or a family eligibility unit by an agency of the United States, the State of Nebraska, or a political subdivision of the State of Nebraska."

1.08C3c Annually, at the end of the calendar year, ROW will submit to the Civil Rights Coordinator in the Program Management Division a report to indicate compliance with Neb. Rev. Stat. § 4-113. This statute states: "Each state agency which administers any program of public benefits shall provide an annual report not later than January 31 for the prior year to the Governor and the Clerk of the Legislature with respect to compliance with Sections 4-108 to 4-113. The report shall include, but not be limited to, the total number of applicants for benefits and the number of applicants rejected pursuant to such sections." (See Attachment 103.)

1.08C3d Neb. Rev. Stat. 4-410 states: "Any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation." 49 CFR 24.208 provides instances when someone not lawfully present in the United States may receive Relocation Assistance Benefits. This procedure is also noted in Chapter 7.07F.

1.09 FEDERAL FUNDING AND REIMBURSEMENT

1.09A GENERAL CONDITIONS – except as otherwise provided in § 710.501 for early acquisition, a State agency only may acquire real property, including mitigation property, with Title 23 grant funds if the following conditions are satisfied:

1.09A1 The project for which the real property is acquired is included in an approved Statewide Transportation Improvement Program (STIP).

1.09A2 The grantee has executed a project agreement or other agreement recognized under Title 23 reflecting the Federal funding terms and conditions for the project.

1.09A3 Preliminary acquisition activities, including a title search, appraisal, appraisal review and waiver valuation preparation, preliminary property map preparation, preliminary property map preparation and preliminary relocation planning activities, limited to searching for comparable properties, identifying replacement neighborhoods and identifying available public services, can be advanced under preliminary engineering, as defined in § 646.204, prior to completion of National Environmental Policy Act (NEPA) (42 U.S.C. 4321, et seq.) review, while other work involving contact with affected property owners must normally be deferred until after NEPA approval, except as provided in 23 CFR 710.503 for protective buying and hardship acquisition (in this manual Section 1.07); and in 23 CFR 710.501, early acquisition (in this manual Section 1.06); and

1.09A4 Costs have been incurred in conformance with State and Federal requirements.

1.09A5 The NDOT has the legal obligation under State law to pay right of way costs.

1.09A6 Right of way costs must be recorded, in the accounts of the NDOT, as an obligation.

1.09A7 Federal-aid participation will not exceed statutory limitation for the particular fund.

1.09B DIRECT ELIGIBLE COSTS

Federal funds may only participate in direct costs that are identified specifically as an authorized acquisition activity such as the costs of acquiring the real property incorporated into the final project and the associated direct costs of acquisition, except in the case of a State that has an approved indirect cost allocation plan as stated in 23 CFR 710.203(d) or specifically provided by statute. Participation is provided for:

1.09B1 *Real Property Acquisition* – usual costs and disbursements associated with real property acquisition as required under the laws of the State, including the following:

1.09B1a The cost of contracting for private acquisition services or the cost associated with the use of local public agencies.

1.09B1b Ordinary and reasonable costs of acquisition activities, such as, appraisal, waiver valuation development, appraisal review, cost estimates, relocation planning, ROW plan preparation, title work, and similar necessary ROW related work.

1.09B1c The compensation paid for the real property interest and costs normally associated with completing the purchase, such as document fees and document stamps. The costs of acquiring options and other contractual rights to acquire an interest in land, rights to control use or development, leases, ROWs, and any other similar action to acquire or preserve rights of way for a transportation facility are eligible costs when FHWA determines such costs are actual, reasonable and necessary costs. Costs under this paragraph do not include salary and related expenses for an acquiring agency's employees (see payroll-related expenses in paragraph (5)).

1.09B1d The cost of administrative settlements in accordance with 49 CFR 24.102(i), legal settlements, court awards, and costs incidental to the condemnation process. This includes reasonable acquiring agency attorney's fees, but excludes attorney's fees for other parties except where required by State law (including an order of a court of competent jurisdiction) or approved by FHWA; and

- Federal funds may be used for the usual costs and disbursements chargeable to the NDOT under State law as part of a valid bill of costs approved by a court in a condemnation proceeding.
- The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

- The final judgment of the courts is that the property cannot be acquired by condemnation; or
- The condemnation proceeding is abandoned by the NDOT; or
- The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the NDOT effects a settlement of such proceeding.
- In any of the foregoing, participation will be limited to such sum as will in the opinion of the court or the Director of the NDOT, reimburse the owner for reasonable costs, disbursements, and expenses actually incurred, including reasonable attorney, appraisal, and engineering fees.

1.09B1e Court Deposits and Interest Thereon

- Federal funds may participate in the amount deposited in court in connection with the condemnation of a parcel when the deposit is:
  - The amount of the NDOT 's approved estimate of just compensation.
  - The amount established by court order.
  - The amount established by State law as a condition of the NDOT's obtaining possession of the right of way.
  - When the amount deposited exceeds the amount of the final settlement or award, the Federal share of the excess deposit shall be promptly credited to the project and be deducted from the next payment due NDOT from FHWA on any Federal-aid project.
- Where, in the opinion of FHWA, the total payments on progress vouchers for the Federal share of court deposits become excessive, further payment may be withheld until the situation is remedied. The Federal share of the total amount of court deposits, plus the Federal share of other eligible expenses incurred on a project may not exceed the Federal funds included in the project agreement.
- Federal funds may be used for the cost of interest on the amount of the deposit into court, from the date of deposit, where due to court procedures the deposit is not immediately available to the owner. Federal funds may not be used for such interest costs where the deposit is available but the owner chooses not to withdraw it.
- Where a condemnation settlement or award exceeds the amount deposited into court, Federal funds may be used for interest paid on the amount in excess of the deposit from the date of the original deposit until the date of settlement or award, in accordance with applicable State law.

1.09B1f The cost of minimum payments and appraisal waiver amounts included in this FHWA approved Manual.

1.09B1g Federal funds may participate in payments by the NDOT to a property owner for the following costs necessarily incurred in transferring property to the NDOT:

- Recording fees, transfer taxes, and similar expenses incidental to conveying real property.
- Penalty costs for prepayment of the preexisting recorded mortgage entered into in good faith.
- The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the NDOT or effective date of possession by the NDOT, whichever is earlier.

1.09B2 *Relocation Assistance and Payments* – usual costs and disbursements associated with the following:

1.09B2a Relocation assistance and payments required under 49 CFR Part 24 in Chapter 7 of this manual.

1.09B2b Relocation assistance and payments provided under the laws of the State that may exceed the requirements of 49 CFR Part 24, except for relocation assistance and payments provided to aliens not lawfully present in the United States as noted in Section 7.07F.

1.09B3 *Damages* – the cost of severance and/or consequential damages to remaining real property resulting from a partial acquisition, actual or constructive, of real property for a project based on elements compensable under State law.

1.09B4 *Property Management* – the net cost of managing real property prior to and during construction to provide for maintenance, protection, and the clearance and disposal of improvements until final project acceptance.

1.09B4a Federal funds may participate in the net cost incurred by the NDOT in the leasing, rental, maintenance, disposal of improvements, protection, rodent control, and clearance of real property acquired for right of way purposes.

1.09B4b Taxes or payments in lieu of taxes required to be paid by the NDOT are a legitimate property management expense and may be deducted from the gross rentals received.

1.09B4c Federal funds may be used for property management or demolition costs on excess lands or uneconomic remainders acquired by the NDOT when Federal participation in the costs of the related right of way acquisition is based on the provisions of Section 1.09B11 of this manual.

1.09B4d Federal funds may be used for the net costs incurred by the NDOT in the leasing, rental, maintenance, rodent control, protection and sale of excess lands when Federal participation in the cost of the related right of way acquisition is in accordance with Section 1.09B4 of this manual.

1.09B4e Leases:

- Open Projects: Amounts received from leases for land or buildings will be credited to the project.
- Closed Projects: Federal funds will not be credited on leases for land or buildings. The amounts received for leases will be credited to a fund entitled project STWD(1019), OE 901, Activity 5757, Account 8231. Monies from this fund will periodically be credited to a current Federal participating project as State matching funds.

1.09B4f Sale of Land:

- Open Projects: Amounts received from leases for land or buildings will be credited to the project.
- Closed Projects: Federal funds will not be credited on leases for land or buildings. The amounts received for leases will be credited to a fund entitled project STWD(1019), OE 901, Activity 5757, Account 8231. Monies from this fund will periodically be credited to a current Federal participating project as State matching funds.

1.09B5 *Taxes* – federal participation will not be permitted in the payment of special assessments or in the payment of taxes, except as provided in Section 5.05C4 of this manual.

1.09B6 *Access Rights*

1.09B6a Where full or partial control of access is obtained on an existing highway, Federal funds may be used for the cost of access rights, whether or not other real property interests are acquired, if the payment for the loss or impairment of access is based upon elements of damage generally compensable in eminent domain and applicable State law.

1.09B6b Federal participation in these costs is not contingent upon further construction of the highway facility.

1.09B6c Federal funds may not be used in payments for access rights where the controlled access highway is on a new location.

1.09B7 *Property Not Incorporated Into a Project Funded Under Title 23 of the United States Code (Highways)* – The cost of property not incorporated into a project may be eligible for reimbursement in the following circumstances:

1.09B7a General: Costs for construction material sites, property acquisitions to a logical boundary, eligible Transportation Alternatives Program (TAP)

projects, sites for disposal of hazardous materials, environmental mitigation, environmental banking activities, or last resort housing.

1.09B7b Easements and alternate access not incorporated into the ROW. The cost of acquiring easements and alternate access points necessary for highway construction and maintenance outside the approved ROW for permanent use (such as for drainage or slope easements); or temporary use (such as for construction purposes or for right of way clearance).

1.09B8 *Utility and Railroad Real Property*

1.09B8a If a utility or railroad is displaced by a Federally-assisted highway project, Federal funds may be used for the cost of real property acquired by the NDOT, a utility company, or railroad to replace real property owned by the railroad or utility and conveyed to the NDOT for highway right of way as provided in 23 CFR 710.203(b) (9) [Utility and Railroad Property].

1.09B8b Federal funds may be used for the cost of acquisition of non-operating real property of a utility or railroad in the same manner as for other privately owned property.

1.09B9 *Tenant Owned Improvements* – federal funds may be used for payment to a tenant for buildings, structures, or other improvements which are acquired by the NDOT to the extent that such payment is not a duplication of any payments otherwise authorized by law.

1.09B10 *Transfers of State-Owned Lands* – when State-Owned lands are transferred for lands required for highway purposes, Federal funds may be used for the costs of the land being transferred as measured by its fair market value. Federal participation will be computed on the total consideration, including land, any cash payments, and any construction features used to mitigate damage. Federal participation may not exceed the pro rata share of the fair market value of the land required for highway purposes plus damages.

1.09B11 *Excess Acquisitions* – when only a portion of a property is required for highway right of way or highway related needs and the NDOT elects to acquire a larger portion or the whole property, Federal participation will be in accordance with the following procedure:

1.09B11a There will be no Federal participation in any relocation costs associated with that part of the tract acquired which is outside the right of way.

1.09B11b The initial installment of the Federal pro rata share of the cost of the land required for the project is determined by apportioning the land cost of the entire tract between the part required and part remaining solely on the basis of the area, plus the cost of improvements necessarily removed for the project, less salvage value of the improvements.

1.09B11c The final installment, representing the Federal share of damages to the remainder, will be the difference between the initial cost of the excess property, prorated as in Section 1.09B11b above, and the price realized at a public sale of the excess property. The sale must be accomplished prior to submission of the final voucher for the project or not later than two years from the time the highway facility is opened to traffic, whichever is earlier. Should condemnation proceedings prevent sale of the excess property within the time limits described, the excess may be disposed of within 12 months of when the NDOT can legally do so.

1.09B11d Two or more excess areas may be combined and sold in one transaction if the NDOT anticipates a higher overall return by such action.

1.09B11e Should the NDOT not dispose of the excess property within the time limits set forth in Section 1.09B11c above, Federal participation shall be limited as under Section 1.09B11b above, unless an exception is granted by FHWA.

1.09B12 *Uneconomic Remnants* – the cost of uneconomic remnants purchased in connection with the acquisition of a partial taking for the project as required by the Uniform Act.

1.09B13 *Acquisition in Connection With Other Federal or Federally Assisted Programs will be Coordinated with FHWA*

1.09B13a Rights of way may be acquired by the NDOT for a Federal-aid highway in coordination or cooperation with other Federal or Federally assisted programs. The NDOT and the agency involved shall set forth in an agreement or memorandum of understanding the responsibilities of each in the acquisition of real property involved and the basis for the sharing of costs. Such agreements should be executed during the early stages of project development, and will not jeopardize future Federal participation in costs to the NDOT, if the agreement does not constitute a binding request for conveyance of specified lands. The agreement should be in effect when a request for authorization to acquire is submitted to FHWA.

1.09B13b Federal funds may participate in obligations for costs incurred by the NDOT after FHWA authorization to proceed. An obligation is incurred by the NDOT on the date that the NDOT commits itself to the acquiring agency through a binding request for conveyance of specified lands.

1.09B13c Federal participation in costs incurred by the NDOT shall be determined on the following basis, unless prior approval is obtained from FHWA for participation on some other basis:

- Where the project of the acquiring agency, such as an urban renewal agency, is developed without consideration of the

highway project, and the land has been cleared at the time the NDOT requests conveyance of specified lands, Federal participation may not exceed its pro rata share of the appraised value of the cleared land required. The appraised value shall be mutually acceptable to the NDOT and the other agency involved. Where the same conditions exist except that improvements have not been removed at the time of request for conveyance, Federal participation may not exceed the fair market value as determined by costs to the acquiring agency.

- Where the project of the acquiring agency, such as an urban renewal agency, was continued after written knowledge that a highway project would be involved, whether or not the exact location thereof was known, Federal funds may not exceed the fair market value as determined by cost to the acquiring agency. It would not matter whether any improvements were removed before or after a request for conveyance is submitted. The NDOT must assure itself that such real property acquisitions are in compliance with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, et seq.).
- "Cost to the acquiring agency," for purposes of Federal participation, may include the fair market value payment, incidental acquisition settlement costs, and clearance and demolition costs, subject to the agreement between the parties, but shall exclude interest on borrowed money, and administrative and overhead expenses. (See also 49 CFR 24.6 regarding relocation matters.) [Administration of jointly-funded projects.]
- When the "cost to the acquiring agency" forms the basis of value for participation, FHWA may accept either a parcel by parcel cost or an overall proration based on total area without regard to location of improvements within the acquiring agency's project area. Where a parcel by parcel basis is used, costs may be prorated on an area basis where only a part of a parcel is required for highway purposes.

1.09B13d Where an urban renewal or any other such federally assisted agency performs work in connection with acquisition of rights of way for Federal or Federal-aid highway projects, FHWA may accept certifications of another Federal agency that the work has been performed in accordance with its governing regulations.

1.09B14 *Construction in Mitigation of Damages* – costs of construction performed by the NDOT in order to mitigate damages to a remainder of real property are eligible for Federal participation, provided that such construction results in an appropriate reduction in compensation to be paid the owner.

1.09C INCIDENTAL EXPENSES AND INDIRECT COSTS

1.09C1 Federal funds may be used for any expenditure of a type normal to the operation of the NDOT and incidental to the acquisition of rights of way, whether the acquisition is by negotiation or condemnation.

1.09C2 Federal participation will not be allowed in charges for the administrative and overhead expenses of either the headquarters or field offices of the NDOT or other publicly maintained land acquisition organizations. When a supervisory or administrative employee is engaged in work chargeable to a specific project, Federal participation may be allowed in claims for salary and related expenses on that project in accordance with CFR 23 Part 140, Subpart G of Chapter 1.

1.09C3 *Indirect Costs* – Indirect costs may be claimed under the provisions of 2 CFR Part 225 (formerly OMB Circular A-87). Indirect costs may be included on billings after the indirect cost allocation plan has been prepared in accordance with 2 CFR Part 225 and approved by FHWA, other cognizant Federal agency, or, in the case of an SDOT subgrantee without a rate approved by a cognizant Federal agency, by the SDOT. Indirect costs for an SDOT may include costs of providing program-level guidance, consultation, and oversight to other acquiring agencies and contractors where ROW activities on Title 23-funded projects are performed by non-SDOT personnel.

1.09D DOCUMENTATION REQUIRED FOR FEDERAL PARTICIPATION

1.09D1 Progress and Final Claims

1.09D1a Any progress or final claim for Federal fund reimbursement of expenditures made for right of way shall be supported by the following documents and information:

- A right of way map or plan showing the rights of way authorized and actually acquired including parcel identification numbers, area acquired, property lines of the area acquired, and any other pertinent data affecting the cost of right of way such as structures, improvements, and fences.
- Statement of cost of right of way showing:
  - Parcel number.
  - Cost of parcel.
  - Cost of excess land, if any, acquired from same ownership.
  - Credits by parcel or project.
  - Incidental expenses by parcel or project.
  - Cost of construction performed in mitigation of damages if claimed as a right of way item.

1.09D1b The required documents and information may be submitted with the claim or made available in the NDOT's files in readily identifiable form as determined appropriate by FHWA in consultation with the NDOT. Further, where a right of way map or plan which meets the requirements set forth in Section 1.09D1a has been previously submitted, FHWA may accept such map or plan for final or progress claim purposes.

1.09D1c The information required in Section 1.09D1a may be submitted under current billing procedures where a memorandum of understanding on such procedures is in effect between the NDOT and FHWA.

1.09D2 *Document Availability* – All plats, appraisals, options, purchase agreements, title evidence, negotiation records, deeds, relocation assistance and payment records, and other data and documents relative to the acquisition of the right of way shall be available for inspection at reasonable times by authorized representatives of FHWA and other authorized Federal representatives.

1.09D3 Federal-Aid Project Numbers. Right of way plans, contracts, deeds, appraisals, options, vouchers, correspondence, and all other documents and papers to which FHWA needs to refer shall carry the Federal-aid project number for ready identification.

1.10 WITHHOLDING FEDERAL PARTICIPATION

1.10A FHWA may withhold payment under the conditions described in 23 CFR 1.36 (Compliance with Federal Laws and Regulations) for failure to comply with Federal law or regulation, State law, or under circumstances of waste, fraud, and abuse.

1.10B If, at any time, FHWA determines that the organization, practices, and procedures actually applied by the NDOT are not in substantial conformity with those accepted by FHWA, or are otherwise not acceptable, FHWA shall notify the NDOT in writing. No further authorizations for acquisition of right of way shall be issued by FHWA after the date of such notification until:

1.10B1 A review of the facts substantiates to the satisfaction of FHWA that the NDOT's accepted practices and procedures are satisfactory and will be adhered to by the NDOT; or

1.10B2 Revised practices and procedures have been submitted by the NDOT and accepted by FHWA. FHWA may participate in claims made or to be made by the NDOT following review of the facts pertaining to the matter.

1.11 ADVANCE APPROVAL OF PROPOSED ACTIONS

There are occasions, rather infrequent, involving large sums of money, complex valuations or legal considerations when it is desirable to request the prior agreement of FHWA for proposed actions in the acquisition of right of way. Such a request may be made prior to negotiations or at a later stage when a settlement is being attempted. In any request for prior approval, sufficient time shall be provided for adequate consideration of the question. Right of way files should include a statement of the reason for the request, and whether FHWA, concurrence in writing may be expected.

1.12 RIGHT OF WAY CLEAR OF ENCROACHMENTS – CERTIFICATION

Prior to the advertising date for a letting of contracts, a certificate (Attachment 609) must be furnished by ROW stating either that all right of way is available to the contractor and clear of improvements, or stating the estimated date when noncomplying tracts will be clear and available. For tracts that require conditional certifications refer to 23 CFR 635.309 and Chapter 6.02 of this manual.

1.13 CODING OF RIGHT OF WAY EXPENDITURES

1.13A On projects where there is Federal-aid for right of way costs, it is the responsibility of the ROW accountant to review file documents for the determination of nonparticipating items which may be included on payment document for right of way.

1.13B Expenditures for right of way must be listed separately as participating or nonparticipating items. This breakdown on expenditures is shown by coding on NDOT Form 225 (Attachment 531) which is attached to the Controller Division's copy of the voucher submitted for payment to the property owner. In the event of doubt as to proper coding, the problem should be discussed with the Property Management Supervisor for clarification.

1.14 FEDERAL LAND TRANSFERS

1.14A The provisions of this subpart apply to any project constructed on a Federal-aid highway or under Chapter 2 of Title 23, of the United States Code. When the FHWA determines that a strong Federal transportation interest exists, these provisions may also be applied to highway projects that are eligible for Federal funding under Chapters 1 and 2 of Title 23, of the United States Code, and to highway-related transfers that are requested by a State in conjunction with a military base closure under the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, 104 Stat. 1808, as amended).

1.14B Under certain conditions, real property interests owned by the United States may be transferred to a non-Federal owner for use for highway purposes. Sections 107(d) and 317 of Title 23, United States Code, establish the circumstances under which such transfers may occur, and the parties eligible to receive such transfers.

1.14C An eligible party may file an application with FHWA, or can make application directly to the Federal land management agency if the Federal land management agency has its own authority for granting interests in land.

1.14D Applications under this section shall include the following information:

1.14D1 The purpose for which the lands are to be used.

1.14D2 The estate or interest in the land required for the project.

1.14D3 The Federal project number or other appropriate references.

1.14D4 The name of the Federal agency exercising jurisdiction over the land and identity of the installation or activity in possession of the land.

1.14D5 A map showing the survey of the lands to be acquired.

1.14D6 A legal description of the lands desired.

1.14D7 A statement of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332, et seq.) and any other applicable Federal environmental laws, including the National Historic Preservation Act (16 U.S.C. 470(f)), and 23 U.S.C. 138.

1.14E If the FHWA concurs in the need for the transfer, the Federal land management agency will be notified and a right of entry requested. For projects not on the Interstate System, the Federal land management agency shall have a period of 4 months in which to designate conditions necessary for the adequate protection and utilization of the reserve or to certify that the proposed appropriation is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved. The FHWA may extend the reply period at the timely request of the Federal land management agency for good cause.

1.14F The FHWA may participate in the payment of fair market value or the functional replacement of impacted facilities under 710.509 and the reimbursement of the ordinary and reasonable direct costs of the Federal land management agency for the transfer when reimbursement is required by the Federal land management agency's governing laws as a condition of the transfer.

1.14G Deeds for conveyance of real property interests owned by the United States shall be prepared by the eligible party and must be certified as being legally sufficient by an attorney licensed within the State where the real property is located. Such deeds shall contain the clauses required by FHWA and 49 CFR 21.7(a)(2). After the eligible party prepares the deed, it will submit the proposed deed with the certification to FHWA for review and execution.

1.14H Following execution by FHWA, the eligible party shall record the deed in the appropriate land record office and so advise FHWA and the affected Federal land management agency.

1.14I When the need for the interest acquired under this subpart no longer exists, the party that received the real property must restore the land to the condition which existed prior to the transfer, or to a condition that is acceptable to the Federal land management agency to which such property would revert, and must give notice to FHWA and to the affected Federal land management agency that such interest will immediately revert to the control of the Federal land management agency from which it was appropriated or to its assigns. Where authorized by Federal law, the Federal land management agency and such party may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.

1.15 DIRECT FEDERAL ACQUISITION

1.15A The provisions of this paragraph may be applied to any real property that is owned by the United States and is needed in connection with a project for the construction, reconstruction, or improvement of any section of the Interstate System or for a Defense Access Road project under 23 U.S.C. 210, if the SDOT is unable to acquire the required ROW or is unable to obtain possession with sufficient promptness. If the landowner tenders a right of entry or other right of possession document required by State law any time before FHWA makes a determination that the SDOT is unable to acquire the ROW with sufficient promptness, the SDOT is legally obligated to accept such tender and FHWA may not proceed with Federal acquisition. To enable FHWA to make the necessary findings and to proceed with the acquisition of the ROW, the SDOT's written application for Federal acquisition must include the following:

1.15A1 Justification for the Federal acquisition of the lands or interests in lands.

1.15A2 The date FHWA authorized the SDOT to commence ROW acquisition, the date of the project agreement, and a statement that the agreement contains the provisions required by 23 U.S.C. 111.

1.15A3 The necessity for acquisition of the particular lands under request.

1.15A4 A statement of the specific interests in lands to be acquired, including the proposed treatment of control of access.

1.15A5 The SDOT's intentions with respect to the acquisition, subordination, or exclusion of outstanding interests, such as minerals and utility easements, in connection with the proposed acquisition.

1.15A6 A statement on compliance with the provisions of parts 771 and 774 of this chapter, as applicable.

1.15A7 Adequate legal descriptions, plats, appraisals, and title data.

1.15A8 An outline of the negotiations that have been conducted with landowners.

1.15A9 An agreement that the SDOT will pay its pro rata share of costs incurred in the acquisition of, or the attempt to acquire, ROW; and

1.15A10 A statement that assures compliance with the applicable provisions of the Uniform Act. (42 U.S.C. 4601, *et seq.*)

1.15B Except as provided in paragraph (a) of this section, direct Federal acquisitions from non-Federal owners for projects administered by the FHWA Office of Federal Lands Highway may be carried out in accordance with applicable Federal condemnation laws. The FHWA will proceed with such a direct Federal acquisition only when the public agency responsible for the road is unable to obtain the ROW necessary for the project. The public agency must make a written request to FHWA for the acquisition and, if the public agency is a Federal agency, the request shall include a commitment that any real property obtained will be under that agency's sole jurisdiction and control and FHWA will have no jurisdiction or control over the real property as a result of the acquisition. The FHWA may require the applicant to provide any information FHWA needs to make the required determinations or to carry out the acquisition.

1.15C If the applicant for direct Federal acquisition obtains title to a parcel prior to the filing of the Declaration of Taking, it shall notify FHWA and immediately furnish the appropriate U.S. Attorney with a disclaimer together with a request that the action against the landowner be dismissed (ex parte) from the proceeding and the estimated just compensation deposited into the registry of the court for the affected parcel be withdrawn after the appropriate motions are approved by the court.

1.15D When the United States obtains a court order granting possession of the real property, FHWA shall authorize the applicant for direct Federal acquisition to immediately take over supervision of the property. The authorization shall include, but need not be limited to, the following:

1.15D1 The right to take possession of unoccupied properties.

1.15D2 The right to give 90 days' notice to owners to vacate occupied properties and the right to take possession of such properties when vacated.

1.15D3 The right to permit continued occupancy of a property until it is required for construction and, in those instances where such occupancy is to be for a substantial period of time, the right to enter into rental agreements, as appropriate, to protect the public interest.

1.15D4 The right to request assistance from the U.S. Attorney in obtaining physical possession where an owner declines to comply with the court order of possession.

1.15D5 The right to clear improvements and other obstructions.

1.15D6 Instructions that the U.S. Attorney be notified prior to actual clearing, so as to afford him an opportunity to view the lands and improvements, to obtain appropriate photographs, and to secure appraisals in connection with the preparation of the case for trial.

1.15D7 The requirement for appropriate credits to the United States for any net salvage or net rentals obtained by the applicant for direct Federal acquisition, as in the case of ROW acquired by an SDOT for Federal-aid projects.

1.15D8 Instructions that the authority granted to the applicant for direct Federal acquisition is not intended to preclude the U.S. Attorney from taking action, before the applicant has made arrangements for removal, to reach a settlement with the former owner which would include provision for removal.

1.15E If the Federal Government initiates condemnation proceedings against the owner of real property in a Federal court and the final judgment is that FHWA cannot acquire the real property by condemnation, or the proceeding is abandoned, the court is required by law to award such a sum to the owner of the real property that in the opinion of the court provides reimbursement for the owner's reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings.

1.15F As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of the compensation in a Federal condemnation, FHWA shall reimburse the owner to the extent deemed fair and reasonable, the following costs:

1.15F1 Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States.

1.15F2 Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property.

1.15F3 The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States or the effective date of possession, whichever is the earlier.

1.15G The lands or interests in lands, acquired under this section, will be conveyed to the State or the appropriate political subdivision thereof, upon agreement by the SDOT, or said subdivision to:

1.15G1 Maintain control of access where applicable.

1.15G2 Accept title thereto.

1.15G3 Maintain the project constructed thereon.

1.15G4 Abide by any conditions which may set forth in the deed; and

1.15G5 Notify the FHWA at the appropriate time that all the conditions have been performed.

1.15H The deed from the United States to the State, or to the appropriate political subdivision thereof, or in the case of a Federal applicant for a direct Federal acquisition any document designating jurisdiction, shall include the conditions required by 49 CFR part 21 and shall not include any grant of jurisdiction to FHWA. The deed shall be recorded by the grantee in the appropriate land record office, and the FHWA shall be advised of the recording date.

CHAPTER 2
RIGHT OF WAY DESIGN

2.01 ORGANIZATION AND RESPONSIBILITIES OF THE ROW DESIGN SECTION

2.01A ORGANIZATION

2.01A1 The Right of Way Design Engineer is in charge of the Right of Way Design Section. This person is accountable to the Right of Way Division Engineer.

2.01A2 The ROW Design Section is further broken down into five units. One unit is responsible for receiving, reviewing and processing the right of way surveys, and for performing the property title research to establish ownership in the properties affected by highway projects. Three units are responsible for developing the ROW plans, plats, and legal descriptions that are used in the ROW appraising, purchasing, and condemnation processes. Each of these units is managed by a ROW Project Manager who is accountable to the ROW Design Engineer. The fifth unit is responsible for performing ROW and Land Surveys.

2.01B RESPONSIBILITIES

Responsibilities of the ROW Design Section are also described in general terms in Section 1.02B of this manual. Detailed responsibilities are further detailed in this Chapter.

2.02 PREFACE

This manual outlines the general procedures and operations of the ROW Design Section as they function within the ROW Division as a whole. The ROW Design Manual referred to throughout this chapter contains the detailed information and procedures for activities performed exclusively by the ROW Design Section in order to carry out their areas of responsibilities.

2.03 INITIATING ROW PROJECTS

Once a project receives approval to proceed, the Program Management Division notifies the ROW Design Engineer via an email that ROW design tasks have been assigned in Clarity for any project requiring ROW. The ROW Design Engineer then inputs the project into ARMS and assigns the project to a ROW Design Project Engineer, ROW Design Project Manager, and ROW Designer in ARMS and Clarity. The ROW Design Engineer sends the ARMS generated ROW Design Project Assign email to notify the ROW Design personnel that they have been assigned a project. This email also goes to the Program Management Coordinator (Clarity PPM Manager) so they can assign the Clarity tasks accordingly. For additional details of the project location, scope, and proposed general design information, see the approved Highway Improvement Programming Request (NDOT Form 73 for State Projects or NDOT Form 530 for Local Projects) in OnBase.

Once a project has been created, the ROW Designer and/or their supervisor shall determine the locations where property rights are anticipated to be needed based on the information available and create a title research study area map showing these locations. The study area map is then sent to the ROW Project Manager (Supervisor in Charge of Title Research) for use in obtaining the title research. The Hwy ROW Project Manager over the Title Researchers, at their discretion may contract with private consultants to complete title searches.

2.04 CERTIFICATE OF TITLE (OR MEMORANDUM OF OWNERSHIP)

2.04A INITIAL OWNERSHIP RECORDS SEARCH

Prior to developing Ownership Plans, the ownership rights of properties affected by the project must be established from information on file at the County Courthouse. This information is obtained by the ROW Agent (Title Research) by performing a Record of Ownership search at the Register of Deeds, County Assessor, and any other offices as needed. This search is completed for all ownership of land immediately adjacent to, and/or affected by a planned highway improvement project as identified in the study area map. Information researched and included in the title report is as follows:

2.04A1 The title researcher shall review the title research study area ("Study Area") and search the County real estate records to identify each separate parcel of land located within the Study Area. A separate parcel of land is all contiguous land owned by the same owner, and held in the same title (e.g. sole owner, joint tenants, tenants in common, etc.)

2.04A2 The title researcher shall identify the current owner(s) of each parcel of land in the Study Area, and provide a copy of the title vesting document(s) for the current owner(s) of each parcel of land in the Study Area.

2.04A3 If the filed date of the vesting document(s) for any parcel of land are within 5 years of the title effective date, the title researcher shall also identify all owners of record of the parcel within the preceding 5 years of the title effective date, including the last owner of record preceding the 5-year period of the title effective date. A copy of each additional instrument conveying title to each owner identified shall be obtained.

2.04A4 Active liens, agreements, conditions, limitations, restrictions or covenants affecting title. A copy of each instrument, except liens, shall be obtained.

2.04A5 Easements such as private water, sewer, ingress/egress (access), cell towers, flood, and irrigation or others that encumber or restrict the use of the land. A copy of each instrument, except liens, shall be obtained. The title researcher should not provide easements for public or municipal utilities (water, sanitary sewer, power, gas, cable, telephone and telegraph).

2.04A6 All recorded leases except oil and gas leases.

2.04A7 The title researcher shall provide copies of subdivision plats and surveys of irregular tracts and tax lots with metes and bounds field notes.

2.04A8 Any other encumbrances.

2.04A9 Provide copies of deeds, easements, dedications, plats, etc., for any property acquired by or conveyed to non NDOT governmental entities.

2.04A10 The title researcher should not provide deeds to the existing State highway property unless specifically requested.

2.04A11 The Title Report shall contain the following information:

2.04A11a The name of the current parcel owner(s) and how the title is held, exactly as shown on the title vesting document.

2.04A11b The County Assessor's Parcel ID Number (PID) if available.

2.04A11c If the owner of record is known to be deceased, the Case Number of the Deceased's Probate along with the name(s) of court appointed Personal Representative(s), death certificate and other documents of death, if available.

2.04A11d Active Mortgages, Deeds of Trusts, and other lien documents, and any assignments of such documents.

2.04A11e Easements such as private water, sewer, ingress/egress (access), cell towers, flood, and irrigation or others that encumber or restrict the use of the land. The title researcher should not provide easements for public or municipal utilities (water, sanitary sewer, power, gas, cable, telephone and telegraph.)

2.04A11f All recorded leases except oil and gas leases.

2.04A11g The Situation Description for the subject parcel of land to identify its general location and footprint as narrowly and as briefly as reasonable. Information contained in the Situation Description will generally be limited to describing parcel of land as being in a section, part of a section, lot, block, subdivision, etc. along with other narrowing identifiers such as lying south of a river, the west half of a lot, etc. The township, range, principal meridian, city, county and other similar information shall also be included in the description. This information is usually contained in the preamble of the legal description in the deed(s) of the parcel and is not intended to describe the precise boundaries of the parcel which would be contained in the actual legal description of the parcel. If the boundaries of the current parcel were acquired through more than one deed the various acquisitions should be combined into one situation description.

2.04A11h Comments the title researcher believes are necessary for a full understanding of the information reviewed for the parcel.

2.04A11i Title effective date.

2.04A11j If by a consultant the name, signature, and license number of abstractor.

2.04A11k The Title Researcher enters the data into the ARMS database and notifies the ROW Designer that the title research has been completed.

2.04B FOLLOW-UP VERIFICATION OF OWNERSHIP

2.04B1 Because ownership in a property may change during the period that a project is being developed, it will be necessary to perform a record of ownership update at various times throughout the life of the project.

2.04B2 A minimum of three months prior to the completion of the appraisal plans, the Hwy ROW Project Manager over the Documents Specialists and the ROW Design Engineer shall decide if the title research needs to be updated prior to the issuance of Appraisal Plans. If yes, then it will also need to be decided which section will perform this work.

2.04B3 The Appraisal section will notify the Hwy ROW Project Manager over the Title Researchers of any ownership changes and request an updated ownership record.

2.04B4 The Negotiations section will notify the Hwy ROW Project Manager over the Title Researchers of any ownership changes and request an updated ownership record.

2.05 ROW SURVEY (LAND SURVEY)

2.05A For projects that require the purchase of new ROW it will need to be determined if a ROW survey is required. This will depend on what type of property rights are being acquired and what survey information is currently available. Information for each project is reviewed with NDOT's Deputy State Surveyor and any ROW survey deemed necessary for the complete and accurate fulfillment of the ROW processes is performed by a Registered Land Surveyor in the Right of Way Division.

2.05B This survey contains the locations of all survey monuments used in the establishment of the existing ROW and property boundaries within the areas where new ROW acquisitions are anticipated along a project. This survey is then processed to tie the ROW Survey to the coordinate control established for that project. The ROW Design Pre-Design Section creates a MicroStation file to graphically illustrate the ROW Survey. This MicroStation file is then placed in ProjectWise. The ROW Design Pre-Design Supervisor sends the ARMS generated ROW Survey Complete Notification email to notify individuals that the ROW survey is complete and available.

2.05C This information is used by the ROW Design Section to create a computer-aided Drafting and Design (CADD) file showing the section lines, section corners, and any other property monuments or lines. This survey is also checked against previous projects for accuracy. Once approved, this file is made available to the Right of Way Designer for their use in developing the ROW Ownership Plans.

2.06 OWNERSHIP PLANS

2.06A Ownerships plans are created for all projects requiring new right of way after the general boundaries of the project have been established. As a minimum, these plans must be created for the areas within a project where new right of way is to be purchased.

2.06B The following information is used in the development of the ownership plans:

2.06B1 Proposed alignment.

2.06B2 Information obtained during record of ownership search.

2.06B3 City Plats.

2.06B4 Land survey locating section lines, section corners, and any other property monuments.

2.06B5 Deeds and plans identifying all previously established, acquired, or dedicated public right of way.

2.06B6 Survey of existing topography.

2.06C Ownership plans will show the following items:

2.06C1 Existing public right of way.

2.06C2 Existing control of access.

2.06C3 Notes identifying existing control of access break locations and types.

2.06C4 Current property owners adjacent to or affected by the highway project.

2.06C5 Existing easements of record (except utility easements).

2.06C6 Land survey.

2.06C7 Subdivisions, block umbers, lot numbers, additions, and outlots.

2.06C8 Street names.

2.06C9 Property lines.

2.06C10 City, County, and State lines.

2.06C11 Section, township, and range information.

2.06C12 Aerial photo.

2.06C13 Existing topography.

2.06C14 Government lots.

2.06C15 See ROW Design Manual (Chapter 4) for other Ownership Plan Design Details.

2.06D Once Roadway Design has completed their Preliminary Design Plans the ROW Designer should compare the locations where ROW Survey and Title research was obtained to the preliminary roadway designs to ensure that ROW survey and Titles are available for all areas where ROW acquisitions are anticipated. If any of these areas are not covered by ROW Survey or Title Research the ROW Designer will notify the ROW Survey Section and/or the Hwy ROW Project Manager over the Title Researchers to request any missing information.

2.06E Once the Existing ROW and Property lines have been graphically established, the ROW Designer notifies their supervisor that the design file is available in ProjectWise and is ready for review.

2.07 PRELIMINARY ROW DESIGN PLANS

Once the Roadway Design plans have been completed to such a degree that all right of way and/or easements needed for the project can be determined, they are forwarded to the ROW Design Section. The limits of construction (LOC), which will be represented on these design plans, are the primary basis for the new ROW design. These LOC's denote the extent of the grading operations (temporary and permanent), culvert extensions, channel cleanouts, erosion control, wetland mitigation sites, driveways, sidewalks, retaining walls, removal of improvements, channel changes, environmental mitigation requirements, and any other construction items.

Multiple LOC's are often displayed on the construction plans to represent unique construction items or phased construction. Examples of such items are temporary roads, channel cleanouts, public frontage roads, private drives, joint use drives, or removal of improvements. Since each of these items have different right of way needs, their corresponding LOC's along with other design information and the construction features are used to determine the size, location, and type of property rights to be acquired.

2.07A INFORMATION SHOWN ON THE PRELIMINARY ROW PLANS

All information shown on the Ownership plans is displayed in addition to the following:

2.07A1 Tract numbers.

2.07A2 New right of way, permanent easement, and temporary easement to be acquired.

2.07A3 New control of access.

2.07A4 Notes identifying new access control break locations and types.

2.07A5 Limits of construction (permanent and temporary).

2.07A6 Limits of construction text (permanent and temporary).

2.07A7 Permanent and temporary easement labels (PE1, TE1, etc.).

2.07A8 Station and offset labels for all right of way break points.
See ROW Design Manual Chapter 5 – Appraisal Plans for other Preliminary ROW plan details.

2.07B DETERMINATION OF RIGHT OF WAY BOUNDARIES AND TYPES

2.07B1 When establishing right of way limits, careful consideration must be given to the need for each tract of land, and of the use to be made of that land by NDOT. The acquisitions should be of sufficient size and type to accommodate the construction, operation, and future maintenance of the highway or transportation facility without being excessive.

2.07B1a *Construct* – construct is the process of physically building the project according to plan. The land rights acquired for these activities should be of sufficient size to reasonably facilitate the area needed for personnel and required equipment to stage, remove, and construct all items identified in the construction plans without trespassing on private property. The right of way areas for this project need also includes the room required to temporarily alter or accommodate surrounding features such as traffic, drainage, and accesses that facilitate the construction activities. Items to consider when determining the amount of right of way needed for this purpose include adequate room for equipment and personnel to operate beyond the physical footprint of the feature being constructed, grading requirements, access to the site, construction staging, temporary roads, feasible excavation for subterranean items, removal or adjustments of obstructions, clearing tracts, temporary construction items, storage of building materials, component assembly, etc. Areas acquired in fee are available for these construction activities as well as any permanent easements whose purpose is consistent with the proposed use. Any additional areas would only be needed during the construction phase and therefore can be acquired as temporary easements.

2.07B1b Operate – this is the process of ensuring that the transportation facility that is under the control, jurisdiction, and responsibility of the public agency continually functions as intended. The permanent land rights for this need permit the safe and efficient operation of the facility, and subsequent use by the public, without being encumbered by competing

land use rights. This includes the physical areas occupied by any feature made available for the public's use such as driving surfaces, public sidewalks, multi-use trails, ADA ramps, stairs, etc. It also includes areas that function or contain features that are in support of these objects such as fill or cut slopes, bridges, curbs, drainage structures, traffic signals, street lighting, clear zones, signs, permanent erosion control, sight distances, ditches, project drainage, retaining walls, joint use drives, etc. Because of the permanent nature of these features, they must reside on land acquired either in fee or as a permanent easement whose purpose is consistent with its intended use.

2.07B1c *Maintain* – maintenance is the process of periodically inspecting, repairing, replacing, or restoring individual features of the facility to ensure the overall facility is functioning as intended or to prolong its service life. The permanent land rights should therefore provide the room necessary for personnel and equipment to access and perform expected and routine maintenance activities such as pavement repairs, restoring erosion control features, cleanout of ditches, restoring sideslopes and backslopes damaged by erosion, cleanout of culverts, ensure structures are sound, fix sidewalks, etc. Because these activities are ongoing the lands rights justified by them must be either acquired either in fee or as a permanent easement whose purpose is consistent with its intended use.

2.07B2 The determination as to whether the additional right of way should be purchased in fee, or in some lesser estate, will depend on how the land will serve the NDOT, and if the acquisition would have any remaining value to the property owner after the NDOT has employed it for their use. The three primary means to acquire right of way are fee simple, permanent easements, and temporary easements.

2.07B2a Fee Simple

2.07B2b Fee simple is used when it is necessary to acquire absolute ownership in a parcel of land. Examples of when fee simple is primarily used include:

- Areas that encompass any public road driving surface along with its associated grading, shoulders, culverts, ditches, curbs, bridges, guardrail, traffic signals, street lighting, dikes, berms, sidewalks, curb ramps, retaining walls, permanent erosion control, and all other related aspects of the road that are necessary to ensure the continued operation and maintenance of the highway in the prescribed manner.
- Any areas that must be maintained free of obstacles.
- Areas for any construction items that are to be for the public's use or benefit.
- Areas that cannot be altered at any time in the future without the NDOT's consent.
- Areas that must be continuously maintained in a specific manner to provide sight distance.

- Areas of a parcel that are not needed for construction, but have little or no use to the property owner after highway construction has occurred (Uneconomic Remnants).
- Areas for work needed to fulfill the environmental permit requirements (wetland mitigation sites, channel changes, buffer zones, etc.)
- Any areas that the NDOT must have control over in order to fulfill a purpose required by the project.
- Areas on one property that must be used to provide access to other properties.
- Any other areas that are permanently needed to construct, operate, and maintain the highway or other public road.
- Bicycle/Pedestrian (Multi-Use) trail surfacing and associated appurtenances necessary to ensure the continued operation and maintenance of the trail in the prescribed manner.

See the ROW Design Manual Chapter 5 – Appraisal Plans for details on ROW design guidelines.

2.07B2c Permanent Easements

2.07B2d Permanent easements can be used when only certain property rights are permanently needed to fulfill the NDOT's purpose. They are often used in lieu of fee simple when it is beneficial for the property owner to retain some rights in the acquisition, and it does not inhibit the NDOT's ability to construct, operate, and maintain the highway in the required manner. Fee simple title should always be the preferred acquisition type when permanent land rights are needed. However, permanent easements may be considered under special circumstances when the benefits of a permanent easement over a fee simple acquisition can be determined. Examples of when permanent easements could be used include:

- Areas on one property that are used to provide access to other properties.
- Areas that are occasionally or permanently affected by drainage.
- Situations where an area serves both a public and private purpose. For example: a fill area that is both an embankment for a public road, and the bank of a private pond. A permanent easement is acquired to enable the NDOT to maintain the road embankment, while still allowing the landowner to use the pond and bank.
- Areas to permanently allow the NDOT access for maintenance.
- Areas for work needed to fulfill the environmental permit requirements (access to wetland mitigation sites, channel changes, buffer zones, etc.).
- Any areas over which the NDOT must have certain rights or control.
- Any other areas that are permanently needed for a specific purpose.

See the ROW Design Manual Chapter 5 – Appraisal Plans for details on permanent easement guidelines.

2.07B2e Temporary Easements

2.07B2f Temporary easements are used when only particular property rights are needed for a limited time. They are used primarily to allow the temporary occupation of an area by the contractor while building the road improvement. Examples of when temporary easements are generally used are:

- Private drive construction.
- To allow access to an area during construction.
- Temporary roads to accommodate traffic during construction.
- Areas needed to accommodate construction equipment and/or materials.
- To accommodate the grading beyond any permanent roadway construction items. Such as in urban areas where the adjacent properties have already been fully developed and the adjacent ground will blend into or compliment the roadway grading. For example: temporary easements could be used to re-shape a residential yard beyond the sidewalk that is at roughly the same elevation as the road and sidewalk.
- Areas needed to remove structures and/or clear it of improvements.
- Areas to facilitate grading operations.
- To grade areas that are not essential to the continued operation or maintenance of the road.
- Any time additional room is temporarily needed to facilitate construction.

See the ROW Design Manual Chapter 5 – Appraisal Plans for details on temporary easement guidelines.

2.07B3 Access Control

2.07B3a Access control is a means to limit access to properties abutting the highway facility. This right of access is a property right that is transferred by a duly executed deed. All existing and/or new access control rights, including the location of all access breaks and any limitations associated with them, must be clearly represented on the right of way plans.

2.07B3b There is a distinction between granting the right to an access point on a controlled access facility, and providing a physical means of access by building a driveway. The former involves the transfer of a legal right, whereas the latter merely implements the legal right already in place. If

driveways are shown on the plans, they will be physically built as part of the project construction. As an exception to this, future access will be shown on the plans as "future access" through a break in the control of access line, but the physical drive will not be built as part of the road construction project.

2.07B3c All Access Control design is to be determined by the Access Management Team. Members of the Access Management Team consist of the Right of Way Division Engineer, Project Development Engineer, Roadway Design Engineer, Traffic Engineer and District Engineer or their delegated representatives. For Highway Construction projects, the Roadway Designer, or their designee, will present the project to the Access Management Team, document their decisions, and distribute them in accordance with the Design Process Outline – Exhibit D (Attachment 201) The Access Management Team's decisions are then incorporated into the preliminary ROW plans.

2.07B3d At times a change in the Access Control is approved in an area not associated with a Highway Construction project. In these instances, the Property Management Section will notify the ROW Design Engineer of the approved change. The most current ROW plans for that location shall then be updated accordingly. (See Section 6.09 for additional control of access information).

2.08 ROW REVIEW MEETING

2.08A Once the ROW Designer has completed the preliminary ROW plans, they will review them with their supervisor and the ROW Design Engineer. The plans are updated to reflect any changes resulting from this review and are distributed to the ROW Design Plan transmittal project group.

2.08B Once the Roadway Designer receives the preliminary plans, they review them with their supervisor and then arranges a Preliminary ROW Plan Review Meeting with representatives from the various Divisions. Attendees include the Roadway Designer, Right of Way Designer, ROW Design Engineer, Appraisers, Utility Coordinator, Railroad Liaison, Lighting Designer, Environmental Personnel, and any others as necessary in accordance with Design Process Outline Exhibit Q (Attachment 202). At this meeting, the general project scope, history, and any relevant issues are discussed. The proposed right of way design is then reviewed by all parties to determine if the design is in compliance with NDOT standards, and that the projects ROW needs are being met.

2.09 PRELIMINARY ROW ESTIMATE

2.09A The Chief Appraiser is required to perform a preliminary estimate on the proposed right of way costs prior to actual appraisal of the project. If the schedule permits, this estimate can be performed from the appraisal plans. No additional information needs to be supplied to the Chief Appraiser in this situation.

2.09B If the estimate needs to be done prior to Appraisal plans distribution, the Chief Appraiser will request a copy of the preliminary ROW plans along with an estimate of the right of way areas. The Right of Way Designer will then prepare a table listing the tracts and their corresponding areas (See the ROW Design Manual Chapter 5 – Appraisal Plans for more details). The plans and right of way areas used for this estimate are still preliminary, but should be based on the most accurate information available at the time. These plans, along with the table, are then sent to the Chief Appraiser.

2.10 APPRAISAL PLANS

2.10A Appraisal plans identify the additional right of way that is required to meet the needs of the highway project. This additional right of way represents the exact areas that are to be appraised.

2.10B Development of the appraisal plans begin after the ROW review meeting. Any changes needed as a result of the meeting are first incorporated into the ROW plans. All information shown on the Preliminary ROW plans is included except for the limit of construction text.

2.10C Once the preliminary ROW plans have been updated, the legal descriptions for each new acquisition are written and stored in the ARMS.

2.10D A Summary of Ownerships (2 sheets) is also created at this time. This Summary of Ownerships is a plan sheet in tabular form that lists basic information for each of the tracts from which right of way will be acquired. Information contained in this sheet includes:

2.10D1 Tract number.

2.10D2 Owner's name.

2.10D3 Description of the ownership by section, township, and range in rural areas and by lot, block, and subdivision in subdivided areas.

2.10D4 Total area of acquisitions.

2.10D5 New area of acquisitions.

2.10D6 Area of permanent easements.

2.10D7 Area of temporary easements.

2.10D8 Remainder areas.

2.10D9 Plan sheet number where tract is located.

2.10E Once the new acquisition areas have been designed and legal descriptions prepared, the ROW Designer notifies the ROW Design Surveyor that the design file and legal descriptions are ready for review.

2.10F The Appraisal plans are then distributed to the ROW Design Plan transmittal project group.

2.11 NEGOTIATION PLANS

The ROW Manager (Acquisition) will notify the Right of Way Designer and the ROW Project Manager (Design) when they are ready to begin the acquisition process. This is the cue to the ROW Designer to transmit the negotiation plans. From this point forward, the plans are labeled as Negotiation Plans, and distributed to the ROW Design Plan transmittal project group. The information shown is the same as that shown on the Appraisal plans.

2.12 LIAISON

Throughout the ROW design process, it is imperative that all aspects of the project be continually coordinated with all personnel, divisions, agencies, and any others that are stakeholders in the project. This will insure that the ROW design reflects the latest proposed construction, that the project needs are being met, that all policies and procedures are being followed, and that information necessary for others to perform their duties is being accurately provided.

2.13 CORRIDOR PROTECTION PLAN DEVELOPMENT

2.13A To initiate the Corridor Protection plans development process, the ROW Design Engineer must receive a letter stating that a request for highway corridor protection has been approved by the Deputy Director of Engineering. Once this letter has been received, the Right of Way Designer should contact the person requesting the corridor protection to ascertain the location, type of project, and boundaries of the proposed highway construction.

2.13B The Right of Way Designer will then forward all pertinent information to the ROW Project Manager (Supervisor in charge of Title Research) so the current ownership of the land within the corridor protection can be retrieved from the county records. Cadastral maps, subdivision plats, and any other information that would assist in establishing the property locations should also be acquired during this search. If the county does not have a Planning and Zoning Department, an address of each owner will also need to be obtained.

2.13C The Corridor Protection plans are to show all properties and their owners within the boundaries of the protected corridor. These plans are not intended to serve as ownership plans, as they are not based on a right of way survey or a five-year record of ownership search. The property lines should be established as accurately as possible using the current owner property descriptions, adjacent property lines, plats, maps, landmarks, air photos, etc. (See ROW Design Manual Chapter 10 for more details.)

2.13D The area of corridor protection is represented on the plans by patterning the area needed to accommodate the project, and in accordance with NDOT Operating Instructions 60–9 (DOT–OI 60-9). The plans are then sent to Property Management Supervisor for filing. (See Section 6.06).

2.14 EARLY ACQUISITION PLANS

The ROW Division Manager will notify the ROW Design Engineer when a request for early acquisition has been approved. The ROW Designer will then prepare an early acquisition appraisal plan and legal description for that tract, and forward them to the Chief Appraiser.

2.15 CONDEMNATION PLATS AND DESCRIPTIONS

When an agreement with the property owner for the purchase of the new right of way cannot be reached, the NDOT may invoke its right of eminent domain through condemnation proceedings. When this occurs, the ROW Project Manager (Acquisition) will notify the ROW Design Engineer, Right of Way Designer, and their supervisor via ARMS that a tract has been marked for condemnation. At this time, a condemnation plat and description will be created. (See ROW Design Manual Chapter 7.) For Board of Education Lands and Funds (BELF) tracts, this plat and description will be sent to the Chief Negotiator – Relocation Supervisor. For all other tracts, they will be sent directly to the Legal Department.

2.16 FINALIZING (HALF SIZING OR ARCHIVING) ROW PLANS

2.16A Finalizing of ROW plans occurs after the entire right of way for a project has been secured and more commonly after the construction has been completed and the project accepted from the contractor. Finalizing plans is sometimes referred to as “half-sizing” or “archiving”.

2.16B When a project has been identified as being ready to be finalized, the appointed ROW Designer will obtain a copy of the instrument that was filed at the courthouse (i.e., descriptions stamped by the Register of Deeds). A copy of these descriptions should be found in the ROW File Room; otherwise a copy must be obtained from the Register of Deeds Office. The Designer will then verify that all new right of way, control of access and permanent easements graphically shown on the ROW plans match what is described in the deeds. The line length dimensions for all new ROW, control of access, and permanent this right of way will also be shown on the plans to assist the user when referencing the plans to the deeds. The angles of these lines do not need to be shown. The footprint and patterning of the temporary easements will also be shown on the ROW plans, but they do not need to be verified against the deed and their line length dimensions and angles do not need to be shown. The Final archive plans are then distributed in accordance with the ROW Design Manual.

2.17 LOCAL PUBLIC AGENCY (LPA) REVIEW

2.17A When local public agencies such as cities or counties elect to use federal funds for a transportation project NDOT is required to oversight, coordinate and provide advisory services for certain aspects of the project on behalf of the FHWA. The primary purpose of this review is to ensure that the ROW acquisition process is in compliance with the Uniform Act and other State and Federal regulations and policies. The ROW plans form the basis of the appraisal and acquisition activities and must accurately represent the existing conditions along with the changes that will occur as a result of the project.

2.17B When the ROW plans are ready to be reviewed, the NDOT Project Coordinator will send an email notification to the ROW Design Engineer containing an OnBase link to the ROW and construction plans stating that the ROW plans are ready for review. The ROW Design Engineer or their designee will review the plans and any discrepancies or comments must be resolved or addressed before any ROW cost estimating, appraisal or acquisitions activities commence. Additional information needed to complete the review shall also be requested.

The general objectives of this review for all projects are to gauge that the following conditions have been met:

2.17B1 That due diligence was exercised when the existing right of way was established on the plans. This is to ensure that federal dollars are not being used to acquire existing public right of way, and that the landowners are being justly compensated for any land that is rightfully theirs.

2.17B2 That the existing public right of way available is adequate to construct, operate, and maintain the facility, and if not, that a sufficient amount of new right of way and/or easements are being acquired to fulfill this need without being excessive. (See Section 2.07B – Determination of Right of Way Boundaries and Types).

2.17B3 That all structures and improvements impacted by the project, either physically or by proximity, are accurately shown on the ROW plans.

2.17B4 That any structures or improvements that could warrant compensation due to their proximity to the project are accurately shown on the ROW plans. This is to ensure that any damages to items that are close to the project, but are not being acquired, have been correctly assessed.

2.17B5 Any major items that are included in, or affected, by the appraisal are adequately represented on the plans.

2.17B6 That all public sidewalks and curb ramps will be within public right of way and/or permanent easements.

2.17B7 That any potential uneconomic remnants can be identified.

2.17B8 That the ownership and boundaries of each tract can be easily located.

2.17C If the reviewer discovers any uncertainties or deficiencies in the ROW plans, they are to be communicated back to the LPA or their designee for clarification and/or corrections. Once all issues have been resolved, a copy of the reviewed ROW plans is placed in OnBase in the NDOT ROW Design > NDOT ROW LPA Plans folder and an email containing a link to the plans is sent to the NDOT Project Coordinator, NDOT ROW LPA Coordinator, NDOT Chief Appraiser, and the NDOT Chief Negotiator notifying them that the ROW plan review is complete.

2.17D If the NDOT is appraising and acquiring the property rights needed for the project on behalf of the LPA, the title reports and legal descriptions shall also be

supplied to the NDOT in addition to the ROW and construction plans. The title research must be performed by or under the direct supervision of a registered abstractor. The title report must be signed by the registered abstractor and must include copies of all documents referred to in the title report (See Section 2.04 for items to be contained in the title report). The title research must be completed prior to the creation of the ROW plans, and the ROW plans must be based on the information contained in the reports. These title reports and all attachments should be sent to the NDOT as soon as they are available. The legal descriptions of the new acquisitions shall be submitted to the NDOT at the same time as the ROW plans that are ready for review. Any discrepancies or uncertainties shall be communicated back to the LPA or their designee for clarification and/or corrections.

2.17E If the NDOT is appraising and acquiring the property rights needed for the project on behalf of the LPA, the legal descriptions for all acquisitions shall be supplied to the NDOT in electronic text format (not pdf). Generally urban areas are to be calculated in square feet rounded up to the nearest whole square foot, and rural areas are to be in acres rounded up to two decimal places. During the appraisal process, the preparer may be directed to use different units depending on the particular characteristics of the acquisition. Each legal description shall be identified by the project control number, its tract number, acquisition type, and its sequential number. Legal descriptions can be submitted in one text document, or each tract can have its own document. The legals should be reviewed and any discrepancies or uncertainties shall be communicated back to the LPA or their designee for clarification and/or corrections. The legal descriptions shall be imported into NDOT's ARMS system and a notification of their availability sent.

2.17F An electronic CADD file in MicroStation .dgn format shall be submitted to the State with the legal descriptions or upon request. The CADD file should be the overall base design file covering the entire boundaries of the project, and must include the property lines, lot lines, sections lines, tract numbers, existing topography, new construction features, grading limits, existing ROW and easement lines, and new areas to be acquired. Reference files shall also be provided to illustrate any of these items not contained in the base CADD file.

2.17G For all LPA projects, a kmz file to view the project in Google Earth shall be submitted with the ROW Plans and upon request by the State. The kmz file should cover the entire boundaries of the project, and must illustrate the property lines, lot lines, sections lines, tract numbers, existing topography, new construction features, grading limits, existing ROW and easement lines, and new ROW and easement lines for the areas to be acquired.

2.18 ROW DESIGN SERVICES CONTRACTING

2.18A GENERAL

2.18A1 At times it is necessary and/or desirable to have consultants provide ROW Design services to the NDOT. These services can include ROW Survey, Title Research, or ROW Design. The need to contract for these services is primarily based on workloads, staff availability, situations where unique expertise is desirable, or the need to maintain project schedules.

2.18A2 Contracting for ROW services is handled through the Agreements and Consultant Services Section of the Project Development Division with the input and assistance of the ROW Design section. Their duties include**:**

2.18A2a Establish selection procedures.

2.18A2b Oversee the selection process.

2.18A2c Provide liaison with the consultants.

2.18A2d Develop the Requests for Proposals (RFP's).

2.18A2e Create the Scope of Services contract.

2.18A2f Advertise for consultant services.

2.18A2g Develop the written consultant contracts.

2.18A2h Administer the consultant selection process.

2.18A2i Participate in the selection of, and negotiation with, consultants.

2.18A2j Maintain certification records of consultants.

2.18A2k Review consultant billings.

2.18B ROW DESIGN CONSULTANT SELECTION PROCESSES

Consultants are hired either for a specific project through the RFP and selection process, or from a pre negotiated "On-Call" list.

2.18B1 RFP Selection Process

The RFP process is generally the preferred method of contracting for services. It is primarily used for individual projects where there is not an immediate need to begin work since the consultant selection process can take several months. The Agreements Engineer in the Project Development Division is notified once it has been decided to use consultant services for a certain task on a particular project. This person initiates the selection process. The requesting entity will assist the Agreements and Consultant

Services Section in the development of the RFP, Scope of Services, Consultant Contract, and Negotiated Hours.

2.18B2 On-Call Process

The “On-Call” process consists of a list of consultants who have entered into a contract with the NDOT to provide specific services for a set period of time. The advertising, selection, and contracting for “On-Call” consultants are handled through the RFP process. These consultants are primarily used when the scope is small in size, or there is an urgent need to begin the work immediately. The requesting entity will notify the Agreements Engineer in the Project Development Division when it has been decided that they wish to use an “On-Call” consultant for a certain task on a particular project. They will then assist the Agreements and Consultant Services Section in the selection of the consultant from the list, development of the Scope of Services, Consultant Contract, and Negotiated Hours.

2.18C DETERMINING WHEN TO USE CONSULTANT SERVICES

2.18C1 ROW Survey

The ROW Design Engineer and the ROW Design Engineer Assistant will coordinate with the Deputy State Surveyor in the ROW Design Section during the Pre-Design Phase of the project to determine if ROW Survey should be contracted out. Project schedules, workloads and consultant capabilities are the key consideration for determining contracting services.

2.18C2 Title Research

Recommendations on which projects will need Consultant Services for Title Research activities will be made by the ROW Project Manager (Supervisor in charge of Title Research) and in Coordination with the ROW Design Engineer and the ROW Design Engineer Assistant. An initial determination will be made early in the ROW pre-design process. Project schedules and workloads are the key consideration for determining contracting services. Preference for contracting out title research is also given to projects where the ROW design will be performed by a consultant.

2.18C3 ROW Design

Recommendations on which projects will need Consultant Services for ROW Design activities will be made by the ROW Design Engineer and the ROW Design Engineer Assistant. Project schedules and workloads are the key consideration for determining contracting services. Other considerations include is to keep smaller projects in-house as the consultant management effort exceeds the time actually performing the ROW Design duties.

Preference for contracting out the ROW Design activities shall be given to projects where the Roadway Design will be performed by a consultant. The determination on whether to have the roadway design consultant also perform the ROW Design services will be made when the ROW needs of the project can be determined with some certainty. For some project this can be done at the consultant selection phase and for others it cannot be made until the Preliminary Roadway Design Phase.

2.19 INDEPENDENT COST ESTIMATES

2.19A GENERAL DESCRIPTION

2.19A1 Independent Cost Estimates (ICE) must be performed for all State projects that will use Federal–Aid funds in the ROW acquisition. This estimate is used to calculate the anticipated Preliminary Engineering expenses associated with establishing the right of way needs of a project and for providing certain right of way information to be used throughout the appraisal and acquisition process. For state projects where this work will be performed by full time salaried employees of the state, the preliminary engineering is performed in two phases (Phase I and II). All of the ROW work in these phases, except for the preliminary right of way estimate, is commonly categorized as ROW Design Activities.

2.19A2 Phase I of the preliminary engineering includes all work up to the approval of the National Environmental Policy Act (NEPA) document. Phase II includes all right of way preliminary engineering work from phase I up to the start of the appraisal process along with the preparation of any ROW plans, plats, and legal descriptions that are needed through the project letting. Specific preliminary engineering right of way activities for each phase are more specifically categorized as follows:

2.19B PHASES

2.19B1 Phase I

2.19B1a Meetings.

2.19B1b General data collection and review.

2.19B1c Title research to establish ownership of existing right of way and other properties.

2.19B1d ROW survey review.

2.19B1e Prepare, plot, and distribute ROW plans showing existing right of way, easements, access control, property boundaries, ownerships, etc. (Ownership Plans).

2.19B1f QA/QC.

2.19B1g Input information in ARMS.

2.19B1h Input and index files in document management system.

2.19B2 Phase II

2.19B2a Meetings.

2.19B2b General data collection and review.

2.19B2c Update title research to reflect recent transactions.

2.19B2d Determine boundaries of new right of way and easements.

2.19B2e Represent new access control on ROW plans.

2.19B2f Write legal descriptions for new acquisitions.

2.19B2g Prepare, plot, and distribute ROW plans showing Ownership Plan information in addition to the new right of way, easements, access control, and proposed construction items.

2.19B2h Prepare preliminary right of way cost estimate.

2.19B2i Upload acquisition information into ARMS.

2.19B2j Prepare condemnation plats and descriptions.

2.19B2k QA/QC.

2.19B2l Input and index files in document management system.

2.19B2m Prepare, index, and distribute archival ROW plans for permanent recordkeeping.

2.19C TASKS

2.19C1 An individual task listing for each phase, along with a detailed explanation of the work effort associated with each task can be found in Attachment 205.

2.19D EXPENSES

2.19D1 The Independent Cost Estimate for each phase is to be accomplished prior to initiating any work within that phase, and should account for all expenses to be incurred during the performance of the associated work tasks. The incurred expenses to be estimated are generally categorized under the following:

2.19D1a *Direct Labor* – This is the estimated time in hours to be spent by each employee classification on the required project tasks multiplied by their respective hourly rate.

2.19D1b *Payroll Additive* – This is the amount that accounts for employee benefits for the time that is spent during the completion of the project tasks. This amount is calculated as a percentage of the Direct Labor costs. This percentage rate is approved by the FHWA and is adjusted annually. The controller's office should be contacted for the current approved rate.

2.19D1c *Travel* – This is the estimated travel expenses that will be incurred during execution of the project work tasks. This amount includes items such as vehicle mileage, lodging, meals, etc. in accordance with the NDOT Operating Instructions (Attachment 204).

2.19D2 The estimate should list the direct labor costs by employee classification for each task that will be performed within that project phase, the payroll additive rate costs, and the individual travel costs to be incurred. The estimate should reflect the project's size, scope, and complexity to give the most accurate estimate as possible. Completed estimates are transmitted to the NDOT Highway Project Funds Manager. Computation sheets listing each task can be found in Attachments 206, 207 and 208.

2.19D3 Procedures outlined in the Nebraska Department of Transportation's Guidelines and Information for the Procurement of Professional Services Manual should be used for state projects where Federal Aid funds will be used and the ROW Design Preliminary Engineering will be performed by an outside consultant.

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CHAPTER 3
APPRAISAL SECTION

3.01 ORGANIZATION OF THE APPRAISAL SECTION

The Chief Appraiser is in charge of the appraisal section and is accountable to the ROW Manager. The Appraiser Review Supervisors are accountable to the Chief Appraiser and oversee the remaining staff appraisers.

3.01A QUALIFICATIONS OF THE APPRAISAL SECTION

The Appraisal Section of the Nebraska Department of Transportation includes the following positions:

- Chief Appraiser
- Appraiser Review Supervisor
- Appraiser III
- Appraiser II
- Appraiser I

Although not required, it is the intent of the Right of Way Division to get all staff appraisers credentialed through the Nebraska Real Property Appraiser Board. The Nebraska Real Property Appraiser Act requires that all persons rendering an opinion or estimate of value of real estate, or any interest therein shall hold a current Nebraska Real Property Appraiser License, Certified Residential or Certified General designation.

Each Position has a required amount of education and experience and may require the person to be Licensed or Certified through the Nebraska Real Property Appraiser Board.

3.01B QUALIFICATIONS OF STAFF APPRAISERS

The Nebraska Real Estate Appraiser Act requires that all persons rendering an opinion or estimate of value of real estate or any interest therein shall hold a current Nebraska Real Property Appraiser License, Certified Residential or Certified General designation. This does not apply to salaried employees of any agency of the State Government or local political subdivisions. This exemption does not apply if the appraiser signs as a credentialed real property appraiser.

3.01B1 CONFLICT OF INTEREST – Reference 1.04C2

3.01C QUALIFICATIONS OF CONSULTANT APPRAISERS

The Chief Appraiser shall establish and maintain an Approved Appraiser List. This list can be found on the Department's website. To be included on the list, appraisers must be Licensed or Certified through the Nebraska Real Property

Appraiser Board and be approved by the Chief Appraiser. The Chief Appraiser shall take positive steps to include all qualified Fee Appraisers who wish to be considered for NDOT contracts on the approved list. Fee Appraisers on this list shall appraise only what is allowed by their scope of practice and shall conform to all USPAP regulations.

3.02 GENERAL OBJECTIVE OF THE APPRAISAL SECTION

The general objective of the Appraisal Section is to carry out the responsibilities listed in paragraph 1.02C in a professional and a timely manner. In addition, the Chief Appraiser assists the ROW Manager in the determination of when and where to use fee appraisers, the selection of which fee appraisers to use, the supervision of the appraiser's work, and the evaluation of the completed work.

3.03 RIGHT OF WAY COST ESTIMATES

3.03A Upon request from other Divisions/Districts within the Department, the Appraisal Section will provide Right of Way cost estimates to aid in developing highway alignment and design alternatives on a tract or project basis.

3.03B The Appraisal Section is also responsible for preliminary Right of Way Cost Estimates on the proposed Right of Way costs prior to the actual appraisal of the project. This function is primarily done by the Chief Appraiser or occasionally by the Appraisal Staff. The estimate is performed usually from the Appraisal Plans but if needed prior to the issuing of the Appraisal Plans; it can be done from Preliminary Plans when requested by the Chief Appraiser. When a State project will use Federal Aid funds in the ROW acquisition, the ROW Cost Estimate will be made in Phase II of the ROW preliminary engineering process and could become part of the Independent Cost Estimate (ICE).

LPA's must have right of way staff, or they must hire someone knowledgeable of the real estate market in the area, to complete the preliminary Right of Way cost estimate.

3.03C All elements of damage should be considered and estimated on a tract by tract basis. These damages include but are not limited to easements, severance, proximity, fencing, landscaping, and changes of grade and of access. The value of the damages are combined with the value of the acquisition, both land and improvement.

3.03D Although estimates are opinions, they are expected to be as solidly based as possible. If helpful, the estimator may do a field inspection of the project. The estimator is allowed to use indicators of value that might not be acceptable in appraising. Some examples are as follows:

3.03D1 Staff appraisals of comparable properties.

3.03D2 Assessor's information.

3.03D3 Multiple listing service sales data.

3.03D4 Observed listings.

3.03D5 Information from brokers.

3.03E The Preliminary Right of Way Cost Estimate consists of all costs associated with a tract or a project, including estimates of the following costs if applicable. See sample worksheet (Attachment 301).

3.03E1 Acquisition costs plus damages on a tract by tract basis.

3.03E2 Condemnation costs, including settlements and legal costs.

3.03E3 Relocation costs (provided by the Relocation Section).

3.03E4 Demolition costs (provided by the Property Management Section).

3.03E5 Cost to acquire advertising signs.

3.03E6 Other costs.

3.03E7 Incidental costs (employee wages, travel expenses, etc.).

3.03F For NDOT projects, notification, in the form of an e-mail or memorandum, is sent to the Roadway Design Engineer with copies to the Construction Engineer, Controller Division, and Right of Way File.

For projects done under contract with Local Public Agencies, notification should also be sent to the NDOT ROW LPA Coordinator and to the Local Assistance Division with copies to Controller Division and the Right of Way file.

3.03G The information from the preliminary Right of Way Cost Estimate is used when assigning the project for appraisal and determining the type of report to be used. This includes the development of the scope of work that is required to appraise the project.

3.03H Preliminary Right of Way Cost Estimates may be supplied by Local Public Agencies. For these estimates, oversight by NDOT's Appraisal Section will be performed to ensure that they have been completed properly. Notification, in the form of an email or memorandum, is sent to the Local Assistance Division and the NDOT ROW LPA Coordinator.

3.04 APPRAISAL

3.04A THE NEED FOR AN APPRAISAL

The term appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The Constitution of the State of Nebraska in Article 1, Section 21, and the Fifth Amendment to the United States Constitution provide that the property of no person shall be taken or damaged for public use without just compensation. Appraisals are necessary to furnish the Department with a well-documented and analyzed estimate of the amount of just compensation due each property owner for the property required for public purposes.

3.04A1 Real property to be acquired must be appraised, before the initiation of negotiations, except that an appraisal may not be required if:

3.04A1a The owner is donating the property and with full understanding of their right to have their property appraised, releases the Department from its obligation to appraise the property.

3.04A1b The Department determines that an appraisal is unnecessary because the evaluation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at $15,000 or less, based on a review of available data.

- When an appraisal is determined to be unnecessary, the Department shall prepare a waiver valuation.
- The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver evaluation.

3.04B THE NEED FOR MULTIPLE APPRAISALS

One appraisal report is all that is required in most situations. When the Chief Appraiser or the Chief Appraiser together with the ROW Manager determines that a property presents a complicated appraisal problem or that damages to a property may be difficult to assess, a second appraisal may be required.

3.04C FORM OF THE REPORTS

The Department uses two types of waiver valuations and two types of appraisals. The two waiver valuations include a “Nominal Compensation Form” and a “Waiver Valuation”. The two appraisals consist of a “Short Form” and a “Before and After”.

The two types of waiver valuations are not considered appraisals by the Department and are prepared under a waiver of appraisal provision authorized by Federal Highway Administration regulations, 49 CFR 24.102(c)(2).

These waiver valuations may not be used by Local Public Agencies on Federal-Aid Highway projects unless they have a right of way office with staff that have sufficient understanding of the local real estate market.

The Uniform Standards of Professional Appraisal Practice (USPAP), as adopted by the Nebraska Real Property Appraiser Board, does consider these to be appraisals. However, pursuant to Neb. Rev. Stat. Section 76-2221 (1), as a

salaried employee of the Department, the employee is exempt from The Real Property Appraiser Act. The statement, “This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act,” shall be prominently displayed. This statement is limited to a salaried employee with a real property appraiser credential.

3.04C1 Nominal Compensation Form

3.04C1a A “Nominal Compensation Form” is a one-page form report where only the part taken needs to be valued. This report may be used when the acquisitions and damages are very simple in nature and do not require in-depth discussions. Total compensation, exclusive of fence relocation and/or construction based on the current Department approved fencing schedule, must not exceed $15,000. Damages must be supported by written contractor’s estimates or by other published and reliable sources.

3.04C1b In order to reduce the time valuing and reporting these uncomplicated and low value acquisitions, staff appraisers or other competent Right of Way Section staff may prepare these waiver valuations.

3.04C1c The report must contain the following elements:

- Project and tract/parcel number.
- Owner’s name, as revealed in the public records.
- Legal description of parcel.
- Physical characteristics of the property.
- Determination of value and basis therefore.
- Area to be acquired.
- Simple cost to cure valuations.
- Effective date of valuation, date of estimate, and preparer’s signature.
- The waiver of appraisal provision eliminates the requirement to offer the owner or representative an opportunity to accompany the appraiser. The appraiser will send a “Notice of Project” letter. (See Attachment 320). The “Right of Way Acquisition” flyer should be included with this notice. If the need arises for the owner to be contacted, a log of meetings with property owner and/or his or her representative should be included with the report.

3.04C2 Waiver Valuation

3.04C2a A "Waiver Valuation" can be used for uncomplicated acquisitions, where only the part taken needs to be valued. It is a narrative report allowing room for adequate discussions of the acquisitions and damages. Total compensation, exclusive of fence relocation and/or construction based on the current Department approved fencing schedule, must not exceed

$15,000. Damages must be supported by written contractor's estimates or by other published and reliable sources.

3.04C2b The Waiver Valuation is not considered an appraisal by the Department and is prepared under a waiver of appraisal provision authorized by Federal Highway Administration regulations, 49 CFR 24.102(c)(2). The Uniform Standards of Professional Appraisal Practice (USPAP), as adopted by the Nebraska Real Property Appraiser Board, does consider this Waiver Valuation an appraisal. Pursuant to Neb. Rev. Stat. Section 76-2221 (1), as a salaried employee of the Department, the employee is exempt from The Real Property Appraiser Act. The statement, "This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act," shall be prominently displayed.

3.04C2c There is no required report format for a "Waiver Valuation," however the report must contain the elements listed for a "Nominal Compensation" form, plus the following elements:

- Property address.
- Description and location of property to be acquired.
- Photos of part acquired.
- Statement of value of property being acquired broken down as to land and improvements.
- Data supporting land value and "cost to cure" items.
- When it is apparent that there is a lessee affected, the leasehold interest, leased fee interest, and lessee-owned improvements need to be valued, if affected. This includes advertising signs.

3.04C3 Short Form Appraisal

3.04C3a "Short Form" appraisals may be used for uncomplicated, whole or partial acquisitions where the highest and best use of the property is its present use and that use is not changed by the acquisition. Compensation is typically anticipated to exceed $15,000 exclusive of fence relocation and/or fence reconstruction. Only one approach, usually the sales comparison method, is required. Damages must be non-complex or of the "cost to cure" type.

3.04C3b Pursuant to Neb. Rev. Stat. Section 76-2221 (1), as a salaried employee of the Department, the employee is exempt from The Real Property Appraiser Act. The statement, "This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act," shall be prominently displayed. However, if the appraiser signs as a credentialed real property appraiser, the employee will be subject to the act and the Uniform Standards of Professional Appraisal Practice.

3.04C3c There is no required appraisal report format for a “Short Form” appraisal report; however all of the listed elements must be included.

3.04C3d The "Short Form" appraisal must contain the elements listed for a "Waiver Valuation" and in addition, the following:

- A statement of assumptions and limiting conditions.
- A statement of the intended use, a statement of the intended user and the property rights appraised.
- The value being appraised and its definition.
- The scope of work necessary to produce a credible report.
- A five year sales/title history of the property.
- An adequate description of physical characteristics of the interior and exterior of the property being appraised (site and improvement data), including photos of the property.
- Zoning of the property and the present use.
- Identify the highest and best use of the property. If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
- An inspection and description of the neighborhood and proposed project area.
- Known and observed encumbrances.
- Available maps, plats, and plans should be included. Include a sketch of any improvements affected by the project.
- In the case of partial acquisitions, an adequate description of the part being acquired and its effect on the remaining property. Adequate description of the remaining property.
- A listing of comparable sales, a direct comparison of those sales to the appraised property, and a complete analysis of the comparable sales used. Provide photographs and location maps of the comparable sales. An attempt shall be made to inspect all sales.
- An explanation of all damages and benefits.
- Effective date of valuation, date of estimate, preparer’s signature, and certification.
- The Appraiser will send the owner an “Offer to Accompany” letter (See Attachment 321). The “Right of Way Acquisition" flyer should be included with this offer. A copy of the letter should be attached to the report.
- Log of meeting with property owner and/or his or her representative, including the owner’s response to the “Offer to Accompany” letter; reason of waiver to accompany, if applicable; and log of inspections must be made part of the appraisal.

3.04C4 Standard “Before and After” Appraisals

3.04C4a Standard "Before and After" appraisals shall be used in those instances when the acquisition is of a complicated nature, or the acquisition causes a diminution of value to the remaining property.

3.04C4b Pursuant to Neb. Rev. Stat. Section 76-2221 (1), as a salaried employee of the Department, the employee is exempt from The Real Property Appraiser Act. The statement, “This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act,” shall be prominently displayed. However, if the appraiser signs as a credentialed real property appraiser, the employee will be subject to the act and the Uniform Standards of Professional Appraisal Practice.

3.04C4c “Before and After” appraisals must value the subject in its current state (before the acquisition) and in its resulting state (after the acquisition). All the elements listed for a “Short Form” appraisal must be included and discussed thoroughly. In addition, all applicable approaches to value should be included. The suggested format for such a report is:

- Appraisal Summary.
- Appraiser’s Certification.
- Definitions.
- Salient Facts.
- Log of Meetings / Offer to Accompany.
- Assumptions & Limiting Conditions.
- Scope of Work.
- Neighborhood / Area / Project Data.
- Property Description.
- Tenant and Lease Data.
- Highest & Best Use Analysis.
- Value Before the Acquisition.
- Description & Effect of Acquisition.
- Value of the Part Acquired.
- Value of Remainder Before Acquisition.
- Highest & Best Use Analysis (After Acquisition).
- Value of Remainder After Acquisition.
- Damages (and Benefits).
- Summary (Acquisitions & Damages).
- Leasehold / Leased Fee Interests.

- Addenda.
- The appraiser will send the owner an “Offer to Accompany” letter (See Attachment 321). "Right of Way Acquisition" flyer should be included with this offer. A copy of the letter should be attached to the report.

3.04D DOCUMENTATION OF APPRAISALS

3.04D1 Proper documentation includes: the ownership of record, the location and description of property, the intended use, and the proper methods or approaches to value, supported by computations used, complete market data for comparable sales, identifying photographs, property sketches, and conclusions with justification therefore, as outlined in 49 CFR 24.103.

3.04D2 Whether narrative or form appraisal reports are prepared, they shall be independently prepared, dated and signed by the individual making the appraisal prior to being submitted for review. When submitted electronically, the process of releasing for review will be considered to be signed.

3.04D3 Each appraisal report shall contain an appraiser's certification incorporating as a minimum the requirements of this manual. A new certificate shall be prepared where there is a change in the appraisal report which affects the estimate of just compensation or changes the date of valuation. Revisions resulting in minor changes of areas or added easements can be handled with a supplemental memorandum along with the new certificate. In the event that negotiations have been completed on a tract, the new acquisitions will be assigned to a new tract.

3.04D4 In estimating just compensation for the acquisition of real property, appraisal reports shall disregard any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement. Physical deterioration within the reasonable control of the owner, during that same time period, should be considered by the appraiser.

3.04D5 The appraiser must report their analysis, opinions and conclusions in the report. Further, all estimates of value, of damages, and/or of benefits, shall be appraised by the most relevant, reliable, and appropriate means available. The appraiser must document the reasoning used to determine which method or methods were determined to be relevant. For example, if support for the valuation of the property after the acquisition, by the usual methods of market or income data or indications from severance damage studies is not feasible, the appraiser shall explain why it is not feasible. In such instances, the appraiser must then fully explain his or her reasoning used to determine the “after” value of the property.

3.04D6 Computations used to develop the various approaches to value and elements of damage will be shown in the appraisal report.

3.04D7 The appraiser shall make every reasonable effort to verify comparable sales with one of the principals or their representatives involved in the sale. Date of sale, time the property was on the market, names of grantee, grantor, legal description, area, types of improvements, consideration paid, motive of seller and purchaser, unusual financing arrangements and photographs of significant features of the sale shall all be made a part of the appraisal report.

3.04D8 For all appraisals (Short Form and Before & After), the owner of the appraised tract or their designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property. It is the desire of the Department of Transportation to keep the landowners affected by projects informed. The appraiser, in the early stages of the appraisal assignment, will send an "Offer to Accompany" letter (See Attachment 321). The "Right of Way Acquisition" flyer should be included with this letter. If the appraiser receives no response to this offer letter, an attempt will be made to contact the individual in person or by phone. Should the second attempt to contact the individual fail, a second offer letter will be sent by certified or registered first class mail with return receipt requested. A copy of this letter, the owner's response to the letter, a log of all contacts with the owner or representative, and the dates of inspection must be made a part of the appraisal.

For all waiver of appraisals (Nominal Compensation Form and Waiver Valuation), the owner will be sent a "Notice of Highway Project" letter (See Attachment 320) in the early stages of the valuation assignment. The "Right of Way Acquisition" flyer should be included with this letter.

3.04D9 The appraisal report should be written so that anyone not familiar with the property may read the report, examine the photographs and plats, and conclude with a thorough understanding of the property and of the reasoning of the appraiser. If the report does not lead to such an understanding, then the report is either ambiguous or deficient in content.

3.04D10 A Project Report may be used as a supplement to the individual appraisals on a project. This Project Report should only contain information that is not specific to an individual tract but is general information that relates to an entire project. It may also include all the comparable sales used for the project (if not included in the individual appraisals). The following is a list of information that may be included in the Project Report:

3.04D10a Appraiser's engagement letter.

3.04D10b Definitions.

3.04D10c Assumptions and limiting conditions.

3.04D10d Market analysis of the neighborhood.

3.04D10e Comparable sales.

3.04D10f Maps (sales, zoning, etc.)

3.04D11 The necessity for detailed documentation in an appraisal is readily apparent because of the various uses to be made of the appraisal report. These uses include the following:

3.04D11a To assure the review appraiser that the value conclusion of the appraiser is adequately supported.

3.04D11b To inform the negotiator of all pertinent facts prior to negotiation with the property owner.

3.04D11c To provide convincing evidence of value to the owner. It is the policy of the Department to provide the owner with a copy of the tract appraisal and the necessary data supporting opinion of value.

3.04D11d To advise the Right of Way Division of all pertinent facts. In the event of condemnation, the appraisal should provide the basis for expert testimony in any legal proceeding.

3.04D11e To advise the Federal Highway Administration of the basis for the Department's offer, when Federal participation is expected in the cost of right of way. The appraisal reports are subject to inspection and review by the Federal Highway Administration Right of Way officers and auditors.

3.05 ALTERNATE APPRAISALS

Alternate estimates of value should be prepared by the appraiser in the following situations:

3.05A UNECONOMIC REMNANT

The landowners remaining land, because of size, shape, topography, or severance, may be of such little value or limited utility to the owner that an uneconomic remnant is created. The "Uniform Act" requires that an "offer to purchase" such remnants must be made. However, the owner need not sell such remnant to the Department. The appraiser, therefore, must compute the loss of market value to the landowner if the remnant is sold to the Department or in the alternative the loss of market value to the landowner if the landowner retains the remnant. The appraiser or the review appraiser shall notify the ROW designer of these remnants and request a legal description with the computed area for the remnant.

3.05B LANDLOCKED REMAINDER

Normally landlocked remnants will be discovered by the ROW designer, who will ask for an estimate of the value of the remainder. That estimate will be compared to the cost of providing access to the remainder. If the cost of providing access exceeds the value of the land or the damage to the remaining property arising from lack of access, the Department has the authority to acquire the landlocked parcel. (Section 39-1321, RRS Nebraska 1943).

In those instances where a landlocked parcel is discovered first by the appraiser, the ROW Design Section shall be advised.

3.05C LANDOWNER'S IMPROVEMENTS LOCATED IN ACQUISITION

In many instances, when improvements are located within the acquisition, it may cost less to move them than to acquire them. However an "offer to purchase" must be made. The owner, after receiving contributory value for the improvement, may elect to purchase the improvement back at the Department's salvage value and remove it from the proposed right of way at their own expense. If the owner elects to retain ownership and move the improvement, compensation cannot be less than the difference between contributory value of the improvement and salvage value. The Right of Way Division Engineer has determined that on premise signs are an integral part of a business and it is permissible to obtain estimates to move and relocate these signs.

3.05D PIVOT IRRIGATION SYSTEM ELIGIBLE FOR A PERMIT TO OVERHANG THE NEW RIGHT OF WAY

There are times when the land to be acquired will impact pivot irrigation systems. When certain conditions are met, a permit can be issued to allow the pivot to overhang the right of way. See Property Management section of this manual for discussion on the conditions for this permit.

The appraiser will estimate the cost to shorten the pivot and the damage to the remainder caused by the shortening of the pivot. This amount will be paid to the owner and the permit will state that no other compensation is owed if the permit is revoked at a later date.

3.05E BOARD OF EDUCATIONAL LAND AND FUNDS (BELF) LAND

The State of Nebraska Board of Educational Land and Funds owns land across the State. Acquisition of BELF land will always proceed to condemnation.

The appraiser will contact BELF to request a copy of the current lease for the property.

An attempt should be made to determine whether the existing highway right of way includes any un-deeded acres. State Statute 72-221.01 dictates that, if there are un-deeded acres, the appraiser will determine when this land became part of a State Highway. This date will be used to estimate the value of this area. This value can be determined from other land that was sold during this time period. However, by agreement with the CEO/Executive Secretary of BELF, the un-deeded acres are now estimated based on current values.

Any new right of way will be valued using current sales.

3.06 APPRAISAL PREPARATION

3.06A REVIEW OF PLANS

3.06A1 When assigned to a project where there are "partial acquisitions," it is essential that the appraiser become thoroughly familiar with the construction plans in order to determine the relation of the finished road to the properties involved.

3.06A2 On new locations or when the grade of the road is to be changed, the appraiser should be aware of the cut or fill areas along the properties being appraised in order to judge the effect of the new construction or of changes in grade.

3.06A3 Other items to be noted include the limits of construction and right of way requirements as they may effect improvements, landscaping, and the landowner's operations.

3.06A4 The appraiser should check the means of access provided for each property and where excessive damages are anticipated because of access restrictions or for any other reason he/she should discuss the matter with the Chief Appraiser and the Right of Way Division Engineer.

3.06A5 The appraiser should make no assumptions as to access or other plan provisions but rather clarify any questionable situation prior to proceeding with the appraisal of the property involved. The appraisal must be based on the plans as provided or upon approved changes.

3.06B PRE-APPRAISAL MEETING

3.06B1 The Chief Appraiser will determine if it is necessary to hold this meeting. Typically, this meeting will be held for projects that require significant right of way acquisition.

3.06B2 If the meeting is held, the following individuals will be invited: the ROW Designer, the ROW Designer's Supervisor, the Roadway Designer, the Roadway Designer's Supervisor and the District Project Manager. The District Engineer and the District Construction Engineer will also be informed of the meeting date and time. Telephone and/or video conferencing shall be considered when appropriate.

3.06B3 This meeting will allow the appraiser to become more familiar with the engineering and design requirements for the project and to become better informed of project details.

3.06C DISTRICT NOTIFICATION OF APPRAISER ASSIGNMENT

The Chief Appraiser will notify the District Engineer of the appraiser assigned to the project, the anticipated start date and the anticipated completion date by memo or email. Copies will be sent to the District Construction Engineer and the District Project Manager.

3.06D FIELD OBSERVATIONS

3.06D1 The appraiser should ask the property owner or tenant about the location, size, and ownership of underground facilities such as pipe lines, water lines, septic tanks, drain tile, sanitary sewers. It is desirable to obtain a copy of the current Highway ROW Use Agreement. The Highway ROW Use Agreement should be reviewed by the appraiser to determine tenant or owner interest. It is not a requirement to contact the property owner for a Waiver Valuation, but the appraiser must take the necessary steps to identify the presence of these items. Estimates of cost should be obtained for any necessary adjustment to privately owned facilities.

3.06D2 Public utilities not shown on the plans should be reported to the Utility Engineer of the Roadway Design Division. The appraiser needs to determine if the costs to move meter poles and make reconnection of utilities will be included with the contract with the public utility. An estimate to perform this work will be required if the property owner is responsible for these costs.

3.06D3 In some situations, in order to properly determine the effect of the acquisition on the owner's remaining property, it may be necessary to determine the precise location of the ROW line in relation to property improvements. When such situations arise, the ROW manager will request that the District Engineer provide "staking" of the proposed ROW line for the appraiser's use.

3.06D4 *Ownership Changes* – In the course of the appraisal work, the appraiser may discover ownerships at variance with those shown on the right of way plans. This may be due to a time lapse, sale of a portion of a particular property, or for some other reason. The appraiser should request revised descriptions from the ROW Design Section and forward to the Project Manager (Title Research Supervisor) with the request, a copy of all documents that provide the basis for the request and provide an update to the five year record of ownership.

The appraiser should determine the current owner(s) of record, any previous owner(s) within the past five years, all legal descriptions of properties or parcels and all easements still in effect (except utilities). This is a requirement for all types of reports.

Where fence lines or hedge rows of long standing may establish boundary lines at variance with those shown on the plans, the appraiser should discreetly ascertain the claims of the owners bordering the questionable line and report the findings to the ROW Design Section for consideration.

3.06D5 It is the appraiser's responsibility to complete the Rodent Control Document (Attachment 306) and the Improvements in the Part Taken (Attachment 307)

for the signature of the Review Appraiser. These documents are prepared for the Property Management Section.

3.06D6 The presence of hazardous materials will normally be identified by the Environmental Section and that information will be passed on to the Appraisal Section. If the appraiser discovers or suspects there are hazardous materials that could be affected by the project as proposed, they should report their findings to the Environmental Section. The Environmental Section should be consulted on the proper handling of these materials in the appraisal process. The knowledge of the existence of hazardous materials will affect the market value of a property and needs to be considered by the appraiser.

3.07 SPECIAL INSTRUCTIONS AND APPRAISAL TERMINOLOGY

3.07A *Just Compensation* – is the full and fair equivalent for the loss sustained by the owner as a result of acquisition or damaging of private property for highway purposes. In an opinion of the Nebraska Supreme Court it is "that amount of money or its equivalent which will compensate the owner; so that he is in the same financial position as he was before his property was taken or damaged for a public purpose. This is the amount of money which will make the owner no richer or no poorer than he was before the taking or damaging of his property."

In measuring the just compensation to which any property owner is entitled under eminent domain acquisition, the courts have held that it shall be measured in terms of fair market value.

3.07B *Fair Market Value* – The Nebraska Jury Instructions, Second Edition (NJI2d Civ. 13.2) for Eminent Domain – General Definition of Fair Market Value is stated as follows:

The “fair market value” of a piece of property is the price that someone ready to sell, but not required to do so, would be willing to accept in payment for the property, and that someone ready to buy, but not required to do so, would be willing to pay for the property.

In determining fair market value, you may consider the uses to which the property has been put, and the uses to which it might reasonably be put in the immediate future.

[In determining the amount of compensation to be paid, you must not consider any change in the fair market value of the property caused by the public improvement or by the knowledge that the improvement would be (constructed, altered, et cetera)].

[You must not compensate the plaintiff for any decrease in the property’s fair market value caused by physical deterioration that the plaintiff could reasonably have prevented.]

3.07C *Highest and Best Use* – Highest and best use is that use which at the time of the appraisal is most likely to produce the greatest net return over a given period of

time. It is necessary to meet four criteria in determining the highest and best use of a property:

3.07C1 The property must be physically adaptable to such use.

3.07C2 The property should be legally available for such use.

3.07C3 The proposed highest and best use should be financially feasible.

3.07C4 The proposed highest and best use should be maximally productive.

In determining the fair market value of the property to be taken, the owner is not limited to the value of the property for the purposes for which it was actually being used. The valuation of property should be based upon its most profitable legal use. Any reasonable future use to which the land might be adapted or applied may be considered in arriving at the present market value. This is distinguishable and separate from the owner's vague plans or hopes for the future which may be completely irrelevant.

The determination of the highest and best use is one of the most important parts of the appraisal. If it is incorrectly determined, then the whole appraisal is likely to be wrong. This is often the main reason for wide divergences in valuations between appraisers. It is important therefore that the appraiser explain how the estimate of highest and best use was determined. Support for the conclusions should take into consideration zoning, land usage, and demands for the use determined most likely to occur.

3.07D *Special Benefits* – special benefits to the remainders of properties acquired are those which enhance the value of the remaining property or its highest and best use after the acquisition, and which the property owner receives that are peculiar to this property. Special benefits are the advantage accruing from a given highway improvement to a specific property and not to others generally. In contrast, general benefits are those which result to an area in general following the opening or improvement of a highway.

In Nebraska, special benefits offset damages to the remainders; however, special benefits cannot be used to offset the value of the property being acquired.

While owners are entitled to just compensation for property taken for highway purposes, unless benefits are taken into consideration the rights of the taxpaying public will not be protected. Appraisers must, therefore, be thoroughly familiar with the various benefits that may affect a remainder property after a partial acquisition and under what conditions they may offset damages. Appraisers who may be unfamiliar with the determination and application of special benefits should consult the Legal Counsel.

3.07E *Cost-to-Cure* – cost-to-cure damages are those that are curable. These costs should be determined by a local contractor who typically does the type of work that will cure the damage caused by the project. In the event a written estimate can't be obtained, these costs need to be supported by other published and

reliable sources. A discussion of the source used, and the details of the costs, should be included in the report.

It is the responsibility of the appraiser to determine whether the cost-to-cure is more economical than the loss in value suffered by the remainder. The appraiser also needs to determine that the estimate to cure the damage is reasonable and does not include any items that are non-compensable or creates betterment to the remainder.

3.08 NONCOMPENSABLE ITEMS

The following items are noncompensable under Nebraska law and shall not be considered by the appraiser in determining damages:

3.08A Loss of profits or business.

3.08B A nonbinding option to purchase property does not constitute an interest in land and therefore cannot be the basis for determining damages.

3.08C Circuity of travel by reason of the blocking of an existing public road, when it is a damage suffered in common with the public generally is a noncompensable item of damage. If this situation is encountered, the appraiser should seek the advice of legal counsel.

3.08D The placing of an island or medians in the center of a street or thoroughfare does not entitle the owner to damages inasmuch as this is an exercise of police power even though right of way is acquired at the same time.

3.08E In estimating damages to property taken containing sand, gravel, or other types of materials, the land must be valued by considering the potentialities that it possesses and minerals it contains as land and cannot be valued on yards times unit price basis applied to the quantity of materials available.

3.08F Damages arising by a reasonable and lawful exercise of police power to protect the public are not compensable.

3.08G Damages suffered during the period of construction such as noise, dust, inability of customers to conveniently get to a business property, are not to be considered by the appraiser.

3.08H Damages by reason of the loss of anticipated profits that the owner(s) claims could have been made had they been allowed to continue the use of their property are speculative and conjectural and therefore are noncompensable.

3.08I Nebraska Statutes, Section 39-1329, provides that if construction or reconstruction of any highway results in the abutment of property that did not before have direct egress and ingress to such highway, no rights of direct access accrue because of such abutment. If a landowner is denied access to a newly relocated road, that denial cannot be the basis for compensation.

3.09 REALTY AND PERSONALTY DETERMINATION

3.09A The classification of equipment and fixtures as realty or personalty is necessary so that the appraiser can list and evaluate each piece of equipment. This is only required when the building within which they are located is being acquired. In other words, an appraisal of the equipment and fixtures, as personalty, is **not** required if the Department is not acquiring the building they are located in. Equipment should be considered as part of the realty by reason of its annexation to real property and adaptation to continuing use in connection with the realty. Equipment not falling under this category is considered personalty.

3.09B In appraising commercial, industrial, and special use properties it is essential that the determinations of realty and personalty be made at an early date so the appraiser may determine the status of each piece of equipment. In order to accomplish this, it may be necessary that a member of the Attorney General's staff, the appraiser, and the Property Management Supervisor meet with the owner or the owner's representative to go over the entire property and catalogue all pieces of equipment and fixtures. With advice from the attorney, a determination should be made for each piece of equipment as to whether it is realty or personalty.

3.09C It is the Department's policy to make two offers to the owner. The first offer will include all realty, including the equipment and fixtures considered part of the realty. The second offer will include the first offer plus the equipment and fixtures considered to be personalty.

3.09D The appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support the opinion of value being placed on the equipment and fixtures considered a part of the realty, and all equipment and fixtures considered to be personalty. If the appraiser isn't qualified to value the equipment and fixtures, the matter should be referred to the Chief Appraiser for a decision of whether to hire a fixture valuation expert.

3.10 TENANT OWNED IMPROVEMENTS

It is clearly the intention of the Nebraska Department of Transportation that tenant-owners of buildings, structures, or other improvements be given status equal to owners of real property and are thus entitled to an offer of just compensation. This policy conforms to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

The appraiser must allocate separately owned property rights in their evaluation. The appraiser is responsible for determining the existence of, and estimating the value of, any tenant-owned buildings, structures, and other improvements.

Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, must be considered to be real property for the purposes of the appraisal.

When estimating the value of tenant-owned improvements, value in place and contributory value are essentially the same. The following procedure is used to estimate the value of tenant-owned improvements:

3.10A When acquiring any interest in real property, the Department shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of the tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

3.10B Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater.

3.10C No payment shall be made to a tenant-owner for any real property improvement unless:

3.10C1 The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Department all of the tenant-owner's right, title, and interest in the improvement.

3.10C2 The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

3.10C3 The payment does not result in the duplication of any compensation otherwise authorized by law.

3.10D This shall not be construed to deprive the tenant-owner of any right to reject payment and to obtain payment for such property interests in accordance with other applicable law.

The Appraisal Standards and Reports requirements noted elsewhere apply to tenant-owned improvements.

3.11 MINIMUM PAYMENTS

3.11A ACQUISITIONS

When the acquisition area is so minor that the market value falls below $100, a nominal allowance of $100 shall be assigned as the payment for each area being acquired.

3.11B TENANTS INTEREST

In instances such as a crop-share, year-to-year lease on agricultural land, or month-to-month rental on residential property, the lessee or tenant does not normally have a compensable interest in the appraised property. However, if it is determined that the project impacts the tenant's rights, it is the Department's policy to obtain a release from the tenant either by contract or by the process of eminent domain. This process is handled by the Negotiations Section.

3.11C PERMANENT AND TEMPORARY EASEMENTS

Each easement is to be considered on its own merits by the appraiser. Damages caused by the permanent use or temporary use of the area are computed on the basis of the "fee value" of the land, the expected length of use, the extent of any permanent restrictions to the area, and the applicable interest rate. This is considered along with the damages caused to any improvements to the land such as crops, grass, trees, shrubs, surfacing, etc. In many instances very nominal damages are found. A minimum of $100 damage for each easement should be added to the appraisal in instances of nominal damage or nominal value. Any damages found to be over $100 are to be appraised at their actual amount.

3.11D ACCESS CONTROL DAMAGES

Each appraisal of access control is considered separately and independently as each situation is unique. The appraiser needs to first determine whether or not there is a loss of value due to the access control. This determination needs to be properly supported in the report. However, in many instances, damages are found to be nonexistent or superficial. If this is the case, the appropriate minimum payment amount can be selected for compensation.

For example, existing access control is moved, along with the right of way line, to a new location that does not affect the ingress to or egress from the property or in any way affect the use of the improvements on the property. In these or similar instances, a minimum allowance of $100 should be included in the appraisal.

In those instances where new access control is being acquired, but existing drives are being perpetuated, or the appraiser concludes that the new access provides reasonable access to the property sufficient to preserve the property's highest and best use, a minimum allowance of $250 should be included in the appraisal.

In those instances, such as on the expressway system, where new access control is being acquired and is normally limited to every 1/2 mile, and access control has the potential to hamper future development of the property, even though there is no market evidence of a decline in the market value of the property after the control of access is in place, it is the Department's policy that a minimum allowance of $500 should be included in the appraisal.

All of the above suggested payments are to be considered as minimum payments. Each situation should be carefully evaluated to ensure that the principles of "just compensation" are followed.

3.12 FENCING SCHEDULE

Annually, after the first of the year, the Appraisal Section shall review the fencing schedule and revise it, if necessary. This can be done using actual costs gathered throughout the State or by using a price index (i.e., CPI). Revisions and updates are approved by the FHWA. This schedule is used as a basis for payments to landowners to relocate agricultural fences from the acquisition and to build new fences where needed. Current Fencing Schedule is located on the NDOT Appraisal webpage.

3.13 ADVERTISING SIGN VALUATION METHODS

The Appraisal Section of the Nebraska Department of Transportation has created a Sign Schedule that details the material and labor costs for the construction of advertising signs. The Appraisal Section will update the costs on this Sign Schedule yearly, as needed. This can be done using actual costs gathered throughout the State or by using a price index (i.e., CPI). This Schedule, and any updates made to it, are approved by the FHWA. In valuing most advertising signs in Nebraska, this cost schedule may be utilized. Exceptions to using the schedule are for those cases where the sign construction does not fit the typical standards and for on-premise signs. Non-typical signs may require a detailed analysis of the reproduction costs. The policy for on-premise signs is to obtain a written estimate to move and relocate.

This schedule is based on a study of the principles and practices of the outdoor advertising industry in Nebraska and surrounding states and is comprised of several individual schedules. The cost schedule is designed with a view of ensuring the industry that just compensation shall be paid for those signs required to be removed. At the same time, a fixed schedule of valuation factors carries the opportunity or maximum efficiency in administering the removal of such signs.

3.13A PURPOSE OF SIGN SCHEDULE

The purpose of the cost schedule is to furnish the replacement value of outdoor advertising devices.

Replacement cost new less depreciation is a concept well established in the appraisal process as an approach to valuation. The factors of each cost and each depreciation item have been based on factual data to assure their accuracy.

Replacement Cost New: This factor is to represent historic cost as available from industry records. It includes both direct and indirect charges to construction. These cost figures have been supported by local material suppliers, catalogs, interview information, and the Federal Highway Administration Cost Schedule. The schedule will be reviewed annually and periodic adjustments will be necessary to reflect changes in labor and material costs. Revisions and updates are approved by the FHWA.

Depreciation: The observed depreciation method will be used to determine the amount of depreciation.

The basic values of the schedules constitute a unit allowance per square foot. These basic values will be adjusted for the following items: illumination, reflectorization, multiple faces, cut out, etc.

3.13B SIGN APPRAISAL PROCEDURE – SIGNS AFFECTED BY RIGHT OF WAY PROJECTS

3.13B1 A list of signs on a project and permit information can be obtained from the Highway Beautification Section.

3.13B2 Measure and calculate the square footage in the sign. Completely list the construction and materials used. When it applies, determine the amount of reflectorization area or type of illumination and measure the height of the build. Take photos of the front and back of the sign.

3.13B3 Make careful inspection of the structure for quality, physical condition, and any other factors that may affect depreciation, and then estimate the percentage of depreciation from all causes.

3.13B4 From the inspection, determine the class and size of the structure and select the correct square foot cost factor from the schedule. Multiply the area by the base price factor and use applicable adjustments as shown in the schedule.

3.13B5 Upon completion, the sign valuation estimates, are reviewed and if approved, are forwarded to the Negotiation Section (Attachments 309, 310, and 311). After these signs are purchased, they will be removed by State forces, in most cases. In other instances, the sign owner may remove the sign after buying back at salvage value.

3.13B6 The appraiser should produce a list of the advertising signs located within the boundaries of the project along with the disposition of the signs noted (See Attachment 308) [confirm attachment link] and forward a copy to the Highway Beautification Supervisor. This list should include permitted signs, signs in the right of way, abandoned signs, and illegal signs. On premise signs are not included.

3.13B7 Other signs affected by the project may not require an appraisal. Signs in the current right of way, abandoned signs, and illegal signs are forwarded to the Highway Beautification Section for removal. (See Attachment 313)

3.13C LEASEHOLD

If it is established that the economic site rent exceeds contract site rent, the bonus value may be computed in accordance with appraisal techniques. This leasehold value will be added to the sign owner's compensation.

3.13D SITE VALUATION/LEASED FEE INTEREST

The market approach is the preferable method to value sign sites. Our staff appraisers are encouraged to keep track of comparable sales that include advertising sign sites. Verification of the sale with the buyer can determine the additional value attributable to the sign.

The income approach can be used as a basis for determining site value compensation when market data is not available. Consideration should be given to the following items:

3.13D1 The terms of the lease or agreement.

3.13D2 Annual rent received for the site.

3.13D3 An interest rate which reflects the durability and quality of the income stream.

3.13D4 Factors affecting the remaining life of the sign on the site.

This site value will be developed and reported in the tract appraisal for the landowner.

3.13E SIGN SALVAGE

The appraiser will provide salvage value on all conforming signs. If occasionally a salvage value is required on non-conforming signs, this could be done by the reviewer or by the appraiser when approved by the reviewer, when requested. Generally the Department of Transportation will remove signs, but arrangements could be made to have the sign company or landowner remove signs. The sign owner or landowner is required to remove the salvaged sign within a specified number of days. If the sign is not removed according to the agreement, the Department will have the right of entry on the property to remove the sign.

Any other salvage that occurs to the Department, as a result of removing signs, will be disposed of according to appropriate Department procedure.

3.14 SELECTION OF FEE APPRAISERS, CONTRACTS AND FEES

At the time a project or appraisal problem is assigned to the Appraisal Section, a determination will be made by the Chief Appraiser and ROW Management, whether to employ a fee appraiser or use a staff appraiser. This decision will be determined by the workload and complexity of the assignment.

3.14A ESTIMATING THE FEE

When it is decided that a fee appraiser should be used, the Chief Appraiser will make an estimate of a reasonable fee. The following factors are considered in estimating the fee:

3.14A1 The number and type of properties to be appraised.

3.14A2 The type of acquisitions (total or partial).

3.14A3 Whether a leasehold interest will be acquired.

3.14A4 The number and type of improvements and the amount of land to be appraised.

3.14A5 The time to be allowed the appraiser to complete the assignment.

3.14A6 Along with the "fee estimate," the Chief Appraiser will make an estimate of damages, number and type of appraisals and will determine which Fee Appraisers are best suited for the assignment.

3.14B APPROVED APPRAISER LIST

Fee appraisers' names will be placed on a roster of pre-qualified appraisers, by the Chief Appraiser, based on their past record of performing satisfactory appraisal work for the Department, or for another agency, with similar appraisal requirements. (See Approved Appraiser List.)

3.14C REQUEST FOR PROPOSAL

The request for proposal process will vary based on the number of tracts needing bids. The thresholds and processes shall be as follows:

For projects requesting bids for ten (10) tracts or less, a request for proposal will be sent by email to one of the appraisers on the Approved Appraiser list who indicate they would work in the county in which the project is located. This selection will be based on the appraiser's past records of performing satisfactory appraisal work for the Department.

For projects requesting bids for eleven (11) to twenty (20) tracts, a request for proposal will be sent by email to at least three appraisers on the Approved Appraiser list who indicate they would work in the county in which the project is located. The selections will be based on their past records of performing satisfactory appraisal work for the Department.

For projects requesting bids for more than twenty (20) tracts, a request for proposal will be sent by email to all appraisers on the Approved Appraiser list who indicate they would work in the county in which the project is located. This assures an open competitive process for selecting recipients for these contracted services.

The request for proposal shall provide a link to the website and post adequate information on the website for the Fee Appraiser Consultant to submit a realistic proposal. This information should include, but not be limited to, a clear scope of work (see Appraisal Services Specifications Attachment 314), plans and/or strip maps, names of the property owners, estimated start and finish dates of the project assignment, number of tracts, the type of valuation/appraisal report required, the time and date of the proposed opening of proposals.

The consultants will be informed to submit their responses to the Requests for Proposals in the manner and format listed below, identifying each response by its respective tab numeral.

Tab	Item
1	Appraisal Experience in Condemnation/Eminent Domain. Describe at least three recent appraisal contracts that demonstrate the fee appraiser is proficient, capable and qualified to appraise condemnation or eminent domain assignments. The description shall include the name of the client and a telephone number of a responsible contact person. Absent actual appraisal experience in condemnation or eminent domain assignments, the fee appraiser shall explain why they feel they have knowledge and experience and what steps the fee appraiser will take to competently complete the contract.
2	Condemnation/Eminent domain Appraisal Education. The fee appraiser shall list all the condemnation or eminent domain education courses attended by noting the provider of the course, the course name, the number of hours, and the date.
3	Memberships and Professional Designations from Professional Organizations. The fee appraiser shall list all the professional organizations in which a membership is currently maintained by noting the name of the organization and how long the fee appraiser has been a member. The fee appraiser shall list all the professional designations currently held by noting the name of the organization, the name of the designation, and the requirements to obtain the designation.
4	Start and completion Dates. The fee appraiser shall propose start and finish dates for the contract. The fee appraiser's start and finish dates may be different than those estimated by the Department. Time is of the essence, therefore, the dates proposed by the fee appraiser will be considered during the Department's evaluation of the proposals.
5	Present Workload with the Department. The fee appraiser shall indicate the Project Number(s) and the number of tracts to be appraised that are not yet completed that are under contract with the Department at the time the proposal is submitted.
6	Cost. The fee appraiser shall indicate the per tract cost and the total cost of the project and note this on Appendix "C" of the Appraisal Services Specifications.

3.14D SELECTION PROCESS

3.14D1 The fee appraisers will also be informed that a selection committee will review and evaluate all replies and identify the individuals that may be invited to submit more detailed proposals, make oral presentations, or both. The selection committee will have only the response to the solicitation to review

for the selection of finalists. It is therefore important that the respondents emphasize specific information pertinent to the work. Our award could be made on the basis of initial proposals, without discussion.

3.14D2 The selection committee will consist of the ROW Manager, Chief Appraiser, and the Appraisal Review Supervisors. Three of these individuals, at a minimum, must be present to review and score the proposals.

3.14D3 Proposals received shall be held until the prescribed time of opening. At which time and in the presence of the selection committee, the proposals shall be opened, copies made and distributed to the selection committee and scored (See Attachment 315) by the selection committee.

3.14D4 The individual scores of the members of the selection committee will be added together for a composite score (see Attachment 316). The selection committee will then determine which proposal is most advantageous to the Department's program. The selected proposal may or may not be the proposal that has the highest composite score. After this decision, an appraisal contract (See Attachment 317) is prepared and presented to the Fee Appraiser for acceptance. When the agreement bearing the Fee Appraiser's signature is received, it is executed by the Right of Way Division Engineer, and forwarded to the Agreements Engineer & Controller.

3.14D5 A memo will be made summarizing the decision reached by the committee. This memo, the composite scoring, the individual scoring and all the proposals received will be placed in the project file.

3.14D6 The administrative details concerning the start, progress, completion, payment, etc. of the services to be performed as per the contract are the responsibility of the Chief Appraiser. The technical details, as outlined by the specifications made a part of the contract, are to be handled by the assigned review appraiser.

3.14D7 There may be cases where there are revisions to the project that were not addressed in the contract with the fee appraiser. Upon reaching an equitable fee for the change in work assignment, both the contracted fee appraiser and the Chief Appraiser will sign a supplement contract. (See Attachment 318) All other conditions and specifications contained in the original agreement shall be applicable to this supplement.

3.14D8 The review appraiser and the Chief Appraiser together will evaluate the Appraisal Consultant's work product and performance. If the performance is unsatisfactory, and with the concurrence of the Chief Appraiser, the fee appraiser is required to take a partial acquisition course and resubmit examples of their work product to be re-approved as a qualified appraiser. This data will be filed for use as future reference for selecting Consultants.

CHAPTER 4
APPRAISAL REVIEW

4.01 QUALIFICATIONS AND SELECTION OF REVIEW APPRAISERS

The position of review appraiser is one of great responsibility. The review appraiser must be a person with good judgment, tact, and integrity. The ROW Manager depends upon the review appraiser to act competently and fairly in completing appraisal reviews which establish value and determine compensation to be paid to landowners. The appraisal reviewer's determinations must fairly and fully compensate landowners and at the same time protect the interest of the taxpayers.

4.01A SELECTION OF REVIEW APPRAISERS

Appraisers are assigned to Appraiser Review by the Chief Appraiser subject to the approval of the ROW Manager. Review appraisers are usually selected from the staff appraisers of the ROW Division on the basis of observed performance.

4.01B QUALIFICATIONS OF REVIEW APPRAISERS

4.01B1 The qualifications of a review appraiser must be at least equal to those of an Appraiser III. In those instances when a consultant review appraiser is used, the appraiser must be a Certified General Appraiser or a Certified Residential Appraiser for residential assignments and must have previously pre-qualified for inclusion on the Department's Roster of Qualified Appraisal Reviewers.

4.01B2 The review appraiser must be thoroughly qualified with formal appraisal training, extensive appraisal experience, and preferably court experience, and be capable of working cooperatively and productively with both staff and fee appraisers. This requires the review appraiser to be professionally well qualified. Criticisms, questions, suggestions, and corrections have greater validity and are more readily acceptable to the appraiser when they are by a professional equal.

4.01B3 Other desirable experience includes buying, selling, and management of property; college training in business administration, agriculture, economics, law, or engineering; continuing education in the real estate field; and employment at a management level by a governmental entity.

4.01B4 CONFLICT OF INTEREST – Reference 1.04C2

4.02 SELECTION OF CONSULTANT REVIEW APPRAISERS, CONTRACTS AND FEE

When an appraisal is advanced to the "review" stage, a determination is made by the Chief Appraiser and Right of Way Management, whether to assign it to a staff review appraiser or retain the services of a consultant review appraiser. The determination is based on the staff's workload, complexity of the appraisal problem, or when an outside opinion is desirable or necessary.

4.02A ESTIMATING THE FEE – in those instances requiring the services of a Consultant, the Chief Appraiser makes an estimate of the consulting fee. The factors considered in estimating the fee:

4.02A1 The number and type of properties to be reviewed.

4.02A2 The type of acquisitions (total or partial).

4.02A3 Damages to the remainder of property.

402A4 Whether a leasehold interest will be acquired.

4.02A5 The number and type of improvements and the amount of land to be appraised.

4.02A6 The time to be allowed the appraiser to complete the assignment.

4.02A7 Location of the assignment.

4.02B *Approved Review Appraiser List* – the Chief Appraiser shall establish and maintain an Approved Review Appraiser List (See Approved Appraiser List). The Chief Appraiser shall take positive steps to include all qualified fee review appraisers who wish to be considered for NDOT contracts, regardless of race, color, religion, sex, national origin, age, or any physical handicap, which does not prevent satisfactory performance of the work, on the approved list.

Fee review appraiser's names are placed on this list by the Chief Appraiser, based on their past record of performing Satisfactory review appraisal work for the Department, or by a fee review appraiser furnishing his/her, work done for another agency, etc. with similar appraisal review requirements.

4.02C *Qualifications* – qualifications required to be added to the Approved Appraiser list as a review appraiser include:

4.02C1 Be generally knowledgeable of land values in the area of the appraisal assignment.

4.02C2 Have adequate experience in Eminent Domain appraisal assignments to enable them to determine the effects of the acquisition on the property being appraised.

4.02C3 Have completed a partial review appraisal course. The Chief Appraiser has discretion to waive this requirement for persons with satisfactory experience and performance as with partial acquisition appraisal assignments.

4.02C4 Hold a Certified General designation from the Nebraska Real Property Appraiser Board.

4.02C5 May hold a Certified Residential designation if the assignment is for residential properties.

4.02D REQUEST FOR PROPOSAL

4.02D1 The request for proposal process will vary based on the number of tracts needing bids. The thresholds and processes shall be as follows:

For projects requesting bids for ten (10) tracts or less, a request for proposal will be sent by email to one of the appraisers on the Approved Appraiser list who indicate they would work in the county in which the project is located. This selection will be based on the appraiser's past records of performing satisfactory appraisal work for the Department.

For projects requesting bids for eleven (11) to twenty (20) tracts, a request for proposal will be sent by email to at least three appraisers on the Approved Appraiser list who indicate they would work in the county in which the project is located. The selections will be based on their past records of performing satisfactory appraisal work for the Department.

For projects requesting bids for more than twenty (20) tracts, a request for proposal will be sent by email to all review appraisers on the Approved Appraiser list who indicate they would work in the county in which the project is located. This assures an open competitive process for selecting recipients for these contracted services.

4.02D2 The request for proposal shall provide a link to the website and post adequate information on the website for the fee review appraiser consultant to submit a realistic proposal. This information should include, but not be limited to, a clear scope of work (see Appraisal Review Services Specifications Attachment 401), plans and/or strip maps, names of the property owners, estimated start and finish dates of the project assignment, number of tracts, the type of valuation/appraisal report required to be reviewed, the time and date of the proposed opening of proposals.

4.02D3 The consultants will be informed to submit their responses to the Requests for Proposals in the manner and format listed below, identifying each response by its respective tab numeral.

Tab	Item
1	Appraisal Review Experience in Condemnation/Eminent Domain. Describe at least three recent appraisal review contracts that demonstrate the fee review appraiser is proficient, capable and qualified to appraise condemnation or eminent domain assignments. The description shall include the name of the client and a telephone number of a responsible contact person. If the fee appraiser has not actually performed review appraisal contracts for condemnation or eminent domain appraisals, they should describe appraisal contracts for appraisal services on condemnation or eminent domain projects.

Absent actual appraisal experience in condemnation or eminent domain assignments, the fee appraiser shall explain why they feel they have knowledge and experience and what steps the fee appraiser will take to competently complete the contract.

2 Condemnation/Eminent Domain Appraisal Review Education. The fee review appraiser shall list all the condemnation or eminent domain education courses attended by noting the provider of the course, the course name, the number of hours, and the date.

If the fee review appraiser has not actually attended any review appraisal courses for condemnation or eminent domain assignments, they should list all appraisal condemnation or eminent domain courses completed.

3 Memberships in and Professional Designations from Professional Organizations. The fee review appraiser shall list all the professional organizations in which a membership is currently maintained by noting the name of the organization and how long the fee review appraiser has been a member.

The fee review appraiser shall list all the professional designations currently held by noting the name of the organization, the name of the designation, and the requirements to obtain the designation.

4 Start and Completion Dates. The fee review appraiser shall propose start and finish dates for the contract. The fee review appraiser's start and finish dates may be different than those estimated by the Department. Time is of the essence, therefore, the dates proposed by the fee review appraiser will be considered during the Department's evaluation of the proposals.

5 Present Workload with the Department. The fee review appraiser shall indicate the Project Number(s) and the number of tracts with appraisals to be reviewed that are not yet completed that are under contract with the Department at the time the proposal is submitted.

6 Cost. The fee review appraiser shall indicate the per tract cost and the total cost of the project and note this on Appendix C, Appraisal Review Services Specifications, (Attachment 401).

4.02E SELECTION OF FEE REVIEW APPRAISER

4.02E1 The fee review appraisers will also be informed that a selection committee will review and evaluate all replies and identify the individuals that may be invited to submit more detailed proposals, make oral presentations, or both. The selection committee will have only the response to the solicitation to review for the selection of finalists. It is, therefore, important that the respondents emphasize specific information pertinent to the work. Our award could be made on the basis of initial proposals, without discussion.

4.02E2 The selection committee will consist of the ROW Manager, Chief Appraiser, and the Appraisal Review Supervisors. Three of these individuals, at a minimum, must be present to review and score the proposals.

4.02E3 Proposals received shall be held until the prescribed time of opening. At which time and in the presence of the selection committee, the proposals shall be opened, copies made and distributed to the selection committee and scored (See Attachment 402) by the selection committee.

4.02E4 The individual scores of the members of the selection committee will be added together for a composite score (see Attachment 403). The selection committee will then determine which proposal is most advantageous to the Department's program. The selected proposal may or may not be the proposal that has the highest composite score. After this decision, an appraisal contract See Attachment 404) is prepared and presented to the fee review appraiser for acceptance. When the agreement bearing the fee review appraiser's signature is received, it is executed by the Right of Way Division Engineer, and forwarded to the Agreements Engineer & Controller.

4.02E5 A memo will be made summarizing the decision reached by the committee. This memo, the composite scoring, the individual scoring and all the proposals received will be placed in the project file.

4.02E6 The administrative details concerning the start, progress, completion, payment, etc. of the services to be performed as per the contract are the responsibility of the Chief Appraiser.

4.02E7 There may be cases where there are revisions to the project that were not addressed in the contract with the fee review appraiser. Upon reaching an equitable fee for the change in work assignment, both the contracted fee review appraiser and the Chief Appraiser will sign a supplement contract. (See Review Contract Supplement Attachment 405). All other conditions and specifications contained in the original agreement shall be applicable to this supplement.

4.02F STAFF REVIEW APPRAISER RESPONSIBILITIES

4.02F1 A staff review appraiser will evaluate consultant appraisal reviews in the area of compliance of the contract, quality of work and adequacy of review. The staff review appraiser has the responsibility of accepting or denying the consultant review. If found unacceptable, the staff review appraiser will prepare a letter stating reasons for non-acceptability and return the appraisal review to the consultant reviewer for correction, clarification, etc.

4.02F2 The staff review appraiser has the responsibility of determining just compensation and the amount to be offered for real property to be acquired. 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. Therefore, the Department, through the staff review appraiser, retains the responsibility of making the final determination of the amount to be offered as just compensation.

4.02F3 The staff review appraiser and the Chief Appraiser together will evaluate (See Appraisal Review Consultant Performance Evaluation Attachment 406) the consultant review appraiser's work product and performance for the purpose of making decisions pertinent to future assignments. If the performance is unsatisfactory, and with the concurrence of the Chief Appraiser, the fee review appraiser is required to take a partial acquisition review appraisal course and resubmit examples of their work product to be re-approved as a qualified fee review appraiser. This data will be filed for use as future reference for selecting Consultants.

4.03 OBJECTIVES OF THE APPRAISAL REVIEW

4.03A The appraisal process is not complete until there has been an adequate review of the appraisals. A determination must be made by the reviewer as to whether the appraisals have adequately determined the fair market value for the property under consideration and made a reasonable estimate of just compensation due the property owner. From the facts and conclusions found in the various appraisals and from the appraiser's knowledge and investigation, the review appraiser must be able to make a logical and sound conclusion regarding the fair market value of the property and of the reasonable and just compensation due the property owner.

4.03B The objectives of review and the procedures to obtain those objectives are covered in greater detail in "An Informational Guide For Appraisal Review" issued by the AASHTO Committee on Right of Way and all reviewing appraisers and administrative personnel should become thoroughly familiar with the contents of that guide.

4.03C The "Nominal Compensation Form" and the "Waiver Valuation" are reports that a waiver of the necessity for an appraisal is determined by ROW due to the uncomplicated nature of the acquisition and meeting the specified level of value. The review appraiser is given the latitude to streamline the review process according to the complexity of the appraisal problem. The main objective should be to ensure that the opinion of value is properly developed and supported by the appraiser.

4.03D The level of review analysis must depend upon the complexity of the appraisal problem, however, the reviewing appraiser shall examine all appraisal reports to determine that the appraisal:

4.03D1 Includes a presentation and an analysis of market information that meets the Department's appraisal specifications.

4.03D2 Follows accepted appraisal principles and techniques in the valuation of real property in accordance with existing Nebraska law and the Uniform Standards of Professional Appraisal Practice.

4.03D3 Contains or makes reference to all information necessary to explain, substantiate, and thereby document the appraisal conclusions and estimates of value and just compensation.

4.03D4 Includes consideration of all compensable items of damage and benefits, and does not include compensation for items held to be noncompensable under Nebraska law.

4.03D5 Contains an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which the appraiser considered to be a part of the real property to be acquired. This includes any tenant-owned buildings, structures, or other improvements. The review appraiser must also determine that the recommended or approved estimate of just compensation contains an appropriate allocation of value to tenant-owned improvements.

4.03D6 Contains an accurate estimate of just compensation for all damages resulting from the acquisition. Where appropriate, in the case of a partial acquisition, either in the report or in a separate statement, a reasonable allocation of the estimate of just compensation for the real property acquired and for damages to remaining real property must be set out.

4.04 ADVERTISING SIGN APPRAISAL REVIEW

All advertising sign appraisal estimates of value shall be reviewed by a person other than the one who made the appraisal estimate. Sign appraisal estimates shall be reviewed and approved prior to the initiation of negotiations.

4.05 DESK REVIEW OF PROJECTS

4.05A The appraisals shall be logged in at the time they are received. The log shall identify the property by tract number and owner's name; state the name of the appraiser, the date that the appraisal was received and the amount of compensation stated in the appraisal. Any supplements or revisions, if there is a change in value, are to be similarly treated.

4.05B Each appraisal shall be "desk reviewed" by the reviewer, before making a field inspection. The reviewer shall examine all appraisals for errors in: areas, names, basic assumptions, affidavits of the appraiser and completeness. Sketches, plats, and photos should be examined. All computations should be checked.

4.05C The reviewing appraiser may supplement an appraisal report with corrections of minor mathematical errors where such errors do not affect the final value conclusion of the report. The review appraiser may also supplement the appraisal file where the following factual data has been omitted:

4.05C1 Project and/or parcel number.

4.05C2 Owner's and/or tenant's names.

4.05C3 Parties to transaction, date of purchase and deed book reference on sale of subject property and comparables.

4.05C4 Statement that there were no sales of subject property in the past five years.

4.05C5 Location, zoning, or present use of subject property and comparables.

4.05D The reviewing appraiser shall initial and date corrections and factual data supplements to reviewed appraisal reports.

4.06 REVIEW MUST BE MADE ON A PROJECT BASIS

In order that review appraisers may more fairly and fully judge the appraisals for a project, a substantial number of appraisal reports should be forwarded to the review appraiser at the same time. This procedure will enable the reviewer to compare values, parcel by parcel, for an overall balance. This procedure applies particularly to properties of similar character in the same range of values.

4.07 REVIEW OF MULTIPLE APPRAISALS

4.07A All appraisals to be made for an individual parcel shall be made available for review before fair market value is established. When two appraisals are made and are being desk reviewed, special attention should be paid to whether there is a wide divergence in the two estimates of just compensation. If wide divergence is noted, the Chief Appraiser should be advised at once in order that determination can quickly be made regarding the necessity for a third appraisal. Early arrangements for a third appraisal are necessary to avoid undue delay in completing right of way acquisitions.

4.07B If more than one appraisal has been completed on a single property, the field review should be of all such appraisals at one time. This allows the reviewer to conserve time, and it permits easier comparison of the appraisals involved. It also allows the review appraiser to better recall variations in the appraisals.

4.08 FIELD INSPECTION OF APPRAISED PROPERTIES

4.08A Field reviews are an essential part of the review process and should include an examination of the entire project. The review appraiser should first orient himself/herself to the project area and determine how it relates to the general neighborhood data, the comparable sales listed in the appraisal reports, other sales that have been found through other sources, and the appraiser's reasoning used to arrive at the estimate of value.

4.08B The review appraiser should then inspect the appraised property, including the interior of the improvements. It is desirable that such inspection of improvements be made in the presence of the owner or with their knowledge. The date of inspection should be noted and recorded, together with the names of parties present or advised. If the review appraiser is the first contact of the owner, the "Right of Way Acquisition" flyer should be given and noted in this log.

4.08C The review appraiser should answer all questions that arise concerning the Department's acquisition procedure. However, the reviewer should not discuss value. This will be done by the right of way negotiator who will subsequently contact the owner. A systematic, efficient, and complete inspection of the property may help assure the owner that full and individual consideration is being given to the owner's property.

4.08D The review appraiser while inspecting the property may ask the property owner to point out any special items of construction or value that the owner believes should not be overlooked. This may help assure that full consideration has been given to all items that are important to the owner. In viewing the exterior of the property, the reviewer should observe all trees, shrubs, and all on-site improvements.

4.08E If the review appraiser discovers or suspects there are hazardous materials that could be affected by the project as proposed, they should report their findings to the Environmental Section. The Environmental Section should be consulted on the proper handling of these materials in the appraisal process.

4.08F The level of review analysis depends on the complexity of the appraisal problem. Waiver valuations are not appraisals as defined by the Uniform Act, therefore, the above items may not be necessary in all cases..

4.09 FIELD INSPECTION OF COMPARABLE SALES

4.09A After completing the inspection of the property being appraised, the review appraiser should personally field check and if not previously accomplished, verify all comparable sales. Each comparable sale should be personally inspected. If an improved sale is relied on in estimating value, an attempt to view the inside of any improvements should be made when there is a question of comparability. Inquiry should be made to determine if any improvements have been added after the date of the sale.

4.09B If other sales data is available to the reviewing appraiser, which is pertinent to the subject appraisal, it should also be inspected. The review appraiser should verify the price, area, terms, and condition of the sale of any comparable property, with the seller, buyer, or broker or other reliable source, if the sale is to be relied upon to in any way determine market value. The level of review analysis depends on the complexity of the appraisal problem. Waiver valuations are not appraisals as defined by the Uniform Act, therefore, the above items may not be necessary in all cases.

4.10 ANALYSES OF HIGHEST AND BEST USE

4.10A In all cases, the reviewer should inspect the present use of the property and verify that the appraiser has determined its zoning, if any. The highest and best use of the property as shown in the appraisal, both before and after the acquisition, should be analyzed by the review appraiser to determine whether the conclusion of the appraiser is correct. If the appraisal concludes that the highest and best use of the appraised property is different from the property's existing

use, the appraiser's conclusion should be set out clearly in the appraisal and logically and properly supported.

4.10B When there is a portion of the property remaining after the taking, it is necessary to determine the highest and best use of the remainder as well as the original property.

4.11 VERIFICATION OF COST AND INCOME DATA

4.11A Additional review must be made by the review appraiser if the cost or income approaches are used in evaluating the property. The reviewer should verify the reliability of the cost data used in the appraisal against current construction costs in the market. Local builders or builders' supply firms can provide data concerning current cost of comparable types of building materials. The reviewer should verify that the cost data used in the appraisal is for structural components of similar quality to those used to construct the existing improvements on the property.

4.11B If the income approach is used, the review appraiser should verify the appraiser's conclusions regarding economic rent, by visiting those properties considered by the appraiser to be similar properties in the area. The reviewer should also verify the appraiser's conclusions regarding the rate of return on income properties, visiting those properties used by the appraiser to establish the rate of return. In the absence of a documented basis for the appraiser's determination of economic rent, the reviewer should ask the appraiser for supplemental data and if not provided verify the appraiser's conclusions by finding the rent and the rate of return on income properties that the reviewer determines to be similar to the appraised property. The reviewer may find typical operating statements for this type of property in the area. If the land residual technique is used, the reviewer must be assured that careful consideration was given to the improvement cost, age, income and highest best use. The reviewer should verify the rate of return on similar income properties located in the vicinity of the appraised property. If the building residual technique is used land values should be established using market evidence. If gross income multipliers are used in the income approach, the reviewer should check the reliability and effective range of the rental sales used, in computing the multipliers.

4.12 PROPER CONSIDERATION OF BENEFITS AND DAMAGES

4.12A In the case of partial acquisitions, the review appraiser should make sure that the appraiser has properly considered all damages to the remaining property and properly applied special benefits found to exist. The reviewer should assure that none of the damages which are listed in Chapter 3 of the ROW Manual as noncompensable have been included in the appraisal. All damage items must be clearly and logically explained.

4.12B By far, the greatest number of appraisal and appraisal review problems arise when partial acquisitions are involved. Partial acquisitions may be divided into four groups:

4.12B1 Group A consists of strip acquisitions to widen existing rural highways where the value of the remaining land far outweighs the value of land taken and there are minimal damages, if any, to the landowner's remaining property. The reviewer should assure that items of damages have not been overlooked by checking the plans to identify changes in grade, changes in drainage, alterations or modifications of driveways, application of access control, provisions for fencing, and proximity of the new property line to existing improvements.

4.12B2 Group B consists of strip acquisitions in urban areas for widening existing streets. This type of acquisition often results in problems of proximity damage, "cost to cure" items, landscaping damage, nonconforming uses, grade change problems and problems concerning the operation or use of existing improvements.

4.12B2a DAMAGE

In the application of proximity damages to residences (or other improvements), it is highly important that the reviewer be satisfied that the damages are supported from local market data. Where severance damage studies are available for this type of acquisition, they should be given thorough consideration by the reviewer.

4.12B2b COST TO CURE ITEMS

The review appraiser should take care that the cost of items to be constructed by the state, such as retaining walls, sidewalks, driveways, and landscaping, are not included as damage items in the appraisal.

4.12B2c NONCONFORMING USE

Wherever the use of the remainder is found to be altered because of the application of zoning or building regulations, the reviewer should examine supporting documentation such as zoning or building codes. Also, the enforcement official for the zoning or building codes should be interviewed if possible, to confirm the conclusion of a changed use.

4.12B3 Group C consists of strip acquisitions for widening existing streets where improvements are required to be taken. The review appraiser should make the same review as with group A, and determine the adequacy of the appraiser's analysis of damages to any improvements.

4.12B4 Group D consists of partial acquisitions of significant proportions, creating one or more remainders, with or without access.

This is the group in which appraisal problems of greatest magnitude arise. This is because many areas of the property may have either damages or benefits that may be seen by the appraiser as real and provable or speculative and questionable. In these situations the review appraiser must be familiar with the highway construction plans in order to evaluate the effect of the proposed construction on the remainder of the property. Such things

as changed drainage, accessibility to fields, availability of operational area, and similar matters must be examined and understood by the reviewer to properly analyze the conclusions of the appraiser.

The Reviewer must first analyze the comparability of properties used to establish after values. In doing so, the review appraiser must examine the similarity of the properties in terms of: areas, irregular field lines, separation due to roads, railroads, or streams, and all other relevant physical features.

Some of the elements to be considered in analyzing damages are:

4.12B4a Economic Size

Adjustments by the Appraiser for economic size should not be arbitrary or speculative but established by adequate market data where possible.

4.12B4b Point Rows and Triangulation of Land Areas

A diagonal acquisition which results in point rows and triangulation of land areas may or may not cause a decline in the market value of the property even though the property would logically appear less desirable after the acquisition. Even small acquisitions may be large in the owner's thinking and represent real, immediate problems to them. However, severance damages must be based on a decline in market value. If there is no real evidence of a decline in market value there are no real damages. Also in these cases, caution should be exercised to avoid compounding damages.

4.12B4c Time Adjustment

Time adjustments should be uniformly applied and, if possible, be established from market data in the area. The use of statewide average changes, if several land uses are involved, may be questionable and should only be used if local data is not available.

4.12B4d Circuity of Travel and Additional Operating Cost Between Remainders

There has been much confusion in the interpretation and application of the term "Circuity of Travel" in distinguishing between compensable and noncompensable damage items. The reviewer should seek the advice of legal counsel if there is a question as to whether damages in an appraisal are based on circuity of travel.

The increased distances required traveling to local markets, schools, and social and cultural events may result in damages which are not compensable and should be eliminated if included in an appraisal.

When the acquisition of property by the Department leaves two or more remainders, the additional operating costs caused by the acquisition, may be considered within the fair market value concept.

4.12B4e Change in Grade and Access

Severance damages due to change in grade, impairment of reasonable access, and land locking, are appropriate for consideration generally. The reviewer should determine whether the Appraiser's conclusions are factually correct and if they are supported by market data.

4.12B4f Stock and Machinery Passes

The reviewer should determine whether damages mitigated by the construction of a stock or machinery pass, have been eliminated from the Appraiser's estimate of damages. The review appraiser should determine whether the estimated cost of the pass exceeds the damages mitigated. If so, the ROW Manager should be advised when this situation occurs and a decision will then be made as to whether to eliminate construction of the stock or machinery pass and to restore the damages found to be mitigated by the appraiser.

Just as the reviewer must be assured that the damages found in the appraisal are compensable damages, the review appraiser must also be alert to the possibility of special benefits accruing to the remaining property. Reference should be made to Section 3.07D for a discussion of special benefits. The review appraiser should be familiar with severance damage studies for reference material in this problem area.

4.13 PROPER APPLICATION OF ABSTRACTING TECHNIQUES

4.13A The reviewer should carefully check any values determined by the appraiser that are based on the appraisal technique of abstraction. The technique of determining the amount of an unknown quantity when certain other quantities are known is referred to in appraising as "abstraction". Obtaining a desired value by abstraction is a useful and accurate technique, when used properly in the appraisal process . Its accuracy, however, is entirely dependent on the accuracy of the known quantities used in the processes.

4.13B The reviewer should be aware that the Appraiser can improperly equate building or improvement contributions on disparate sales and thereby make such sales appear to support the appraiser’s abstracted land prices. Building or improvement contribution must be adequately supported in all sales used in the abstraction technique.

4.13C There are a number of areas where the technique of abstraction is utilized in appraising. For example: (1) in determining the contributing value of certain classes of farm land, and (2) in determining the amount of benefits or severance damages in the allocation function. Abstraction should only be used in the absence of sales that are comparable to the entire property being appraised and when other known quantities are actually “known” to be supported by clear market evidence.

4.14 WERE PROPER APPROACHES TO VALUE USED

In addition to checking the overall adequacy of the appraisals, the reviewer should determine whether the proper approaches to value were used by the Appraiser. An examination should be made when all three approaches to value are not used to see that the Appraiser has given an adequate explanation for not using an approach or approaches. For example, the cost approach has very little validity as buildings grow old, except in the case of special use properties, such as public buildings, and churches, where the cost approach is normally the only available guide to valuation. Therefore, the appraiser's decision not to use the cost approach could be justified in the case of a property with "old" improvements.

4.15 SUFFICIENCY OF SUPPORT AND REASONING TO JUSTIFY CONCLUSIONS

4.15A After determining whether the approaches that have been used are proper, the reviewer should determine whether the market data in the appraisal fully supports and documents each of the appraiser's conclusions and findings.

4.15B It is necessary to determine whether proper mathematics was used in the application of numbers to the appraisal process and whether they are supported and reasonable. Caution and judgment must be exercised because virtually any value conclusion can be derived by mathematical manipulation. An appraiser's conclusions are of doubtful validity, unless the mathematics used to arrive at those conclusions are founded on accurate market data, and reasonable inferences based on sound appraisal theory and principles.

4.16 REVIEWER AND APPRAISER RECONCILE DIFFERENCES

4.16A GENERAL INFORMATION

4.16A1 If for any reason the review appraiser believes that the appraisal is lacking in any important detail, the reviewer should request, and inform the Chief Appraiser, that the Appraiser makes corrections or furnish such additional support and documentation as may be required.

4.16A2 No one likes to be shown that they are in error, and relations with an Appraiser may become strained because of the reviewer's lack of tact. This results in unnecessary difficulty in resolving problem areas in the appraisal. The review appraiser should never make corrections in the report they are reviewing, except as outlined in Section 4.05C. Changes in the report itself shall be made only by the Appraiser who prepared the report by providing a signed addendum and certification.

4.16A3 All errors should be called to the Appraiser's attention. Significant errors or problems should be resolved by notifying the appraiser of the problems or errors in writing, possibly after a discussion or conference. If the Appraiser should be used as an expert witness while unaware of even a minor error, the appraiser's effectiveness as an expert witness could be compromised.

4.16A4 In the review of an appraisal report, the reviewer may criticize, question, or suggest, but, in the end, the opinion of value is the judgment of the Appraiser. It is the appraiser that is responsible for defending the opinion in court. Appraisers are hired for their judgment, experience, and expertise. They

should not be criticized for the honest exercise of these qualities so long as their conclusions are based upon proper appraisal technique and available data. If the review appraiser cannot agree with the finding of the Appraiser after attempts at rehabilitation of the appraisal report have failed, the reviewer should fully set forth, document, and support all reasons for their differences. In some cases, it may be necessary to obtain another appraisal by contract, staff, or the Reviewer.

4.16B *Decision Categories* – after all reasonable action has been taken to reconcile problems discovered by the reviewer; the reviewer must make a determination as to the acceptability of the appraisal product and determine whether the Appraiser has complied with the requirements of the appraiser's contract. Normally, a decision falls into one of the following categories:

4.16B1 The appraisal is accepted and approved in its entirety.

4.16B2 The appraisal is accepted but not approved in its entirety.

4.16B3 The appraisal is acceptable for payment of any fee involved, but not accepted, in whole or part, in estimating market value.

4.16B4 The appraisal is rejected and a recommendation made to the Chief Appraiser that the payment of fee is denied to the Contract Appraiser.

4.17 RESOLVING APPRAISAL DIVERGENCES

4.17A Both appraisals must be completely analyzed to discover the exact source of the difference. If the discrepancy is factual, both appraisers should be asked for a confirmation of the factual matter and reanalysis of any possible changes discovered.

4.17B Frequently, a review appraiser may be called upon to choose between two or more well documented appraisals. Even after receipt of further detail and analysis, the divergent opinions of the appraisers may seem equally well documented. In such cases, the review appraiser's decision to accept or reject an appraisal is the sole decision of the reviewer and it must be based upon the reviewer's own skill and judgment.

4.17C The review appraiser shall identify each appraisal as recommended, accepted, or not accepted. Each appraisal reviewed should be identified in the review appraiser's report. A stamp (recommended, accepted, or not accepted) and a review appraiser's signature is not sufficient. However, a low value property requiring only a simple appraisal process, the review appraiser's recommendation and/or approval will satisfy the requirement for the review appraiser's signed report and certification.

4.18 ADMINISTRATIVE REVIEW

4.18A The ROW Manager is dependent on the review appraiser for assurance that appraisals are technically adequate and provide the Department with a final

estimate of value that fairly and reasonably represents just compensation for the property interest acquired by the Department.

4.18B For continued assurance of satisfactory performance by review appraisers and because of the necessity for great reliance on the reviewer's individual judgment, the effectiveness of the reviewer's work must be continually evaluated. In determining the performance of its review appraisers, the Department considers the following:

4.18B1 Product Quality Control is indicated through success of acquisition, auditing acceptance, and cost effectiveness.

4.18B2 The appraisal review "product" is subject to field and office audit by a multitude of interested parties, the personnel of which may have little or no actual appraisal experience but have great concern for the effectiveness of the work product. These interested parties include; the ROW administrators, Departmental negotiations staff, the Department's legal representatives, legislative auditors, FHWA auditors, legislative committees, public groups, and the General Accounting Office. Because the Reviewing Appraiser is responsible for assuring compliance with auditing requirements, the audit results are another method of administrative quality control.

4.18B3 The costs of operation of appraisal review are an important management concern. In any consideration of the cost of the right of way operation, it is obvious that elements other than appraising or its review affect the results. Nevertheless the ROW Manager is concerned not only with the appraisal costs but with costs affected by the effectiveness of the appraisal work. Other operations affected by appraisal results include cost of acquisition, excessive condemnation, abnormal settlement variations, and failure of auditing acceptance.

4.18C If the ROW Manager determines that 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 of the property, the ROW Manager shall have the appraisals updated or obtain new appraisals. Under normal conditions, an appraisal that is a year old from the date of review will need to be updated or reappraised, however in rapidly changing markets this may be a shorter period of time. If the latest appraisal information indicates that a change in the purchase offer is warranted, the acquiring agency will promptly reestablish just compensation and offer that amount to the owner in writing.

4.18D When settlement prior to condemnation at an amount other than the Reviewing Appraiser's determination of value, is considered by the ROW Manager that consideration must include:

4.18D1 The Appraiser's opinion of value.

4.18D2 The determination of the State's Reviewing Appraiser.

4.18D3 Recent awards by condemnation juries for similar properties in the same area.

4.18D4 The State's probable testimony, should the case be condemned, in the opinion of the State's Legal Counsel.

4.18E During the process, the ROW Manager will not return the appraisal to the review appraiser; however, the review appraiser could appropriately be available for discussing the review conclusions.

4.18F Justification for settlement in an amount which varies substantially from the review appraiser's determination of value is the responsibility of the ROW Manager who shall prepare a statement for the parcel file giving all reasons for settlement.

4.19 REVIEW APPRAISER CERTIFICATION

4.19A The review appraiser's dated signature on the appraisal report is sufficient concurrence on appraisal reports not requiring a written review report. This applies to the “Waiver Valuation Report” and to the “Short Form Report” forms that contain a signature block and/or certification for the review appraiser.

4.19B Complex appraisal problems, “Before and After Reports” and Federal participation require more detail in the scope of the review. The review appraisers shall be thoroughly familiar with 49 CFR, Part 24, with particular attention to sections covering requirements for eligibility for Federal participation in right of way costs.

4.19C The review appraiser’s written report must identify the appraisal reports reviewed, identify any damages or benefits to any remaining property, document the findings and conclusions arrived at during the review of the appraisals, and provide a signed certification that states the parameters of the review and the approved value. If authorized to do so, the review appraiser’s certification shall establish the amount believed to be just compensation.

4.19C1 The acquiring agency must determine just compensation on each tract. The acquiring agency shall have either a review appraiser on staff to set just compensation on each tract or the acquiring agency shall empower an elected or appointed official (such as Chairperson of the County Board of Supervisors, Chairperson of the County Commissioners, City Manager, or Mayor) to review the appraisals, appraisal reviews and set the just compensation on each tract and record it in the project right of way file. Just compensation cannot be for less than the reviewed appraisal amount.

4.19C2 For purposes of documentation, the review appraiser shall place a signed and dated report in the tract file (See Attachment 406) that sets forth:

4.19C2a The reviewer’s determination of fair market value.

4.19C2b The reviewer understands that the determination is to be used in connection with a Federal-Aid highway project.

4.19C2c The extent of the reviewer's visual inspection of the parcels to be acquired and of the comparable sales applicable thereto.

4.19C2d That the reviewer has no direct or indirect, present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

4.19C2e That the reviewer's determination has been reached independently based on appraisals and other factual data of record without collaboration or direction.

4.19C2f The reviewer's value determination of items compensable under State law but not eligible for Federal reimbursement, if any.

4.19D The review appraiser's determination of market value shall be placed in the parcel file to show the basis for the Department's negotiations.

4.19E Pursuant to Neb. Rev. Stat. Section 76-2221 (1), as a salaried employee of the Department, the employee is exempt from The Real Property Appraiser Act. The statement, "This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act," shall be prominently displayed.

If the review appraiser signs as a credentialed real property appraiser, the employee will be subject to the act and the Uniform Standards of Professional Appraisal Practice.

4.20 COORDINATION WITH LEGAL COUNSEL

4.20A The review appraiser must be aware that the appraisal may be used in court. It follows that the appraisal must have sufficient detail and must contain conclusions which are defensible in court. Because of the reviewer's familiarity with the appraised property, the reviewer is in a position to advise the attorney on appraisal details.

4.20B The review appraiser can assist the Legal Counsel in the selection of a contract appraiser in preparation for trial.

4.20C The review appraiser may be called upon to testify as an expert witness. If so, the review appraiser may need to prepare an appraisal. As an expert witness the review appraiser will work closely with the attorney in preparing testimony.

4.20D While the above emphasizes coordination in preparation for trial work, there are numerous occasions when the review appraiser should consult members of the Legal Counsel regarding legal consideration which may have an important bearing on the appraisal and review process.

CHAPTER 5
NEGOTIATION SECTION

5.01 ORGANIZATION AND DUTIES OF THE SECTION

The Chief Negotiator oversees the Negotiation Section, and the HWY Relocation Supervisor oversees the Relocation and Local Assistance Section of the Right of Way Division. Both are accountable to the Right of Way Division Engineer. They are both assisted by their section staff and Fee or Contract Agents when needed.

5.01A SECTION RESPONSIBILITIES

5.01A1 In general, the duties of the section include the following:

5.01A1a The acquisition of property rights for a public purpose.

- Verifying ownership on all parcels to be acquired before making offers.
- Contacting all property owners/tenants to make the purchase offers and to inform the owners/tenants of their rights, duties and obligations.
- Closing all real estate transactions involving the acquisition of new right of way.
- Providing files to Legal Counsel for filing of condemnation actions.

5.01A1b The Relocation and Local Assistance Section in conjunction with the Negotiation Section will administer the relocation program.

- Making preliminary studies and formulating plans to provide for the orderly and humane relocation of families and businesses.
- Preparing relocation assistance studies to determine eligibility for, and amount of, relocation assistance payments.
- Providing advisory services to those displaced by highway projects.
- Monitoring the relocation assistance activities of local public agencies and providing them with technical assistance.

5.01A1c Payments for these acquisitions and relocations.

5.01A1d Central supply and record storage for ROW.

5.01A2 The specific duties and expectations of the above are covered in Chapter 1. Details of the relocation program are covered in Chapter 7.

5.01B QUALIFICATIONS

5.01B1 *Chief Negotiator/Relocation Supervisor* – must have the ability to organize the work done by the section; to effectively delegate that work; to train and motivate employees; is collaboratively responsible for the Relocation Program; should be experienced in real estate matters and have knowledge of:

5.01B1a Process/procedures for planning, designing and constructing a highway project.

5.01B1b The documents used to acquire property rights.

5.01B1c Legal requirements and problems routinely associated with land acquisition and relocation activities.

5.01B1d Record keeping and payment procedures used by the NDOT in land acquisition and relocation activities.

5.01B1e Relocation processes and procedures.

5.01B1f Uniform Act.

5.01B2 *Row Project Manager* – must have the ability to delegate work, and to establish schedules for work to be completed. Responsible to train and motivate their subordinates. Should be experienced in real estate matters and have knowledge of:

5.01B2a Policies and procedures for planning, designing and constructing a highway project.

5.01B2b The documents used to acquire property rights.

5.01B2c Legal requirements and problems routinely associated with land acquisition.

5.01B2d Record keeping and payment procedures used by the NDOT in land acquisition activities.

5.01B2e General knowledge of Relocation processes and procedures, but is not responsible for the program.

5.01B2f General knowledge of the Uniform Act.

5.01B3 *ROW Agent (Acquisition)* – must have the ability to work independently, and to organize their work schedule to complete their assignments in a timely manner. Should be experienced in real estate matters and have knowledge of:

5.01B3a Policies and procedures for planning, designing and constructing a highway project.

5.01B3b The documents used to acquire property rights.

5.01B3c Legal requirements and problems routinely associated with land acquisition.

5.01B3d Record keeping and payment procedures used by the NDOT in land acquisition activities.

5.01B4 *ROW Agent (Relocation)* – must have the ability to work independently and to organize their work so that it can be completed in a timely manner. Should be experienced in real estate matters and have knowledge of:

5.01B4a Procedures used in planning for residential and business relocations.

5.01B4b The documents used in the relocation process.

5.01B4c Legal requirements routinely associated with relocation activities.

5.01B4d Record keeping and payment procedures used by the ROW and the NDOT.

5.01B5 *Accountant* – must have the ability to work independently and to organize their work. Responsible for training and motivating their subordinates. Should be experienced in principles of accounting and have knowledge of:

5.01B5a Accounting classification codes and the automated accounting system of the NDOT.

5.01B5b General knowledge of the Right of Way process.

5.01B5c Knowledge of the Payroll Detail System.

5.01B5d Record keeping and payment procedures used by ROW and the NDOT.

5.01B6 *ROW Associates* – must have the ability to work independently and to organize their work so that it can be completed in a timely manner. Should be experienced in real estate matters and have knowledge of:

5.01B6a Understanding and use of appraisals.

5.01B6b The documents used in the acquisition process.

5.01B6c Legal requirements routinely associated with acquisition activities.

5.01B6d Record keeping and payment procedures used by ROW and the NDOT.

5.01B7 *Office Clerk* – must have the ability to work independently, order supplies and to organize and maintain various types of files. Should be experienced in general filing principles and have knowledge of:

5.01B7a Understanding State of Nebraska's ordering system.

5.01B7b The filling system used by ROW.

5.01B7c Record keeping procedures used by the NDOT.

5.02 THE NEGOTIATION PROCESS

Negotiations is defined as the process by which property or property interest is acquired through written or personal contact with the owner/tenant with the aim of reaching agreement on the terms of a voluntary transfer of such property or property interest. Negotiations may start upon the receipt of reviewed valuation documents (appraisals or Waiver Valuations) and approved right of way plans. When federal participation is expected in the right of way costs, written authority to proceed must be received from the Federal Highway Administration.

Depending on the current and anticipated workload, the Chief of Negotiations may choose to assign the acquisition duties for any project (NDOT or LPA) to either internal NDOT staff negotiations agents, or to a qualified acquisition consultant through the open bid process.

5.02A NEGOTIATION GUIDANCE POLICIES

5.02A1 *Conflict of Interest* – Negotiations will not be conducted by the individual who made the appraisal or reviewed the appraisal of the property, except as described in Section 1.04C2 of this manual.

5.02A2 Every reasonable effort shall be made to acquire the real property and other property interest expeditiously by negotiation.

5.02A3 As soon as feasible the owner/tenant will be notified in writing of the NDOT's interest in acquiring the real property or property interest and the basic protections provided to the owner/tenant by law. Where appropriate, this written offer 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. (See Section 1.04G and Section 7.13).

5.02A4 All reasonable efforts shall be made to contact the owner/tenant or the owner/tenant's representatives and discuss its offer to purchase the property or property interest, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses.

5.02A5 The owner/tenant shall be given a reasonable opportunity (without setting a hard and fast rule, 30 days is a reasonable time) to consider our initial offer. The owner/tenant may present material for consideration which is relevant to determining the value of the property or property interest and to suggest modifications in the proposed terms and conditions of the purchase.

5.02A6 NDOT will not take any coercive action in order to induce an agreement on the price to be paid for the property or property interest, or any of the following:

5.02A6a Advance the time of condemnation.

5.02A6b Defer negotiations or condemnation.

5.02A6c Deposit funds with the court.

5.02A7 Before requiring the owner to surrender possession of real property, the NDOT will pay the agreed purchase price to the owner/tenant, or in case of a condemnation, deposit with the court, for the benefit of the owner/tenant, an amount not less than the NDOT's approved appraisal of the 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 NDOT may obtain a right of entry (Attachment 501.1 or Attachment 501.2) from the owner/tenant for construction purposes before making payment available to the owner/tenant. However, as stipulated in the State's acquisition contracts, the State is granted immediate right of entry to the property upon execution of those documents.

5.02A8 If the NDOT intends to acquire any interest in real property by exercise of the power of eminent domain, it will institute formal condemnation proceedings and will not intentionally make it necessary for the owner/tenant to institute legal proceedings.

5.02A9 Occasionally, the owner/tenant will ask about being represented by an attorney during negotiations. The ROW Agent must remain neutral to any such question, informing the owner/tenant that, while the NDOT always makes it possible to complete the transaction without an attorney, the decision must be entirely the owner's/tenant's.

5.02A10 Whenever a ROW Agent is informed by an owner/tenant that the owner/tenant is represented by an attorney, no further negotiations should be undertaken except through that attorney. If the property owner/tenant later states that he/she is no longer represented by counsel, it is advisable to get such notification in writing, if possible, before further direct contact with the owner/tenant.

5.02A11 To provide the owner/tenant with a copy of the tract appraisal and Project Report along with all other required acquisition documents.

5.02A12 ROW has developed procedures for the collection of statistical data (race, color, religion, sex and national origin) of the participants in and beneficiaries

of the State Highway Programs. The Civil Rights Survey (Attachment 102) is entirely voluntary on the part of those being asked to complete the form. Once the completed form is received by ROW, responses are entered into a data base and the necessary report is sent to the Civil Rights Coordinator in the Program Management Division. See (Attachment 101) for a sample of the report.

5.02A12a Negotiation/Relocation Assistance Section – Negotiation Function (Attachment 102) is mailed to each person where ROW needs to have a contract signed so that we may secure the necessary property rights - 24 needed for the project. This attachment is personally delivered by the Negotiator when not mailed.

5.02A12b Negotiation/Relocation Assistance Section – Relocation Assistance Function (Attachment 102) is personally delivered the ROW Agent and presented to the displacee when the Relocation Assistance Offer is made. When the Relocation Assistance Benefit Offer cannot be made in person, the attachment is mailed to each displacee.

5.02B CONDUCT OF THE ROW AGENT – whenever interviewing property owners/tenants, particularly when negotiating the purchase of property, the following guidelines should be followed:

5.02B1 The ROW Agent is an employee of the public and should always keep in mind that the property owner/tenant in every negotiation is part of that public.

5.02B2 The ROW Agent's first impression on the owner/tenant is important, whether it is in person or by phone. A friendly manner and neat appearance when meeting with the landowner/tenant will assist in establishing a good rapport.

5.02B3 The ROW Agent shall exercise care at all times to completely and honestly protect the property owner's/tenant's interest, especially of those who may be unfamiliar and inexperienced in real estate matters.

5.02B4 High pressure sales tactics have no place in right of way negotiations.

5.02B5 The ROW Agent shall never use the threat of condemnation, even by inference, to affect a settlement. The use of such a threat is contrary to NDOT policy. The ROW Agent should explain condemnation proceedings when specifically requested or when it becomes apparent that agreement cannot be reached. The use of the standard prepared statement is important.

5.02B5a Annually all Right of Way Negotiators/Agents will participate in appropriate "coercion awareness" training.

5.02B6 The ROW Agent should keep in mind that every appraisal, every offer, and every settlement is a confidential matter between the agency and each property owner/tenant.

LPAs may be required to secure agency board approval for negotiations. It is recommended that the board handle such items in executive/closed session

and not make them part of the public record. All records maintained by the agency are confidential regarding their use as public information until ownership is transferred to the agency.

5.02B7 The ROW Agent should guard against making indiscriminate remarks which can be misunderstood. In spite of the supplementary clause at the bottom of the contracts relative to verbal promise agreements, controversies do arise from unguarded comments by agency personnel. It is best for the ROW Agent to limit conversation to the terms of the offer and the physical effects of construction on the property. This is not meant to discourage "small talk" or rapport-building conversations. In addition, the ROW Agent must not accept gratuities of any kind (i.e. gifts, meals, etc.) from any party involved in the offer.

5.02B8 The ROW Agent should avoid discussions on politics, religion, or other matters which may become argumentative.

5.02B9 The ROW Agent should carry out the negotiations as expeditiously as possible without actually, or appearing to be, rushing the property owner/tenant.

5.02C NEGOTIATION PROCEDURES – Negotiation procedures will vary according to agency. At NDOT, the Negotiation section is organized with a team approach. There are two teams with a ROW Project Manager supervising each team. Each ROW Project Manager supervises a team of ROW Agents. Although, there are two distinct teams, there is teamwork between the teams and between individuals of each team. Team members can, and do, assist others when needed. ROW Project Managers assign projects to their team and oversee their progress. ROW Associate staff produces all necessary documents needed by ROW Agents to complete their negotiations.

5.02C1 *Documents* – the ROW file copy of the project report and all appraisal reports are sent to the Property Management Section for processing. When Property Management's work with the appraisals is complete, the ROW copy of the appraisals will be sent to the Right of Way file room for placement in the tract files. Two (2) copies of the appraisal reports will be sent to the Negotiation/Relocation Section for the preparation of contracts and other related acquisition documents.

5.02C2 ROW Associate's document preparation of assignment

For NDOT sponsored projects: ROW Associates will prepare all acquisition contracts showing "Nebraska Department of Transportation, hereinafter called the STATE" as the promisee. Likewise, all Deeds for acquisition of land will show "Nebraska Department of Transportation, hereinafter called the STATE" as the grantee.

For LPA sponsored projects: ROW Associates will prepare all acquisition contracts showing the sponsoring Local Public Agency as the promisee. Likewise, all Deeds for acquisition of land will show the sponsoring Local Public Agency as the grantee.

5.02C2a Print legal descriptions for Project.

5.02C2b Proofread legal descriptions and compare with plans.

5.02C2c Check title certificate of ownership record for current owner.

5.02C2d Determine the legal document for the property to be acquired.

5.02C2e Prepare all documents by reviewing information from appraisals, plan sheet and legal descriptions.

5.02C2f Log in record for status of project.

5.02C3 The ROW Agent's preparation after assignment. The following information forms the basis for negotiation:

5.02C3a Right of Way plans.

5.02C3b Appraisal and appraisal review.

5.02C3c Title information.

5.02C3d *Preparation is the Key to Successful Negotiating* – the ROW Agent must carefully prepare to effectively negotiate with property owners/tenants. Becoming familiar with all of the information available about the transaction is an important step in preparation. It is the role of the ROW Agent to explain the work of the engineer (construction plans), the appraiser (market value), and the attorney (contract provisions) to the owner/tenant, in an objective, impartial, and sincere fashion. To accomplish this, the ROW Agent must be thoroughly familiar with each phase of the acquisition process.

If a tract of land is to be acquired in total, the ROW Agent must check for unpaid taxes and special assessments (Attachment 503). If such leans exist, at an appropriate time, the owner/tenant will be given the option of paying the lean or having that amount deducted from the acquisition payment and paid directly to the County Treasurer by the NDOT.

5.02C3e *Priority of Tracts* – the ROW Agent must screen all the tracts before the start of negotiations to find those tracts that appear to present problems such as probate or guardianship proceedings that could take considerable time to complete. It is essential to concentrate on such parcels.

5.02C3f *Review of Appraisals* – it is essential that the ROW Agent carefully study the approved appraisals and be fully acquainted with all comparable sales data that are used in the appraisals. Only after a thorough preparation should the ROW Agent make any attempt to contact the property owners.

5.02C3g *Review of Plans* – the ROW Agent should study the project plans and be able to interpret them correctly. The ROW Agent should be familiar with limits of construction and right of way requirements as they may affect improvements, landscaping, and operations of the property owner/tenant.

5.02C4 PRE-NEGOTIATION MEETING

5.02C4a For NDOT, the ROW Project Manager will determine if it is necessary to hold this meeting. For larger projects, the meeting is a valuable time for the ROW agents to become familiar with public acceptance, design, and appraisal issues associated with the project. The meeting gives Negotiations staff an opportunity to be proactively prepared for many of the questions that they will encounter as they make calls on landowners and tenants. Typically, this meeting will be held prior to contact with owners/tenants for projects that require significant right of way acquisition. If the meeting is held, the following individuals will be invited: ROW Agent, Appraiser, Review Appraiser, Right of Way Designer, Right of Way Designer's Supervisor, Roadway Designer, Roadway Designer's Supervisor, and District Project Manager. The District Engineer and the District Construction Engineer will be informed of the meeting date and time. Telephone and/or video conferencing shall be used when considered appropriate.

5.02C5 WRITTEN OFFER PACKET

5.02C5a All offers are mailed via USPS Certified Mail to the landowners and tenants. If advisable, offers may be delivered via USPS Overnight, UPS, or FedEx, if proof of delivery is provided. In addition, in-person delivery by an NDOT agent is also acceptable. The subsequent call report must reflect this visit. When an offer must be left at a location, without a direct presentation to the addresses, the agent must photograph the offer package in the location it is left with recognizable features in the background and date stamp. The tenant's offer should cover only their interest with the same principle applying to the landowner. The following documents will be prepared, logged, and mailed to the property owner or tenants with enclosed copies of the following documents:

- Offer letter for real estate without improvements owned by a tenant (Attachment 504.1) or offer letter for real estate with improvements owned by a tenant (Attachment 504.2) or sign (Attachment 505). A photocopy of this offer letter, complete with the ROW agent's signature, must be retained in the tract's permanent file.
- Offer letter for tenant (Attachment 526). NDOT reserves the right to make a thoughtful determination of when tenants' rights are impacted by a project, and therefore, when it is proper to extend an offer to acquire leasehold rights. This determination is based on whether tenants will have access to and from their leased/rented property both during construction of the project and after construction is completed. If access is available, no leasehold rights acquisition is needed. If

access is not available, NDOT will make an offer to acquire certain leasehold rights as determined necessary.

- Payment Allocation Voucher (Attachment 506). The Description of Purchase and/or Compensation section is to include the compensation conditions as outlined in the acquisition contract.
- W-9 Request for Taxpayer Identification.
- Deed.
- Appropriate Acquisition Contract:

  - ROW (Attachment 508.1).
  - Control of Access (Attachment 508.2).
  - Permanent Easement (Attachment 508.3).
  - Temporary Easement (Attachment 508.4).
  - Total Taking (Attachment 508.5).
  - Lessee (Attachment 508.6).
  - Catch All (Attachment 508.7).
  - Conforming Sign (Attachment 508.8).
  - Nonconforming Sign (Attachment 508.9).
  - Leased Fee Interest in Sign (Attachment 508.10).
  - Irrigation Permit (Attachment 508.11).
  - Tenant Request Form (Attachment 509).
  - Request for Mortgage Release (if applicable) (Attachment 527).
  - Right of Way Plan sheet.
  - Valuation document (appraisal or Waiver Evaluation and copy of project report).
  - Postage paid return envelope.
  - "Right of Way Acquisition" flyer.
  - Civil Rights Survey (Attachment 102).
  - ROW Agent's Business Card.

5.02C5b An introductory telephone call should be made by the ROW Agent approximately a week after the offer has been mailed. The ROW Agent should ask if there are any questions or concerns. The ROW Agent should ask the owner(s)/tenant(s) for a convenient time and location to meet and review plans, sales and documents.

- ROW Agents are to encourage the owner(s)/tenant(s) to ask questions. The ROW Agents should be good listeners and, through

conversation, develop common grounds of interest, confidence, and trust.

- The ROW Agents are to inform the property owners of the need for the transportation improvement project and fully inform the property owner/tenant of the ability and judgment of NDOT's representatives in all phases of highway work.
- Information Provided, either by phone or personal visit, to the property owner/tenant and the ROW Agent must have discussed:
  - The written offer of the NDOT to purchase the property of the owner/tenant.
  - The basis for NDOT's offer of just compensation including all necessary aspects of the appraisal and the project report.
  - The NDOT's acquisition policies and procedures including payment of incidental expenses.
- For various reasons, owners/tenants may be distressed at the thought of losing their property. The ROW Agent should be patient and empathetic, but firm. The ROW Agent should point out the greater good for a greater number in providing a safer highway.

5.02C6 *Closing* – after the offer has been made, there are in general, at least three possible reactions of the owner/tenant to the offer: agreement, disagreement or silence, or counteroffer.

5.02C6a If there is agreement, after the documents are signed, the ROW Agent should explain payment procedures and encourage the owner(s)/tenant(s) to call NDOT for additional information.

5.02C6b *Disagreement or Silence* – in some instances, the owner's/tenant's reaction to the offer to purchase may be disagreement or silence.

- The property owner/tenant may need time to consider the information presented. The owner/tenant must be given a reasonable period of time (minimum of 30 days) to consider the offer and to present material which the owner/tenant believes is relevant to determining the value of the property.
- The owner/tenant may also present a counteroffer or seek time to get another appraisal. The time needed by the owner/tenant may vary significantly with the circumstances of each negotiation.
- The owner/tenant may ask, "What if I don't sign?" A ROW agent must never use the threat of condemnation (either specifically or by inference as a persuasion tactic).
- Generally another call should be made by the ROW Agent to the owner/tenant after the offer has been refused. Repetition is a sound sales approach.

- The ROW Agent should answer questions left from previous calls, present any newly available facts, and reemphasize the strongest points of the offer previously made. The ROW Agent should review the offer and explain, if possible, the basis for the appraiser's conclusions. It should be impressed upon the owner/tenant that there is only one offer and that offer is based upon sound evaluation procedures.
- When silence persists, the ROW Agent should send a letter to the owner/tenant that informs them that if we do not hear from them in 10 days, we will commence Eminent Domain procedures. (Attachment 528).

5.02C6c Counteroffer made by Owner/Tenant

- If an owner/tenant does not agree to the NDOT acquisition offer, they should be encouraged to submit a counteroffer with substantiation for their requested amount. If the owner/tenant does not offer support for the counteroffer, the ROW Agent should reiterate the facts about the property's valuation. Review the comparable sales and make comparisons as to age, area, condition, and other elements of desirability. The owner/tenant should then be advised that in view of the facts upon which our offer is based, the NDOT believes that the offer represents fair market value.
- On the other hand, if an owner/tenant presents data that was not available to the appraiser and, in the ROW Agent's opinion, would affect the appraised value, the ROW Agent should advise the owner/tenant that the ROW Agent will be happy to investigate this data. The data furnished by the owner/tenant should be given to the Chief Negotiator/Relocation Supervisor for proper consideration. A call back shall be made to report the conclusion to the owner/tenant.

5.02C6d Agreement Reached on Counteroffer

- Occasionally it is in the public's interest to agree to a settlement that is in excess of the review appraiser's fair market value determination. Such settlements are broadly defined as administrative settlements due to the fact that they are the result of administrative decision. In all instances, administrative settlements should be accomplished using caution, discretion, and proper judgment.
- It is the NDOT's policy in settlement matters to maintain consistency and fairness to the Nebraska taxpayer and to all property owners/tenants, especially those who have accepted the NDOT's initial offers. The NDOT will not agree to settlements above the established amount of just compensation merely because a property owner/tenant "holds out". This type of practice could soon become public knowledge and there would be few negotiated agreements by the ROW Agent based upon just compensation.

- The Administrative Settlement can be made in consideration of factors utilized in the appraisal process to determine fair market value and just compensation. Further, settlement should consider items omitted from the appraisal process and all other available information including other appraisal, additional estimate or bids, recent court awards, estimated trial cost, and valuation problems.

5.02C6e Justification for Administrative Settlements

- The justification for an Administrative Settlement should be documented on (Attachment 511), by the proponent of such settlement which herein and after will be referred to as the responsible party. Documentation should briefly present the negotiation, while providing sufficient detail to define the problem and justify the settlement. Documentation should be understandable and should present an explanation as to why additional taxpayer dollars were expended.
- The following outlines the responsible parties, authorized amounts and official approvals. These amounts are the upper limit amounts but LPAs have the ability to be more strict if they choose.
  - Consultant: $1,000 or 10% of the Fair Market Value (contract amount).
  - ROW Agent: $1,000 or 10% of the Fair Market Value (contract amount).
  - ROW Project Manager: $10,000 or 10% of the Fair Market Value, whichever is greater.
  - Chief Negotiator/Relocation Supervisor: $10,000 or 10% of the Fair Market Value, whichever is greater.
  - Right of Way Division Engineer: $10,000 or more.
- FHWA may or may not participate in the cost of additional payment, depending on the reasonableness of the settlement. They will not participate if a settlement report, as described above, is not prepared and in the file.

5.02C6f It is unacceptable to provide an Administrative Settlement to compromise the difference between the agency's appraisals and the owner's/tenant's appraisals.

5.02C7 *Row Agent Call Report*

5.02C7a Immediately after each contact with a property owner/tenant, lessee, or the representative of either, in person or by telephone, the ROW Agent shall make a call report by using ARMS (Automated Right of Way Management System) of the contact including such items as the date, the

time of day, place of contact, persons present, principal items discussed, offers made, counteroffers made, reasons settlement could not be made, and comments, if any, about the particular contact. (Attachment 512).

5.02C7b Call Reports need to sufficiently document activities that transpired during negotiations. Activity records, or logs maintained by NDOT and local public agencies and are kept in the tract file. The call report record is essential documentation of the activities conducted by the agent during the negotiation process. These file records should include all activities, both verbal and written made by the agent. This includes all activities from reviewing the appraisal report, to meeting with the property owners, to information found about the parcel from outside sources, to recording all the property owner's comments. The agent may consider this type of record as a diary of all relevant activities on the parcel. In case of an eminent domain trial, detailed call reports will help refresh the memory of the ROW Agent and confirm our "good faith" offer. Therefore it is helpful to note, such items as where the meeting with the landowner/tenant took place, features of the plans that were noted, questions asked or statements made relating to plans; questions, arguments or objections raised by the owner/tenant and the agent's response, reviewing the impacts of the acquisition on site, and if owner/tenant accompanied the ROW Agent.

5.02C8 *Plan Changes* – requests by the owner/tenant for changes in plans and the ROW Agent's response to such requests should be noted. Any commitments made shall be specifically stated on the right of way contract only after approval by Roadway and Right of Way Design.

5.02C9 *Row Agent Certificate* – when negotiations are successful, the ROW Agent shall place in the file a signed *Certificate of Right of Way Agent* (Attachment 535) that states:

5.02C9a I have no direct or indirect present or contemplated future personal interest in the parcel or in any benefit from the acquisition of the parcel.

5.02C9b I understand the parcel is to be secured for use in connection with a Federal-Aid Highway project.

5.02C9c Any agreements reached were reached without coercion, promises other than those shown in the agreements, or threats of any kind whatsoever by or to either party.

5.02C9d The written agreements secured embody all of the considerations agreed upon.

5.02C10 *Miscellaneous Negotiation Procedures*:

5.02C10a Alternate Acquisitions – situations may arise when some purchase arrangement, other than the proposed acquisition, may be desirable. Such situations are identified as follows:

- Uneconomic Remnant – the owner/tenant may have a remnant which has little or no value or little or no utility to the owner/tenant after the acquisition. In such a case, the NDOT will offer to purchase the uneconomic remnant. It is the NDOT's determination as to whether or not the remnant is uneconomic.
- Landlocked Remainders – after the acquisition, the project may leave a portion of the owner's/tenant's property without access to the highway system. Where the cost of acquisition of such landlocked property or land through the exercise of eminent domain would be more economical to the NDOT than the cost of providing a means of reasonable ingress to the property or land, the NDOT may, in its discretion, acquire such landlocked property or land thereof by eminent domain. (Neb. Rev. Stat. § 39-1321). The NDOT would attempt to purchase the landlocked property prior to filing eminent domain proceedings.

5.02C10b New Value Evidence

- During Negotiations, if the ROW Agent discovers items that are not included in the appraisal, the matter should be discussed with the ROW Project Manager. If the items excluded are substantial, requiring an appraisal opinion and review, the ROW Project Manager will contact the Appraisal Section.
- If this results in a change in value opinion, a revised appraisal shall be prepared and submitted for review. Negotiations should resume upon the receipt of a revised opinion of value from the Reviewing Appraiser and a new revised offer presented to the owner/tenant.
- If it is obvious that the item adds nothing to the property value, or if its value is readily apparent, the ROW Agent should attempt to settle the matter on the spot, using the ROW Agent's own best judgment and common sense.
- Whenever evidence from any source reveals that elements of value have been overlooked, the evidence should be fully considered to insure that the owner/tenant is fully and properly compensated.
- If the ROW Manager determines that 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 of the property, the ROW Manager shall have the appraisals updated or obtain new appraisals. Under normal conditions, an appraisal that is a year old from the date of review will need to be updated or reappraised, however, in rapidly changing markets this may be a shorter period of time. If the latest appraisal information indicates that a change in the purchase offer is warranted, the acquiring agency will promptly reestablish just compensation and offer that amount to the owner in writing.

5.02C10c *Retention of Salvage* – Should the owner elect to retain an improvement, ROW Division will establish the salvage value, which will subsequently be deducted from the purchase price. Offers to the owners/tenants to retain Salvage rights are presented by the Negotiation Section. The ROW Agent will subtract the salvage value in the acquisition contract, then determine an agreeable removal date (preferably before the letting date) with the owner of the improvement. The ROW Agent will add remarks detailing the removal within the acquisition contract.

5.02C10d *Donations*

- Right of way may be acquired through the donation of property, provided the property owner/tenant receives an offer based on an appraisal. All landowners/tenants will receive, as part of the offer, either an Appraisal, or a Waiver Valuation, or a "Nominal Compensation Form." Landowners are free to initiate an offer to donate land, but are not asked to do so.
- If an owner/tenant desires an appraisal on the property for the purpose of justifying the charitable contribution to the Internal Revenue Service, the owner/tenant must engage the services of a fee appraiser to complete the appraisal.

5.02C10e *ROW Agent Role in County Court Hearings* – each tract of land is a potential condemnation action and each negotiation report is a potential item of evidence in that action. The ROW Agent preparing the report must recognize this potential and report the negotiations in such detail that the report accurately records the negotiation. It is essential that the ROW Agent, on the basis of the report, be able to inform the Legal Counsel of every element of negotiation including the probable causes of failure to reach an agreement. Furthermore, by reference to a complete report, the ROW Agent should be in a position to support the negotiations if called upon to testify in court.

5.02C10f *Right of Entry*

- The Right of Entry (Attachment 501.1 or Attachment 501.2) is a document signed by the owner/tenant that gives the NDOT permission to take possession of the new right of way to construct the project. It is intended for those situations when, for whatever reason, it is determined that the right of way acquisition either cannot or should not be completed in the normal project timeframe. If the owner/tenant is not agreeable to the use of a Right of Entry, it cannot be forced. A Right of Entry is never used on a regular basis. 49 CFR 24.102 (j) specifically states:

  "Before requiring the owner to surrender the real property, the Agency shall pay the agreed purchase price to the owner, or deposit with the court for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property or the amount of the court award. 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".

- *Right of Survey Entry* – the right to enter property temporarily to make surveys, and investigations for proposed highway improvements. (See also Nebr. Statutes 39-1324).

5.03 NEGOTIATIONS FOR THE ACQUISITION OF SPECIAL INTEREST LANDS

During the course of land acquisition for right of way purposes, special interest parcels may be encountered. Special interest parcels include those owned by the Federal government, other agencies of the State, municipalities, counties, school districts, churches, cemeteries, and airports. Acquisition procedures for special interest parcels differ from those procedures normally used by the NDOT. Due to variations in legal requirements for the disposal of lands by governmental units and churches, advice of Legal Counsel should be obtained in advance. Because such acquisitions may require an extended period of time, it is essential that priority be given to the negotiations for "special interest" lands along with those with encumbered ownerships.

5.03A LANDS OWNED BY THE UNITED STATES

The negotiations for the acquisition of right of way from Federal agencies are handled by the Chief Negotiator/Relocation Supervisor.

5.03A1 Basic procedures for acquiring land from the United States are:

5.03A1a Contact the Agency being affected.

5.03A1b Ask how their procedures for transfer of land and/or damages are handled.

5.03A1c Follow their procedures as directed.

5.03B NATIVE AMERICAN LANDS – BUREAU OF INDIAN AFFAIRS (BIA)

5.03B1 Negotiations for right of way across Native American lands are conducted through the superintendent of the appropriate Indian Agency by the Chief Negotiator/Relocation Supervisor and staff. The first step is to send certified plats to the appropriate BIA office for approval. Next, the appraisals are forwarded to the BIA for review and approval.

5.03B2 A certified copy of ownerships and list of addresses is requested from the BIA. Upon receipt of ownerships, a consent form containing the offer is sent to each allotee listed along with an explanation of the project and a statement as to the dollar value of their interest.

5.03B3 When an appropriate percentage of allotees have signed, the consent forms are forwarded to the BIA, who then executes and delivers the right of way document.

5.03B4 It is the responsibility of the ROW Agent assigned to the project to determine whether there are tenants or lessees on Native American lands from whom an agreement must be obtained.

5.03B5 For additional information in dealings with Native American lands, see 25 CFR 169.1 on the FHWA website.

5.03C STATE-OWNED LANDS

The State-owned land most frequently acquired for highway purposes is educational trust land that is part of the educational trust administered by the Board of Educational Lands and Funds. The acquisition of these lands is covered in Section 5.07.

5.03D AIRPORTS

Usually the Airport being affected has already been contacted in the early stages of project development. This coordination is intended to resolve any conflicts between our project and the operation of the Airport. Department of Transportation Division of Aeronautics should also have been involved in this early coordination.

5.03D1 Basic procedures for acquiring land from an airport are:

5.03D1a Contact Airport Management to verify who will be their contact person.

5.03D1b Send our acquisition documents and Right of Way plans to this contact person.

5.03D1c Send copies of the above along with a complete set of design plans to the Department of Transportation Division of Aeronautics.

5.03D1d Discuss with the contact person what additional information, review and/or approval, if any, may be required by the Department of Transportation Division of Aeronautics and/or the Federal Aviation Administration.

5.03D1e Provide consultation to Airport Management and any other entities involved as requested.

5.03D1f Coordination is complete when all entities involved, (the local public airport, the Department of Transportation Division of Aeronautics and/or the Federal Aviation Administration) have approved the project.

5.03D1g With these approvals, the Airport owner is ready to sell the property following their usual rules and procedures.

5.03E *Railroads* – the negotiations for the acquisition of the right of way from railroads are not the responsibility of ROW. However, negotiations with tenants of the railroad are usually handled by the Negotiation Section.

5.03F COUNTIES, CITIES, TOWNS, VILLAGES & SCHOOL DISTRICTS

5.03F1 Where the property to be acquired is owned by a governmental subdivision, the Right of Way Agent should contact the appropriate subdivision authority. Contact the ROW Project Manager (Negotiation Section) or Legal Counsel to determine the contact information.

5.03F2 No deed or contract with a governmental subdivision is valid without the governing body passing a resolution giving authority to the proper person to sign for the governmental subdivision.

5.03F3 Because a governmental subdivision is not bound by the warranty in warranty deed; a quitclaim deed is acceptable.

5.03G *Church Lands* – if a church is the owner of property, information should be obtained regarding the church's type of organization (corporation or association), and whether the church operates under a higher church authority. After this information is obtained, it should be turned over to Legal Counsel for examination and advice on how to proceed.

5.03H CEMETERIES

5.03H1 While every effort is made by the Roadway Design Division to avoid the graves in cemeteries and to hold land area requirements to an absolute minimum, it is sometimes necessary to acquire right of way along cemetery property. Legal Counsel should be consulted after obtaining available information as to ownership and for specific instructions.

5.03H2 When a cemetery is owned by a city, village, or town, the ROW Agent should proceed as with other lands owned by a city, village, or town. If the cemetery is under the control and management of a cemetery board or association, a resolution should also be obtained giving the board's concurrence in the sale.

5.03H3 Conveyances from cemeteries owned by associations or districts should be executed by officers authorized to do so by the bylaws with supporting resolutions of the trustees. It is desirable that a copy of the bylaws or rules and regulations be obtained.

5.03I *Irrigation Districts* – if the situation exists where an irrigation district is assessing acres under private ownership; the NDOT is required by State law to compensate that irrigation district for damages caused. That State law is as follows:

5.03I1 Neb. Rev. Stat. § 76-710.02. Land situated in irrigation district; damages payable to district. Whenever lands situated in an irrigation district are acquired by any condemner through eminent domain, and such lands at the time of their acquisition by any condemner, are irrigable and are being served or are capable of being served by facilities of the district to the same extent and in the same manner as lands of like character held under private ownership were served, the condemner, as part of the compensable damages of the acquisition and at the time of such acquisition, shall make a lump-sum payment to the irrigation district in an amount sufficient to:

5.03I1a Pay the pro rata share of the district's bonded indebtedness, if any, and the pro rata share of the district's contract indebtedness to the United States or to the State of Nebraska, if any, allocable to such lands, plus interest on such pro rata share in the event such indebtedness is not callable in advance of maturity.

5.03I1b Pay any deferred installments of local improvement district assessments against such lands, if any; and

5.03I1c Produce, if invested at an annual rate of interest equivalent to that set forth in current tables issued by the Director of Banking and Finance of the State of Nebraska, a sum of money equal to the annual increase in operation and maintenance costs against remaining lands in the district resulting from the severance from the district of the lands thus acquired by the condemner. For the purposes of determining the amount of such lump-sum payment, the annual maintenance and operation assessment of the district shall be considered to be the average for the ten years, or so many years as the district has assessment experience, if less than ten years, preceding the date of acquisition.

5.03I1d The above law is to be used to prepare an appraisal of damages. A special contract (Attachment 532) is available for this type of acquisition.

5.04 EVENTS REQUIRING SPECIAL ATTENTION

The occurrence of certain events or conditions may require special attention or procedures varying in some degree from the usual negotiation process. Some of the following materials have been presented elsewhere in this manual but are repeated here for additional emphasis.

5.04A LANDOWNERS ADDRESS UNKNOWN – the ROW Agent shall make a diligent effort to find any clues to a possible forwarding address of the owner. In the event the owner of record cannot be located, legal counsel should be sought.

5.04B LEASEHOLD INTERESTS

5.04B1 The Appraiser shall determine if the property is leased, and if so, whether the lessee has a property interest in the leased property. In those parcels in which the appraiser contacts the property owner, the appraiser shall appraise the lessor's and the lessee's interests and allocate any damages between the lessee and lessor.

5.04B2 It is the responsibility of the ROW Agent to identify all lessees/tenants and determine the type of lease they hold with the landowner by asking the landowner to complete a "Request for Tenant, Renter or Lessee Information" form (NDOT), or obtain the following information:

- There is/is not an agreement with a tenant, renter or lessee concerning this property. If there is:

- Tenant/Lessee Name.
- Tenant/Lessee Address.
- Tenant/Lessee Home, work and cell phone numbers.
- Lease Type: Verbal, or written (if written, ask for a copy).
- Lease Term: Is it month-to-month, year-to-year, or other duration.

5.04B3 In dealing with a leased property, extreme caution must be taken to avoid creating an adverse relationship between lessor and lessee. During negotiations, it is usually preferable to deal with the landowner and lessee separately.

5.04B4 A careful search of title will generally disclose complete information as to leasehold and lien interests. Valuable insight is sometimes obtained by an examination of the documents on file in connection with a lease, lien, or judgment interest. Care should be taken to determine which signatures are needed to convey the lease or lien interest.

5.04B5 Information about a previously unknown tenant, either from the owner or from information obtained by the ROW Agent, needs to be addressed. In either situation, the ROW Project Manager shall review this information and act on it in the following manner:

5.04B5a Tenant interest is not affected. The ROW Agent, in consultation with their Project Manager and/or the Chief Negotiator, may determine that there is no impact from the project on the tenant's interest (i.e. construction does not negatively impact access to the rental property). In this case, staff may decide that compensation is not warranted.

- Document their review of the tenant information and approval of a minimal payment for this interest.
- Direct the ROW Associate to prepare the required leasehold documents.
- Assign the leasehold acquisition to the ROW Agent.

5.04B5b Tenant interest is more than minimal:

- Document their review of the tenant information and determination that the interest is more than minimal.
- Request the Chief Appraiser to determine the value of the leasehold interest on the tract.
- Direct the ROW Associate to prepare the required leasehold documents after receipt of the revised appraisal.
- Assign the leasehold acquisition to the ROW Agent.

5.04C MULTIPLE OWNERSHIPS

5.04C1 Contracts and agreements must show:

5.04C1a All parties with an ownership interest.

5.04C1b A description of the property in sufficient detail to identify it, and.

5.04C1c The total price to be paid for the acquisition and damages.

5.04C2 If all of the owners/tenants with an interest in the property sign the acquisition documents, the next step for the ROW Agent is to turn the file in for payment.

5.04C3 However, if any of the multiple owners/tenants with an interest in the property decline to sign the acquisition documents, then the next step for the ROW Agent is to turn the file in for condemnation. The ROW Agent should contact all owners/tenants either by letter or phone informing them that one of owners/tenants has declined to sign and all those with an interest in the property are being turned in for eminent domain.

5.04D MITIGATION REQUIREMENTS FOR ENDANGERED SPECIES

5.04D1 An endangered species is a population of organisms which is at risk of becoming extinct because it is either few in numbers, or threatened by changing environmental or predation parameters. One important way to help threatened plants and animals survive is to protect their habitats along roadsides.

5.04D1a Mitigation can include, but is not limited to, the following:

- Seasonal scheduling and/or specific requirements for project construction. An example would be tree removal or topping of trees to prohibit the nesting of protected birds or other endangered species.
- Seasonal scheduling and/or specific requirements for property owners/tenants. Existing fence removal and new fence construction are examples.

5.04D1b Exact mitigation requirements will be on a project-to-project basis. The specific wording and procedures to be followed will be a cooperative effort between the ROW and the Environmental Section of the Project Development Division.

- The Environmental Section will determine the mitigation requirements and cause them to be printed in the Plan in Hand Report for the project.
- The Chief Negotiator/Relocation Supervisor is on the distribution list for the Plan in Hand Report. Upon receipt of the report, he/she will notify appropriate staff of the mitigation requirements.

- Where mitigation is required on a property with some type of acquisition, the specialized requirements will be added to the remarks area of the acquisition contract.

5.05 PREPARATION, EXECUTION OF INSTRUMENTS AND CLOSING REQUIREMENTS

5.05A PREPARATION

5.05A1 *Considerations* – the policy of ROW will be to show compensation on all deeds and easements as ONE DOLLAR AND OTHER VALUABLE CONSIDERATION.

5.05A2 General Provisions

5.05A2a If there is ever a question of ownership by affected parties, get all the facts possible and present the matter to the ROW Project Manager (Negotiation Section) or consult with Legal Counsel.

5.05A2b All title information should be complete and factual. All information shall be verified from public records to the extent possible and from other sources that may be available in the course of negotiations. Some of this information can be obtained by inspection of the subject property and discussions with the owner or the occupants of the property. It is necessary to obtain the names of the occupants, their addresses, and the nature of their interest, if any, in the property regardless of whether such interest is by written agreement or verbal. The ROW Agent shall note any other uses being made of the property, who is using it, and the full extent of their use and interest in the land.

5.05A2c Deeds and other documents must be prepared to show the names of grantors or other parties in a manner identical to that disclosed by the records except in cases wherein a change of name is encountered. Such change must be shown by an appropriate recital in the caption. The caption shall include:

- The marital status of each party in interest.
- If the grantor conveys under a name different from that the title was acquired, such variation must be accounted.
- Showing both the name under which the grantor presently is conveying and that under which the title was acquired.

5.05A2d The ROW Agent should determine who is in possession of the premises, and to what extent they have an interest in the property. This includes tenants/lessees, farm managers, and buyer/seller situations (Attachment 533). Information regarding the terms of their agreements and contracts, and if they are filed at the courthouse, should be obtained along with all names, addresses, phone numbers, and email addresses of all interested parties. When there are any questions concerning possession, the ROW Agent should consult with their immediate supervisor.

5.05A2e Occasionally, an occupying claimant will be identified by the appraiser. A short definition of an occupying claimant is: a person or entity in possession of certain real estate but not by authority of title.

5.05A2f Often there isn't documentation regarding this situation at the courthouse. The Appraiser will discuss this situation in their appraisal. The acquisition contract and voucher will be written to include the occupying claimant. The owner of record will sign a warranty deed and the occupying claimant will sign a quit claim deed. The ROW Agent will need to explain to both the owner and the occupying claimant why the NDOT needs signatures of all interested parties. If there are questions, the ROW Agent should consult with their Supervisor.

5.05A2g Signatures and acknowledgements must be in agreement with the names of grantors or other parties appearing in the caption or the body of the instrument. All parties named as grantors must both sign the deed and their signatures must be acknowledged with marital status stated in the acknowledgement.

5.05A2h All signatures must be made in ink.

5.05A3 Pivot Irrigation System Eligible for a Permit to overhang the new right of way requires a special contract.

5.05A3a There are times when the land to be acquired will impact pivot irrigation systems. When certain conditions are met, a permit can be issued to allow the pivot to overhang the right of way. This permit will reduce the impact to the remainder.

5.05A3b The appraiser will estimate the damage to the remainder caused by the shortening of the pivot and estimate the cost to shorten the pivot. Then the appraiser will estimate the cost to adapt the shut-off mechanism to avoid sprinkling on the right of way. A determination will be made whether it is more economical to issue a permit or to pay damages to the remainder. If it is determined that the permit would be offered, the appraiser includes the compensation to shorten the pivot and resulting damages to the remainder. This amount will be stated in the encroachment permit, in the event the encroachment permit is cancelled or will be offered to the landowner if the permit option is not accepted.

5.05A3c Two contracts are written for encroachment situations that give the landowner a choice.

One contract is written with an encroachment permit. This permit would allow the encroachment and set forth the specific requirements of NDOT. The other contract is without an encroachment permit. This contract will have compensation based on the appraiser's calculations. (See 5.02C5a)

5.05A3d A draft encroachment permit (Attachment 508.11) is presented to the landowner, however the final encroachment permit that will be recorded at the courthouse is prepared by the Property Management Section.

5.05A3e Refer to 6.08H11 of the Right of Way Manual for details regarding permits for pivot irrigation systems.

5.05B OWNERSHIPS AND EXECUTION OF DOCUMENTS

5.05B1 *Single Owners* – examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

5.05B1a Single person

Caption: Jordan Smith, Single

(This form applies whether never married, divorced, or a widow).
Signature – Jordan Smith

5.05B1b If owner's name is different from title

Caption: Jordan Smith also known as Jordan H. Smith

Signature: Jordan H. Smith

5.05B1c When there are multiple individuals as record owners and not married

Caption: Jordan Smith, single
Sam Jones, single

Signatures: Jordan Smith
Sam Jones

5.05B2 OWNERSHIPS OF MARRIED PERSONS

5.05B2a NDOT policy requires that, when the property is recorded in only the husband's or wife's name as sole owner, the signature of the spouse is obtained in order that marital rights to the property are conveyed. If the property is a homestead, both signatures are required or the conveyance is void.

5.05B2b The wife's signature should show her own given name such as Mary Jones or Mary Smith Jones; use of the husband's name, such as Mrs. John Jones is improper.

5.05B2c Where couples are contemplating, or are in the process of securing a divorce, the attorneys for the parties should be consulted.

5.05B2d Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

5.05B2e Married woman who acquired title as a single woman named Mary Ann Jones

Caption: Mary Ann Jones, now known as Mary Ann Jones Smith and
John H. Smith, wife and husband

Signatures: Mary Ann Jones Smith
John H. Smith

5.05B2f Married person/couple

Caption: Jordan Smith and Judith Smith, husband and wife

Signatures: Jordan Smith and Judith Smith, husband and wife
Jordan Smith
Judith Smith

5.05B2g Multiple individuals as record owners, and one or more are married

Caption: Jordan Smith and Judith Smith, husband and wife, Richard Jones, a single person and Martha White, a single person

Signatures: Jordan Smith
Judith Smith
Richard Jones
Martha White

5.05B2h Joint tenants or tenants in common

Caption: Jordan Smith and Judith Smith, husband and wife

Signatures: Jordan Smith
Judith Smith

5.05B2i Where Jordan Smith and Richard Jones are the record owners and either one is married and are joint tenants or tenants in common

Caption: Jordan Smith and Judith Smith, husband and wife, and Richard Jones and Martha Jones, husband and wife

Signatures: Jordan Smith
Judith Smith
Richard Jones
Martha Jones

5.05B3 JOINT TENANTS

5.05B3a In cases where property is held in joint tenancy and the joint tenants are husband and wife, the signature of both joint tenants is required on the right of way contract, or deed.

5.05B3b Where property is held in joint tenancy and the joint tenants are not husband and wife, the signatures of not only the joint tenants, but also the spouse of each joint tenant is required on the right of way contract, or deed.

5.05B3c In joint tenancy, where one of the parties dies, the property vests in the surviving party or parties. In a tenancy in common, each of whom is considered as being possessed of the whole of an undivided part, upon death of one, their interest goes to their heirs or those entitled to inherit by law.

5.05B3d Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Joint tenants or tenants in common

Caption: Jordan Smith and Judith Smith, husband and wife

Signatures: Jordan Smith
Judith Smith

5.05B4 *Estates* – when a property owner has died, and probate proceedings have not been started and may not be started in the near future for some reason, or have not yet been completed, and the probable heirs are known, it is suggested that all signatures of the heirs be secured and the caption on the deed be similar to the following: "John Jones, Single, and Henry Jones and Mary Jones, his Wife, Sole Heirs at Law of James Jones, Deceased." This procedure should be used with caution and only after receiving approval from Legal Counsel.

5.05B4a Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Estates (By Heirs)

Caption: Jordan Smith and Judith Smith, husband and wife; Richard Jones and Martha Jones, husband and wife; Alice Mallory, Single; and Mabel D. Ryan and John F. Ryan, Wife and Husband, Sole heirs at law of Frank Donaldson, deceased.

Signatures: Jordan Smith
Judith Smith
Richard Jones
Martha Jones
Alice Mallory
Mabel D. Ryan

Estate (by personal representative)

Caption: Henry Smith, Personal Representative of the estate of John C. Rodgers, deceased

Signature: Henry Smith, Personal Representative of the estate of John C. Rodgers, deceased.

5.05B5 *Partnerships* – where a partnership is the owner of the property, the contract should be executed in the name of the partnership and signed by the partners, or a General Partner who has been given authority by the partnership to execute conveyances. A copy of such authority should be obtained.

5.05B5a Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Partnership

Caption: Nebraska Farms, a partnership

Signature: NEBRASKA FARMS, A PARTNERSHIP
Jordan Smith, a Partner
Jerry Brown, a Partner

5.05B5b If the property is not in the partnership name and there is some question as to whether the property is partnership property or owned by one or some of the partners individually or as joint tenants or tenants in common, get all the facts possible and present the matter to Legal Counsel.

5.05B6 *Corporations* – corporation deeds for lands or any interests therein, owned by a corporation organized under any law of this state, shall be signed by the authorized officers of the corporation and sealed with the corporate seal supported by a proper resolution.

5.05B6a A copy of the pertinent article or bylaw setting forth such authorization should be obtained.

5.05B6b Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Corporation

Caption: Dane County Insurance Company

Signature: DANE COUNTY INSURANCE COMPANY
By Charles L. Day, President or authorized officer

5.05B7 *Limited Liability Company* (LLC) – documents for lands that are owned by an LLC should be signed by the member(s) or manager that is authorized to do so. Such authorization is found in the current articles of organization (and amendments thereto) and in the current operating agreement of the LLC. The ROW Agent should obtain and review a copy of both.

5.05B7a Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Listing of owner on document:

Caption:	Riverside Heights, a Nebraska Limited Liability Company
Signature:	Signature – Mary J. Jones, Member of Riverside Heights, a Nebraska Limited Liability
Signature:	Mary J. Jones, Manager of Riverside Heights, a Nebraska Limited Liability Company

Listing of owner on document:

Caption:	Riverside Heights, a Nebraska Limited Liability Company
Signature:	Mary J. Jones, member of Riverside Heights, a Nebraska Limited Liability
Signature:	Mary J. Jones, manager of Riverside Heights, a Nebraska Limited Liability Company

5.05B8 *Land Contract* – usual procedure is to have sellers execute a warranty deed and buyers execute a quitclaim deed, even when the contract signed by sellers and buyers calls for a warranty deed.

5.05B9 *Political Subdivisions* – documents for cities, counties, or other political entities must be executed by the proper office or officers and be supported by a proper resolution or ordinance from a governing board or body authorizing the execution of the documents. A seal should be affixed. A copy of the resolution and other proceedings should be obtained and attached to the deed.

5.05B10 *Churches, Fraternal or Charitable Corporations and Organizations* – care should be taken that instruments from churches, fraternal or charitable corporations and organizations are executed in conformity with the bylaws and constitutions of such groups. Resolution of authority to execute such instruments and copies of bylaws must be procured from the controlling body, such as a board of trustees or directors, and a copy of such resolution, certified or attested to by its secretary, must be secured. If a resolution is required, it should be attached to the deed.

5.05B11 *School Board, Cemetery Association, Cooperative Association o any Other Or Unincorporated Group* – groups such as school boards, cemetery associations, or cooperative associations must, by resolution, authorize certain persons to act for the group. A copy of the resolution is then attached to the deed.

5.05B12 MINORS AND INCOMPETENTS

5.05B12a Minors and incompetents defined – see appendix.

5.05B12b If an interest in the property is held by a minor or an incompetent, the ROW Agent should first ascertain whether a conservator has been appointed by the court and secondly, whether such conservator has power to convey. This information should not be obtained from the parties, since many times such information cannot be relied on. A check with the county court should be made and, if possible, a copy of the documents giving the conservator power to sell should be obtained.

5.05B12c Neb. Rev. Stat. § 76-724 authorizes a conservator to assist in the sale or condemnation of property. In situations where no conservator exists for minors or incompetents, NDOT may offer to compensate owner or owner's representative for reasonable costs to appoint a conservator:

- NDOT offers to compensate for reasonable costs to appoint a conservator.
- The ROW Agent may assist the owner or owner's representative to obtain estimate from a local qualified attorney so that the cost estimate may be verified.
- If owner or representative is uncooperative or unwilling to assist in hiring an attorney, NDOT will hire one.
- The ROW Agent should discuss this matter with their immediate supervisor, the Negotiation/Relocation Supervisor and/or the Right of Way Division Engineer. In addition, it may be necessary to seek assistance from Legal Counsel.
- This information should be turned over to Legal Counsel to determine whether a contract should be taken or condemnation instituted.
- The ROW Agent should assist Legal Counsel in any way to promptly hire an attorney for the appointment of conservator.

5.05B12d Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Minor or Incompetent—Court Appoints Conservator

Caption: James D. Brown, Minor (or Incompetent)

Signatures: James D. Brown, Minor
Judith Smith

By Harry W. Smith, Conservator

5.05B13 TRUSTEE

5.05B13a If property is held in an undisclosed trust, per Legal Counsel's requests, the ROW Agent should only obtain a copy of the page showing designated trustee(s). If the property is held in a disclosed trust, get a copy of the entire trust agreement.

5.05B13b If original trustee is no longer serving in that capacity, the successor trustee(s) signature is required.

5.05B13c Examples of the proper listing of names of owners and the method of placing their signatures are indicated below:

Undisclosed trust

Caption: Mary Jones, Trustee of the XYZ Trust

Signatures: Mary Jones, Trustee of the XYZ Trust

Disclosed trust

Caption: Mary Jones, Trustee of the XYZ Trust, for the benefit of Taylor Jones

Signatures: Mary Jones, Trustee of the XYZ Trust, for the benefit of Taylor Jones

5.05B14 POWER OF ATTORNEY

5.05B14a The ROW Agent should obtain a copy of recorded or unrecorded Power of Attorney and give it to Legal Counsel to determine the extent of such power. Instruments executed under Power of Attorney must be executed as Mary Doe by John Doe, her attorney in fact.

5.05B14b Power of Attorney affidavit/title (Attachment 525).

5.05B14c If the Power of Attorney is not of record, it must be recorded along with the conveyance documents . In addition, a Power of Attorney affidavit must be signed by the Attorney in Fact; this affidavit must be attached to the conveyance documents.

5.05B15 *Persons Unable to Write* – persons unable to sign their names may sign by mark. Two witnesses must be present, excluding the person that is notarizing the mark. The ROW Agent cannot be one of the witnesses. The name of the grantor must be written near the mark by one of the two required witnesses. Deeds so executed may be acknowledged in the same manner as if signature had been written by grantor personally. The use of the following witness clause is permissible:

X John Smith's name subscribed

John Smith, being unable to write, made his mark in my presence and I signed his name at his request and in his presence

5.05B16 ACKNOWLEDGEMENTS – (notary block)

5.05B16a Neb. Rev. Stat. § 76-234, Nebraska Statutes provides that, "No acknowledgement of any conveyance shall be taken by any officer, unless the officer taking it shall know or have satisfactory evidence that the person making such acknowledgement is the person described in and who executed such conveyance".

5.05B16b Neb. Rev. Stat. § 40-104 provides that, "The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife...." Cases construing this section hold that if not executed and acknowledged at the time of delivery of the instrument, the instrument is void. One of these cases clearly points out that the grantors must be made aware of the fact that their acknowledgement is being taken. Therefore, be sure that when there is any possibility that a homestead is involved, the grantors sign in your presence and that they are fully aware that you are taking their acknowledgement. Do your notary work in their presence and in the notary block show marital status.

5.05B16c While the burden of proving that property is considered a homestead lies with the grantors, a broad definition would be property upon which the grantors reside.

5.05C CLOSING REQUIREMENTS

5.05C1 *Satisfying Subordinate Interests* – Chief Negotiator/Relocation Supervisor will determine if subordinate interests are required. Those interests which may affect good merchantable title can be quite numerous and can generally be determined by a study of the title report. Such interests can be released collectively on the common highway conveyance or easement but may be released individually if desired. Where lands are acquired in fee simple by warranty deed, all subordinate interests are released by a quitclaim deed or document separate from the landowner's deed. Quite naturally, a subordinate interest holder would not wish to be a party to warranting title to the land.

5.05C2 *Mortgage Releases* – when a release of mortgage is required, only the signature of the spouse who is the mortgagee is required, since a mortgage is considered to be personal property and not realty, even though secured by real estate.

5.05C2a Single Person

Caption: James A. Beal

Signature: James A. Beal

5.05C2b Several Individuals

Caption: James A. Beal, Jerry Mallory and Frank Smith

Signatures: James A. Beal
Jack Mallory
Frank Smith

5.05C2c Estate

Caption: C. B. Peel, Personal Representative of the estate of Howard Delmont, deceased

Signatures: C. B. Peel, Personal Representative of the estate of Howard Delmont, deceased

5.05C2d Corporation

Caption: Dane County Insurance Company

Signatures: DANE COUNTY INSURANCE COMPANY
By Charles L. Day, President
Attest: Fred D. Lake, Secretary

5.05C2e Deed of Trust

Caption: Adams Bank & Trust, Trustee

Signature: Adams Bank & Trust By Jason Brown, President

5.05C3 SATISFACTION OF MORTGAGE

5.05C3a Mortgages represent the largest number of subordinate interests and in some rare cases, it might be advisable to have the mortgagee present during negotiations with the owner. Some owners, however, are resentful of a mortgagee's voice in negotiations and are prone to regard it as interference. The ROW Agent should check this procedure with the owner during the first meeting for negotiations. The owner should be advised that the warrant will be made payable to the owner and the mortgagee.

5.05C3b Full or partial release of mortgage is accomplished by use of standard documents designed solely for this purpose.

5.05C3c Most insurance companies, mortgage companies, banks, or Federal lending agencies prefer to use their own forms. In such cases, ROW simply furnishes the necessary descriptions. In cases where ROW is requesting partial releases for land taken for right of way, the partial release should be extended to include all permanent easements, control of access and advertising control. In letters requesting partial releases, it should be emphasized that the partial release is to cover, not only the land taken, but also any descriptions of permanent easements, control of access and advertising control, if such rights are being acquired.

5.05C3d When the value of the land and improvements in the taking is $10,000 or less, mortgage releases will normally not be required. Consideration should be given to obtaining a release if there are large severance damages, if the security interest of the mortgagee would be seriously impaired or if other circumstances indicate it is prudent to obtain a release. The Chief Negotiator/Relocation Supervisor will need to exercise good judgment in determining when to obtain a release on these lower value partial takings. A release of mortgage is always required on a total taking, no matter what the value. Also, the mortgagee will always be named in a condemnation action.

5.05C4 REAL ESTATE TAXES

5.05C4a Real estate taxes are due and payable and become a first lien on the property on December 31st of each year. In counties having a population of 150,000 or more, the first half of these taxes become delinquent on April 1st of the following year and the second half become delinquent on August 1st. In the remaining counties, those dates are May 1st and September 1st. It must be remembered that, while the taxes don't become delinquent until the dates mentioned above, they are due and payable and are a first lien on the property on December 31st of the preceding year. Therefore, when making inquiry at the appropriate county offices, the question is not what taxes are delinquent but, rather, what taxes are due and payable and are a first lien on the property.

5.05C4b When we are acquiring only a portion of the property (partial taking), there is no need to concern ourselves with the real estate taxes. This is a risk management decision and policy. The only conceivable circumstance that would cause a problem would be if we left a remainder of such a small value that it would not cover the amount of the taxes. It is reasoned that, under that scenario, we would be acquiring the entire property anyway, and the taxes would be accounted for as described below.

5.05C4c When the entire property is acquired (total taking), the real estate taxes are always accounted for. This is done by one of two ways: (1) either by requiring the owner to pay the taxes before we complete the payment; or, (2) by deducting the amount of taxes that are due and payable and a first lien on the property from the payment to the owner. We then make payment directly to the county so as to ensure that no tax lien attaches to our property.

5.05C4d Taxes allocable to the year in which we acquire the property have not yet become due and payable and a first lien on the property since they do not do so until December 31st. Therefore, there is no need for us to concern ourselves with them.

5.05C5 *Special Assessments* – the tax records may indicate that all taxes to date have been paid but it may be that special assessments for the street work, sewer or water mains are outstanding. Such assessments are usually represented by improvement bonds which can be redeemed or paid at the property owner's option. Before the consideration is paid in full, evidence should be demanded that such special improvements have been paid or a satisfactory amount should be withheld from the consideration so that the purchaser may make the necessary payment.

5.05C6 STATE AND FEDERAL TAX LIENS AND JUDGMENTS

5.05C6a Notices of liens for internal revenue taxes payable to the United States of America shall be filed in the Register of Deeds office of the county or counties within which the property subject to such lien is situated. Such liens become effective as of the date of filing with the Register of Deeds office.

5.05C6b Judgments filed in the office of the Clerk of the District Court in any county of this State become a lien on property of the debtor in such county. In Douglas, Lancaster, and Lincoln counties, the Federal Court records must be searched for Federal judgments, as transcripts of them will not be found in the District Courts for these counties. (See Neb. Rev. Stat. § 25-1305).

5.05C6c For partial takings, such tax and judgment liens are generally ignored since they usually represent only a very small part of the value of the entire property. Where whole takings are involved, it is the policy of the NDOT to clear such liens.

5.05C7 MINERAL RIGHTS

5.05C7a It is NDOT policy to permit the owner to reserve oil and gas rights and a clause is in all deeds reserving oil and gas rights to the grantors, except total acquisitions.

5.05C7b Unless the right of way being acquired is occupied by an oil well or other oil producing equipment, releases are not obtained from the owners or lessors of oil and gas rights.

5.05C7c Filing of documents, papers or maps consists merely of indexing and filing of the material in the various offices and departments as may be designated by law.

5.05C8 *Recording and Filing of Instruments* – all instruments such as deeds, easements, mortgage releases and condemnation returns are forwarded, along with payment for recording, to the appropriate County Register of

Deeds Office for recording. When returned, they are filed in the file room for future reference.

5.06 PAYMENT PROCEDURES

5.06A GENERAL POLICY

5.06A1 In providing payment for property being acquired for right of way, the primary objective is prompt payment based on assurance that all subordinate interests have been satisfied. No payment shall be made unless, and until, the documents necessary to provide a clear title are delivered to the NDOT or sufficient assurance is received that they will be delivered promptly after payment.

5.06A2 Before requiring the owner/tenant to surrender possession of real property, the NDOT will pay the agreed purchase price to the owner/tenant. In the case of a condemnation, NDOT will deposit with the Court, for the benefit of the owner/tenant, an amount not less than the NDOT's approved appraisal of the market value of such property, or the award of compensation in the condemnation proceedings of the property. In exceptional circumstances with the approval of the owner/tenant, the NDOT may obtain a right of entry (Attachment 501.1 or Attachment 501.2) for construction purposes before making payment available to the owner/tenant.

5.06B *Date of Possession* – the date on which the NDOT may take physical possession of the property is immediately after the contracts are signed. NDOT's contract states, "It is agreed and understood that the STATE is hereby granted an immediate right of entry upon the premises described above."

5.06C *No Duplication of Payment* – no person shall receive any payment from the NDOT pursuant to the 42 USC Section 4601-4655 if that person receives a payment under Federal, State, local law, or insurance proceeds which is determined by the NDOT to have the same purpose and effect as such payment under the Act. An exhaustive search for such other payments is not required. However, a duplicate payment must be avoided based upon the NDOT's knowledge at the time payment is computed.

5.06D INCIDENTAL AND LITIGATION EXPENSES

5.06D1 The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

5.06D1a Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property and similar expenses incidental to conveying the real property to the NDOT. However, the NDOT is not required to pay costs solely required to perfect the owner's title to the real property; and

5.06D1b Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

5.06D1c The pro rata portion of any prepaid real property taxes which are allocable to the period after the NDOT obtains title to the property or effective possession of it, whichever is earlier.

5.06D2 Whenever feasible, the NDOT shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the NDOT.

5.06D3 The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding if:

5.06D3a The final judgment of the court is that the NDOT cannot acquire the real property by condemnation; or

5.06D3b The condemnation proceeding is abandoned by the NDOT other than under an agreed-upon settlement; or

5.06D3c The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the NDOT effects a settlement of such proceeding.

5.06D4 The owner may appeal the NDOT's determination of the owner's eligibility for, or the amount of, the above payments. The appeal procedure shall be handled in the same manner as Relocation Appeals and is described in 7.22 of this manual.

5.06E *Obligation to Pay* – the NDOT's legal obligation to pay for right of way is as follows:

5.06E1 When acquired by purchase, the NDOT is obligated to pay right of way costs, including any transfer expenses, upon the completion of the contract. The contract is complete when signed by the Right of Way Division Engineer.

5.06E2 When acquired by condemnation, the NDOT is obligated to pay a right of way condemnation award within sixty (60) days from the filing of the award by the Board of Appraisers.

5.06E3 Incidental costs such as staff salaries, expenses, and materials supplied, will normally be considered as services rendered and will be payable at the time such services are rendered and accepted by the NDOT. For contract services such as Fee Appraisers, Fee Acquisition Consultants and title examination work, etc., the NDOT will pay for such services contracted for as of the date of NDOT approval, but payment will not be made until such services have been rendered and accepted, as provided for, in the contract.

5.06F *Processing of Acquisition Documents* – when a signed contract is turned into the ROW Project Manager, the following steps must be taken:

5.06F1 A review of the contracts and associated documents must be made to assure accuracy, completion, and the legal conveyance of title.

5.06F1a Those documents are:

- Contract(s).
- Deed(s).
- Resolution (if required) (Attachment 522).
- Payment Allocation Voucher.
- W-9.
- Mortgage Release needs to be signed by owner if the land value is over $10,000.
- Certificate of ROW Agent – signed by agent.
- Civil Rights Survey.
- ACH Form – if compensation is $25,000 or more.
- Dated offer letter.
- Call reports.
- Any additional correspondence.
- Administrative Settlement (if necessary).
- Appraisal report.

5.06F2 A file is complete when all documents mentioned above have been turned in to the ROW Project Manager and reviewed for accuracy. A Routing Slip is attached by the ROW Project Manager (Attachment 530) and this package of documents is a "payment package".

5.06F2a Processing of this "payment package" includes:

- Log "payment package" in the signed contracts log and send to Accountant's Office to process for payment.
- Obtain mortgage releases as necessary.
- Secure recording of warranty deeds, permanent easements and other documents at County Register of Deeds.

5.06F3 *Accountant's Office* – After the ROW Associate completes their portion of processing the right of way acquisition transaction, the individual property file will be forwarded to the office of the Negotiation Section Accountant.

5.06F3a This process is explained in the following steps:

- An Order/Payment Form is prepared and attached to the file (Attachment 531). (Periodically there are special circumstances where a title company is contracted, and in those cases, the title company will file the deed.)
- The file is then routed to the Property Management Section for Right of Way Certificate documentation and to approve coding.
- At this time, the payment information is entered into the Right of Way Accounting and Certificate system (RAC) for tracking purposes.
- If the file is fully completed and acceptable, the Right of Way Division Engineer reviews the file; signing the contracts, voucher, and coding document.
- The individual property file is then returned to the Negotiation Section Accountant.
- Next the payment document will be processed through the Roads Payment System (RPS), which will produce a warrant.
- Prior to recording of deeds, the warrant is either hand carried or mailed to the property owner, tenant, relocation displacee, or others as intended or direct deposited (ACH). The current required amount for direct deposit is $25,000 or more.
- The ROW Associate records the deeds.
- The remainder of the payment package is filed in the ROW file room.

5.06F4 Payment information is recorded in the Payment Database and Document Register. A register of the payment documents issued is maintained by the Negotiation Section Accountant.

5.06F5 Acknowledgement of Right of Way Contracts and Payment Documents. A letter is sent to the owner/tenant acknowledging receipt of the signed documents and NDOT approval of the documents. Included in this mailing will be the approved contract, a copy of the approved voucher attachment and the property owner's Opinion Survey. This is done under the direction of the Negotiation Section Accountant. (Attachment 534)

5.06F6 *Acquisition Documents with no Existing Mortgage* – when the signed acquisition documents are received, and no mortgage is involved, the acquisition documents will be submitted for processing for the payment to the landowner.

5.06F7 ACQUISITION DOCUMENTS WITH AN EXISTING MORTGAGE

5.06F7a When the signed acquisition documents are received, and existing mortgage is involved, the processing for payment will be put on hold until a signed mortgage release is obtained.

5.06F7b When the land acquisition amount is less than the Appraisal Waiver amount, as stated in Chapter 8 on this manual, a mortgage release will

normally not be required. If there appears to be a problem regarding the property owner and their relationship with a mortgage company(s); the ROW Project Manager will review the facts and use sound judgment to determine if a mortgage release is required.

5.06F7c When the mortgage release is completed, the mortgage company(s) name will be added to the final payment documents so that both the owner(s) and mortgage company(s) will be on the State Warrant for payment.

5.06F8 MORTGAGE RELEASES

5.06F8a At the time of processing for payment, a request for a partial release of mortgage will be sent to the mortgage company. (Section 5.05T)

5.06F8b In those instances where an individual holds a mortgage(s), the release will be prepared by the Negotiation/Relocation Section and the necessary signatures will be secured by the ROW Associate. If the mortgage is tracked by MERS (Mortgage Electronic Registrations Systems), a title company will be contracted to handle the closing.

5.06F9 PAYMENT PROCEDURES ON TOTAL ACQUISITIONS

5.06F9a The ROW Agent, in conducting an interview with the landowner, will inform them that unpaid taxes or liens will be deducted from the total purchase price shown on the payment document. If the property owner pays the taxes or assessments before final settlement is made, no deduction will be made.

5.06F10 PAYMENT TO COUNTY COURT

5.06F10a The award of the appraisers in a condemnation proceeding must be deposited with the County Judge within sixty (60) days from the date of the award. If the award is not appealed by either party within thirty (30) days after the award, the owner/tenant may withdraw the full amount of the award as soon as it is deposited.

5.06F10b If the award is appealed by either party, upon agreement of the parties and approval of the County Judge, an amount equal to 100% of the offer may be withdrawn prior to the final determination on appeal. The withdrawal under such an agreement has no effect whatsoever upon either party's right of appeal.

5.06F11 RECORDING AND FILING OF INSTRUMENTS

5.06F11a All instruments such as deeds, easements, mortgage releases and return of appraisers will be forwarded to the appropriate County Register of Deeds office for recording. When returned they are filed in the ROW File Room for future reference.

5.06F11b Special attention should be made to assure that the return of appraisers is obtained by ROW. The tracking of this document is very important as there is often a long period of time between the filing of the condemnation and the actual county court hearing and payment.

5.06F12 PAYMENTS MADE BY A CLOSING COMPANY WITHOUT TITLE INSURANCE

5.06F12a The State issues paper warrants in the amount of $25,000 or less. These paper warrants will contain the owner(s) name and any other name(s) that hold a legal interest in the property.

5.06F12b Any payment $25,000 and over is made electronically through an Automated Clearing House (ACH). An ACH payment is made to a single account. This is acceptable when there is only one payee. It is necessary to use a closing company if there are multiple owners or others holding a legal interest in order to assure that they receive proper payment as their interest dictate. The NDOT makes a direct payment to a closing company, selected by the ROW Project Manager over the Title Researchers, in the name of the NDOT's payee. The closing company will acquire any additional documentation and make payments to all interests, as necessary. The selected closing company will complete all the requirements outlined in "Closing and Title Insurance" letter. (Attachment 514)

5.06F13 *Payments made by a Closing Company with Title Insurance* – title insurance will not normally be acquired where the acquisitions do not exceed $50,000. However, if there appears to be a problem that could impact the NDOT acquiring a free and clear title on acquisitions under $50,000 or if free and clear title has been established up to $300,000, then title insurance should be obtained on these acquisition(s) after review by the ROW Project Manager over the Title Researchers and/or Chief Negotiator.

5.07 CONDEMNATIONS

5.07A *General Comments* – this section is intended to provide a brief outline of some of the issues and procedures involved with the condemnation process. No representation is made as to the accuracy or completeness of this information. This chapter is not intended to provide legal advice for the reader. Legal Counsel should be consulted for advice regarding the rights of the parties in any particular condemnation action.

5.07B *Neb. Rev. Stat. § 39-1320* – the NDOT has statutory authority to acquire property through condemnation. Neb. Rev. Stat. § 39-1320, provides as follows:

"The Department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any

lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price."

5.07C *Neb. Rev. Stat. § 76-701 to § 76-724* – these statutes provide the procedure for condemnation actions with certain exceptions including acquisition of public school lands or lands of other State agencies. Neb. Rev. Stat. § 76-704 provides: "If any condemnee shall fail to agree with the condemner with respect to the acquisition of property sought by the condemner, a petition to condemn the property may be filed by the condemner in the county court of the county where the property or some part thereof is situated."

5.07D *A Condemnation File* – this file is prepared by the ROW Project Manager for the use of Legal Counsel in instituting condemnation. This file shall include Basic Information Sheet, reports of the ROW Agent, a copy of the approved appraisals, the appraisal review, contracts and all applicable correspondence and other documents as may be requested by Attorney General's office.

5.07E *Date of Taking* – the date of filing of the condemnation petition is deemed the time of taking for determining market value and damages but is not the date for possession by the condemner.

5.07F GOOD FAITH OFFER

5.07F1 There is a statutory condition precedent to the filing of a condemnation action which is commonly referred to as an obligation to negotiate with the owner/tenant in good faith. The Nebraska Supreme Court has interpreted this condition as follows: "In order to satisfy the statutory requirement, there must be a bona fide attempt to agree. There must be an offer made honestly and in good faith, and a reasonable effort to induce the owner to accept it." State v. Mahloch 174 Neb. 190 (1962)

5.07F2 To provide a sound basis for an offer made in good faith, NDOT policy requires that offers shall be made to the owner/tenant and shall be based on an appraisal which has been reviewed for the purpose of establishing fair market value and damages prior to negotiation.

5.07F3 In the negotiation process, the ROW Agent's call report should note the circumstances of making the offer and the owner's/tenant's response. It should be noted in the call report whether or not a counteroffer was made and the basis of it. These call reports should be made as soon as reasonably possible after the meeting with the owner/tenant. A further discussion regarding this report is set out in Section 5.02C6.

5.07G CONDEMNATION PROCESS

A condemnation action will be filed when it is determined that the NDOT and owner/tenant cannot reach a satisfactory agreement to accept the NDOT's offer to acquire the land or when, for some reason, fee simple title is not free and clear of liens and encumbrances.

5.07G1 Generally, condemnation is initiated by the ROW Project Manager if an agreement with the owner/tenant to convey the property cannot be reached. The following steps are taken:

5.07G1a Notify and request condemnation plat from Right of Way Design through ARMS.

5.07G1b Review the file to ascertain if a good faith offer was made to the owner/tenant or his/her representative. A good faith offer includes:

- Offer Letter and all acquisition documents sent to owner/tenant.
- The owner/tenant has been given at least 30 thirty days from receipt of first offer.
- Attempts were made to contact owners/tenants by telephone calls and/or followed up by personal visits, when reasonable.
- The owner/tenant has been informed of the NDOT's willingness to answer questions or continue negotiations up to the date of the condemnation hearing.
- And a reasonable effort was made to induce the owner/tenant to accept it.

5.07G1c Negotiations are concluded and the ROW Project Manager will send a certified letter (Attachment 515) to the owner/tenant and other parties with an interest in the property. This letter is signed by the Right of Way Division Engineer and states:

- The terms of the NDOT's offer to acquire the property.
- The amount of any counteroffer.
- Any information deemed by the NDOT to be relevant to the negotiations; and
- A statement that the file will be forwarded to Legal Counsel for the filing of a condemnation action.
- A Summary of Issues page is included with this letter. This page is for in office use only and is to inform the Right of Way Division Engineer of the issues that precipitated condemnation action.

5.07G1d The ROW Agent file is then prepared and copies are made for Legal Counsel as follows:

- One (1) copy of the basic information sheet on both sides.
- One (1) copy of all contracts.
- One (1) copy of any wills, deeds, final decree and appointments of conservators and related documents.
- One (1) copy of the final offer letter.

- ROW Agent's copy of the appraisal report and project report.
- Complete two (2) copies of the Negotiation Summary (Attachment 521).

5.07G1e The NDOT ROW sends the condemnation file along with the name and phone number of the LPAs attorney to the NDOT Legal Division. NDOT Legal Division contacts the LPA attorney to offer assistance or provide standard forms and processes. The NDOT Legal Division will assist as requested by LPA's attorney, NDOT ROW Manager and ROW Local Projects Section.

5.07G1f The originals of the ROW Agent's file are given to the Chief Negotiator/Relocation Supervisor for routing to the ROW File Room through the Property Management Section. The Chief Negotiator/Relocation Supervisor then logs and sends the Legal copy to NDOT's Legal Counsel for appropriate action.

5.07H *Continued Negotiations* – sometimes it is necessary or helpful to continue negotiations with the owner/tenant after the filing of a condemnation action when requested by the owner/tenant, the Chief Negotiator/Relocation Supervisor, the Right of Way Division Engineer or Legal Counsel. Legal counsel should be contacted prior to continuing negotiations after a condemnation action is filed. The condemnation action can be dismissed if agreement is reached with an owner/tenant prior to the condemnation hearing. Other potential areas of agreement are covered in 5.02, Negotiation Process.

5.07I INSTITUTING CONDEMNATION PROCEEDINGS

5.07I1 The County Court condemnation action is an administrative proceeding, not a judicial proceeding and the Nebraska Supreme Court in Higgins v. Loup River Public Power District, 157 Neb. 652 held that:

"The procedure in the County Court contemplates an informal hearing by the appraisers, a view of the lands, no record of the testimony, and a report of damages assessed to be filed subject only to the right of appeal, not to confirmation by the appointing court …".

5.07I2 The following includes details of some aspects of a condemnation action

5.07I2a *Appointment of Appraisers* – the County Judge, upon filing of the petition of the condemner, appoints three disinterested landowners of the county where the action is filed within three days by serving upon them a copy of the Appointment of Appraisers. The three appraisers are required to be disinterested freeholders of the county, not interested in a like question, and at the time of the hearing are required to take an oath that they will support the Constitutions of the United States and the State of Nebraska and will faithfully and impartially discharge their duty as required by law.

5.07I2b *Qualifications of Appraisers* – state law provides that upon convening of the appraisers the County Judge shall interrogate them as to their

qualifications and may excuse any appraiser found to be disqualified to serve and thereafter fill the vacancy arising through such disqualifications and inability to attend or otherwise.

5.07I2c *Notice to Landowner* – a copy of the "Notice to Landowners" should be served on the condemnees at least ten days prior to the date set for the hearing, giving the place for the appraisers to convene, the date and time of the hearing, and a copy of the plat and description of the property sought to be acquired by the condemner. A voluntary appearance may be filed by a condemnee waiving the ten-day notice requirement.

5.07I2d *Duties of Appraisers* – the appraisers' duties are to carefully inspect and view the property acquired, and also any other property of the condemnee allegedly damaged because of the acquisition. The appraisers shall hear any party interested therein in reference to the amount of damages when they are so inspecting and viewing the property. Thereafter, the Board of Appraisers shall assess the damage and file with the County Judge a written report called the Return of Appraisers. The appraisers can only assess damages. They cannot change the taking or file a conditional award.

5.07J *Deposit of Award and Possession* – the Return of Appraisers, upon deposit by the condemner (NDOT) of the amount awarded, is recorded in the Register of Deeds office and has the same force and effect as a deed. The condemner acquires a right of possession of the property upon deposit of the award of the appraisers and when it is ready to put the property to a public use.

5.07K *Abandonment of Proceedings* – if no appeal is taken by the condemner from the award of the appraisers, the condemner will be deemed to have accepted the award unless the condemner has, within sixty (60) days from the date of the award, filed an election in writing to abandon the proceeding. However, if the condemner fails to make a deposit of the award within sixty (60) days from the filing of the appraisers award, the condemner shall be deemed to have abandoned the condemnation proceeding. Upon abandonment, new condemnation proceedings may not again be instituted by the condemner to condemn the property within two years from the date of abandonment.

5.07L *Appeal From an Award* – either party or both may appeal the award of appraisers by filing with the County Judge a Notice of Appeal within thirty (30) days from the date of filing the award. The filing of an appeal does not prevent the use of the property for the public use for which it was condemned. If an appeal is made by the condemnee, the statutes allow interest on the award of appraisers, the amount except withdrawn by the condemnee. If the condemner takes the appeal, the condemnee is entitled to interest on the total amount of the award. When the condemnee makes the appeal, the condemnee must increase the award of the appraisers to be entitled to interest.

5.07L1 *Interest on Award* – upon stipulation of the condemnee and condemner, an amount up to the award of the appraisers, may be withdrawn and interest ceases to accrue on the amount withdrawn. In the event that a final verdict or judgment results in a lesser amount than the amount withdrawn, the

condemner has a judgment against the condemnee for such excess amount withdrawn plus interest from the date of withdrawal.

5.07L2 On appeal to the District Court, the proceedings become judicial, pleadings are filed, the issue is tried de novo (over again, second time) and the landowner has the burden of proof and is required to go forward with evidence or, they may not be entitled to recover anything. The NDOT's burden is to show matters which mitigate or reduce damages.

5.07L3 *Appeal Costs* – Attorney and Expert Witness Fees

5.07M DECISIONS TO APPEAL

5.07M1 The Legal Counsel's attorney who attended the condemnation hearing shall prepare a report of the condemnation proceeding. The report should set out the applicable details about the condemnation hearing, including all information which might have a bearing on the amount of the condemnation award. This report together with the individual file is reviewed by the Chief Appraiser and the Right of Way Division Engineer. Their recommendations are considered by the Chief Counsel who makes the final decision whether an appeal shall be made from the condemnation award. This procedure complies with a ruling of the Attorney General of Nebraska.

5.07M2 A decision on whether an appeal shall be made from an adverse judgment upon trial in District Court shall be made by the Chief Legal Counsel for the NDOT with the advice of the Right of Way Division Engineer and the Chief Appraiser.

5.07N CONDEMNATION OF BOARD OF EDUCATIONAL LANDS AND FUNDS (BELF)

5.07N1 The State-Owned land most frequently acquired for highway purposes is educational trust land that is part of the educational trust administered by the Board of Educational Lands and Funds. Neb. Rev. Stat. § 39-1323 authorizes the NDOT to acquire the portions of these lands needed for highway purposes as provided for in Neb. Rev. Stat. § 72-224.02, § 72-224.03 and § 72-225.

5.07N2 Neb. Rev. Stat. § 39-1323 further provides that prior to the acquisition; a certificate prepared by Legal Counsel certifying that the taking of such lands is in the public interest, must be signed by the Governor and filed in the office of the Department of Administrative Services. The Board of Educational Lands and Funds must be notified ten days prior to the filing.

5.07N3 Customarily, the NDOT does not obtain possession of the property until payment has been made for the acquisition. However, upon agreement of the amount of damages payable to The Board of Educational Lands and Funds and the acquisition of the tenant rights, the Deputy Director of The Board of Educational Lands and Funds authorizes the NDOT to proceed with its project.

5.07N4 An appraisal board made up of the officials listed in Neb. Rev. Stat. § 39-1323 will determine the amount to be paid by the NDOT. This board meets infrequently and this fact could cause considerable delay in public improvement projects. Because of this, the approval procedure described above is used to indicate “payment and possession”.

5.07N5 Negotiations with tenants on The Board of Educational Lands and Funds will be conducted by the ROW Agent on the basis of the approved appraisal.

5.07N6 In the event agreement cannot be reached with the tenant, the compensation to be paid to the tenant as well as the compensation to be paid to the school trust will be determined by the appraisal board referred to above.

5.07N7 Detailed procedures are noted in (Attachment 529).

5.08 LEGAL SETTLEMENTS

5.08A The possibilities of settlement may develop after the condemnation award has been made to the County Judge and prior to appeal.

5.08B Occasionally owners/tenants may contact ROW to explore the possibility of a settlement in their hope of avoiding a District court trial and the necessity of retaining an attorney. These owners/tenants shall be directed to the Chief Legal Counsel. If a settlement which meets the conditions listed in Section 5.07C appears possible, the Chief Legal Counsel will confer with the Right of Way Division Engineer as to acceptable terms or range of values for settlement.

5.08C Prior to appeal by the NDOT of a condemnation award substantially above the NDOT’s offer, Legal Counsel, after conferring with the Right of Way Division Engineer to establish limitations for an acceptable settlement, may contact the owner/tenant or the owner’s/tenant’s attorney if an attorney has been retained, to explore the possibility of reaching a settlement prior to appeal. The appeal will be made prior to the thirty (30) day deadline if this attempt at settlement is unsuccessful.

5.08D After an award has been appealed by either party, the attorney assigned to the case will confer with the Right of Way Division Engineer prior to the trial being scheduled to determine the upper limit of values to be considered in any discussion of settlement with the owner's/tenant’s attorney.

5.08E If a settlement is reached, a report of settlement shall be documented as follows:

5.08E1 A signed statement by the attorney who handled the case, describing the reasons for the settlement, with appropriate supporting data to show the application of the guidelines set out in 49 CFR 24.102(i).

5.08E2 A signed statement by the Chief Legal Counsel, stating concurrence in the reasoning and disposition of the case.

5.08E3 A signed statement by the Right of Way Division Engineer indicating concurrence.

5.09 FEE ACQUISITION CONSULTANTS

5.09A QUALIFICATIONS

5.09A1 The Chief Negotiator/Relocation Supervisor has established and maintains a list of Approved Acquisition Consultants (Approved Acquisition Consultants List). The Chief Negotiator/Relocation Supervisor takes positive steps to include all qualified Fee Acquisition Consultants on the approved list who wished to be considered for NDOT contracts.

5.09A2 Subsequent additions of Acquisition Consultants to this list are accomplished by reviewing the qualifications of those that have requested to be added to the list.

5.09A3 FEE ACQUISITION CONSULTANTS SHALL MEET THE FOLLOWING QUALIFICATIONS

5.09A3a Must be properly licensed in Nebraska by the Nebraska Real Estate Commission.

- Acquisition Consultants need to be licensed.
- All licensed activity should be contracted for and done under the supervision of the affiliated licensee's designated broker.
- All payments for licensed activity need to go to the designated broker, who can then compensate their affiliated licensee.
- Nebraska does not recognize licenses by reciprocity, but an out of state licensee can obtain a Nebraska license based upon license recognition, a Nebraska license, whether original issue, or based on license recognition from another state is needed before conducting activity requiring a license in Nebraska.

5.09A3b Highly desirable that they have a history of successful performance in this field.

5.09A3c Must be able to show that they have a qualified licensed staff available.

5.09A3d Must demonstrate knowledge and abilities in title searches and closing procedures.

5.09A3e Must demonstrate knowledge in Nebraska eminent domain procedures so the proper explanation can be given to the owners/tenants.

5.09A3f Must have knowledge in the appropriate federal laws and procedures as set forth in our Right of Way Manual.

5.09A3g Must be able to explain engineering plans, analyze the appraisal, answer legal questions, firmly present the offer and tolerantly endure the complaints and arguments of the property owners/tenants.

5.09B CONTRACTING FOR SERVICES

5.09B1 The Right of Way Division Engineer, in consultation with the Chief Negotiator/Relocation Supervisor may, when circumstances warrant, contract for a Fee Acquisition Consultant to acquire the right of way for a project.

5.09B2 A Request for Proposal (Attachment 520) will be sent to all Approved Acquisition Consultants. This assures an open competitive process for selecting recipients for these contracted services.

5.09B3 The Request for Proposal shall provide adequate information for the Acquisition Consultants to submit a realistic proposal. This information should include, but not be limited to, a clear scope of work, a defined work product, plans and/or strip maps, names of the property owners, proposed start and finish dates of the project, number of tracts and the time and date of the proposed opening of proposals.

5.09B4 Responses to the Requests for Proposals must be submitted in a binder with numbered tabs/dividers titled and correlated with each of the following numbered topics.

5.09B4a *Proposal* – the Consultant's proposal must describe in detail how the service will be provided, with statements specifically addressing how the tasks outlined in the Acquisition Consultant Specifications (Attachment 516) will be completed. The consultant shall propose a timeline for the project. Time is of the essence, therefore proposed time lines will be considered during evaluation.

5.09B4b *Firm's Capacity* – the Consultant's proposal must state the size of the firm, the size of the firm's acquisition staff and the location of the office from which this service is to be performed. Also, the number and nature of the professional staff to be employed in the performance of this service on a full-time basis and the number and nature of the staff employed on a part-time basis must be listed.

5.09B4c *Personnel* – the Consultant must attach resumes of all those who will be involved in the delivery of the service. The resumes must include their experience in the area of negotiation for the purchase of real estate. The level of involvement by principals of the firm in the day-to-day operation of the contract must be explained.

5.09B4d *Present Workload With the NDOT* – the Consultant must indicate the project number and the number of tracts not yet completed that are under contract with the NDOT at the time the proposal is submitted.

5.09B4e *Cost* – the Consultant's proposal must indicate the per tract cost for providing the service as noted in the Acquisition Consultant Specifications for each ownership, with a total cost for the project.

5.09B4f *References* – the Consultant must list at least three references knowledgeable of the Consultant's work on contracts of similar size and scope, including at least two references for current contracts or those awarded during the past three years. The Consultant should include the name of the organization, the length of the contract, a brief summary of the work, and the name and telephone number of a responsible contact person.

5.09C ADDITIONAL REQUIREMENTS

5.09C1 The Consultants will be informed that a selection committee will review and evaluate all replies and identify the firms that may be invited to submit more detailed proposals, make oral presentations, or both. The selection committee will have only the response to the solicitation to review for selection of finalists. It is, therefore, important that respondents emphasize specific information pertinent to the work. The award could be made on the basis of initial proposals, without discussion.

5.09C2 The selection committee will consist of the Right of Way Division Engineer, Chief Negotiator/Relocation Supervisor, and both ROW Project Managers. At least three of these four individuals must be present to review and score the proposals.

5.09C3 Proposals received shall be held until the prescribed time of opening. At that time, in the presence of the selection committee, the proposals shall be opened, copies made and distributed to the selection committee. The proposals will be scored (Attachment 517) by each selection committee member.

5.09C4 The individual scores given by the members of the selection committee will be added together for a composite score (Attachment 523). Each Consultant and their score will be noted on the Right of Way Consultant Combined Score Sheet (Attachment 518). The selection committee will then determine which proposal is most advantageous to the NDOT's program. The committee may reject any or all proposals. The selected proposal may or may not be the proposal that has the highest composite score. After this decision, an agreement will be prepared by the Agreements and Consultants Services Section of the Project Development Division and presented to the Fee Acquisition Consultant for acceptance. When the agreement bearing the Fee Acquisition Consultant's signature is received, it will be executed by the Right of Way Division Engineer.

5.09C5 All proposals received and a memorandum summarizing the decision reached by the committee, along with the composite scoring and the individual scoring, will be placed in the project file.

5.09C6 The Chief Negotiator/Relocation Supervisor or designee will evaluate the Consultant's work product and performance. To aid in this evaluation, this individual will periodically complete a project status summary (Attachment 524). At the completion of the contract, an Acquisition Consultant

Performance Evaluation (Attachment 519) will be completed and filed for future reference in selecting a Fee Acquisition Consultant.

CHAPTER 6
PROPERTY MANAGEMENT SECTION

6.01 GENERAL OBJECTIVE

The general objective of the Property Management Section is to carry out the responsibilities listed in paragraph 1.02F, in a professional and timely manner.

The activities of the Property Management Section are administered in a manner consistent with the public interest and are designed to produce a maximum long range public benefit.

6.02 PREPARATION OF RIGHT OF WAY CERTIFICATES

6.02A The factual data for the Right of Way Certificate (Attachment 609) shall be assembled by the Property Management Section for the signatures of the PM Supervisor (certifying signature) and the Right of Way Division Engineer (approving signature). The information required for a Conditional or Final Certificate is listed in the table below.

Statement	Conditional	Final	Requirement
Signs and or sign bases may be removed by owners prior to construction	X	X	Use if there are signs on the project. Conditional Certificate only when another item listed is not completed.
Encroachments on the old right of way being checked; or No encroachments on the old right of way	X		Use one of the two statements, as appropriate.
No encroachments on the old right of way	X	X	Conditional Certificate only when another item listed is not completed.
No right of way acquisition required	X	X	Conditional Certificate only when another item listed is not completed.
The right of way has been acquired in accordance with current Federal Highway Administration directives covering the acquisition of real property	X	X	Conditional Certificate only when another item listed is not completed

Statement	Conditional	Final	Requirement
All necessary rights of way, including control of access rights when pertinent, have been acquired, including legal and physical possession.	X	X	Conditional Certificate only when another item listed is not completed
The Contractor will not be able to perform work on any tract listed as “Unacquired Right of Way Tracts” until legal and physical possession has been acquired by the State. If necessary, the contractor will be granted an extension of time if delay is caused because of the above tract(s) not being acquired. The balance of the right of way has been acquired in accordance with current Federal Highway Administration directives covering the acquisition of real property.	X		Only use the “balance of right of way” statement if there are tracts that have been acquired.
Tract ___ is state land owned by the Board of Educational Lands and Funds and application for appraisal damages has been made to that body.	X		
No residential or non-residential occupants were required to be relocated. Steps relative to relocation advisory assistance and payments as required by the current Federal Highway Administration directives covering the administration of the Highway Relocation Assistance Program are not required.	X	X	No relocation assistance of any type.

Statement	Conditional	Final	Requirement
The State certifies that all residential occupants have been relocated to decent, safe, and sanitary housing or the State has made available adequate replacement housing to those displaced in accordance with Federal Highway Administration directives. Steps relative to relocation advisory assistance and payments for residential occupants, as required by the current Federal Highway Administration directives covering the administration of the Highway Relocation Assistance Program, have been taken. Steps relative to relocation advisory assistance and payments for non-residential occupants, as required by the current Federal Highway Administration directives covering the administration of the Highway Relocation Assistance Program, are not required.	X	X	Only Residential Relocation and it is complete. Conditional Certificate only when another item listed is not completed.
Relocation of residential occupants has not been completed. Steps relative to relocation advisory assistance and payments for non-residential occupants, as required by the current Federal Highway Administration directives covering the administration of the Highway Relocation Assistance Program, are not required.	X		Only Residential Relocation and it is not complete.
Steps relative to relocation advisory assistance and payments for non-residential occupants, as required by the current Federal highway Administration directives covering the administration of the Highway Relocation Assistance Program, have been taken. No residential occupants were required to be relocated.	X	X	Only non-residential occupants and it is complete. Conditional Certificate only when another item listed is not completed.

Statement	Conditional	Final	Requirement
Relocation assistance activities for non-residential occupants have not been completed. No residential occupants were required to be relocated.	X		Only non-residential occupants and it is not complete.
The State certifies that all residential occupants have been relocated to decent, safe, and sanitary housing or the State has made available adequate replacement housing to those displaced in accordance with Federal Highway Administration directives. Steps relative to relocation advisory assistance and payments for residential and non-residential occupants, as required by the current Federal highway Administration directives covering the administration of the Highway Relocation Assistance Program, have been taken.	X	X	Both residential and non-residential occupants and it is complete. Conditional Certificate only when another item listed is not completed.
Relocation of residential occupants has not been completed. Steps relative to relocation advisory assistance and payments for non-residential occupants, as required by the current Federal Highway Administration directives covering the administration of the Highway Relocation Assistance Program, have been taken.	X		Both residential and non-residential occupants and residential is not complete but non-residential is complete.

Statement	Conditional	Final	Requirement
The State certifies that all residential occupants have been relocated to decent, safe, and sanitary housing or the State has made available adequate replacement housing to those displaced in accordance with Federal Highway Administration directives. Steps relative to relocation advisory assistance and payments for residential occupants as required by the current Federal highway Administration directives covering the administration of the Highway Relocation Assistance Program have been taken. Relocation assistance activities for non-residential occupants have not been completed.	X		Both residential and non-residential occupants and residential is complete but non-residential is not complete.
Relocation of residential occupants has not been completed. Relocation assistance activities for business and moving personal property have not been completed.	X		Both residential and non-residential occupants and neither are completed.
All right of way clearance has been completed; or All necessary arrangements have been made for the right of way clearance to be undertaken and completed before physical construction begins; or All necessary arrangements have been made for the right of way clearance to be undertaken and completed concurrently with the highway construction.	X	X	Use one of the three statements, as appropriate. Conditional Certificate only when another item listed is not completed

6.03 MANAGING NEWLY ACQUIRED RIGHT OF WAY AND PROVIDING FOR ITS CLEARANCE PRIOR TO CONSTRUCTION

6.03A MANAGEMENT OF NEWLY ACQUIRED PROPERTY

The Property Management Section is responsible for coordinating activities to maintain acquired right of way and acquired vacated improvements in an acceptable condition until the right of way is needed for construction.

District Maintenance personnel, upon notification by the Property Management Section, may perform necessary maintenance to keep the right of way in a good and safe condition. Maintenance includes: removal of improvements when requested, cutting of weeds and removal of snow when required, installation of snow fences or safety barriers, removal of debris, and surveillance to keep unauthorized personnel from occupying Department owned property or using the Department property for an illegal purpose.

If Maintenance personnel are not available, the PM Supervisor may contract with individuals or companies outside of the Department to perform maintenance.

An extended period of time may exist between the time that improvements are acquired and the time of their disposal. Where evidence of vandalism is apparent in an area and there is considerable salvage value in the improvement, the PM Supervisor should request authority to hire a patrol service or other type of protection. District Maintenance personnel should be requested to assist in the work necessary to protect an acquired improvement such as boarding up windows, placing hasps and locks on doors when needed, winterizing when necessary, installing “For Sale” signs or ownership signs when requested.

6.03B CLEARANCE OF IMPROVEMENTS FROM RIGHT OF WAY

6.03B1 *Process Prior to Property Acquisition* – in order to produce the maximum possible benefit to the Department from the management and the disposition of property acquired for Highway purposes, the Property Management Section must plan its activities as early as possible in the acquisition process.

6.03B1a *Demolition Estimates for the Appraisal Section* – the Property Management Section shall provide, upon request, demolition cost estimates for the Appraisal Section. Information shall be based on past demolition contracts awarded and provided to the Appraisal Section on a Demolition Cost Estimate Form. (Attachment 608)

6.03B1b *Notice by the Appraisal Section* – the Appraisal Section shall provide an inventory of all improvements to be acquired, when its staff makes or reviews an appraisal.

6.03B1c *Estimate of Removal Date* – an estimate of the date when property must be removed from newly acquired right of way shall be obtained by the PM Supervisor after consultation with the Roadway Design Division, Contracts Administration, District Engineer or Project Manager.

6.03B2 The Process To Be Followed After Eminent Domain Proceedings Are Held

6.03B2a *Notification* – the Property Management Section shall be notified of Eminent Domain proceedings by the Legal Section of the Department. This notice shall also include conditions as set forth in the proceedings.

6.03B2b *Rental and Leasing of Property Acquired by Eminent* Domain – the Property Management Section shall follow the Attorney General's opinion dated January 8, 1981 in regards to the rental or leasing of condemned property. (Attachment 601)

6.03B2c *Clearance of Property Acquired by Eminent Domain* – the Department of Transportation will not clear a property until such time as the property is to be used for the intended public purpose. Except, upon a mutual agreement between the Department and the owner as to a vacating date, or on those projects where physical construction is imminent.

6.03B3 The Process to be Followed Immediately After Physical Possession of Property is Attained

6.03B3a *Inspection* – an inspection of newly acquired property shall be made by the PM Supervisor, a member of the Property Management Section, other Right of Way personnel or District personnel to:

- Confirm that real property and inventory described in the appraisal is present. If items from the description and inventory are missing, the PM Supervisor will consult with Legal Counsel.
- Determine the priority of disposition of acquired property with the most valuable property and the property requiring the most time to remove being given consideration. This is to avoid a loss to the Department if a timely process is not put in place.
- Make a final determination of the method of disposal of the improvements.
- Secure if necessary any vacated improvements to assure that the value of the structures will be maintained.
- Make a determination regarding the recommendation for RODENT CONTROL. Rodent control may be used on highway projects where buildings, garbage dumps, or landfills are located.
- The Review Appraiser shall recommend rodent control if conditions are such that rodent control measures are necessary. The recommendation as to whether rodent control measures are necessary will be made by the Review Appraiser during the review procedure, and will be documented (Attachment 306) and forwarded to the PM Supervisor.
- Rodent control measures to be taken will be determined and supervised by the PM Supervisor. Generally, rodent control will not be necessary on rural projects unless a substantial number of buildings, a garbage dump, or a landfill is present.

- If after the inspection, the PM Supervisor determines that rodent control is desirable, appropriate measures will be employed prior to the demolition or removal of infested improvements using Property Management, Right of Way or District Personnel.
- If rodent control is utilized, the person performing the control measures shall document the date the control measures were used and send all records to the PM Supervisor using the proper form (Attachment 306) and these records shall be filed in the applicable Right of Way Tract File.
- Under most conditions, the exterminating treatment can be applied by Department of Transportation's personnel. However, under very adverse conditions, such as the presence of a garbage dump, the assistance and cooperation of such interested entities as State, County and City health departments should be requested.

6.03B3b *Temporary Use of Right of Way* – Right of Way acquired for both present and future use, may be offered for use or lease on a temporary basis until the right of way is needed.

6.03B3c *Temporary Use of Right of Way Acquired for Future Use* – the temporary use or lease of right of way acquired for future highway uses may be permitted by the Department and/or Local Public Agency, when the following conditions exist:

- The integrity and the safety of the highway facility constructed elsewhere on the right of way will not be affected by the temporary use of the area.
- Access control to the highway facility constructed elsewhere on the right of way will not be violated by the temporary use of the area.

6.03B3d *Temporary Use or Lease of Right of Way Acquired for Present* Use – the temporary use or lease of right of way acquired for present use may be permitted by the Department and/or Local Public Agency, subject to the following conditions:

- A short term rental of acquired property will occur only if it is advantageous to the Department and/or Local Public Agency.
- An owner or tenant maybe permitted to occupy the property if the occupancy is on a rental basis for a short term or for a period of time subject to termination by the Department on short notice.
- The amount of rent required shall not exceed the fair rental value of the property to a short term occupier.
- If the property has been condemned by the Department and/or Local Public Agency, the previous owner shall pay no rent and be permitted to remain until such time as the property is needed for the highway improvement.

6.03B3e Time Constraints

- An owner or tenant occupying a dwelling acquired by the Department and/or Local Public Agency, will not be required to vacate that dwelling without being given at least 90 days written notice. If the property is owner occupied, the owner may continue to occupy the property rent-free until the expiration of the 90 day notice or until 30 days after payment has been made for the property, whichever is the later date. If it has been determined in the Last Resort Housing Plan that the only comparable dwelling available is one that must be newly constructed, the owner may continue to occupy the property for up to 180 days after payment has been made for the property, if the owner has made a good faith effort to construct a replacement dwelling.
- If the property is tenant occupied, the tenant can continue to occupy the property until the expiration of the 90 day notice to vacate. However, the tenant must pay rent to the Department and/or Local Public Agency, from the date that the Department and/or Local Public Agency, acquired the property.

6.03B3f *Rental Agreement* – any owner wishing to occupy a property after the rent-free period described in 6.03B3(e) above must sign a rental agreement with the Department (Attachment 602). The rental agreement must clearly provide that only emergency repairs to the property will be made by the Department and/or Local Public Agency, and that repairs will be made only when the Department deems it necessary to maintain utility service and to maintain the property. The cost of any such repairs must be recoverable from the rental income of the property produced over the remaining term of the lease.

6.03B3g *Methods to be Used for Removal of Improvements from the Right of Way* – all improvements that are located within the normal right of way limits on newly acquired right of way must be cleared. The methods used for clearing improvements from the right of way are as follows:

- *Removal by Owner* – offers to the owners to retain salvage rights are presented by the Negotiation Section. The Property Management Section shall provide the Negotiation Section with a blank Salvage Removal Contract. (Attachment 603) If the owner retains salvage, he/she shall sign the Salvage Contract and it will be turned in with the contracts for purchase. The Salvage Contract will contain the following information: Project Number, Tract, Owner's name and Removal Date. The Property Management Section shall then cause the contract to be signed by the PM Supervisor and the Right of Way Division Engineer. A copy will be mailed to the owner.
- *Removal by State Forces* – acquired improvements may be retained by the Department and removed by Department forces when it has been determined to be beneficial to the Department to do so. For example, an improvement may be one which the Department can put

to good use or the cost of removal may be far less by using State forces.

- *Auction* – the auction method of disposal may be used where there is sufficient equipment, fixtures, or buildings to overcome the cost of a public auction and to provide the maximum possible return to the Department.

    - The auction may be conducted by the personnel of the Property Management Section or by a private auctioneer hired by the Property Management Section. When private auctioneers are used, the auctioneer hired must be the most advantageous to the Department and written bids must be received from at least two auctioneers.
    - The PM Supervisor will arrange for an employee of the Right of Way Division to attend the auction and to observe generally the conduct of the sale. The person attending will furnish the Salvage Purchase and Removal Contract to the buyer upon payment to the auctioneer of the amount of the bid and upon the bidder providing an executed performance bond. If local representatives of the Right of Way Division are not available, the District Engineer will be requested to furnish a Department representative to perform such tasks as are requested by the PM Supervisor.

- *Performance Bond* – the successful bidder must provide a performance bond to insure the timely removal of the improvement from the right of way. For houses or commercial buildings, the amount of the required bond will be determined by the PM Supervisor.

    - The removal date set out in the Salvage Purchase and Removal Contract will be determined by the PM Supervisor and will conform to construction schedule requirements. The removal date will be set forth in the performance bond and if the successful bidder fails to remove the improvement by the removal date, the bidder shall be advised by letter that the performance bond is forfeited.
    - If weather conditions or other mitigating circumstances beyond the control of the successful bidder prevent the removal of the improvement, an extension of time may be authorized in writing by the PM Supervisor.

- *Sealed Bids* – sale by sealed bid will be used when isolated properties or improvements are to be disposed of or when the number of properties to be disposed of are not of a sufficient number or a high enough salvage value to warrant an auction.

- The sale will be advertised in a local paper or papers closest to the properties twice at one week intervals. A daily paper, if it has a large local circulation, and also a weekly paper, when available, will be used.
- The advertisement will specify that a check in the amount of 10 percent of the bid must accompany the sealed bid as evidence of good faith and that the amount of the check will be forfeited in the event that full payment of the total amount of the bid is not tendered.
- The advertisement shall also specify the conditions to be met in the property removal, including time limitations.
- If houses or buildings are to be moved, a performance bond will be required of the successful bidder.
- The Salvage Purchase and Removal Contract will be provided to the successful bidder for signature and will be approved by the Right of Way Division Engineer when returned with payment and the performance bond.
- Written authorization to proceed with the removal of improvements will be provided to the bidder by the PM Supervisor, with copies to the appropriate District Engineer and Project Manager. Copies of the Salvage Purchase and Removal Contract (Attachment 603) will be attached in each instance.
- The Right of Way Representative, if there is one assigned, or the Project Manager, shall advise the Lincoln office in advance of the expiration of the contract time limit regarding the progress of the successful bidder in completing removal of improvements. This will allow the Right of Way Division time to send reminders of the expiration date and the penalties for failure to meet the contract date.
- The performance bond will be released as soon as the Property Management Section determines that the improvements have been removed in accordance with the contract.

- *Removal After Private Sale* – in those instances when the disposal of improvements by auction or sealed bid was unsuccessful, the improvements may be sold by private sale. Also, isolated outbuildings of low salvage value may be disposed of by private sale without advertising. The procedures used in sealed bid sales will also be used in private sales.
- *Removal by a Demolition Contractor Pursuant to Contract* – when there is no reasonable probability of acquired improvements being disposed through public sale, salvage, or other means or it is in the public interest because of health, safety, beauty, neighborhood preservation, and environmental factors, the acquired improvements should be removed from the right of way pursuant to a demolition

contract as soon as practicable after the improvements have been permanently vacated.

- Each commercial facility shall be inspected for Asbestos Containing Materials (ACM). If ACM is found to be present in the facility, the Property Management Section shall determine if asbestos removal shall be pursuant to a separate contract or be combined with the demolition contract.
- A bid package shall then be prepared to include a Demolition Contract (Attachment 604), plan sheet, a cover letter listing tracts and addresses, and special instructions. This package shall be mailed to all pre-qualified contractors and other qualified contractors.
- When bids are received, the Right of Way Division Engineer shall consider the bids. If all of the bids are considered unacceptable, all bids will be rejected and a new bid package shall be prepared. If the bids are acceptable, an Authorization to Proceed and a copy of the approved bid will be sent to the contractor, the District Engineer and the Project Manager. It shall be the responsibility of the Contractor to provide any notice required by law or by the regulations cited in the Demolition Contract.
- If asbestos removal is to be a separate contract, the above requirements shall also apply. In emergency cases, where the demolition is determined to be an emergency, bids will be solicited from three qualified contractors. The bid solicitation shall state the reason an emergency exists.
- After acceptance of a completed Demolition Contract, the Property Management Section shall amend the Right of Way Certificate (Attachment 604), and notify the Roadway Design Division of the removal of the improvements.

■ *Removal Improvements as Part of the Highway Construction Contract* – removal of improvements by the Highway Contractor pursuant to a removal clause in the construction contract may be the most beneficial method of removing improvements from the right of way.

- This method of improvement removal may be used in cases where improvements are large and cannot easily be removed, cannot economically be moved or have little or no salvage value.
- In this instance, improvement removal is the contract obligation of the Highway Contractor, removal costs are part of the contractor's bid, and negotiation is not necessary with the Highway Contractor to determine the cost to the Department for the removal.

6.03B4 *Permitted Sign Disposal Procedures* – upon notification by the Appraisal Section of permitted signs in the acquisition areas of a project, the Property Management Section shall prepare a database for the tracking of the disposition of each sign on a project. The Property Management Section shall then notify the Highway Beautification Section of the proposed acquisition and the actual acquisition date of each sign.

6.03B4a When there is no reasonable probability of acquired signs being disposed through salvage or other means, or it is in the public interest because of health, safety, beauty, neighborhood preservation, and environmental factors, the acquired signs should be removed from the right of way under a Sign Demolition Contract when the right of way acquisition phase of the entire project is completed nine (9) months before the letting date of the Physical Construction contract. If the entire right of way acquisition phase is not completed prior to nine (9) months before the letting date, sign demolition shall become part of the Physical Construction contract.

6.03B4b If the Physical Construction contract letting date is moved to a later date, the Property Management Section shall re-evaluate the need for a Sign Demolition Contract.

6.03B4c A bid package shall then be prepared to include a Sign Demolition Contract (Attachment 605), plan sheet and a cover letter listing permit numbers, stationing, offsets and special instructions. This package is mailed to all pre-qualified contractors and other qualified contractors.

6.03B4d When bids are received, the Right of Way Division Engineer shall consider the bids. If all of the bids are considered unacceptable, all bids will be rejected and a new bid package shall be prepared. If the bids are acceptable, an Authorization to Proceed (ATP) (Attachment 606), and copy of the approved bid will be sent to the contractor, the District Engineer and Project Manager.

6.03B4e In emergency cases of demolition, three (3) bids from qualified contractors, if available, shall be secured. Such request shall state the reason an emergency exists.

6.03B4f Upon notification and acceptance of a demolition contract or the letting of the physical construction contract, the Property Management Section shall update the Right of Way Certificate and notify the Highway Beautification Section and the Roadway Design Division of the removal of the signs.

6.04 MANAGING AND SELLING SURPLUS LAND

6.04A GENERAL CONDITIONS

6.04A1 *Disposals Require Fair Market Value or Rent* – the Department shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with Title 23 of the United States Code funding, except as provide

below in 6.04A2. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes.

6.04A2 *Exceptions* – exceptions to the general requirement for charging fair market value or rent may be approved by the Federal Highway Administration in the following situations:

6.04A2a When the Department and/or Local Public Agency, clearly shows that an exceptions is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or uses under 23 U.S.C. 142(f), Public Transportation.

6.04A2b Use by public utilities in accordance with 23 CFR Part 645.

6.04A2c Use by railroads in accordance with 23 CFR Part 646.

6.04A2d Use for bikeways and pedestrian walkways in accordance with 23 CFR Part 652.

6.04A2e Use for transportation projects eligible for assistance under Title 23 of the United States Code.

6.04A3 The Federal share of net income from the sale or lease of excess real property shall be used by the Department and/or Local Public Agency, for activities eligible for funding under Title 23 of the United States Code. Where project income derived from the sale or lease of excess property is used for subsequent Title 23 projects, use of the income does not create a Federal-aid project.

6.04A4 No Federal Highway Administration approval is required for disposal of property which is located outside of the limits of the right of way if Federal funds did not participate in the acquisition cost of the property.

6.04A5 Highway facilities in which Federal funds participated in either the right of way or construction may be relinquished to another governmental agency for continued highway use under the provisions of 23 CFR 620, subpart B.

6.04B MANAGEMENT OF SURPLUS PROPERTY

6.04B1 *Miscellaneous Parcels Inventory* – miscellaneous parcels of land are those tracts of land owned by the Department that are located outside of established right of way limits. A n inventory of these tracts is maintained by the Property Management Section using the ROW Arms Software System which records the following information:

6.04B1a The highway on which the tract is located.

6.04B1b The project number identifying the highway construction project for which the tract was purchased.

6.04B1c The tract number identifying the tract number assigned the tract as a part of the Highway Construction Project.

6.04B1d The county and subdivision where the tract is located.

6.04B1e The Federal-aid Notation if the tract was purchased using Federal aid.

6.04B2 *Land Controlled by a City or a County* – when notified of a possible or pending sale of Federally- funded property by a city or county, the Property Management Section will request approval to sell from the appropriate District Engineer. If the property is on the interstate system, approval is needed from the Federal Highway Administration. All information on the sale will be placed in a file titled Government Subdivision. This file will be reviewed quarterly to determine the progress of the sale.

6.04B3 *Plat and Description of Miscellaneous Parcels* – in preparation for possible disposal of a miscellaneous parcel, a plat and a description of the tract shall be prepared by the Right of Way Design Section which shall have sufficient information to enable the District Engineer and others to identify the property. The plat and the description are necessary to inform potential purchasers of the size, shape, dimensions and location of the tract. The plat and the description must be included in a request for Federal concurrence on tracts purchased for Interstate right of way purposes. Copies shall be placed in the file.

6.04B4 *Valuation of Miscellaneous Parcels* – in anticipation of the disposal of property or in response to a request from a potential purchaser, an appraisal or compensation estimate may be completed to determine the market value of the property. The value and character of the property should determine the type and form of the appraisal used and thereby the cost of the appraisal.

Care should be taken to avoid appraisals that cost more than the value of the land to be sold. The PM Supervisor or designee shall make a preliminary estimate of the market value of the property.

If the market value is estimated to be $2,000 or less, a member of the Property Management Section may estimate the value of the parcel provided that sufficient data is available.

If market value is estimated to be more than $2,000, the parcel will be submitted to the Appraisal Section.

6.04B4a The “Compensation Estimate" form will be provided by the Appraisal Section and must contain the following:

- Project and parcel number.
- Property Address.
- Description, location and area of property.

- Photos of part to be sold, if available.
- Determination of the market value and the basis for all value conclusions.
- Statement of the market value of the property, the market value of the land, and the market value of the improvement.
- All data supporting the determination of the market value of the land.
- Effective date of valuation, date of estimate, the signature and certification of the person making the valuation.

    - If the property, due to size, shape or access would be of interest only to one party, the potential purchaser may expedite the valuation process by making a deposit of $1000, and agreeing in writing to pay for appraisal cost of the parcel. The Department will then use a staff appraiser or hire a fee appraiser to complete the valuation. Upon the successful negotiation and purchase of the property, the deposit amount will be deducted from the purchase price. However, in the event that the potential purchaser elects not to purchase the property after it has been appraised, the deposit shall become non-refundable.

6.04C SALE OF SURPLUS PROPERTY

6.04C1 State Laws Governing The Sale Of Property

6.04C1a Neb. Rev. Stat. § 39-1325. Real property; power of Department of Transportation to sell and convey excess. The Department shall have the authority to sell and convey, with the approval of the Governor, any part of or any interest in real property held by the Department which is deemed no longer necessary or desirable for highway purposes. The sale or conveyance of such real property shall be in such manner as will best serve the interests of the state and will most adequately conserve highway funds.

6.04C1b Neb. Rev. Stat. § 39-1326. Real property; sale, deed; bill of sale; execution; conditions; disposition of proceeds. The Director/State Engineer, for the Department, and in the name of the State of Nebraska, may execute, acknowledge, seal, and deliver all deeds, bills of sale, and other instruments necessary and proper to carry out the sale and exchange of real property. Such deeds, bills of sale and other instruments shall have affixed the seal of the Department. The deeds, bills of sale and other instruments may contain any conditions, covenants, exceptions, and reservations, which the Department deems are in the public interest, or may convey title in fee simple absolute. All money received from the sale of such property shall be deposited in the state treasury and credited to the Highway Cash Fund.

6.04C2 Approvals Necessary Prior To Sale Of Property

6.04C2a Disposal of the Department's real property is subject to the approval of the Governor, the Director-State Engineer and where federal funds have been used to purchase the right of way on the Interstate, the sale is subject to the approval of the FHWA.

6.04C2b It is the policy of the Department that no property should be sold without the recommendation of the applicable District Engineer, the Project Development Engineer, the Roadway Design Engineer, and the Right of Way Division Engineer. The recommendation of each may include "limitations" to be placed on the sale and the recommendation must be received by the Property Management Section prior to offering property for sale.

6.04C3 *Classification of Real Estate to be Sold* – in order that the sale of excess property shall be accomplished in a manner that will best serve the interests of the State, a classification of the Department's miscellaneous holdings should be made in order to determine the process of sale for each parcel. The classification of property to be sold shall be the responsibility of the PM Manager.

6.04C3a *Restricted Market Sale* – when a tract of land is adjoined by only one neighboring tract, and because of its size, shape, or access, the tract to be sold can reasonably be expected to have a potential economic use only by the owner of the adjoining tract, the tract should be classified as "restricted market".

6.04C3b *Moderately Restricted Market Sale* – when there are two or three neighboring tracts under different ownerships and the tract to be sold is landlocked or cannot be developed independently, the tracts should be classified as "moderately restricted market".

6.04C3c *Unrestricted Market Sale* – when a tract of land can be developed or improved independently the tract should be classified as "unrestricted market sale".

6.04C3d *Public Purpose Tracts* – when another Governmental subdivision desires to purchase an unrestricted market parcel, the following conditions must be met:

- The Governmental subdivision must certify that the purchase is being made for a public purpose.
- The certification must specifically state what intended use will be made of the property.
- The intended use must be such that it will clearly qualify as a public purpose.
- Public purpose means the use of the property to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health

and welfare, developments by a public housing agency, parks, culture, recreation, community development and cemetery purposes.

- Public education shall mean schools and institutions of higher learning belonging to the public, established, and conducted under public authority and include teaching and instruction activities, research activities or public service activities.
- Care should be taken to see that a proposed use of the parcel would not violate controlled access, that the parcel will not be used for advertising or junkyards, and that the parcel will revert to the Department when no longer used for public purposes if conveyed to public agencies.

6.04C3e To further clarify public purpose, the terms used in the preceding paragraph shall have the following meaning:

- General operation of government shall mean the powers conferred upon a State Agency or governmental subdivision through the Federal or State Constitution, Federal of State legislation, duly promulgated Federal or State regulation or voluntarily assumed for the benefit of its citizens.
- Public education shall mean schools and institutions of higher learning belonging to the public, established and conducted under public authority and include teaching and instruction activities, research activities or public service activities.
- Public Safety shall mean an Agency, which actually provides firefighting, law enforcement, ambulance, emergency medical, or other emergency services.
- Transportation shall mean the transport of passengers or goods by water, land, air or other conveyance.
- Public Works shall mean the establishment of grades, building of culverts, sewers, electric light systems, waterworks, irrigation works, power plant, structures used in connection with providing electricity, public heating system, bridges, curbing and gutters, the improvement of streets, aviation facilities, landing fields and the erection and repair of buildings.
- Civil and Criminal Justice shall mean the courts and any government agency which performs the administration of civil and criminal justice pursuant to a statute or executive order.
- Public Health and Welfare shall mean the prosperity, well-being, or convenience of the public at large.
- Developments by a Public Housing Authority shall means and includes all dwellings and associated appurtenances, including real and personal property, and all other facilities and improvements of every kind and description which it may hold an interest; all land upon which such dwellings, appurtenances, and facilities are situated; all work and activities undertaken by a local housing agency or others

relating to the creation of such property and all tangible and intangible personal property relating thereto, including all leases, licenses, agreements, and other instruments; and all rights and obligations arising thereunder establishing or confirming ownership, title, or right of use or possession in or to any such property by a local housing agency.

- Parks shall mean an area set aside for the historical or recreational benefit of the public.
- Culture means property used primarily for educational, performing arts, scientific, historic preservation, or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. Cultural property includes, but not limited to, museums, performing arts facilities, historical societies, historic sites or landmarks, parks monuments, libraries, and zoos.
- Recreation shall mean property used for diversion and relaxation.
- Community Development shall mean public property for use in a development project. The following actions are assumed to meet this requirement:

    - Community development projects authorized under the Community Development Act, Neb. Rev. Stat. § 13-201 to § 13-208.
    - Community Development activity as authorized under the Community Development Law, Neb. Rev. Stat. § 18-2101 to § 18-2144.
    - Nebraska Redevelopment Act activities as authorized under Neb. Rev. Stat. § 58-501 to § 58-533.
    - Community Development Block Grant projects as authorized by the Housing and Community Development Act of 1974 as amended by the Housing and Urban-Rural Recovery Act of 1983.
    - Affordable Housing Trust fund activities allowed by the Affordable Housing Act, Neb. Rev. Stat. § 58-701 to § 58-711.

- Cemetery shall mean property set apart for the interment of human dead.

6.04C3f *Maintenance Yards* – these are properties owned and used by the Department to house materials and equipment for the maintenance forces of the Department. In most cases, maintenance yards are improved with offices, large buildings, and storage tanks both above and underground. When taken out of use and declared surplus by the District Engineer and the Operations Division, these properties which have been uniquely improved for use as maintenance yards, will be disposed of by the Property Management Section.

6.04C4 Procedure For Sale of Miscellaneous Parcels

6.04C4a Tracts classified “Restricted Market”

- Form of Negotiation:
  - A personal solicitation of the single interested buyer may be made by mail or personal contact.
- Negotiation Limitations:
  - Because of the limited nature of the market, the PM Supervisor can deal directly with a potential buyer without employing bidding of any type.
- Basis for Negotiation:
  - The appraisal or compensation estimate must serve as the basis for negotiation with consideration being given to the Department’s cost to maintain the tract. The relative value of the tract to a single buyer must also be considered even thought this value may appear to be unrelated to market value. For example, if the property to be sold when combined with the adjoining tract, favorably changes the highest and best use of the adjoining tract, the property sold may have a value to the adjoining owner that exceeds the fair market value of the property to be sold standing alone.
- Advertising:
  - No advertising should be needed to sell a restricted market property.

6.04C4b Tracts classified “Moderately Restricted Market”

- Form of Negotiation:
  - Sealed Bid – each of the adjoining landowners should be contacted either personally or by mail.
- Negotiation Limitations:
  - If only one of the adjoining landowners submits a bid, the process used can be the same as the restricted market sale.
- Basis for Negotiation:
  - The appraisal or compensation estimate should be the basis for negotiation.
- Advertising:
  - Each adjoining property owner should be contacted either personally or in writing and provided with a form on which to present a sealed bid. No advertising should be considered.

6.04C4c Tracts classified “ Unrestricted Market”

- Form of Negotiation:
  - Tracts classified unrestricted market should be sold by either sealed bid or by use of a realtor selected by PM Supervisor.
- Negotiation Limitations:
  - None except those imposed by the Department pursuant to the recommendations of the District Engineer, the Project Development Engineer, the Roadway Design Engineer, and the Right of Way Division Engineer.
- Basis for Negotiation:
  - The advertisement for bids must state that the Department reserves the right to reject any or all bids. The acceptance of the bids shall be heavily influenced by the appraised value of the property determined prior to the receipt of bids. If the high bid does not equal or exceed the appraised value of the property, consideration may be given to negotiating for the disposal of the tract with individual bidders.
- Advertising:
  - The sale of the property must be advertised two times, one week apart, in local newspapers with good circulation. The advertisement must set out the proper time and method of submitting a bid and must provide that the Department reserves the right to reject any and all bids.

6.04C4d Tracts classified “Public Purpose Property”

- Form of Negotiation:
  - The Department must receive a request from a governmental entity to purchase a public purpose tract. The public entity must certify that the purchase is being made for a public purpose and specifically set out the intended use of the property. Before proceeding with an appraisal and sale, the request must be submitted to the Director who must concur that the Government entities’ use of the property is for a public purpose.
- Negotiation Limitations:
  - None except those imposed by the Department pursuant to the recommendations of the District Engineer, the Project Development Engineer, the Roadway Design Engineer, and the Right of Way Division Engineer.
- Basis for Negotiation:
  - The property should be sold at its fair market value as determined by the Reviewer based upon the appraisal or compensation estimate.
- Advertising:
  - None

6.04C4e Properties classified as “Maintenance Yards”

- Form of Negotiation:
  - Because Maintenance Yards are improved for a special or unique purpose and can readily be used by governmental subdivisions, when a Maintenance Yard is declared surplus, it should be appraised and then offered for sale to the local city, county and school district for the appraised value.
  - If two or more entities want to acquire the property, each will be requested to submit sealed bids. If only one wishes to purchase the property, the property can be sold directly to that entity. If no public entity wants to purchase the Maintenance Yard, it will be offered for sale to the public.
  - After the sale of a maintenance yard is completed, notification of said sale shall be sent to the District Engineer, Operations Division and the Controller Division.
- Negotiation Limitations:
  - To avoid liability to the Department regarding contamination of the sale property occurring subsequent to the sale of a maintenance yard, an environmental assessment may be made prior to the sale and such assessment may be referenced in documents of sale and concurred in by the buyer.
- Basis for Negotiation:
  - The property should be sold at its fair market value as determined by the Reviewer based upon an appraisal or compensation estimate.
- Advertising:
  - None, unless the maintenance yard is ultimately offered for sale by sealed bid to the public. When offered to the public, the sale of the property should be advertised as are the sales of properties classified as “Unrestricted Market Properties”.

6.04C4f Procedure To Be Used When A Realtor Is Used To Sell Excess Property

- *Decision* – the Department may hire a realtor to sell a tract or tracts of excess property when the tract remains unsold after being offered for sale by sealed bid, or when the PM Supervisor determines that the tract could best be sold by a local realtor. In making this determination, the PM Supervisor shall consider the value of the tract, the improvements on the tract, staff availability, the expense to the Department to use the staff of the Property Management Section, and any other relevant fact that could relate to making a reasonable decision.

- *Selection Process for Choosing a Realtor* – the Department will advertise in a local newspaper for realtors to submit their qualifications to market and sell Department property locally.

  If there is no response to the advertisement, or if the responding applicants are judged unacceptable by the PM Supervisor, the Property Management Section staff may contact local Realtors directly to determine their qualifications and to request submission of proposals from those deemed qualified.

Realtors must be licensed, experienced in marketing property located in the area of the property to be sold, be available to aggressively market the property to be sold, and possess a reputation in the real estate community for fair and honest dealing.

When the property to be sold has improvements, interested realtors must be informed that a pre-proposal viewing will be conducted by members of the Property Management Section and that only realtors that attend the viewing will be eligible to submit proposals.

- Proposal requirements to be considered, proposals must contain the following:
  - Qualifications of the realtor to include a listing of the realtor's education, licenses, and real estate experience.
  - A listing of the realtor's experience with real estate in the area of the property to be sold.
  - The realtor's plan for marketing the property to be sold.
  - The anticipated sale price of the property.
  - The commission required by the realtor.
- The PM Supervisor shall determine the realtors that will be invited to submit proposals. When possible, at least three realtors shall be invited to submit proposals.
- All proposals submitted shall be reviewed by the PM Supervisor, the Chief Appraiser, and one member of the Property Management Staff. Based on this review, one realtor shall be recommended to the Right of Way Division Engineer.
- The Right of Way Division Engineer may accept the realtor recommended or reject the recommendation and choose another realtor.
- The PM Supervisor shall review any offer to purchase submitted by the realtor. If the review determines the offer to be proper and in the best interest of the Department, the PM Supervisor will recommend acceptance of the offer to the Right of Way Division Engineer. The Right of Way Division Engineer may accept or reject the offer for the Department.

- No property of any nature acquired for state highway purpose shall be sold directly to a Department of Transportation's Employee.

6.05 MANAGING RIGHT OF WAY USED FOR NON-HIGHWAY PURPOSES ON ALL HIGHWAY SYSTEMS

Right of Way is defined at that space located above, at or below the highway's established grade line lying within the approved right of way limits.

6.05A RIGHT OF WAY SUBJECT TO HIGHWAY ROW USE AGREEMENTS

When the Department and/or Local Public Agency has sufficient right, title and interest in the right of way to permit the use of certain right of way for non-highway purposes and when such right of way is not presently required or required in the foreseeable future for the safe and proper operation and maintenance of the highway, the right to temporary occupancy or use of such right of way may be granted by the Department of Transportation subject to Federal Highway Administration approval if Interstate right of way is involved. (Attachment 607)

6.05B FAIR MARKET RENT

Right of way shall be leased at fair market rent. Fair market rent shall be determined by using appropriate appraisal methods. Rental rates shall be reviewed periodically. All monies received from the lease of right of way shall be deposited in the State treasury and credited to the State highway cash fund with proper credit to the Federal government when due.

6.05C MASS TRANSIT OR PUBLIC RAIL

Where sufficient land exists within the acquired right of way of any Federal-aid highway system the Director may review requests from either a mass transit authority or public rail officials for use of the Department's right of way. Automotive safety shall not be impaired and future highway improvements must be clear of any other use of the property. The Director shall determine the rent to be paid the Department for use of the right of way.

6.05D PARKING LOTS

6.05D1 Approval for the use and occupancy of highway right of way for the parking of motor vehicles shall be granted only after considering:

6.05D1a The parking design or arrangement to assure orderly and safe parking.

6.05D1b The use of plantings or other screening measures to improve the aesthetics and appearance of the area.

6.05D1c The use of surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices.

6.05D1d Provisions for access for fire protection and firefighting equipment.

6.05E PUBLIC OR QUASI PUBLIC USE OF RIGHT OF WAY

When consistent with highway design, any portion of the right of way may be used as green areas, mini parks, play areas, parking, wetlands, other highway related public use, other public or quasi-public use which would help to integrate the highway into the local environment and would enhance other public programs. The Department may retain jurisdiction over such lands, but may enter into agreements with local public agencies.

6.05F APPLICATION FOR RIGHT OF WAY USE

Individuals, companies, organizations or public agencies desiring the use of highway right of way must make application to the State of Nebraska, Department of Transportation.

6.05G HIGHWAY ROW USE AGREEMENT

All non-highway use of right of way shall be pursuant to a Highway ROW Use Agreement.

6.05G1 Requirements of the Application for Highway ROW Use Agreement.

6.05G1a A written application to use the right of way for non-highway use must be made to the Right of Way Division of the Department of Transportation.

6.05G1b The application must contain a detailed explanation of the proposed non-highway use together with construction plans showing the proposed use of the right of way.

6.05G2 Requirements of the Highway ROW Use Agreement:

6.05G2a The names and addresses of all parties responsible for developing and operating the non-highway use of the right of way.

6.05G2b A detailed explanation of the proposed non highway use of the right of way.

6.05G2c Attached plans showing the design for the non-highway use of the right of way, any facilities to be constructed, together with such maps or sketches as are necessary to display all pertinent features of the proposed use in relation to the highway facility.

6.05G2d A detailed three dimensional description of the space to be used, except when the surface area beneath an elevated highway structure or adjacent to a highway roadway is to be used for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities and similar uses. In such cases, metes and bounds description of the surface

and along with appropriate plans and cross sections defining vertical use limits must be furnished in lieu of a three-dimensional description.

6.05G2e A provision requiring that any significant changes in the design of the non-highway use of the right of way as submitted, or change in the intended use, must receive the written approval of the Department of Transportation and the Federal Highway Administration prior to construction.

6.05G2f A provision stating that the Highway ROW Use Agreement cannot be transferred assigned or conveyed to another party without the prior written approval of the Department of Transportation and the Federal Highway Administration, of applicable.

6.05G2g A provision stating that the Highway ROW Use Agreement can be revoked by the Department in the event that any Right of Way Use facility located within the area of a ROW Use Agreement ceases to be used or is abandoned.

6.05G2h A provision stating that the Highway ROW Use Agreement will be revoked by the Department if it is violated and such violation is not corrected within a reasonable period of time after written notice of noncompliance has been given. The ROW Use Agreement must further provide that in the event the agreement is revoked and the Department deems it necessary to remove the facility occupying the right of way, the removal must be accomplished by the user of the right of way, at the user's own cost, and in a manner prescribed by the Department.

6.05G2i A provision stating that the user of the right of way, when required to do so by the Department, will provide proof of insurance, with the Department as the "named insured," in an amount adequate to hold the Department harmless from any damages arising out of the use of the right of way in any manner permitted by the Highway ROW Use Agreement. Exception to this requirement may be made when the right of way use is by a public agency and that agency is by law, specifically responsible for payment of any damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage related to the non-highway use of the right of way.

6.05G2j A provision stating that the Department and its authorized representatives may enter in or upon any portion of the right of way at any time during the term of the Highway ROW Use Agreement for the purpose of inspection, maintenance or reconstruction of the highway facility.

6.05G2k A provision stating that the area covered by the Highway ROW Use Agreement will be maintained in a manner that assures that the structures and area within the highway right of way boundaries will be kept in a safe and good appearing condition. The Highway ROW Use Agreement should further provide that maintenance activities within the Highway ROW Use Agreement area must cause no unreasonable interference with the highway use, and that should the right of way user fail in its

maintenance obligations, the Department may enter the premises and cause all necessary maintenance work to be completed at the cost of the right of way user.

6.05G2l A provision stating that appropriate provisions of Appendix C of the State's civil rights assurances with respect to Title VI of the Civil Rights Act of 1964 and 49 CFR 21 shall be adhered to.

6.05G2m A 30-day cancellation clause may be included in all ROW Use Agreements.

6.05G3 Permissible Area Of Proposed Right of Way Use

6.05G3a Use of right of way beneath the established grade line of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

6.05G3b The proposed use of right of way shall comply with standards set forth in the Nebraska Department of Transportation – Roadway Design Manual, Chapters 6 and 10.

6.05G3c Piers, columns, or any other portion of the right of way structure shall not be erected in a location which will interfere with visibility or reduce sight distance or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

6.05G3d The structural supports for the right of way facility shall be located to clear all horizontal and vertical dimensions established by the Department. Supports shall be clear of the shoulder or safety walks of the outer roadways. However, supports may be located in the median or outer separation when the Department determines and the Federal Highway Administration concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the Department and the Federal Highway Administration. No supports shall be located in the ramp gores, or in a position so as to interfere with the signing necessary for the proper use of the ramps.

6.05G3e Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing highway without prior approval by the Department and the Federal Highway Administration.

6.05G3f When the Department or the Federal Highway Administration determines that the proposed use of the right of way requires changes in, or additions to, existing highway facilities changes shall be provided at the cost of the right of way user. This requirement may be waived when the proposed use is for highway related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance

other publicly supported programs. This provision is not intended to expand existing limitations upon expenditures from the highway trust fund.

6.05G3g Proposed right of way facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction.

6.05G3h Permission shall not be granted for any use of right of way which does not conform with the provisions of current, Federal Highway Administration regulations.

6.05G4 Safety Policies

6.05G4a The use of the right of way shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

6.05G4b Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or right of way due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Such precautions should include, but not be limited to:

- Consideration of protective barriers or continuous guardrail with impact attenuation proper to prevent penetration by heavy vehicles.
- Installation of fire hydrants.
- Drainage arrangements adequate to safely handle accidentally released hazardous liquids.
- Warning signs, reflectors, and lights.
- Speed controls.
- Where deemed necessary, limitations on the use of the highway facility by vehicles carrying hazardous materials.
    - Right of way facilities shall not be approved for construction over or under the highways, unless the plans therefore contain adequate provisions, acceptable to the Department, and the Federal Highway Administration, for evacuation of the structures or facilities.

6.05G4c Any right of way facility shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the Department and the Federal Highway Administration. Such right of way facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the Department or the Federal Highway Administration to be a hazard to the highway or non-highway users.

Proposals involving the construction of improvements in the right of way should be approved by the State authority responsible for fire protection standards.

In cases where the Department or the Federal Highway Administration questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

6.05G4d No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity.

Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation.

The Department shall determine such lengths for each particular case; subject to Federal Highway Administration concurrence.

Exceptions may be allowed when complete tunnel ventilation is provided.

Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway.

To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces.

Supports for such structures shall leave as much open space on the sides of the highway as feasible.

Such space shall be appropriately graded where deemed necessary or desirable by the Department.

6.05G4e The design, occupancy, and use of any structure over or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind there from.

6.05G5 *Advertising Devices Erected Within Highway ROW Use Agreement Areas* – on premise signs, displays, or devices may be erected on structures occupying highway right of way. Such signs, displays, or devices shall be restricted to those indicating ownership and type of on premise activities and shall be subject to regulation by the State of Nebraska, Department of Transportation and Federal Highway Administration with respect to number, size, location and design.

6.05G6 *Notice to Taxation Authorities of Highway ROW Use Agreements* – leased public property is subject to taxation in accordance with Neb. Rev. Stat. § 77-202.11. This Statute requires that by January 31, the State shall provide

to the appropriate county assessor a copy of each new lease in effect on January 1 of that year for property owned by the State.

6.05G6a The following procedures will be utilized by the Property Management Section to comply with these requirements:

- A list will be maintained of all Highway ROW Use Agreements.
- By January 31 of each year, a copy of each new ROW Use Agreement entered into the previous year will be forwarded to the appropriate County Assessor with a letter referring to Neb. Rev. Stat. § 77-202.11(2) and a brief description explaining the reasons for the purchase and retention of the land.
- By January 31 of each year, the county assessor will be notified of any ROW Use Agreement that is no longer in effect that was previously deemed taxable.
- The County Assessor will send a notice to the Lessee or the Department if the property will be subject to property tax and the amount of tax due. If the notice is sent to the Department, it will be forwarded to the lessee.
- New ROW Use Agreements will include a statement including payment of taxes as part of the consideration.

6.05G7 *Highway ROW Use Agreement Inventory* – the Department of Transportation shall maintain an inventory of all authorized uses of the right of way with each Highway ROW Use Agreement being assigned an individual file. This inventory, which shall be available for review by appropriate Federal and State agencies, shall include, but not be limited, to the following items for each authorized use of right of way:

6.05G7a Location by project, survey station, or other appropriate method.

6.05G7b Identification of the authorized user of the right of way.

6.05G7c A three dimensional description or a metes and bounds description of the right of way.

6.05G7d A copy of the executed Highway ROW Use Agreement.

6.05G7e Construction plans of the facility authorized to occupy the right of way.

6.06 CORRIDOR PROTECTION

6.06A PURPOSE OF THE CORRIDOR PROTECTION PROGRAM

The Corridor Protection Program allows the Department to make advance acquisitions of property located within an approved highway improvement corridor. In doing so, the Department can delay imminent development of the property until the Department has had time to purchase the land.

6.06B FUNCTION OF THE PROPERTY MANAGEMENT SECTION IN THE CORRIDOR PROTECTION PROGRAM

The Property Management Section is responsible for managing the Corridor Protection Program, in accordance with NDOT Operating Instruction 60-09, and in all respects must provide the notices, record keeping, and interdepartmental coordination necessary to properly administer the program.

6.06B1 *Receipt of Notice and Corridor Protection Map* – the corridor protection process is initiated when the Property Management Section receives a notice of corridor protection approval from the Deputy for Engineering. The notice will also be provided to the Right of Way Design Section which will begin preparation of the corridor protection map.

The corridor protection map is a multi-page set of plans that displays dimensions of the corridor in relation to each tract of land within the corridor and lists all affected landowners within the corridor. (See Section 2.15)

6.06B2 *Record Keeping* – the Property Management Section shall maintain a corridor protection file which by project number retains all records pertaining to corridor protection on a given highway construction project.

6.06B3 Notice To Counties and Cities

6.06B3a *Counties and Cities Requiring Building Permits* – the Property Management Section or other Department personnel shall deliver to the county officer responsible for issuing building permits, a corridor protection map and a listing of the owners of parcels of land located within the corridor.

The name, address, and toll free phone number of the PM Supervisor shall be included in the notice. The County or City Official shall sign a receipt provided by the Property Management Section stating the date that the corridor protection map and listing of property owners was received by the County or City.

6.06B3b *Counties or Cities Without Building Permit Procedures* – a staff member of the Property Management Section or other Department personnel will deliver to the County or City Clerk, the Corridor Protection Map, a copy of Neb. Rev. Stat. § 39-1311, and a listing of owners of land located within the corridor.

The map will be accompanied by a letter explaining, that pursuant to Neb. Rev. Stat. § 39-1311.04, the County or City Clerk is authorized to issue building permits for erection of improvements within the County or City.

The name, address, and toll free phone number of the PM Supervisor shall be included in the notice.

The County or City Clerk shall sign a receipt provided by the Property Management Section stating the date that the corridor protection map and listing of property owners was received by the County.

6.06B4 Procedure When Building Permit Request Is Received

6.06B4a When a building permit request is received from a City or County, the Property Management Section shall immediately send a copy of the request to the Roadway Design Division for a review of the request. The PM Supervisor shall also notify the Right of Way Division Engineer, Right of Way Design Engineer and the District Engineer of the request.

6.06B4b If the Roadway Design Division approves the issuance of the building permit, the PM Supervisor shall notify the City or County that the Department has no objection to the issuance of the permit and that corridor protection remains in effect for any future permit request.

6.06B4c If the Property Management Section receives notice from the Roadway Design Division that the request is in conflict with the future plans of the Department, the PM Supervisor will immediately inform the Right of Way Division Engineer of the notice and of the time remaining in the 60 day period.

6.06B4d Department personnel may negotiate with the permit applicant to revise the applicant's plans at any time to allow for the issuance of the permit.

6.06B4e The Right of Way Division Engineer shall cause the Appraisal Section to make a preliminary estimate of the fair market value of the property needed by the Department from the parcel in question, if time permits.

6.06B4f The Right of Way Division Engineer, the PM Supervisor and the Deputy Director – Engineering shall then meet to determine if land from the parcel in question should be purchased in advance of the Department's normal land acquisition process.

6.06B5 *Statement of Intent to Negotiate* – if the decision is to go forward with the acquisition, the PM Supervisor shall prepare and file a Statement of Intent to Negotiate.

The PM Supervisor shall file by registered mail, or personal delivery, the Statement of Intent to Negotiate with the responsible County Official.

The Property Management Section shall notify in writing, the Right of Way Design Section, the Appraisal Section and Negotiation Section that the Statement of Intent to Negotiate has been filled and the date of expiration of the 6-month negotiation period.

6.07 RELINQUISHMENT OR ABANDONMENT OF ROADS NO LONGER ON THE STATE HIGHWAY SYSTEM

Management of the process for the abandonment or the relinquishment of fragments, sections, or routes from the State Highway System, is the responsibility of the Property Management Section.

RELINQUISHMENT: If the road in question is to remain a public road under the jurisdiction and control of another public entity, the road is said to be relinquished by the Department to the other public entity. In such instances, title to the roadway remains with the Department.

ABANDONMENT: If the road in question is no longer to remain a public road, the road is said to be abandoned. In these instances, the roadway may be sold, revert to private ownership, or remain in the ownership of the Department.

6.07A STATUTORY AUTHORITY FOR RELINQUISHMENT OR ABANDONMENT

6.07A1 *Neb. Rev. Stat. § 39-1313* – this Section authorizes the Department, upon the advice of the Highway Commission, and with the consent of the Governor, to abandon or relinquish portions of the State Highway System.

6.07A2 *Neb. Rev. Stat. § 39-1314* – this Section requires the Department, prior to abandoning any portion of a road, to offer to relinquish the road to a governmental subdivision or public corporation located at the site of the abandoned or relinquished roadway. The Section further provides that the Department shall offer to relinquish to a political or governmental subdivision or public corporation and if after 4 months the political or governmental subdivision or public corporation fails to petition the Department for relinquishment, the road segment may be abandoned.

6.07A3 *Neb. Rev. Stat. § 39-1315* – this Section provides that the document evidencing the abandonment must:

- 6.07A3a Be in writing and describe the abandoned area.
- 6.07A3b Bear the Department's seal and be signed by the Director.
- 6.07A3c State how title of the abandoned area will be affected.
- 6.07A3d Be certified by the Department and filed with the proper Register of Deeds.

6.07B PLAT AND DESCRIPTION OF THE LAND TO BE ABANDONED OR RELINQUISHED

The Property Management Section shall cause to be prepared, a detailed drawing of the fragments, sections, or routes of the State Highway to be relinquished or abandoned. The Property Management Section shall also cause to be prepared, a legal description of individual tracts to be relinquished or abandoned. This process involves researching the title to the old right of way and computing the acreage of areas remaining for relinquishment or abandonment.

6.07C RELINQUISHMENT

The PM Supervisor shall provide the District Engineer with copies of the plat and the description to use in making an offer to relinquish. The Department must first offer to relinquish a fragment, section, or route on the State Highway System to a governmental subdivision or public corporation wherein any portion of the road is to be abandoned. The offer must be in writing and may be conditional or subject to the reservation of any right which the Department deems necessary. An initial agreement between the Department and the governmental subdivision or public corporation regarding the disposition of the road should be reached at the earliest stages of the project planning to insure that the subdivision or public corporation will in fact petition the Department for relinquishment of the road.

6.07D PETITION FOR RELINQUISHMENT

If the governmental subdivision wishes to assume jurisdiction and control of the old roadway, they must submit a petition to the Department within 4 months of receiving the relinquishment offer. Upon receipt of this petition, the political or governmental subdivision or public corporation may negotiate the terms or conditions of the relinquishment. The Property Management Section shall then draw a relinquishment instrument describing the areas to be relinquished and any terms or conditions, if any, pursuant to the memorandum of understanding. The Director shall sign the instrument date it and affix the State Seal. After the execution of the relinquishment instrument, it shall be recorded in the office of the Register of Deeds in the county in which the relinquished land is located. After the recording, the instrument must be returned and remain of record at the Department.

In the event that a political or governmental subdivision or public corporation does not wish to acquire segments of old roadway offered to them by relinquishment, the Property Management Section shall draw an abandonment instrument. The Abandonment Instrument will contain a complete legal description of the segments of old roadway and shall contain the Director’s signature along with the State seal. The abandonment instrument shall state whether fragments of old roadway shall be sold, revert to private ownership or remain in the public. This instrument shall be recorded with the Register of Deeds office in the county in which the land is located. The original instruments shall be returned and remain on record in the Right of Way Division.

6.07E NOTIFICATION AFTER ABANDONMENT OR RELINQUISHMENT

The District Engineer will be notified by the Property Management Section after the completion of each relinquishment or abandonment.

6.07F SALE OF ABANDONED SEGMENTS OF HIGHWAY

If it is determined that the abandoned segments of highway shall be sold, they will be offered for sale pursuant to the provisions of this manual relating to the sale of surplus property.

6.08 POLICY FOR REMOVING OR PERMITTING PHYSICAL OR FUNCTIONAL ENCROACHMENTS, STRUCTURES, OR USES OF STATE HIGHWAY RIGHT OF WAY

6.08A FUNCTION OF THE PROPERTY MANAGEMENT SECTION

The Property Management Section is responsible for the administration of the Department's policy for removing or permitting physical or functional encroachments, structures, or use of the State highway right of way.

6.08B STATUTORY AUTHORITY

Neb. Rev. Stat. § 39-1359 provides the Department general authority to control the use or occupancy of State Highway rights of way:

The right of way acquired by the Department shall be held inviolate for state highway and departmental purposes and no physical or functional encroachments, structures, or uses shall be permitted within such right of way limits, except by written consent of the Department.

Additionally, Neb. Rev. Stat. § 39-1360 prohibits the use of highway drainage facilities for private purposes without obtaining a permit from the Department. (See Appendix.) Neb. Rev. Stat. § 361 and § 1362 require permits from the Department and set forth conditions for the use of State highway right of way for pipelines, sewers, pole lines, conduits, cables and other related uses. Various utilities have the right by statute to occupy State highway right of way. Department personnel should contact the Department's legal office if a question arises concerning a utilities right to occupy State highway right of way.

The Department is granted authority in Neb. Rev. Stat. § 39-102 to promulgate rules and regulations regulating the placement of pole lines, pipelines, or other utility facilities and private driveways, commercial approach roads, facilities, things or appurtenances upon State highway rights of way.

Finally, pursuant to Neb. Rev. Stat. § 39-1404, no title or interest in State property can be obtained by use, adverse possession, or prescription.

In instances in which the State owns only an easement for highway purposes, an adjoining property owner has the right to make some non-competing uses of the land on which the easement is located. Department personnel should contact

the Department's legal office if a question arises as to an adjoining owner's right to use the land on which the State has only an easement for highway purposes.

6.08C DEFINITION OF ENCROACHMENT

For purposes of the Department's encroachment policy, the term "encroachment" shall have its commonly understood meaning and includes: any non-Department use or occupancy of the area above, below, or on the surface of State highway right of way, that has not been permitted in writing by the Department, by any object or structure including but not limited to real property, fixtures or personal property.

6.08D ENCROACHMENT POLICY

It is the policy of the Department to keep State highway right of way clear of private uses and encroachments. The Department's policy recognizes that there are non-highway uses of State highway right of way allowed by State statute. The Department's policy also acknowledges that there are private encroachments and uses, which pose no threat to the public use, construction and maintenance of the highway, the removal of which would impose an unreasonable hardship on the owner. These encroachments may be allowed to remain in place by permit. Encroachments not allowed by statute or issued a permit by the Department must be removed from State right of way by an orderly process. Local Public Agencies must follow the "LPA Encroachment Policy for Federal Aid Projects," dated May 9, 2014.

6.08E JURISDICTION

No town, city, village or municipality shall have authority, right or power to allow encroachments, structures, or uses by any person, corporation, or entity upon state highways in and through such city, village, town or municipality without written agreement from the Department authorizing such control, power or authority.

If encroachments are found along highways within municipalities, it should be determined whether the municipality has been delegated the responsibility for removing encroachments by agreement. If so, the municipality should be requested to take action to remove the encroachments.

6.08F PROCEDURES

The following procedures shall be followed where encroachments are found, upon, under, overhanging public right of way or where new encroachments are to be allowed.

6.08F1 *Immediate Hazard* – the encroachment may be removed immediately upon a determination of the Maintenance Superintendent, their designee, another Maintenance Superintendent from that same district, the District Operations and Maintenance Manager, the District Construction Engineer or the District Engineer that the encroachment creates an immediate hazard to the traveling

public, the Department's employees, or others. The procedure to be followed is as follows:

6.08F1a The Maintenance Superintendent shall personally meet with the owner of the encroachment, if reasonably possible, prior to removing the encroachment.

6.08F1b Photographs of the encroachment shall be taken before and after it is moved.

6.08F1c The Maintenance Superintendent shall remove the encroachment by moving it to a location that alleviates the immediate hazard.

6.08F1d The Maintenance Superintendent should complete a full report of the events related to the discovery and removal of the encroachment including:

- A description of the encroachment, including when it was discovered and where it was located in relation to the highway.
- Any pertinent weather or highway conditions.
- The reason for, and the methods used to remove the encroachment.
- Names, addresses, and phone numbers of witnesses.
- The equipment and employees used to remove the encroachment.
- An explanation of the attempts made to contact the owner of the encroachment.
- The location of the encroachment that was moved.

6.08F1e The Maintenance Superintendent shall follow up the personal contact with the owner with a letter sent by First Class Mail to the owner, setting forth the reasons why the encroachment was moved, how it was moved, to where it was moved, and a statement listing the State's costs in moving the encroachment with a request that the owner reimburse the State for its costs in moving the encroachment.

6.08F2 *No Immediate Hazard* – if it is determined that the encroachment does not constitute an immediate hazard to the traveling public, State employees or others, the Maintenance Superintendent shall take appropriate steps to have the owner remove the encroachment. If it is anticipated that legal assistance might ultimately be necessary to remove the encroachment, the following procedure shall apply:

6.08F2a The Maintenance Superintendent shall determine whether the encroachment is actually located on State highway right of way. In making this determination, the Maintenance Superintendent may use Department right of way plans, city plat maps, surveys or right of way markers, and other similar information. Without additional corroborating information, fence lines should not be used to make this determination.

6.08F2b If the encroachment is found to be on State highway right of way, the Maintenance Superintendent shall make all reasonable efforts to identify and locate the owner of the encroachment.

6.08F2c The Maintenance Superintendent shall make a personal contact, if at all possible, with the owner of the encroachment, and attempt to confirm the following information:

- Ownership of the encroachment.
- The encroachment is located, at least in part, on State highway right of way.
- The owner does not have permission, in writing, from the State for the location of the encroachment on State right of way.

6.08F2d If information in section 6.08F2(c) is confirmed by the owner, the Maintenance Superintendent shall request that the owner remove the encroachment except in those instances when it appears that a permit could be granted to leave the encroachment in place.

6.08F2e When it is determined that the encroachment must be removed, the Maintenance Superintendent shall meet with the owner in person, if at all possible, and inform the owner that the encroachment must be removed by a certain date (within a reasonable time), inform the owner the encroachment will be considered abandoned, if not removed by that date, and will be removed by the State and the owner charged for the State's cost in removing the encroachment.

6.08F2f The Maintenance Superintendent shall follow up this personal contact with a letter sent by First Class Mail to the owner, setting forth the items described above in paragraph 6.08F2(e).

6.08F2g The Department should only remove the encroachment or structure when the owner refuses to remove the encroachment and when it can be removed without going on the adjoining property to remove it and when it can be removed without damaging the adjoining property.

6.08F3 *Legal Assistance* – the Department's legal office should be consulted when the owner refuses to remove or seek a permit for the encroachment, and when it is determined for whatever reason that the encroachment cannot be removed without legal assistance. The District Engineer should contact the Chief Counsel of the Transportation Section of the Attorney General's Office and provide the Chief Counsel with the following information:

6.08F3a All information, including photographs, plan sheets, surveys, and drawings, establishing that the encroachment is actually located on State right of way.

6.08F3b A detailed description of the encroachment.

6.08F3c The name and address of the owner of the encroachment.

6.08F3d The deed(s) showing who is the present owner(s) of the property encroachment.

6.08F3e All documents regarding any tenants on the property adjoining the encroachment.

6.08F3f All reports, letters, notes, and other correspondence related to the encroachment.

6.08G PERMITTING ENCROACHMENTS

The District Engineer may grant a permit if it is determined that leaving the encroachment in place will not create a danger to the traveling public, to the State employees or to others, and that requiring the removal of the encroachment would place an unjust burden on the owner. A permit may be denied in any instance when requiring the removal of the encroachment is in the State's best interest.

6.08G1 Permits shall not be granted for the following uses of highway right of way:

6.08G1a The storage of personal property, including but not limited to vehicles, signs, equipment, hay or other farm products, and fence.

6.08G1b Any business use of the right of way, except those allowed by this policy or those instances where the Department has leased the highway right of way for business purposes.

6.08G1c Any use, which adversely affects threatened or endangered species of wildlife or wild plants.

6.08G1d Any use of Interstate or Freeway highways, except for those uses allowed by our Policy for Accommodating Utilities on State Highway Right of Way.

6.08H PERMITS FOR USE OF HIGHWAY RIGHT OF WAY

6.08H1 General Requirements for All Permittable Encroachments

6.08H1a *Application* – The applicant must complete the appropriate application form and file the application with the District office. (https:/dot.nebraska.gov/business-center/permits/row)

6.08H1b *Plans* – two sets of plans, no larger than 12 inches by 18 inches, detailing the proposed work that is to take place in the right of way must accompany the application form.

6.08H1c *Performance Guarantee* – the District may require a performance guarantee from individuals, contractors, power companies, utility districts

and governmental subdivisions. The District shall determine the amount of the performance guarantee.

6.08H1d *Restrictions and Specific Instructions* – the Department may prescribe and define any terms and conditions deemed necessary and/or in the best interest of the public. Generally, these instructions are transmitted from the District office to the Property Management Section with the application. The District transmittal will either direct the Property Management Section to issue the permit or to coordinate a review by others in the Central office for restrictions or other specific instructions to be noted or attached to the permit.

6.08H1e *Permit Issuance* – the Property Management Section issues the permit and maintains the record for the permit. (https:/dot.nebraska.gov/business-center/permits/row)

6.08H1f *Approved Permit* – the applicant must have an approved permit before commencing any work on the right of way. The applicant shall notify the District at least 48 hours in advance of the time the applicant expects to begin any work within the limits of the State's right of way. All construction under the permit shall be under the supervision of the NDOT and at the expense of the applicant.

6.08H1g *Completion of Work* – the applicant shall immediately notify the District when the work has been completed. The District will inspect the work and if satisfactorily completed, the performance guarantee, if any, will be returned to the applicant.

6.08H1h *Release of Performance Guarantee* – upon receipt of the "Released" copy of the permit, the Property Management Section will confirm that the Performance Guarantee was returned to the applicant.

6.08H2 *Accommodation of Utilities* – the Department has the authority and responsibility to regulate utility occupancy on all state highways. Utilities are permitted to occupy highway right of way in accordance with state statutes and the Department's current Policy for Accommodating Utilities on State Highway Right of Way. Also, refer to Nebraska Department of Transportation Rules and Regulations: Title 410, Chapter 1 – Utility Permits. (https:/dot.nebraska.gov/business-center/permits/row)

6.08H3 *Approach Roads* – NDOT has the authority and responsibility to regulate the location and placement of driveways and approach roads on all state highways. Driveways and approach roads are permitted to occupy highway right of way in accordance with state statutes and the Department's Rules and Regulations, Title 410, Chapter 2 – Driveway and Approach Road Permits. (https:/dot.nebraska.gov/business-center/permits/row)

6.08H4 Identifying Marker

6.08H4a The Department may consider requests for a sign or monument identifying a city, village, town or municipality within the boundaries of the highway right of way when:

- The sign or monument is within the corporate limits of the city, village or town.
- It is determined to be in the public interest.
- Where the identifying sign or marker cannot feasibly be located off the highway right of way.
- The identifying sign or marker is not within the interstate or freeway right of way; and the sign or marker can be placed in a safe location.
- All signs and markers must conform to the NDOT Highway Beautification policies. See Chapter 8 of this manual.

6.08H4b The following requirements and procedures will be used to evaluate and approve the location for the Identifying Marker. For locations on the National Highway System, the Federal Highway Administration must also give approval.

- The applicant shall furnish information to the Nebraska Department of Transportation to document the following:
  - The Identifying Marker is being erected within the corporate limits of the applicant.
  - The installation of the Identifying Marker is pursuant to direction or authorization contained in local law or ordinance of the applicant.
  - The Identifying Marker shall not advertise any products or services.
  - The applicant shall furnish site plans of said intended Identifying Marker showing, distance from travel lanes, distance from right of way lines, the appropriate clear zone, elevations of the site location.
  - The applicant shall furnish construction plans of said intended Identifying Marker showing its location, size, lighting, construction materials, height, and message content.

- The district will send the application together with the district's comments and recommendations to the Right of Way Division.
- The applicant shall agree to install, own, and maintain the sign or monument and be solely responsible and liable for the sign or monument as if it were located on the applicant's property.
- If the Identifying Marker, after installation and erection, is determined by the Department to endanger the health, safety or welfare of the traveling public or if the installation obstructs the view of oncoming traffic or any traffic control devices, the applicant shall remove the

installation within 30 days after receiving notice from the Department at the applicant's expense.

- The applicant shall agree that no privilege, franchise, right, title, right of user, or other interest in or to the highway right of way shall ever arise or be created, secured, acquired, extended or enlarged or amplified by the applicant because of the permit issued for the Identifying Marker.
- The permit shall provide that the Department may cancel the permit for the Identifying Marker at any time after giving the owner 30 days written notice.

6.08H5 Signs, Awnings, Canopies, Marquees

6.08H5a Where a highway passes through an established business district, within the corporate limits, and the buildings are at, or near, the right of way line, overhanging encroachments in the nature of signs, awnings, canopies, and marquees may be permitted, subject to the following conditions:

- Must advertise on-premise activities or public service messages.
- It must be supported wholly from the face of the building.
- In a curbed area, it shall be at least three feet back of the face of the curb and eight feet above the elevation of the sidewalk or ground.
- For a two-lane highway in an area without curbs, it can overhang the right of way provided it is not closer than 24 feet from the centerline of the highway and eight feet above the elevation of the sidewalk or ground.

6.08H5b The owner of the business must make application for a permit and submit a sketch or drawing of the new or existing encroachment showing its use, size, lighting, construction, materials, advertisement and distance from curb and height from sidewalk or ground.

6.08H5c No uses can be made of the structure other than as displayed on the permit. When required, the permit number will appear on the structure as directed by the Department.

6.08H5d All encroachments which contain, include or are illuminated by any flashing, intermittent or moving light or lights are prohibited except for signs which change their message at reasonable intervals by electronic process or by remote control giving public service information such as time, date, temperature, weather or on-premise signs advertising goods or services available on the premises provided that such signs shall not contain or be illuminated by beacons, strobe lights or bright flashing lights.

6.08H5e In the event the encroachments referred to above, by reason of color, illumination, or placement, obscure or in any way detract from the effectiveness of highway signs or traffic signals, or so distract the driver of a motor vehicle, the city, or state shall cause the removal of such encroachments or take appropriate measures so that the effectiveness of the highway signs or traffic signals are not impaired.

6.08H5f All permits mentioned above must include a provision stating that the owner, by signing the permit application form, shall give the Department a right of entry to the property permitting the Department access, at any time to remove the encroachment. Removal shall take place after at least 30 days after the owner has been notified in writing to remove the encroachment and the encroachment hasn't been corrected or removed..

6.08H5g All permits shall provide that the permit shall be automatically revoked upon 30 days written notice, if the use of the property changes, alterations as to size occur to the encroachment, the encroachment is moved or changed from the original plans, sketches, drawings or narrative submitted with the application and further where the property is needed for highway purposes.

6.08H5h An inventory of existing encroachments shall be made in all cases where highway right of way is needed for highway construction. Notices shall be sent to the owners of encroachments where the permits are to be revoked because the encroachment no longer conforms to this policy. Notices shall also be sent to the owners of those encroachments that need to be altered or removed as part of the project because the encroachment no longer conforms to this policy.

6.08H6 Landscaping

6.08H6a It is the policy of the Department to permit the beautification of the right of way by the adjacent landowner, local municipality or other interested party when such beautification does not compromise the integrity and the safety of the highway. Landscaping means to alter the appearance of land by planting trees, shrubs, flowers, grasses, and the like. It does not mean changing the contour of the land. Permitted grading work would be subject to the policy criteria set forth in this manual for grading. Items in the right of way other than those noted will not be permitted as "landscaping".

6.08H6b Landscaping permits shall not be allowed if the Department determines that primary purpose of the landscaping is to enhance or benefit private property. In such instances, the Department will consider leasing the right of way in accordance with the procedures set out in this Right of Way Manual.

6.08H6c The surfacing of any portion of the right of way for use by a business for parking or display of merchandise is strictly prohibited.

6.08H6d Landscaping that alters highway drainage shall not be permitted.

6.08H6e The type and location of shrubbery or trees planted within the right of way must be approved by the Roadside Development and Compliance Unit in Project Development.

6.08H6f Any party issued a permit to landscape on state right of way as provided in this section, shall as condition of that permit agree to defend, indemnify and hold harmless, the State for all claims of injury and property damage arising out of the permitted landscaping or the landscaping installation operations.

6.08H6g Landscaping permits shall not be granted for tree trimming or tree removal, except in exceptional circumstance, and when approved by Roadside Development and Compliance Unit in Project Development. The Department's policy for Tree Trimming and Tree Removal by Utility Districts should be followed for this type of request from utility companies.

6.08H6h Tree Trimming and Removal may be allowed by Outdoor Advertisers to remove obstructions of view to the owner's signs. The "Guidance Document for Vegetation Trimming and Removal on State Right-of-Way for Outdoor Advertising Signs Adjacent to the State Highway System" shall be followed for these types of permits.

6.08H6i Landscaping permits shall not be granted for plantings that will have the appearance of recognizable business logos or any other nationally or regionally know shapes or symbols.

6.08H7 *Temporary Irrigation Pipe Crossing* – the Department has the authority and responsibility to regulate temporary irrigation pipe crossings on all state highways. Irrigation pipe may be allowed to temporarily occupy highway drainage structures by permit, only when the district has determined that the temporary placement of an irrigation pipe will not negatively impact the drainage structure.

6.08H8 Grading and Dirt Removal

6.08H8a The Department has the authority and responsibility to regulate grading and dirt removal from all State highway right of way. Grading and dirt removal to enhance the view of billboards will be strictly prohibited. For other grading and dirt removal work, the Department's application and permit process shall be followed.

6.08H8b Consideration should be given to the following non-exclusive list of factors in deciding whether to issue a permit:

- Does the grading and/or removal of dirt benefit the State?

- Does the grading and/or removal of dirt primarily benefit only the applicant? If this is the case, consideration should be given to charging the applicant for the dirt.
- What are the Department's future right of way needs?
- Are there any noise impacts as a result of removing an existing berm?
- Are there any negative drainage and water quality impacts?
- Will there be a negative visual impact?
- Will there be any wetland impact or effect on established wetlands?

6.08H9 Monitoring Wells

6.08H9a The request for a permit to drill and install monitoring wells in the right of way generally results from the presence of contaminated underground water. The wells allow the applicant to monitor the amount of contamination, and the direction of flow of the contaminated water. The applicant must provide documents, from the governmental agency responsible for determining the extent of the contamination, which support the necessity of using the highway right of way. The use of the highway right of way should be considered only as a "last resort" when no other feasible monitoring well locations are available for use by the applicant.

6.08H9b The District shall determine whether the requested use of the right of way will interfere with the safety of the highway and the District's maintenance uses. Generally two specific instructions are needed:

- The cover plate for the monitoring well shall be flush with the surrounding ground.
- Upon completion of the testing, the permit holder must fill all holes drilled in accordance with specifications set forth in Nebraska Revised Statutes, 1943, Chapters 46-1201 to 46-1241 and Rules and Regulations, Title 178, Chapter 12. It is important to determine the proper name of the permit holder. The permit holder should be the person or persons legally responsible for the well.

6.08H10 Water Remediation or Water Discharge

6.08H10a An applicant wishing to discharge water into the Department's right of way or storm sewers for extended periods of time, must make application to the Department to do so. Generally, the request occurs when underground water has been contaminated and remediation efforts require the water to be pumped from the ground, airified, and discharged to drainage systems.

6.08H10b The use of the highway right of way must be considered only as a "last resort" when no other feasible alternative can be followed by the applicant. The application should address the following:

- Provide documentation to identify what other alternatives were considered and why those alternatives were not feasible.
- All documentation showing the reason for the discharge, plans for the discharge, contamination reports and copies of all federal, state and local jurisdictional permits.
- The applicant should provide information that describes how the right of way will be used. The following information as a minimum should be provided:
  - An estimate of how long the system will operate.
  - An estimated volume of discharge.
  - Assurances and explanation of proper operation, inspection and maintenance of the system.
  - An explanation of the method of preserving the capacity of the ditch, culverts, or sewer systems that the applicant wishes to occupy. Examples would be to install a sensor or float system in the storm sewer to automatically shut off the system in the event of a storm.
  - A schedule of inspection of wintertime operations to assure against ice build-up blocking outlets or causing other problems.
  - An explanation of the method to be used to shut off the system in case of downstream maintenance or construction.
- The applicant shall provide all reasonable assurances to the Department that the water discharged on the highway right of way is free of contamination.
- The applicant shall agree to hold harmless and defend the Department against any and all claims arising out of the permitted use of State property.
- The District must make the final decision to approve or reject the request for a permit.
  - The District must determine that no feasible alternate location is available to the permit holder before allowing this type of use or occupancy.
  - Also, the District must determine that the requested use of the right of way will not interfere with, or cause unreasonable hazards to, the use of the right of way for highway purposes.
  - In addition, the District should consider the possibility of creation of wetlands and maintenance problems associated with the use of the Department's right of way.

- The Department reserves the right to reject any water remediation permit application if the Department determines it to be in the State's best interest to do so.

6.08H11 Pivot Irrigation System

6.08H11a The number of pivot irrigation systems impacted by highway construction projects is increasing. When highway construction requires alteration of a pivot system, the alteration usually results in less land being irrigated than what was originally designed for the pivot system. The Department deems it to be in the best interest of both the Department and the general public to minimize the damage to center pivot irrigation systems by establishing the policy set out below to be applied to all highway construction projects, except those occurring on the interstate highway.

6.08H11b *Permit Conditions* – permits may be issued for the encroachment of an existing pivot irrigation system, onto the acquired highway right of way if the issuance of such permits reduces the amount of damages that are required to compensate the landowner. Permits for the encroachment of center pivot irrigation systems on State right of way will be issued under the following conditions:

- The end of the pivot irrigation system that is permitted to encroach on the highway right of way must be a minimum of 30 feet from the main traveled way of the highway.
- The pivot irrigation system must be equipped with a shutoff device that prevents irrigation waters from falling upon State right of way.
- In no case will the pivot irrigation system be allowed to spray water onto the traveled way of the highway.
- The supporting mechanism on which the boom is carried must remain on private property at all times.
- The Department will encourage utility companies' facilities to accommodate pivot irrigation system when such alterations will be in the best interest of the Department.
- The owner of such pivot irrigation system must agree to accept full responsibility to the public for any losses or damages caused by arising out of the fact that the pivot irrigation system has been permitted to extend into the highway right of way. The owner must agree to defend and hold harmless the State from any claims brought against the State arising from the fact that the pivot irrigation system has been permitted to extend into the highway right of way.
- The irrigation system shall not be permitted to overhang the right of way when the system is not being used for irrigation purposes.

6.08H11c New Pivot Irrigation Systems – a permit will not be issued to allow the encroachment of a center pivot irrigation system if the erection of the irrigation system postdates the highway improvement. It is the intent of the Department that the issuance of permits for the encroachment of center pivot irrigation systems on State right of way be restricted to situations where the encroachment of the irrigation system is brought about by the acquisition of right of way for road improvement.

6.08I PERMIT REVIEW ACTIVITIES

6.08I1 Review in District – Permit Issued in Lincoln

6.08I1a The District Engineer will review and approve all applications in which the permits will be issued in Lincoln (private drive access, except those in controlled access where the access location is new or is moved, and temporary irrigation crossings).

6.08I2 Review in Lincoln (Traffic Engineering Division) – Permit Issued in Lincoln

6.08I2a The District keeps the original application package and sends an unsigned copy of the application and a copy of the plans to Coordinator (Traffic Engineering Division) when completed. (dot.nebraska.gov/business-center/permits/row)

6.08I2b An interdisciplinary team review will be required when the application:

- Will require a change in the geometrics of the highway.
- Is within the limits of a project noted in our Surface Transportation Program.
- Is of concern to the District Engineer.

6.08I2c The interdisciplinary team consists of the same individuals that comprise the Access Management Team, which are The Right of Way Division Engineer, Project Development Engineer, Roadway Design Engineer and Traffic Engineer.

6.08I2d The review meetings will coincide with the regularly scheduled Access Management meetings on the first and third Mondays of each month.

6.08I2e The interdisciplinary team may take these actions:

- *Approve the application* – Coordinator (Traffic Engineering Division) prepares the decision record & distributes to all appropriate parties.
  - District Engineer approves the application and the permit is issued in the District.
- *Deny the application* – Coordinator (Traffic Engineering Division) prepares the decision record & distributes to all appropriate parties.
  - District Engineer notifies the applicant of the decision.
- Request additional information or changes from the applicant.
  - Coordinator (Traffic Engineering Division) prepares the decision record. The Coordinator (Traffic Engineering Division) contacts the applicant explaining the need for additional information,

- The applicant furnishes the additional information or complies with the requested changes to the plans and specifications,
- The Coordinator (Traffic Engineering Division) reviews the information or changes provided by the applicant and when satisfied, either approves or brings the matter back to the Interdisciplinary Team for review,
- The interdisciplinary team may take any of the above noted actions again.
- If approved, the Coordinator (Traffic Engineering Division) prepares a decision record and distributes to all appropriate parties.

6.08I3 Review in District – Permit Issued in Lincoln

6.08I3a The District Engineer will review and approve all applications in which the permits will be issued in Lincoln.

6.08I3b The application and two sets of plans will be transmitted to Right of Way for permit issuing activities.

6.08I4 *Review in Lincoln* – (Roadway Design Division), permit issued in Lincoln.

6.08I4a The District keeps the original application package and sends an unsigned copy of the application and a copy of the plans to Coordinator (Roadway Design Division) with completed forms. (dot.nebraska.gov/business-center/permits/row)

6.08I4b An interdisciplinary team review will be required when the application:

- Is an access in a controlled access area.
- Will require a change in the geometrics of the highway.
- Is within the limits of a project noted in our Surface Transportation Program.
- Is of concern to the District Engineer.

6.08I4c The interdisciplinary team consists of the same individuals that comprise the Access Management Team, which are The Right of Way Division Engineer, Project Development Engineer, Roadway Design Engineer and Traffic Engineer.

6.08I4d The review meetings will coincide with the regularly scheduled Access Management meetings on the first and third Mondays of each month.

6.08I4e The interdisciplinary team may take these actions:

- Approve the application.

- Coordinator (Right of Way Division) prepares the decision record & distributes to all appropriate parties.
- District Engineer approves the application and transmits the application and plans to Lincoln to issue the permit.

- Deny the application.
  - Coordinator (Right of Way Division) prepares the decision record & distributes to all appropriate parties.
  - District Engineer notifies the applicant of the decision.
- Request additional information or changes from the applicant.
  - Coordinator (Right of Way Division) prepares the decision record.
  - The Coordinator (Right of Way Division) contacts the applicant explaining the need for additional information.
  - The applicant furnishes the additional information or complies with the requested changes to the plans and specifications.
  - The Coordinator (Right of Way Division) reviews the information or changes provided by the applicant and when satisfied either approves or brings the matter back to the Interdisciplinary Team for review.
  - The interdisciplinary team may take any of the above noted actions again.
  - If approved, the Coordinator (Right of Way Division) prepares the decision record and distributes to all appropriate parties.

6.08J PERMIT ISSUING ACTIVITIES

6.08J1 Permit issued in Lincoln – Review in District

6.08J1a The District Engineer shall approve all copies of the application.

6.08J1b The District will complete the Transmittal and mail the original and two copies of the application and plans to Right of Way.

6.08J1c Right of Way processes the application for permit, enters data on various databases, signs and mails the permit to the applicant with copies being returned to the appropriate parties.

6.08J2 Permit issued in Lincoln – Review in Lincoln

6.08J2a The District receives the approved decision record from the Coordinator (Right of Way Division).

6.08J2b The District Engineer shall approve all copies of the application.

6.08J2c The District will complete the Transmittal and mail the original and three copies of the application and plans to Right of Way.

6.08J2d ROW processes the application for permit, enters data on various databases, signs and mails the permit to the applicant with copies being returned to appropriate parties.

6.09 POLICY FOR CHANGING EXISTING ACCESS CONTROL

6.09A FUNCTION OF THE PROPERTY MANAGEMENT SECTION

The Property Management Section is responsible for managing the Department's policy regarding Existing Access Control to State Highways.

6.09B STATUTORY AUTHORITY

6.09B1 A controlled access facility as defined in Neb. Rev. Stat. § 39-1302, Paragraph (9) "shall mean a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled access facility or for any other reason. Such highways or streets may be freeways or they may be parkways."

6.09B2 Neb. Rev. Stat. § 39-1320 gives the Department authority to acquire property for State highway purposes..." by gift, agreement, purchase, exchange, condemnation, or otherwise". State highway purposes, as referred to in Neb. Rev. Stat. § 39-1320 or otherwise in Neb. Rev. Stat. § 39-1301 to § 39-1392 shall include provision for, but shall not be limited to, the following: …"Controlled access facilities, including air, light, view, and frontage and service roads to highways."

6.09B3 Through the provisions of Neb. Rev. Stat. § 39-1327, the Department designates and establishes controlled access facilities. Under such provisions, the Department:

6.09B3a is authorized to designate and establish controlled access facilities.

6.09B3b may design, construct, maintain, improve, alter, and vacate such facilities.

6.09B3c may regulate, restrict, or prohibit access to such facilities so as to best serve the traffic for which such facilities are intended.

In order to carry out the purposes of this section, the Department may acquire, in public or private property, such rights of access as are deemed necessary, including but not necessarily limited to air, light, view, egress and ingress.

Such acquisitions may be by gift, devise, purchase, agreement, adverse possession, prescription, condemnation, or otherwise and may be in fee simple absolute or in any lesser estate or interest.

6.09B4 Neb. Rev. Stat. § 39-1328 through § 30-1336 make further reference to control of access and its acquisition, and in outline provide the following:

6.09B4a The Department may determine where frontage roads may be connected with a controlled access facility and provide for ingress and egress to the frontage road at such places as will afford reasonable access.

6.09B4b The right of reasonable ingress and egress to property abutting an existing highway or street may not be denied except by the acquisition of controlled access rights by the Department. If construction or reconstruction of any highway results in the abutment of property that did not theretofore have direct egress and ingress to such highway, no rights of direct access accrue because of such abutment.

6.09B4c Private property from which right of way is acquired for construction, relocation, or reconstruction shall not be left without a reasonable means of egress and ingress to a road; however, the Department is granted the authority to define the location, width, nature and extent of access that may be permitted.

6.09B4d The Department and the governing bodies of any political or governmental subdivision or any public corporation of this State may enter into agreements with each other respecting the planning, designation, financing, establishing, constructing, improving, maintaining, using, altering, relocating, regulating, or vacating of controlled access roads, except any toll facilities." This provision affords additional protection to critical intersections beyond the limits of control, which would ordinarily be under jurisdiction of this Department alone.

6.09C APPLICATION PROCESS

The Department realizes there may be locations where granting an access within an area where access rights were previously acquired may be consistent with our current policies. In these cases, the property owner shall submit a request for the establishment of a new access to the District Engineer. The property owner may request to purchase any type of access (from full unrestricted access rights to some lesser restricted access right) from the NDOT, and the Department should follow the procedure that follows:

6.09C1 Application Review In The District

6.09C1a This procedure will be followed on all projects on which the District Engineer has given tentative acceptance of the project in behalf of the State. Access requests, which occur prior to acceptance of project, will be handled in accordance with normal Right of Way Division procedures.

6.09C1b All requests for a break in controlled access or a change in the conditions or classifications of existing accesses in controlled access areas shall first be submitted to the District Engineer in whose District such access or access change lies. See map at the end for addresses and district boundaries.

6.09C1c Requests may be submitted on standard access permit application forms available from the Department or by letter. The request shall include a property map or plat indicating the boundaries of the property, other accesses, and abutting public roads and streets. The request shall also include the name(s) of the owner as they appear on the deed of record and the legal description of the property. The Department may require any of the following items or others when relevant to the evaluation of an access application or the construction of an access.

- Highway and driveway plan and profile.
- Complete drainage plan of the site showing impact to the highway right of way and related drainage infrastructure.
- Map and letters detailing the utility locations before and after development in and along the Highway.
- Subdivision zoning or development plan, if appropriate. These should be coordinated with the local officials and their comments should be included with the application.
- Proposed access design.
- Traffic Impact Study.

6.09C1d At this phase of the request, the district should not accept a performance guarantee with the application. The reason is that the Department does not approve many access requests and there is no reason to have these funds on hand.

6.09C1e Each District Engineer should make appropriate comments and forward the application together with the information noted above in 6.09C1(c) and, if available in the District office, a copy of the right of way plans which denote the location of the new access to the Property Management Section in Lincoln. Access to the state highway system is based on many factors. Among those to be considered by the District and the central office include:

- Preservation of the safety of the persons using the highway.
- Preservation of the public's investment in the existing highway.
- The effect of the proposed access point on the traffic carrying capability of the highway, the potential for accidents, and the impact on traffic signals.
- The existing sight distance.
- Highway alignment and configuration.
- The volume and speed of the traffic on the highway at the proposed access point.
- The volume of traffic generated by the development served by the access and to what extent improvement to the highway facilities by

persons requesting access will mitigate adverse effects caused by the access point to the highway facility.

- Closure or relocation of existing access points, or relocating access points to provide better traffic turning movements.
- Moving the new access point to a property line to allow for a joint-use drive to serve two properties, or to allow access points to be directly across the highway from each other (to eliminate offset access points.)
- Input from the local governmental authority.
- Dedication of right of way for future public streets to provide for orderly development of the property abutting the highway.

6.09C2 Application Review In Right of Way (ROW)

6.09C2a The Property Management Section in the Right of Way Division shall receive access requests for changes and conditions of access in controlled access areas on behalf of the Department. This office shall prepare the necessary files, research deeds and plans, and coordinate the review of the access requests within the Department.

6.09C2b An interdisciplinary team reviews all applications.

- The members of the Access Management Team consist of the Right of Way Division Engineer, Project Development Engineer, Roadway Design Engineer, Traffic Engineer and District Engineer or their delegated representatives.
  - Staff members from each of these Divisions/Districts, as well as the Realty Officer of the Federal Highway Administration, may also attend the work sessions.

6.09C2c The team works cooperatively with the applicant and attempts to resolve all difficulties prior to taking final action on the application.

If additional information is required, the Property Management Section shall secure the required additional information.

6.09C2d The team, at a minimum, considers the following factors:

- All the items considered by the District Engineer noted in 6.09C1(e).
- The Department may require consolidation of existing accesses whenever separate parcels of land abutting the highway are consolidated or assembled under one purpose, plan, entity, or usage.
- The owner of the abutting property shall remove any existing access or accesses that are replaced by consolidated accesses.

6.09C2e The Property Management Section will make a written record of the decision of the team.

6.09C3 Application Denied By The Access Management Team

6.09C3a If the Access Management Team denies the request, such request shall be considered "closed" unless the applicant supplies additional information to justify a request for reconsideration. In this situation, the Department can again consider a request at a later date; however, denial of access upon reconsideration should close additional reconsideration of access for a period of at least one year.

6.09C3b The Property Management Section shall advise the applicant of the decision of the Department. A copy of the correspondence shall be sent to the District Engineer and other appropriate parties.

6.09C4 Application Approved By The Access Management Team

6.09C4a The Property Management Section shall, if necessary, obtain commitments from the property owner for the dedication of public streets and acceptance of such dedication from the county or municipality under whose jurisdiction these public streets will fall if access is granted.

In addition, acceptance of design features of the access, and if necessary, any required highway improvements considered necessary by the Department shall be secured from the applicant.

Definite information must be received concerning the official legal owner of the property so a proper deed can be written.

6.09C4b The Property Management Section shall prepare a formal submittal to the Project Development Division to determine that the change in access control will result in little or no adverse environmental effect and that the approval to change access control meets the programmatic categorical exclusion approved by the Federal Highway Administration.

6.09C5 Application Denied By Project Development

6.09C5a After receipt of Project Development's reply, the Property Management Section will advise applicant of the denial.

6.09C5b The applicant will have opportunity to request reconsideration if appropriate environmental studies determine if the programmatic categorical exclusion classification is proper.

6.09C6 Application Approved By Project Development

6.09C6a The Chief Appraiser will determine the format and level of documentation for the appraisal. The Department has developed minimum standards for appraisals consistent with established and commonly accepted appraisal practice. The following appraisal formats are listed from the simplest to the most complex:

- Compensation Estimate
- Short Form Appraisal
- Narrative Appraisal Report
- If the Chief Appraiser determines the changes in access to the property will result in no value or nominal value (insignificant) the value of the access right shall be $250.
- If any of the other types of appraisals are required, the value of the access right shall be determined by the completed and reviewed appraisal report.

6.09C6b Appraisal deposits will be required from the applicant for all appraisal types. The deposit will be $1,000 for the Appraisal Report.

- The Property Management Section will consult with the Chief Appraiser about the complexity of the appraisal process and a decision will be reached about the amount of the deposit.
- The deposit will be fully refundable to the applicant if the applicant follows through on the access request and actually purchases the access rights from the Department at the appraised fair market value.
- If the applicant desires to do so, the deposit may be applied to the appraised value.
- If the applicant does not purchase the access rights, an accounting will be made of the Department's appraisal cost. Any deposit surplus will be refunded to the applicant. The applicant will be required to pay for any appraisal costs over and beyond the deposit.

6.09C6c Upon receipt of the deposit from the property owner, the Chief Appraiser will be requested to complete an appraisal. The appraisal may be completed by staff appraisers or by hiring a consultant from the Department’s approved Fee Appraiser Roster.

Fee appraisers may be utilized when it is necessary to expedite the appraisal process. The completed and reviewed appraisal will be forwarded to the Access Control Appraisal Review Team, which consists of the Chief Appraiser, Property Management Supervisor, and Right of Way Division Engineer, by the Property Management Section for review and approval of the appraised value.

6.09C6d The Property Management Section notifies the applicant of the fair market value of the access rights being sold and requests that the applicant forward that amount to close the sale of the access rights.

6.09C6e The Property Management Section shall prepare driveway easements and/or deeds to grant the change in the condition of the access. Warranty Deeds are for the owner to sign if existing access must be closed. Quitclaim Deeds are for the Director and the Governor to sign to open the new access.

6.09C6f At the same time as the deeds are prepared, the Property Management Section shall contact the applicant and secure written confirmation that all public streets which were a part of the approved scheme have been dedicated and likewise received written verification from the local political subdivision that they have accepted such dedication. The performance guarantee from the applicant should be requested at this time.

6.09C6g After receipt of this verification of the dedication of public streets and their acceptance by the local political subdivisions, the Property Management Section can send the Warranty Deed and/or driveway easement to the applicant for execution.

6.09C6h At such time that the signed Warranty Deed, relinquishing the existing driveway(s), is received by the Property Management Section, the Quitclaim Deed and/or easement granting the new access is submitted to the Director and Governor for signatures. After all signatures have been obtained, the deeds are sent to the respective counties for recording. The Property Management Section will make the distribution of the original deed and the copies.

6.09C6i The permit will be issued to the applicant after a performance guarantee for the permit has been received. The permit will be in accordance with the agreed upon plans, specifications, and conditions as approved by the Department.

6.09D RECORDS

The Property Management Section is responsible for distribution of the following information and maintaining certain records:

6.09D1 The Property Management Section will record all highway improvement projects reviewed by the Department. The record shall indicate if controlled access is required.

6.09D2 The Property Management Section shall maintain a permanent record of all access control decisions.

6.09D3 The Property Management Section shall maintain a complete record of all roads on which access control has been obtained for use by the public and employees of the Department of Transportation.

6.10 OIL AND GAS LEASES

6.10A FUNCTION OF THE PROPERTY MANAGEMENT SECTION

The Property Management Section is responsible for the leasing of the Department's Oil and Gas rights.

6.10B STATUTORY AUTHORITY

Neb. Rev. Stat. § 57-218 through § 57-221 provides the Department general authority to lease lands under their control for oil and gas exploration.

6.10C LEASE PROCEDURES

Upon the receipt of a request about an Oil or Gas lease, the Property Management Section shall follow the following procedures:

6.10C1 Send a letter and forms to the requesting party advising what procedures will need to be completed.

6.10C2 The lease can only be obtained by purchase at a Public Auction.

Notice of said auction must be published in a legal newspaper in the county where the land is located. It must be published for two successive weeks giving the time and place of sale. It must also contain the legal description and acreage.

The terms of the sale shall be an annual delay rental in the bid amount per acre, but not less than one dollar ($1.00) per acre, plus one-eighth (1/8) royalty, plus a one hundred dollar ($100) bonus to cover the Department's expense for each lease.

The lease shall be for a term not to exceed ten (10) years and so long thereafter as oil and gas is produced in paying quantities. Separate leases are required for separate properties, that is, one lease can cover only contiguous tracts of land within one Township.

Any standard form of lease will be agreeable to the Department in so much as it does not contain warranties as to title.

6.10C3 When the requesting party returns the "Legal Notice" advising when the auction will take place, a memo is sent to the appropriate District office requesting that Department personnel attend the auction. This memo shall contain the following information:

6.10C3a Location of Auction.

6.10C3b Date and time of the Auction.

6.10C3c Legal Description and number of Acres.

6.10C4 After the Auction, the successful bidder shall complete the lease in duplicate with the “Surface encroachments prohibited” form attached.

The lease with the “Order approving sale of oil and gas lease” in duplicate will be forwarded to the Property Management Section.

6.10C5 The receipt for payment, the original approved lease with the “Surface Encroachment Prohibited” form attached and the Original approved “Order approving sale of oil and gas lease” is sent to the successful bidder.

The originals are to be recorded by the successful bidder with the Register of Deeds.

6.10C6 A file is then prepared by the Property Management Section with a copy of the receipt and coding sheet.

6.11 CROP DAMAGE AND TEMPORARY FENCING

6.11A PAYMENT FOR CROP DAMAGE

Payment for crop damage shall be administered by the PM Section. When a request for crop damage is received from a Project Manager, the amount will be determined by one of the following methods:

6.11A1 Upon receipt of signed crop damage affidavit, payment will be based on the approved crop schedule, which is reviewed annually, or as needed.

6.11A2 For a crop not included in the schedule or if a landowner is unwilling to accept the scheduled amounts, the Project Manager will notify the Property Management Section of the amount of acreage involved. The Property Management Section will send an affidavit to the landowner requesting the landowner to provide the average yield of the remaining field and the price paid when the crop was sold. Payment will then be based upon these values less the cost of harvesting and marketing.

6.11B PAYMENT FOR TEMPORARY FENCING

When a request for payment for temporary fencing is received from the Project Manager, the amount of the payment will be determined by using the Temporary Fencing Schedule.

6.12 LOCAL PUBLIC AGENCIES

6.12A GENERAL

6.12A1 This manual outlines the general procedures for acquiring right of way in accordance with the Uniform Act which applies whenever any federal dollars are used in any phase of a project, such as planning, environmental assessment, right of way, or construction. This manual must be followed at all times, regardless of which phase(s) are federally funded.

6.12A2 Prior to advertising for construction bids for a project, the LPA must prepare a Certificate which states the properties needed for the construction of the project have been obtained, they are clear of any utilities and structures which must be moved, and all individuals and families have been relocated to decent, safe, and sanitary housing or the agency has made available to relocatees adequate replacement housing in accordance with the provisions of the 49 CFR part 24.

6.12A3 Additionally, a subsequent State Right of Way Certificate must be signed by the NDOT ROW LPA Coordinator and Right of Way Division Engineer.

6.12A4 To accomplish the issuance of these certificates, the following activities must be completed if required by the project:

6.12A4a Right of way plans and estimate.

6.12A4b Appraisals and appraisal review.

6.12A4c Determination of just compensation.

6.12A4d Negotiation/acquisition.

6.12A4e Relocation assistance.

6.12A5 The following Sections provide a brief summary of the LPA process.

6.12B RESPONSIBILITIES AND OBJECTIVES

The goal of the Federal Highway Administration is that all people affected by eminent domain be treated fairly and the same, whether the project involving them is headed by a State Agency, a County or City Agency, or any type of agency having the power of eminent domain.

The NDOT ROW LPA Coordinator office is a link between the Federal Highway Administration, the Local Public Agencies, the Public, and the other Department of Transportation offices monitoring the project construction and funding, to see that those rules of fairness are followed.

6.12C ASSESSMENTS AGAINST ACQUIRED PROPERTIES

6.12C1 When federal funds participate in a project, an LPA may not levy a special assessment for the project, solely against those property owners from whom acquisitions are made for the public improvement, for the primary purpose of recovering the compensation paid for the real property. This recapture of compensation would constitute a form of forced donation, which is coercive and thus not permitted under the Uniform Act.

However, an LPA may levy an assessment to recapture funds expended for a public improvement, provided the assessment is levied against all properties in the taxation area or in the district being improved and provided it is consistent with applicable local ordinances.

The LPA needs to confirm there is no Uniform Act violation by documenting the following and the project files must contain documentation affirming these items:

6.12C1a The affected property owners will be provided just compensation for their property as required by the Federal and State Constitutions and reiterated in the Uniform Act.

6.12C1b The acquisition costs will be paid by the LPAs and property owners made aware they will not be assessed the cost to acquire their property needed for the project.

6.12D RIGHT OF WAY PLANS AND ESTIMATE

6.12D1 The LPA or their consultant prepares right of way plans and ROW cost estimates, which are forwarded to the NDOT ROW LPA Coordinator.

6.12D2 The Right of Way Design Engineer reviews the plans for completeness and notes any deficiencies. The Chief Appraiser reviews the right of way cost estimate for accuracy.

6.12E APPRAISALS AND APPRAISAL REVIEW AND DETERMINATION OF JUST COMPENSATION

6.12E1 This Manual has specific procedures which define who may complete appraisals, waiver valuations, and appraisal reviews and determine just compensation. For assistance in preparing appraisals and review appraisals, refer to Chapters 3 & 4 in this Manual.

6.12E2 All project appraisals, waiver valuations, and review appraisals are submitted to the NDOT ROW LPA Coordinator for review and approval by NDOT appraisal staff before the LPA is authorized to proceed to determine just compensation and with negotiations.

6.12F AGENCY DETERMINATION OF JUST COMPENSATION

The acquiring agency must determine just compensation on each tract. The acquiring agency shall have either a review appraiser on staff to set just compensation on each tract or the acquiring agency shall empower an elected or appointed official (such as Chairperson of the County Board of Supervisors, Chairperson of the County Commissioners, City Manager, or Mayor) to review the appraisals, appraisal reviews and set the just compensation on each tract and record it in the project right of way file. Just compensation cannot be for less than the reviewed appraisal amount.

6.12G NEGOTIATION/ACQUISITION

6.12G1 The Nebraska Department of Transportation (NDOT) role in representing and managing the development and construction of local projects will be to act as the Responsible Charge (RC) and Project Manager on behalf of the LPA for local projects outside of the MAPA and LCLC areas. For those projects inside the MAPA and LCLC areas, projects will be managed by the local public agency. The Local Public Agency must have a ROW Office to acquire ROW or must have a certified Responsible Charge and will use approved Fee Appraisers and ROW Acquisition Consultants off NDOT's approved lists.

Except for duties delegated to the LPA, NDOT will be responsible for completing and overseeing all stages of the development of the Federal-aid project on the LPA's behalf including planning, environmental, public involvement, design, right of way, utilities, railroad, construction, and construction engineering.

The LPA may negotiate the purchase of the necessary property with their own personnel or by contract with consultants. The Negotiation process to be followed is outlined in Chapter 5 of this Manual.

6.12G2 LPA's manage any condemnations for their projects. The NDOT ROW sends the condemnation file along with the name and phone number of the LPAs attorney to the NDOT Legal Division. NDOT Legal Division contacts the LPA attorney to offer assistance or provide standard forms and processes. The NDOT Legal Division will assist as requested by LPA's attorney, NDOT ROW Manager and ROW Local Projects Section.

6.12G3 At the completion of negotiations, the LPA submits the complete acquisition file for each tract including tracts acquired by condemnation.

6.12G4 The NDOT ROW LPA Coordinator completes a thorough review of each file to determine that the property was acquired according to the Uniform Act, the LPA Manual and this Right of Way Manual.

6.12H RELOCATION ASSISTANCE

6.12H1 See section 7.06 of this manual.

6.12H2 All Relocation Benefit Studies completed by the Relocation Assistance Consultant shall also be reviewed and approved by NDOT before the amounts are offered to those being displaced. Likewise, all Relocation Assistance Claims submitted by the displacee shall be reviewed and approved by NDOT before the amounts are paid.

This way NDOT can certify to the Federal Highway Administration that the Relocation Assistance activities and payments are in accordance with the Uniform Act requirements.

6.12I CONFLICT OF INTEREST – Reference 1.04C2

6.12J RIGHT OF WAY CERTIFICATE

6.12J1 Prior to advertising for construction bids for a project, the acquiring agency must prepare a Right of Way Certificate (Attachment 611). This certification states that the properties needed for the construction of the project have been obtained, they are clear of any utilities and structures which must be moved, plus persons or businesses displaced by the project have been relocated. Essentially, the certification must include a statement that the acquiring agency has complied with Uniform Act requirements and that the project is ready for construction.

6.12J2 If the project has no new right of way to acquire, complete and send ROW Certificate (Attachment 612).

6.12J3 The ROW Certificate should be sent to NDOT Local Assistance Division. Also, the LPA needs to send copies of all the required documents generated during the acquisition process for review of adherence to the Uniform Act. A checklist of the documents needed to be sent can be found in (Attachment 610). Following acceptance of the certificate, an authorization to advertise for bids to construct the project will be received.

6.12K PROPERTY MANAGEMENT

6.12K1 The administration of acquired land and improvements is called property management. It includes activities such as maintenance and protection of the right of way, rental or leasing of acquired property and disposal of property no longer needed for the road purposes.

6.12K2 LPA's are advised to contact the NDOT Property Management Supervisor for further information and direction.

6.12L FEDERAL REIMBURSEMENT

6.12L1 All requests by the LPA for Federal reimbursement for right of way expenses shall be submitted to the NDOT Local Assistance Division and approved by the NDOT ROW LPA Coordinator. The request should be made on the LPA Right of Way Reimbursement Claim Form (Attachment 613) and all supporting documentation for the payments shall be included with the request for reimbursement if they have not previously been submitted.

NDOT will review these requests and reconcile the amount with the information submitted or by reviewing information presently in our file. Any discrepancies noted will be returned to the LPA for further clarification and re-submittal.

All amounts that have been reconciled will be authorized by the NDOT ROW Coordinator for federal reimbursement.

6.13 RECEIPT OF MONIES

6.13A STATUTORY AUTHORITY

Neb. Rev. Stat. § 39-1323.01 and § 39-1326 provides the Department general authority to lease, rent, or permit for use lands acquired for highway purposes, the sale of property and the disposition of proceeds.

6.13B PROPERTY MANAGEMENT PROCEDURES – LEASE AND SALE OF PROPERTY

6.13B1 When payments are received for the leasing or sale of land. The project and tract number of the Highway Project on which the property was purchased is attached to the payment and an account coding sheet is prepared by the Property Management Section. The coding shall be as per the Controller Division Manual.

6.13B2 The payment and account coding sheet is then delivered to the Negotiation Section for processing and delivery to the Controller Division. A receipt is then returned to the Property Management Section.

6.13C PROPERTY MANAGEMENT PROCEDURES – PERMITS

6.13C1 When payments for permit applications are received by this Section, the payment is delivered to the Negotiations Section for processing and delivery to the Controller Division.

CHAPTER 7
RELOCATION ASSISTANCE

7.01 GENERAL POLICY

The policy of the State of Nebraska, Department of Transportation shall be that all persons, families, businesses and farms who are displaced from their homes or their locations as a result of the acquisition of real property for public purposes receive fair, uniform and equitable treatment and that such persons shall not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. It is, therefore, intended that the Department shall provide an effective relocation assistance program to the end that:

7.01A No project shall be advertised for construction until each eligible displaced person has either obtained, or has the right of possession to, comparable replacement housing or the Department has offered comparable replacement housing which is within his/her financial means and available for immediate occupancy.

7.01B No eligible occupants shall be required to move from their dwelling unit without first receiving at least 90 days' notice in writing that the premises will be needed for construction. (Attachment 717.1 and Attachment 717.2)

7.01C Relocation payments are fairly and equitably determined and are paid to the eligible displacees in a timely manner.

7.01D Relocation advisory services shall be offered to all displaced persons within the right of way and when determined necessary to those immediately adjacent thereto. It shall be furnished promptly to all persons requesting assistance.

7.01E Proper notices and information regarding the relocation assistance program are furnished to the public on a timely basis.

7.01F Any person who qualifies as a displaced person will be fully informed of their rights and entitlements to relocation assistance and payments provided in this Chapter. In extraordinary circumstances, when a displaced person is not readily accessible, the Department will make a good faith effort to comply with the requirements of this chapter and will document the efforts in writing.

7.02 RELOCATION ASSISTANCE FUNCTION ORGANIZATION

The Relocation Assistance Function within the Division is under the general supervision of the Right of Way Division Engineer, with direct responsibility assigned to the Chief Negotiator/Relocation Supervisor. This person is assisted by Right of Way Agents assigned to the Relocation Function.

Each right of way project where displacements will occur shall have assigned to it one or more individuals whose primary responsibility is to provide relocation assistance. These individuals may have responsibility for more than one project where reasonable.

The Relocation Assistance Function will provide the following information on a project basis:

7.02A Current and continuing lists of replacement dwellings available to persons without regard to race, color, religion, sex or national origin, suitable in price, size and condition for the displaced persons to the extent that they are available.

7.02B Current and continuing lists of comparable commercial and farm properties and locations for displaced businesses and farms to the extent that they are available.

7.02C Copies of the Department's brochure explaining its relocation program.

7.02D All Relocation Benefit Studies completed by the Relocation Assistance Staff/Consultant shall also be reviewed and approved by NDOT before the amounts are offered to those being displaced. Likewise, all Relocation Assistance Claims submitted by the displacee shall be reviewed and approved by NDOT before the amounts are paid.

This way NDOT can certify to the Federal Highway Administration that the Relocation Assistance activities and payments are in accordance with the Uniform Act requirements.

Relocation staff will maintain personal contact and shall exchange information with other agencies providing services useful to persons who will be relocated. Such agencies may include social welfare agencies, Housing and Urban Development, Small Business Administration, etc. Personal contact will also be maintained with local sources of information on private replacement properties which will include real estate brokers, property managers, apartment owners and operators and home building Contractors.

7.03 TERMS

7.03A DEFINITIONS

7.03A1 Alien not lawful present in the United States – The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 CFR 103.12 and includes:

7.03A1a An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and nationality Act (8 USC 701 *et seq*.) and whose stay in the United States has not been authorized by the United States Attorney General; and

7.03A1b An alien who is present in the United States after the expiration of the period of stay authorized by the Untitled States Attorney General or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

7.03A2 Business – The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

7.03A2a For the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities and/or any other personal property.

7.03A2b For the sale of services to the public.

7.03A2c By a nonprofit organization.

7.03A2d For outdoor advertising display purposes, when the display must be moved for the project.

7.03A3 *Citizen* – The term citizen includes both citizens of the United States and noncitizen nationals.

7.03A4 *Comparable Replacement Dwelling* – The term comparable replacement dwelling means a dwelling which is:

7.03A4a Decent, safe, and sanitary as described in paragraph 4 of this section.

7.03A4b Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, we may consider reasonable tradeoffs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Section 7.15B3a(2))

7.03A4c Adequate in size to accommodate the occupants.

7.03A4d In an area that is not subject to unreasonable adverse environmental conditions, is not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

7.03A4e On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, and greenhouses.

7.03A4f Currently available to the displaced person on the private market, except as provided in 7.03A4h.

7.03A4g Within the financial means of the displaced person.

- A replacement dwelling purchased by a homeowner in occupancy for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full purchase differential, all increased mortgage interest cost, and all incidental expenses. Plus any additional amount required to be paid under Section 7.20, Housing of Last Resort.
- A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this chapter, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described in Section 7.15C.
- For a displaced person who is not eligible to receive a Replacement Housing Payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if we pay that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in Section 7.15C. Such rental assistance must be paid under 7.20, Housing of Last Resort.

7.03A4h For persons receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such case, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. A privately owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing.

A housing program subsidy that is paid to a person (not tied to a building), such as a HUD Section 8 Housing Voucher Program, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately owned subsidized unit or public housing unit before displacement. (See Section 7.15A23 for comparable selection criteria).

7.03A5 *Contributes Materially* – The term "contributes materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as we determine to be more equitable, a business or farm operation:

7.03A5a Had average annual gross receipts of a least $5,000; or

7.03A5b Had average annual net earnings of at least $1,000; or

7.03A5c Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

7.03A5d If the application of the above criteria creates an inequity or hardship in any given case, we may use other criteria as determined appropriate.

7.03A6 *Decent, Safe, and Sanitary Dwelling* – The term "decent, safe, and sanitary dwelling" (DSS) means a dwelling which meets local housing and occupancy codes. This includes the abatement of deteriorating paint, including lead-based paint and lead-based dust, if included in the local code.

However, any of the following standards which are not met by local code shall apply, unless waived for good cause by the Department and concurred in by the FHWA. The dwelling shall:

7.03A6a Be structurally sound, weather tight, and in good repair.

7.03A6b Contain a safe electrical wiring system adequate for lighting and other devices.

7.03A6c Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

7.03A6d Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person.

Local housing codes on 1) the number of persons occupying each habitable room used for sleeping purposes and 2) the requirements for separate bedrooms for children of the opposite gender shall not be exceeded.

In the absence of local codes, the following applies for each room occupied for sleeping purposes: 1) One person shall have an area of not less than seventy square feet. 2) More than one person shall have fifty square feet per person.

In the absence of local codes, the following applies for each room occupied for sleeping purposes by individual of the opposite gender: 1) Married couples and consenting adults over the age of 18 are allowed to occupy the same room. 2) Children 18 or under must be separated by gender regardless of age.

7.03A6e There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that

contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

7.03A6f Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

7.03A6g For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

We will address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation will include the following at a minimum:

- Doors of adequate width.
- Ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks.
- Storage cabinets, vanities sink and mirrors at appropriate heights.
- Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access.
- We will consider other items that may be necessary based on the displaced person's needs.

7.03A7 *Displaced Person* – Any person who moves from real property or moves personal property from real property and meets the following criteria: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements as described in Sections 7.15B2. and 7.15C2.)

7.03A7a General

- As a direct result of a written notice of intent to acquire (see 7.13A), the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
- As a direct result of rehabilitation, demolition, or other displacing activity, when the displacement is permanent.
- As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under Section 7.12 and moving expenses under 7.14A, B and C.

7.03A7b Persons not displaced. The following is a nonexclusive listing of persons who do not qualify as a displaced person.

- A person who moves before the initiation of negotiations (See Section 7.15A15); unless we determine the person was displaced as a result of our project; or
- A person who initially enters into occupancy of the property after the date of its acquisition for the project; or
- A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Department; or
- A person whom the Department determines is not displaced as a direct result of a partial acquisition; or
- A person who, after receiving a notice of relocation eligibility (see 7.13C), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or
- A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department; or
- A person who is required only to temporarily vacate the premises. The temporarily-occupied housing must be DSS and the tenant must be reimbursed for all reasonable out of pocket expenses incurred with the temporary relocation. These expenses may include moving expenses and increased housing costs during the temporary relocation. Temporary relocation should not extend beyond one year before the person is return to their previous location; or
- A person who has occupied the property for the purpose of obtaining assistance under the Relocation Assistance Act; or
- A person who is determined to be in unlawful occupancy prior to the initiation of negotiations or a person who has been evicted for cause (see 7.03E), under applicable law; or
- An owner occupant who moves as a result of a voluntary acquisition or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a project is subject to these procedures); orAn owner occupant who voluntarily sells his or her property after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Department will not acquire the property. If a tenant is displaced in such cases, the tenant is a displaced person. This paragraph (11) applies only if the following conditions are present:

    - No specific site or property needs to be acquired.

We may limit our search for alternative sites to a general geographic area. The term general geographic area is used to clarify that the “geographic area” is not to be construed to be a small, limited area.

- The property to be acquired must not be a part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.
- We will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed. Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the condition surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on our part.

  In those situations where we wish to purchase more than one site within a geographic area on a "voluntary transaction" basis, we intend that all owners be treated similarly with respect to eligibility for benefits under the Uniform Act and these regulations.

- We will inform the owner in writing of what we believe to be the market value of the property. The Chief Appraiser will determine the method of valuation.

  After establishing the amount and informing the owner in writing, we may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount.

  For amounts that are negotiated above the estimated value, we will apply the administrative settlement concept and procedures referred to in Section 5.02C6e of this manual. We will not take any coercive action in order to reach agreement on the price to be paid for the property.

- Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided by Section 102 of the American Dream Down payment Act (Pub. L. 108 -186; codified at 42 U.S.C. 12821.
- A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 7.07F.

7.03A8 Displacee – This shall mean any person who meets the definition of the displaced person.

7.03A9 *Dwelling* – the term "dwelling" means the place of permanent or customary and usual abode. It includes a single family house, a one family unit in a multi-family building; a unit of a condominium or cooperative housing project, or any other residential unit, including a mobile home. The term "place of permanent or customary and usual abode" is interpreted to mean "domicile". "Domicile is the place where a person has his true, fixed, permanent home and principal establishment, into which place he has, whenever he is absent, the intention of returning." A person may have but one "domicile" at any given moment and where a person has two or more houses or residences, the issue of which one is "domicile" is a question of fact. If difficulty is encountered when applying this definition to the individual cases, the Relocation Assistance Supervisor should be consulted for guidance.

7.03A10 *Dwelling Site* – the term "dwelling site" means a land area that is typical in size for similar dwellings located in the same neighborhood or rural area.

This definition ensures that the computation of replacement housing payments are accurate and realistic when encountering the following situations:

7.03A10a When the dwelling is located on a larger than normal site.

7.03A10b When mixed, use properties are acquired.

7.03A10c When more than one dwelling is located on the acquired property.

7.03A10d When the replacement dwelling is retained by an owner and moved to another site.

7.03A11 *Family* – The term "family" means two or more individuals living together in a dwelling unit who:

7.03A11a Are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

7.03A11b Are not related by blood or legal ties but live together by mutual consent.

7.03A12 *Farm Operation* – The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

7.03A13 *Household Income* – the term “household income” means total gross income received for a 12-month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students less than 18 years of age.

Household income for purposes of this manual does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. If there is a question on whether or not to include income from a specific program, contact the Federal Agency administering the program. For examples of exclusions to income, or access a list *of Federally Mandated Exclusions to Income* at http://www.fhwa.dot.gov/real_estate/.

7.03A14 *Initiation of Negotiations for the Parcel* – The term "initiation of negotiations for the parcel" means:

7.03A14a The date the acquiring agent makes their first personal contact with the owner of the real property, or their representative, to give them a written offer of just compensation for the property to be acquired. In those instances where the initial offer has been mailed to the owner, the term means the date on the offer letter. However, if we issue a notice of our intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written offer, the "initiation of negotiations" means the actual move of the person from the property.

7.03A14b In the case of permanent relocation of a tenant as a result of an acquisition of real property described in 7.03A7b(11)(a), 7.03A7b(11)(b) and 7.03A7b(11)(c), the initiation of negotiations means the actions described in 7.03A14a, except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under this part, until there is a written agreement between the Department and the owner to purchase the real property.

7.03A14c Tenants who occupy property that may be acquired amicably, without recourse to the use of the power of eminent domain, must be fully informed as to their eligibility for relocation assistance. This includes notifying such tenants of their potential eligibility when negotiations are initiated, notifying them if they become fully eligible, and, in the event the purchase of the property will not occur, notifying them that they are no longer eligible for relocation benefits. If a tenant is not readily accessible, as the result of a disaster or emergency, the Department will make a good faith effort to provide these notifications and document our efforts in writing and place that documentation in the case file.

7.03A15 Mobile Home – The term “mobile home” includes manufactured homes and recreational vehicles used as residences.

The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be acceptable as comparable replacement dwellings for persons displaced from mobile homes.

7.03A15a A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met:

- The recreational vehicle is purchased and occupied as the dwelling, as defined in 7.03A9.
- It is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the departments decent, safe, and sanitary inspection.
- The dwelling, as sited, meets all local, State and Federal requirements for decent, safe and sanitary dwelling. (The regulations of some local jurisdictions will not permit the consideration of these vehicles as decent, safe and sanitary dwellings. In those cases, the recreational vehicle will not qualify as a replacement dwelling.)

7.03A15b When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They may be single or multi-sectioned units when installed. Their designation as personality or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing.

7.03A15c The 1976 HUD standards distinguish manufactured homes from factory-built “modular homes” as well as conventional or “stick built” homes. Both of these types of housing are required to meet State and local construction codes.

7.03A16 Mortgage – the term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

7.03A17 *Nonprofit Organization* – the term "nonprofit organization" means an organization that is incorporated under the applicable laws of the State as a nonprofit organization, and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

7.03A18 *Owner* – a displaced person is considered to have met the requirement to own a dwelling if the person holds any of the following interests in real property acquired for a project:

7.03A18a Fee title, a life estate, a land contract, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

7.03A18b An interest in a cooperative housing project which includes the right to occupy a dwelling; or

7.03A18c A contract to purchase any of the interests or estates described in subparagraphs (a) and (b) of this paragraph; or

7.03A18d Any other interest, including a partial interest, which in the judgment of the Department warrants consideration as ownership.

7.03A18e Who has succeeded to any of the foregoing interests by devise, bequest, inheritance or operation of law. For the purpose of this chapter, in the event of acquisition of ownership by any of the foregoing methods in this paragraph, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

7.03A19 *Person* – the term "person" includes any individual, family, partnership, company, corporation, or association.

7.03A20 *Small Business* – is defined as a business that has less than 500 employees working at the site being acquired or displaced by a project and is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of Section 7.14D. A part-time business that does not contribute materially to the household income is excluded.

7.03A21 *Tenant* – means a person who has the legal temporary use and occupancy of real property owned by another.

7.03A22 *Unlawful Occupant* – a person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law.

7.03A23 *Utility Costs* – the term "utility costs" means expenses for electricity, gas, other heating and cooking fuels, water and sewer.

7.03B WITHHOLDING OF RELOCATION PAYMENTS

We will deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. We will not withhold any part of a relocation payment to a displaced person to satisfy any obligation to the Department of Transportation or any obligation to any other creditor, unless a court of law instructs us to do otherwise or, unless the displaced person has, on their own volition, decided to assign all or a portion of their relocation payment to any other party, including the Department of Transportation.

7.03C DELIVERY OF PAYMENT CHECK (WARRANT)

Where possible, all warrants will be mailed to the displacee. In emergency or hardship cases the warrant may be delivered in person to the displacee by any Department employee, including the person who computed the payment, provided that the payment was approved by a superior of that employee. (See 7.14A4 and 7.15A3)

When delivered in person, the employee must have a receipt signed by the displacee. The receipt will be placed in the file.

7.03D SURVEILLANCE

The Department of Transportation shall monitor relocation assistance activities conducted by any other State agencies, individual, firm, association or corporation to the extent necessary to ascertain compliance with the provisions of this Right of Way Manual when Federal Highway Funds are involved in the acquisition and relocation.

7.03E EVICTION FOR CAUSE

Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this rule unless we determine that:

7.03E1 The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

7.03E2 The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

7.03E3 In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in these procedures.

7.03E4 An eviction related to non-compliance with a requirement related to carrying out a project (e.g., failure to move or relocate when instructed, or to cooperate in the relocation process) shall not negate a person's entitlement to relocation payments and other eligible assistance.

For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available.

7.03F APPLICABILITY

7.03F1 The provisions of this Right of Way Manual are applicable to any person who is displaced by any project on which State or Federal highway funds are or will be utilized.

7.03F2 Property acquired as required by contribution. All right of way acquired by any State Agency, county, town or any other local governmental Agency and to be furnished as a required contribution incidental to a State assisted highway project shall not be accepted unless all payments have been made and all the assistances and assurances have been provided as required by this Right of Way Manual.

7.03F3 The Right of Way Division Engineer may waive any provision in this chapter that is not required by law when it is determined that the waiver does not

reduce any assistance or protection available to an owner or displaced person under this chapter. Any request for a waiver shall be justified on a case-by-case basis.

On Federal projects, all waiver requests should be sent to the Federal Highway Administration (FHWA).

7.04 PUBLIC HEARING PROCEDURES

7.04A PUBLIC INFORMATION

General requirements: In order to assure that the public has adequate knowledge of the relocation program, the Department shall present information and provide opportunity for discussion of relocation services and payment at public informational meetings or hearings, prepare a relocation brochure and give full and adequate public notice of the relocation assistance program. In areas where a language other than English is predominant, public information must be published in the predominant language as well as in English unless:

7.04A1 The Director-State Engineer finds that publication in the language other than English is unnecessary; and

7.04A2 An alternative program is established for the displaced person unable to communicate in English.

Brochure – We will prepare a brochure which adequately describes our relocation program. Distribution of the brochure shall be made without cost at all public informational meetings and hearings in which displacements occur and to all other appropriate individuals and organizations. The brochure will state where copies of our State regulations implementing the relocation assistance program can be obtained.

7.04B PUBLIC HEARING PRESENTATION

7.04B1 Relocation information to be presented shall include, but not necessarily be limited to, the following:

7.04B1a The eligibility requirements and payment procedures for moving costs, housing and rent supplement payments, increased interest payments, closing cost payment and appeal procedures.

7.04B1b A discussion of the services available under the Department's Relocation Assistance Advisory Program, and the address and telephone number of the local relocation office.

7.04B1c The estimated number of individuals and families to be relocated. This may be omitted if the estimate is in the Design Statement.

7.04B1d A discussion of our ability to provide replacement housing for those displaced from their homes.

7.04B1e An estimate of the time necessary for relocation of those to be displaced. This may be omitted if the Design Statement includes an estimate of when Right of Way activities may start and when the project will be let for construction bids.

7.04B1f If a particular item is not applicable to the project, it will not be necessary to discuss the item beyond the mere mention that the law makes provisions for such items.

7.04B2 As the brochure covers most items in sufficient detail, it will be satisfactory to highlight what the brochure contains without going into any great detail. This short narrative presentation should be used when the number of displacements is expected to be small. A more detailed presentation will be used, on larger projects. The decision, on which type of format to use, will be made by the Right of Way Division Engineer.

7.05 DUPLICATION OF PAYMENT

No person will receive any payment under this manual if that person receives a payment under Federal, state, local law or insurance proceeds which are determined to have the same purpose and effect as such payment under these regulations. The Department is not required to conduct an exhaustive search for such other payments; only to avoid creating a duplication based on the Department's knowledge at the time the payment is computed.

7.06 CONTRACTS FOR RELOCATION SERVICES

7.06A General

The agency may enter into contracts with any individual, firm, association or corporation for services in connection with the relocation program, or may carry out such functions through any Federal, State or local government agency having an established organization for conducting relocation assistance programs.

The ROW Manager, in consultation with the Relocation Supervisor, may elect to contract for relocation services for a project when circumstances warrant.

7.06B Contracts With A Government Agency

The contracts initiated by the Department shall reflect agreements with the agency to perform the work of relocation assistance under the supervision of the Department.

7.06C Private Consultants

7.06C1 Qualifications

7.06C1a The Relocation Assistance Supervisor shall establish and maintain a list of Approved Relocation Consultants. The Relocation Assistance Supervisor shall take positive steps to include all qualified consultants who wish to be considered for NDOT contracts, regardless of age,

disability, race, color, religion, sex, or national origin, on the approved list. (See Approved Relocation Consultant List)

7.06C1b The Agreement Section in the Project Development Division developed the original list described in the previous paragraph. This was accomplished by advertising in appropriate trade journals and publications. Subsequent additions of Relocation Consultants to this list are accomplished by the Relocation Assistance Supervisor reviewing the qualifications of those that have requested to be added to the list.

7.06C1c Consultant shall meet the following qualifications:

- Highly desirable that they have a history of successful performance in this field.
- Must be able to show that they have a qualified staff available.
- Must demonstrate knowledge in Nebraska eminent domain procedures so the proper explanation can be given to the property owners and tenants being displaced.
- Must have knowledge in the appropriate federal and state relocation laws and rules and regulations.
- Must be able to explain engineering plans, analyze the appraisal, answer legal questions, firmly present the relocation offer and tolerantly endure the complaints and arguments of the property owners and tenants being displaced.

7.06C2 Selecting the Contracting Method – Lump Sum or Hourly

For projects with a large number of displacements, the Relocation Supervisor should consider using the Hourly format. With this format, the Relocation Consultants are required to bid the project on the number of employees, hours for each employee and hourly cost for each employee with a total cost for the project based upon those factors. If it is necessary, because of unusual and complex situations that arise unexpectedly, the contract may be easily revised and adjusted to respond to the circumstances.

7.06C3 Soliciting and Selecting Proposals

7.06C3a A Request for Proposal will be sent to all Approved Relocation Consultants from the approved NDOT list. This assures an open competitive process for selecting recipients for these contracted services.

7.06C3b The Request for Proposal shall provide adequate information for the Relocation Consultants to submit a realistic proposal. This information should include, but not be limited to, Relocation Assistance Services Specifications (Attachment 701 or Attachment 702), your anticipated start and finish dates (if known), number and type of displacements, the time and date of the proposal opening.

7.06C3c Request for Proposal will be sent to all Approved Relocation Consultants. This assures an open competitive process for selecting recipients for these contracted services.

7.06C3d Proposals received shall be held until the prescribed time of opening. At which time and in the presence of at least one witness, the proposals shall be opened and read aloud. Consideration will be given each proposal, checking for accuracy and responsiveness.

7.06C3e When satisfied that the proposal(s) are acceptable, a committee composed of the Chief Negotiator/Relocation Supervisor and one or more of the Right of Way staff along with the Right of Way Division Engineer will determine which Relocation Consultant will be awarded the contract. This determination is made by evaluating which proposal is most advantageous to the Department's program, with price and other factors being considered. After this decision, an agreement is prepared and presented to the Relocation Consultant for acceptance. When the agreement bearing the Relocation Consultant's signature is received, it is executed by the Right of Way Division Engineer.

7.06C3f A memo to the project file will be made regarding names of interested Relocation Consultants, names of bidders, the actual bid amounts and the names of those present at the time of the bid opening.

7.06C3g A Draft Agreement (Attachment 703 or Attachment 704) will be sent to the Agreements Section, Project Development Division to formalize the Final Agreement between the Relocation Consultant and the Right of Way Division.

7.06C3h The Relocation Supervisor or designee will evaluate the work product and performance. This evaluation will be filed for use as future reference when selecting Relocation Consultants.

7.07 RECORDS

7.07A GENERAL

The Department will maintain adequate records of our displacement activities to demonstrate compliance with all applicable rules and regulations. These records will be retained for at least three years after financial closeout.

Records maintained by the Department in accordance with this manual are confidential regarding their use as public information unless applicable law provides otherwise.

7.07B CLAIMS

7.07B1 Claim Preparation and Documentation

7.07B1a All applications for relocation payments will be made to the Department on standardized claim forms (Attachment 705).

7.07B1b Documentation must be provided for expenses incurred, such as bills, paid receipts, certified prices, appraisals, or other evidence of such expenses.

7.07B1c A signed claim form and substantiating documents are to be submitted with the payment package.

7.07B2 Claim Submission

A displaced person will be provided with reasonable assistance, by the assigned agent, necessary to complete and file any required form for payment.

Claims normally are submitted after all conditions for payment have been met. However, they may be submitted in anticipation of full qualification. This may be necessary when a purchase/rental agreement has been executed and relocation assistance funds are required.

It is the responsibility of the assigned agent to insure that processing is promptly commenced when all necessary requirements are met.

The time period for filing claims may be waived for good cause by the Right of Way Division Engineer.

7.07B3 Claim Processing

All claims for a relocation payment shall be filed within 18 months after:

7.07B3a For tenants, the date moved.

7.07B3b For owners, the date moved or the date of the final payment for the acquisition of the real property, whichever is later.

Decent, Safe and Sanitary inspections of dwellings (Attachment 706) will normally be made within 5 days following the first knowledge of the relocation or receipt of request for advanced inspection. This form shall accompany all claims for housing payments.

All payable claims (Attachment 705) shall normally be within 5 working days of receipt or completion of all qualifying conditions. Claim forms received from claimants which must be sent back for correction shall be returned within the same time period.

7.07B4 Advance Payments

If a person demonstrates the need for an advanced relocation payment in order to avoid or reduce a hardship, we shall issue the payment, subject to such safeguards as appropriate to ensure that the objective of the payment is accomplished.

7.07B5 Signatures and Executions

Where the claim shows more than one eligible claimant to be paid all of the claimants need to sign to make it a valid claim.

Where less than the total number of eligibles are to be paid, the payment box should show only the names of those to be paid together with the designation "sole claimant(s)". However, all the eligibles must sign the claim.

No one, except as provided by law (i.e., attorney-in-fact), may sign a claim form in the place of the displaced person.

Where benefits are split, as in the case of separation, divorce, or joint occupants going to separate replacement dwellings, individual claim forms may be used with a reference in the margin to the other claim, provided that a written agreement exists between the parties.

7.07B6 Expeditious Payments

We will review all claims in an expeditious manner. The displacee will be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

7.07B7 Verification and Documentation Guidelines

Verification of qualifying activities such as moving, occupancy of replacement housing, etc., may be accomplished by personal inspection and documentation in the tract file.

Expenditures must be documented by inclusion in the file of the original or copies of bills, statements, cancelled checks, etc.

Payment of bills in some cases may be confirmed by telephone with the accounting office of the moving company, veNDOT, etc.

Documentation requirements for specific situations such as income for in lieu payments, incidental expenses, searching costs, etc., may be found in the appropriate sections of this chapter.

7.07B8 Notice of Denial of Claim

If we disapprove all or part of a payment claim or refuse to consider the claim on its merits because of untimely filing or other grounds, we will promptly notify the claimant in writing of our determination, the basis for our determination, and the procedures for appealing that determination.

7.07B9 No Waiver of Relocation Assistance

We will not propose or request that a displaced person waive their rights or entitlements to relocation assistance and benefits provided by this Chapter.

The Department may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such statement must clearly show that the individual knows what they are entitled to receive a copy of the Notice of Relocation amounts (see 7.13E) which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. This statement must be signed and dated and may not be coerced by the Department.

7.07B10 Expenditure of Funds

Payments, provided pursuant to this Chapter shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.

This is an important distinction in situations where replacement properties are acquired or rented by displaced persons. This action by a displaced person does not cause the present occupant of that replacement property to gain eligibility for any relocation benefits; nor, would that action require NEPA or other actions because relocation funds are used in the purchasing or renting of replacement property.

No relocation payment received by a displaced person shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been redesignated at the Internal Revenue Code of 1986 (Title 26, U. S. Code), or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act (42 U. S. Code 301 et seq.) or any other federal law, except for any federal law providing low income housing assistance.

7.07C CASE RECORDS

Case records on each displacee shall contain the following information:

7.07C1 Project number, control number and tract number.

7.07C2 Names of displaced persons and their complete original and new addresses and telephone numbers (if available) after reasonable effort to obtain where displacee moved without assistance.

7.07C3 Personal contacts made with each relocated person or family including:

7.07C3a Date of notification of availability of relocation payments and services.

7.07C3b Dates and substance of subsequent follow-up contacts.

7.07C3c Date on which the relocated person was required to move from the property acquired for the project.

7.07C3d Date on which actual relocation occurred.

7.07C3e Type of tenure before and after relocation.

7.07C4 For displacements from dwelling:

7.07C4a Number of male and female adults in family; number of children by age and sex.

7.07C4b Type of property (single detached, multi-family, etc.).

7.07C4c Value or monthly rent.

7.07C4d Number of rooms occupied.

7.07C5 For relocated businesses:

7.07C5a Type of business.

7.07C5b Whether continued or terminated.

7.07C5c If applicable, a certified inventory of items to be actually moved and an inventory of the items actually moved.

7.07C6 For relocated farms:

7.07C6a Whether continued or terminated.

7.07C6b If applicable, a certified inventory of items to be actually moved and an inventory of the items actually moved.

All of the information outlined above shall be shown in the case file; through the use of the appropriate forms, call reports (Attachment 512), informational memoranda and support documents.

7.07D MOVING EXPENSE RECORDS

Records shall contain the following information regarding moving expense payments:

7.07D1 The date the removal of personal property was accomplished.

7.07D2 The location from which and to which the personal property was moved.

7.07D3 If the personal property was stored temporarily, the location where the property was stored, the duration of such storage, and justification for the storage and the storage charges.

7.07D4 Itemized statement of the costs incurred supported by receipted bills or other evidence of expense; (if applicable, the two acceptable bids or estimates based on the certified inventory list).

7.07D5 Amount of reimbursement claimed, amount allowed and an explanation of any difference.

7.07D6 Data supporting any determination that the business is not part of a commercial enterprise having at least three other establishments not being acquired by the State or the United States.

7.07D7 When an in lieu payment is made to a business or farm operation, data showing how the payment was computed.

7.07D8 When moving expense payments are made in accordance with a schedule, the data called for in Items 3 and 4 above need not be maintained. Instead, records showing the basis on which payment was made shall be maintained.

7.07D9 On all moves, the file will contain pre and post inventories of the items that are to be moved and relocated. These inventories must be certified to accuracy by the displacee.

7.07D10 Data supporting any determination that the business can be relocated without a substantial loss of its existing patronage, if applicable.

Items 1, 2, 3, 5, and 8 will be documented in the call reports (Attachment 512) memoranda and the Relocation Assistance Payment Claim (Attachment 705). Items 4, 6, and 7 will normally be on support documents. Any such documents are to be stored in the case file.

7.07E REPLACEMENT HOUSING PAYMENT RECORDS

The Relocation Assistance Function shall also maintain records for each displacee containing the following information regarding Replacement Housing Payments:

7.07E1 The date of the displacee's claim for payments.

7.07E2 The date on which each payment was made or the application rejected.

7.07E3 Supporting data explaining how the amount of the supplemental payment to which the applicant is entitled was calculated.

7.07E4 A copy of the closing statement to support the purchase or down payment, and incidental expenses when replacement housing is purchased; or rent receipts or rental documentation (e.g. canceled checks) when replacement housing is rented.

7.07E5 A copy of the Truth in Lending Statement or other data including computations to support the increased interest payment.

7.07E6 The individual responsible for determining the amount of replacement housing or rent supplement payment shall place in the file a signed and dated statement setting forth: (Attachment 708).

7.07E6a The amount of replacement housing or rent supplement payment,

7.07E6b Their understanding that the determined amount is to be used in connection with a Federal-Aid highway project; and

7.07E6c That they have no direct or indirect present or contemplated personal interest in this transaction nor will they derive any benefit from the Replacement Housing Payment.

7.07E7 The date on which the Relocation Assistance Supervisor approves the computed study amount.

7.07E8 The individual responsible for determining the actual Replacement Housing Payment at the time of relocation shall place in the file a signed and dated statement setting forth: (Attachment 708).

7.07E8a The calculated amount of the Replacement Housing Payment to be paid.

7.07E8b Their understanding that the determined amount is to be used in connection with a Federal-Aid highway project.

7.07E8c That they have no direct or indirect present or contemplated personal interest in this transaction nor will they derive any benefit from the Replacement Housing Payment.

7.07E9 The Decent, Safe and Sanitary Inspection Form for the replacement housing unit. (Attachment 706)

7.07F ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES (Neb. Rev. Stat. § 4-408 to § 4-113)

7.07F1 Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify: (Attachment 709, Attachment 710).

7.07F1a In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.

7.07F1b In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.

7.07F1c In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.

7.07F1d In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

7.07F2 The above certification shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this rule shall be within the discretion of the Federal Highway Administration and, within those parameters, that of the Department, as specified in 49 CFR 24.208.

7.07F3 In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

7.07F4 The Department shall consider the certification provided in 7.07F1 to be valid unless we determine in accordance with 7.07F6 below that it is invalid based on a review of an alien's documentation or other information that the Department considers reliable and appropriate.

7.07F5 Any review by the Department of the certifications provided pursuant to 7.07F1 above, shall be conducted in a nondiscriminatory fashion. The Department will apply the same standard of review to all such certifications we receive, except that such standard may be revised periodically.

7.07F6 If, based upon a review of an alien's documentation or other creditable evidence, the Department has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination.

7.07F6a If the Department has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, the Department shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office. A list of local BCIS offices is available at https://www.uscis.gov/about-us/find-a-uscis-office/field-offices. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. If the Department is unable to contact the BCIS, we may contact the FHWA in Washington, DC, Office of Real Estate Services or Office of Chief Counsel for a referral to the BCIS.

7.07F6b If the Department has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, the Department shall request evidence of United States citizenship or

nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.

7.07F7 No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the Department's satisfaction that the denial of relocation assistance will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.

7.07F8 For purposes of 7.07F7 above, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

7.07F8a A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child.

7.07F8b A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member.

7.07F8c Any other impact that the Department determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

7.08 REPORTS

7.08A Annually at the end of each Federal fiscal year (September 30th) the Right of Way Division will prepare a report of our real property acquisition and displacement activities as required by 49 CFR Part 24 Section 24.9 and Appendix B to Part 24 – Statistical Report Form. This report shall be submitted to the Federal Highway Administration's Division Administrator.

7.08B Annually at the end of each Calendar year the Right of Way Division will prepare a report of our Relocation Assistance Benefits Report as noted in 1.08C. This information is collected with Attachment 709, 710, and 721. The information is furnished to the Civil Rights Coordinator in Program Management Division.

7.09 CONCEPTUAL STAGE STUDY – CORRIDOR STAGE

The conceptual stage study is made for route location alternate decisions at the conceptual stage of the route planning. A project will be considered to be in the conceptual stage until such time as the final location is approved. The conceptual stage study is submitted to the Project Development Division after they have requested the Relocation Function to provide the required data.

The relocation information should be summarized in sufficient detail to adequately explain the relocation situation including anticipated problems and proposed solutions. Secondary sources of information such as census, economic reports and contact with

community leaders, supplemented by visual inspections (and, as appropriate, contact with local officials) may be used to obtain the data for this analysis. This study shall develop and report the same information noted in 7.10.

7.10 CONCEPTUAL STAGE STUDY – DESIGN STAGE

The conceptual stage study at the design stage is primarily the information in the conceptual stage study used at the corridor stage with the addition of more precise data relating to specific design alternates for the adopted route location. This study compares the design alternates for the specific routes selected.

The relocation information should be summarized in sufficient detail to adequately explain the relocation situation including anticipated problems and proposed solutions. Secondary sources of information such as census, economic reports and contact with community leaders, supplemented by visual inspections (and, as appropriate, contact with local officials) may be used to obtain the data for this analysis. This study shall develop and report the following information:

7.10A An estimate of the number of households to be displaced, including the family characteristics (e.g., minority, ethnic, handicapped, elderly, large family, income level, and owner/tenant status). However, where there are very few displacees, information on race, ethnicity and income levels should not be included to protect the privacy of those affected.

7.10B A discussion comparing available (decent, safe, and sanitary) housing in the area with the housing needs of the displacees. The comparison should include (1) price ranges, (2) sizes (number of bedrooms), and (3) occupancy status (owner/tenant).

7.10C A discussion of the measures to be taken where the existing housing inventory is insufficient, does not meet relocation standards, or is not within the financial capability of the displacees. A commitment to last resort housing should be included when sufficient comparable replacement housing may not be available.

7.10D An estimate of the numbers, descriptions, types of occupancy (owner/tenant), and sizes (number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify (1) sites available in the area to which the affected businesses may relocate, (2) likelihood of such relocation, and (3) potential impacts on individual businesses and farms caused by displacement or proximity of the proposed highway if not displaced.

7.10E An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

7.10F Identification of any divisive or disruptive effect that the displacements could have on the community, such as separation of residences from community facilities or removal of a business that is critical to the community.

7.10G A discussion of the results of contacts, if any, with local governments, organizations, groups, and individuals regarding residential and business relocation impacts, including any measures or coordination needed to reduce general and/or specific impacts. These contacts are encouraged for projects with large numbers of displacees or complex relocation requirements. Specific financial and incentive programs or opportunities (beyond those provided by the Uniform Relocation Act) to residential and business displacees to minimize impacts may be identified, if available through other agencies or organizations.

7.10H A statement that (1) the acquisition and relocation program will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and (2) relocation resources are available to all residential and business displacees without discrimination.

7.10I A discussion of any business, nonprofit organizations or families having special composition (e.g., ethnic, minority, elderly, handicapped, or other factors) which may require special relocation considerations and the special advisory services measures proposed to resolve these relocation concerns. See Relocation Assistance Advisory Services in 7.12.

7.10J Estimate the amount of lead time required and demonstrate its adequacy to carry out a timely, orderly and humane relocation program.

7.11 RELOCATION PLAN

This document will be prepared only if the reports specified in Sections 7.09 and 7.10 have not been completed because no request was received from the Project Development Division and the Right of Way Division is of the opinion that the displacements on the project are significant and of a substantial nature that cannot be addressed in the individual displacee eligibility study.

The plan if developed will include an analysis of the relocation problems involved and a plan for their resolution. The plan should consist of the following:

7.11A An inventory of residential needs: this inventory must reflect the characteristics and needs of individuals and families to be displaced, obtained by personal contacts and interviews based on the standard of comparable replacement housing.

Available Housing Units, (Attachment 711), Subject Property Housing Displacement, (Attachment 712), Relocation Advisory Service Information, (Attachment 709), are to be used for the inventory and after their usage for planning purposes shall become a permanent part of the file. All data called for is to be entered on the form in its appropriate place and should an exception occur, it must be so noted and explanatory remarks entered. The inventory may be based upon a complete occupancy survey or a sampling survey process.

7.11B An inventory of nonresidential needs: this inventory must reflect the characteristics and needs of those being displaced, obtained by personal contacts and interviews. This should include an estimate of the numbers, descriptions, types of occupancy (owner/tenant), and sizes (number of employees) of businesses and farms to be displaced. Additionally, the discussion should identify (1) sites available in the area to which the affected businesses may relocate, (2) likelihood of such relocation, and (3) potential impacts on individual businesses and farms caused by displacement or proximity of the proposed highway if not displaced.

Attachment 710 is to be used for the inventory and after their usage for planning purposes shall become a permanent part of the file. All data called for is to be entered on the form in its appropriate place and should an exception occur, it must be so noted and explanatory remarks entered. The inventory may be based upon a complete occupancy survey or a sampling survey process.

7.11C An inventory of available sites for housing, business, farm and nonprofit organizations: A reliable estimate of currently available sites for replacement housing, business, farm and nonprofit organizations must be developed. The estimate shall set forth the type of buildings, number of rooms, adequacy of such property as related to the needs of the individual, family, business, farm or nonprofit organization to be relocated, type of neighborhood, proximity to public transportation and commercial shopping areas, and distance to any pertinent social institutions, such as church, community facilities, etc.

The estimate must be supported by a listing of currently available housing that is for sale or rent to those being displaced. Such listings can be obtained from real estate firms, real estate web pages, newspapers, apartment directories, multiple listing services, board of realtors, mortgage lenders, Federal Housing Administration and from individuals with property for sale or rent.

Sufficient listings must be obtained and the estimate should be developed to the extent to support that the relocation plan can be expeditiously and fully implemented. The use of maps, plats, charts, etc. would be useful at this stage. Every potential data source should be investigated, and where appropriate may be part of the plans.

7.11D An analysis of inventories: an analysis and correlation of the inventory of individual needs, and the inventory of available sites for housing and business, farm and nonprofit organizations discussed in paragraph C above must be prepared so as to develop a relocation plan which will:

7.11D1 Outline the various relocation problems and identify and recommend for priority acquisition potential problem tracts to the Right of Way Division Engineer.

Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed.

7.11D2 Provide an analysis of current and future Federal, State and community programs currently in operation in the project area, and nearby areas affecting the supply and demand for housing including detailed information on concurrent displacement and relocation by other governmental agencies or private concerns.

7.11D3 Provide an analysis of the problems involved and the methods of operation to solve such problems and relocate the occupants in order to provide maximum assistance. A commitment to last resort housing should be included when sufficient comparable replacement housing may not be available.

Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

7.11D4 Estimate the amount of lead time required and demonstrate its adequacy to carry out a timely, orderly and humane relocation program.

7.11D5 A discussion of a "relocation site office" determination made for each project.

7.11D6 A statement of any special advisory services that may be necessary. (See 7.12)

Upon completion of the above research and analysis, conclusions are made regarding availability of resources and adequacies of the relocation program to be administered for the project. All conclusions reached are to be based upon the facts and the supportable projections developed during research and analysis which becomes the supports for "project assurances."

Local Relocation Assistance Office

Establishment – The local relocation office (site office) will be established when the Department determines that the volume of work or the needs of displaced persons are such as to justify the establishment of such an office. A site office shall be in a location which is within walking distance to the project or which is reasonably convenient to public transportation, and shall be opened during hours convenient to the persons to be relocated. If the local office is opened on a part time basis, a sign should be placed on the door of the office during the periods it is not in operation advising displacees of the hours that it is open to the public.

7.12 RELOCATION ASSISTANCE ADVISORY SERVICES AND RELOCATION STUDY

7.12A GENERAL

Whenever the acquisition of real property for a publicly financed project, undertaken by the Department, will result in the displacement of any person, the Department will provide a Relocation Assistance Advisory Program for the displaced persons.

This program should allow displaced persons to receive uniform and consistent services and payments regardless of race, color, religion, sex, national origin, age, or any physical handicap. The services required are intended, as a minimum, to assist persons in relocating to decent, safe and sanitary housing that meets their needs. The services shall be provided by personal contact, except, if such personal contact cannot be made, the Department shall document the file to show that reasonable efforts were made to achieve the personal contacts.

7.12A1 To whom provided: Relocation assistance advisory services shall be offered to:

7.12A1a Any "displaced person" as defined in Section 7.03.

7.12A1b Any person occupying property immediately adjacent to the real property acquired when the Department determines that such person or persons are caused substantial economic injury because of the acquisition.

7.12A1c Any person who, because of the acquisition of real property used for his/her business or farm operation, moves from other real property used for a dwelling, or moves his/her personal property from such other real property.

7.12A1d Any person, who occupies property acquired by the Department, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for our project, shall be eligible for advisory services, as determined by the Department. Our lease and subsequent vacating notice, if required, will inform the tenant of this benefit.

7.12A2 Advisory service requirements: the Department's Relocation Advisory Services Program will include such major facilities or services as may be necessary or appropriate.

7.12A2a Relocation study begins with a personal interview of each person to be displaced (residential and nonresidential) and complete the following forms as appropriate (Attachment 709 or Attachment 710). Also furnish each expected displacee with a Relocation Assistance Brochure.

7.12A2b Determine, for nonresidential (businesses, farm and nonprofit organizations) displacements, the relocation needs and preferences of

each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:

- The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.
- Determination of the need for outside specialists that may be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
- For businesses, an identification and resolution of personality/realty issues. Every effort must be made to identify and resolve realty/personality issues prior to, or at the time of, the appraisal of the property.
- An estimate of the time required for the business to vacate the site.
- An estimate of the anticipated difficulty in locating a replacement property.
- An identification of any advance relocation payments required for the move.

7.12A2c Determine, for residential displacements, the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each residential displaced person.

- Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available.
- We will inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the Replacement Housing Payment and the basis for the determination in order that the displaced person is made aware of the amount of the Replacement Housing Payment to which he or she may be entitled. (Attachment 713.1, Attachment 713.2, Attachment 713.3, Attachment 713.4, Attachment 713.5, and Attachment 713.6).
- Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, the person to be displaced shall be notified that a Replacement Housing Payment may not be made unless the

replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

- Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require that we provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.
- All displaced persons shall be offered transportation to inspect housing to which they are referred by the Department.
- Advise any displaced person that may be eligible for government housing assistance at the replacement dwelling of any requirements of such government housing assistance program that would limit the size of the replacement dwelling (see 7.03A4h), as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.

7.12A2d Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

7.12A2e Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

7.12A2f Supply persons to be displaced with appropriate information concerning Federal and State housing programs, administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

7.12B PROCEDURES

7.12B1 Relocation Assistance Agents will read the "Offer Letter" and furnish a brochure to the displacee.

7.12B2 The Agent will then, in detail, explain the eligibility requirements and methods of computation for each payment described in the "Offer Letter".

7.12B3 The Agent will offer assistance in locating and/or obtaining replacement housing.

7.12B3a The Agent will note whether the offer was accepted or declined and who accepted or declined the offer.

7.12B3b This will be included in the Agent's call report of the meeting.

7.12B4 The Agent will advise the displacee to select a realtor of their choice and in addition, inform the displacee of the comparables used in the Relocation Study.

7.12B5 The Agent will obtain the name of the realtor for coordination of the purchase of the replacement house.

7.12B6 If the displacee does not select a realtor, the Relocation Assistance Agent will provide a housing list.

7.12B7 The Agent should identify other problems that can affect the displacee's program.

7.12B8 The Agent should determine which of the problems warrant the provision of advisory services.

7.12B9 The Agent should decide whether he/she has the time and expertise to provide the required assistance.

7.12B10 The Agent should locate other agencies or organizations that can provide assistance to the displacee.

7.12B11 The Agent should refer the displacee to this Department or organization for advisory services.

7.12B12 The Agent should monitor and evaluate the assistance received by the displacee from the referral Department.

7.12B13 The Agent will provide other assistance as needed, and will include but not necessarily be limited to the following:

7.12B13a Transportation.

7.12B13b Home ownership counseling.

7.12B13c Mortgage finance counseling.

The amount and extent of the advisory services shall be administered on a reasonable basis commensurate with the displacee's needs.

7.12C COORDINATION OF RELOCATION ACTIVITIES

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

Such agencies may include but not be limited to social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, Department of Housing and Urban Development, Veterans Administration and Small Business Administration.

Contact shall be maintained with local sources of information on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

Contact shall be maintained with the Department of Housing and Urban Development and Veterans Administration relative to property held by them which may be available for sale.

It is expected in the application of these programs to specific projects that the Department will coordinate their actions with local agencies responsible for administering other Federal programs.

The Department can consider contracting with a single Department to assume full responsibility for providing relocation services and assistance in a given community or area.

7.13 WRITTEN NOTICES INCLUDING WRITTEN OFFER

Written notices will be furnished to each displaced person to insure they are fully informed of the benefits and services available to them. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

7.13A NOTICE OF INTENT TO ACQUIRE

This notice will be furnished to owners and tenants (Attachment 714.1 and Attachment 714.2), along with the brochure, in those "special cases" when the Department determines to establish eligibility for relocation benefits. When a notice of intent to acquire is issued, it will be considered, for the purposes of this section, to be the same as the date of initiation of negotiations for the parcel.

This notice will contain the statement of eligibility and any restrictions, the anticipated date of the initiation of negotiations for acquisition of the property, and how additional information pertaining to relocation assistance payments and services can be obtained.

If this notice is furnished to an owner, it will also be furnished to the tenants. If it is furnished to a tenant, the owner must be simultaneously notified of such action.

When such notice is issued, every effort should be made to commence negotiations as soon as practical to prevent possible subsequent occupancy and/or minimize rental problems for the owner.

If this notice is used for the owner of a rental property (Business Investment) because the Department is proceeding with tenant occupant displacee's, then this notice (Attachment 714.2) should be modified to include a statement that the

Department will rent the unit/property after the tenant has vacated it so that the owner does not rent to a subsequent occupant who would be eligible for relocation assistance benefits.

7.13B GENERAL INFORMATION NOTICE

As soon as feasible, a person scheduled to be displaced should be notified about the possibility of his or her displacement. He or she should also be furnished with a general written description (Relocation Assistance Brochure) of the Department's relocation program which does at least the following:

7.13B1 Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

7.13B2 Indicates that any person displaced will be given reasonable relocation advisory services including housing referrals, help in filing payment claim(s), and other necessary assistance to help the person successfully relocate.

7.13B3 Informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available to the displaced person. No person will be required to move without at least 90 days advance written notice.

7.13B4 Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined in 7.07F8.

7.13B5 Describes the person's right to appeal the Department's determination as to eligibility for, or the amount of, any relocation payment for which the person is eligible.

The General Information Notice, in the form of our Relocation Assistance brochure, will be presented to such persons once they have been identified via the real estate appraisal process, provided negotiations are not imminent. The General Information Notice will be presented by the Relocation Agent in a personal contact or via mail with an accompanying letter of explanation. (Attachment 715)

7.13C NOTICE OF RELOCATION ELIGIBILITY

A notice of relocation eligibility shall be given all occupants at the initiation of negotiations or Notice of Intent to Acquire. This notice may take the form of a Relocation Assistance Offer Letter, a Notice of Displacement or a Notice of Intent to Acquire. No displacee will be given a notice to vacate until he/she has received a Relocation Assistance Offer Letter. The notice of relocation eligibility will be presented in a personal contact by a representative of the Department's Right of way Division or via mail with an accompanying letter of explanation.

Persons receiving the notice of relocation eligibility by mail will be contacted within a reasonable period of time thereafter for an explanation of the acquisition and relocation process.

7.13D NOTICE OF DISPLACEMENT

7.13D1 Owners

At the initiation of negotiations for the parcel, the owner shall be furnished with a written explanation of the eligibility requirements for moving expenses and Replacement Housing Payments, if they are residential occupants. (See Attachment 716.1 and Attachment 716.2) The displacee shall be provided an explanation of the relocation services available and where they may be obtained. The displacee will also be furnished with a copy of the Relocation Assistance Brochure.

7.13D2 Tenants

Within a reasonable period of time after the initiation of negotiations for the purchase of the parcel, the tenant shall be furnished, either by personal contact or mail, a written statement (Attachment 716.1 and Attachment 716.2) which includes the date of the initiation of negotiations for the parcel and an explanation of the eligibility requirements to receive moving payments and a Replacement Housing Payment, if they are residential occupants. In addition, the displacee shall be provided an explanation of the relocation services available and where they may be obtained. Each displacee will be provided with a copy of the Relocation Assistance Brochure.

7.13E NOTICE OF RELOCATION PAYMENTS – RELOCATION ASSISTANCE OFFER LETTER

In lieu of the earlier-described Notice of Intent to Acquire, Notice of Displacement, or General Information Notice, the Relocation Assistance Offer Letter can be issued at the initiation of negotiations. Its purpose is to provide a positive understanding of the eligibility requirements, payments and assistance to be provided to the displaced person. This letter will include the amount of the relocation payment and also any pertinent eligibility requirements which must be met before the relocation payment can be paid. For examples of Notices of Replacement Amounts refer to (Attachment 713.1, Attachment 713.2, Attachment 713.3, Attachment 713.4, Attachment 713.5, and Attachment 713.6), Attachment 713.7, and Attachment 713.8).

7.13F REDUNDANCY OF NOTICES

The timing and determination of which notice to use will be made by the Relocation Assistance Supervisor. Attention will be focused on the need to inform versus the risk of being redundant. To unnecessarily repeat the same message or idea in different words is confusing to those being displaced. It often causes unnecessary anxiety and disorder. Therefore, if the time between the issuance of the General Information Notice and the Notice of Relocation Eligibility and/or Notice of Displacement is expected to be short, we will defer to the later notice.

7.13G 90-DAY AND 30-DAY NOTICES TO VACATE

The construction or development of a highway will be so scheduled to the greatest extent practicable that no person lawfully occupying real property shall be required to move from a dwelling or to move from a business or farm without at least 90 days written notice of the intended vacation date. Owners of personal property are considered to be occupants of real property to be acquired and they are also entitled to this notice.

The 90-Day Notice (Attachment 717.1) may be given on or after the initiation of negotiations for the parcel and will include a statement that the displacee will not be required to move from his/her dwelling, or to move a business or farm, before 90 days from the date of the notice. This notice shall inform the displacee that he/she will be given a 30-day written notice specifying the date in which the property must be vacated.

If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. It is the policy of the Department to issue the 90-day notice concurrently with the Notice of Relocation Amounts. It is in the Notice of Relocation Amounts letter that the Department informs the displacee of the availability of a comparable replacement property.

The 30-Day Notice will not be given until such time as the Department has control of the property. (Attachment 717.2)

This notice is not required if the displacee moves on their own volition prior to the time the notice was given.

Exceptions to the 90-Day Notice requirement will be made only in the case of very unusual conditions or when the notice is impracticable, such as when the person’s continued occupancy of the property would constitute a substantial danger to health or safety. Written justification will be placed in the file.

7.13H NOTICE OF RIGHT OF APPEAL

All eligible displacees shall be furnished with a written notice of their right to appeal and the procedures for making such an appeal. Such notification will be provided by the Relocation Assistance Brochure and will be explained, again, at the time the displacee is issued the Relocation Assistance Offer Letter. (Attachment 718.1 and Attachment 718.2)

7.14 MOVING EXPENSE PAYMENTS

7.14A GENERAL

7.14A1 General Provisions

This section contains general rules that apply to all moves. These should be understood and used in conjunction with the instructions contained in the following sections relating to specific types of Claimants.

7.14A2 Definitions

Many of the payments made in this section are limited to costs that are actual, reasonable and necessary. These terms are defined as follows:

7.14A2a Actual – truly incurred (out of pocket) costs; existing in fact or reality; not merely potential.

The actual costs of a move or specific element of a move can be readily determined. The documentation is usually a receipt, invoice, cancelled check, etc. This evidence supports the actual cost.

7.14A2b Reasonable – not extreme or excessive; not conflicting with reason.

In contrast to the ease with which the actual cost is determined, ascertaining the reasonable cost is more nebulous. Reasonable is not an exact term and the concept will vary from one person to another. However, the relocation agent is expected to make these decisions routinely.

The definition offered above for the term “reasonable” includes the phrase “not conflicting with reason.” This is a common approach to determining what is reasonable. Essentially, the question presented in “would most people agree that something is reasonable given all the facts?” It is assumed that most people are reasonable and thus can arrive at reasonable conclusions.

7.14A2c Necessary – of an inevitable nature; logically unavoidable; produced by the condition of things.

7.14A3 Eligibility

Any "displaced person," as defined in 7.03 is eligible to receive payment for actual moving and related expenses in accordance with the criteria in this section for:

7.14A3a Moving of personal property located within the acquired right of way,

7.14A3b The appropriate moving payment under 7.14A, 7.14B and 7.14C when the acquisition of real property used for a business or farm operation causes a person to vacate their dwelling or other real property not acquired, or to move their personal property from other real property not acquired,

7.14A3c The appropriate moving payment under paragraph 7.14B for their dwelling unit and under paragraph 7.14C for the other units in an owner occupied multi-family dwelling.

7.14A4 Claim for Payment

A displacee must file a written claim with the Department of Transportation (Attachment 705), in order to receive the payment for moving expenses. All claims for a relocation payment shall be filed with the Department within 18 months after:

7.14A4a For tenants, the date of displacement.

7.14A4b For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Department for good cause.

7.14A5 Advance Payments

7.14A5a Moving expense claims (Attachment 705) cannot be paid until after the move except in cases of undue hardship. Payment of moving expenses in advance of moving may be made with prior authorization if:

- The property has been acquired by the State; or
- The displaced person moved as a result of a written order to vacate, issued by the Department.

If the displacee needs a moving expense warrant prior to the time that they are fully eligible for such payment, the following procedures will be implemented:

- The displacee will notify the agent of the particular hardship in writing or by a call report prepared by the agent.
- The agent transmits the necessary documentation and forms for approval.

- Transmittal memo.
- Complete and correct claim.

7.14A5b Advanced payment should only be made after:

- An effort has been made to arrange payment of moving expenses directly to the mover by the Department or, where moving expenses will be large, to make partial payments as the move progresses.
- Prior approval is obtained from the Right of Way Division Engineer.

7.14A6 Partial Payments

The Department may make partial payments of moving expense claims where such claims are based on the actual cost of moving provided the amount of such partial payment does not exceed the actual cost incurred up to the time such payment is claimed.

7.14A6a Claims must be supported by receipted bills or other documentation of expenses actually incurred up to the date of the claim.

7.14A6b In complicated moves a reasonable amount will be withheld from payment to cover possible ineligible charges. The displacee will be informed of the amount to be withheld.

7.14A6c Schedules which involve partial payments shall be accompanied by a memorandum stating it is a partial payment and summarizing the following information:

- Estimated total cost of move.
- Amount of this claim.
- Amounts of previous claims paid to this account.
- Estimated remaining costs.

Partial or progress payments may be made only for moving expenses. Replacement Housing Payments may not be made in stages to pay for construction or rehabilitation.

7.14A7 Payment Direct to Commercial Mover

By written prearrangement between the Department, the displaced person, and the commercial mover, a displaced person may present unpaid moving bills to the Department and the Department may pay the commercial mover directly.

7.14A7a Payment of moving expenses may be made directly to commercial movers or contractors by one of two methods:

- Written Agreement signed by the claimant, the Department and the mover which specifies the terms and conditions for each party of the agreement.
  - Upon completion of the move and presentation of itemized bills and a properly executed claim for payment, the Department will pay the mover for all eligible costs incurred.
  - In the event charges are incurred during the move, which are not considered eligible moving costs, the amounts charged will be deleted by the Department and it shall be the obligation of the claimant to make payment of such cost directly to the mover.
- Assignment of the amount claimed, by letter of assignment, to the mover. (Attachment 719) Before such an assignment is accepted by the Department, all documentation in support of the costs of the mover shall be examined, ineligible costs deleted, and the assignment executed and accepted only for the proper amount.

7.14A7b When scheduling payment directly to the commercial mover or contractor, a copy of the written prearrangement or assignment shall be attached to the claim form.

7.14A8 *Limitations* – no moving expense payment will be made for more than one move of a claimant except where found by the Department to be in the public interest and prior approval has been granted.

7.14A9 Eligible Actual Moving Expenses

7.14A9a 50 Mile Move Limit

The allowable expense for transportation shall not exceed the cost of moving 50 road miles measured from the point from which the move was made to the point of relocation via the most commonly used routes between such points.

In the case of a business or farm operation, where the Department determines that relocation cannot be accomplished within the 50 mile area, the additional mileage may be allowed with the prior approval of the Right of Way Division Engineer. Payment shall be limited to the nearest available adequate site.

Where a move is accomplished by a commercial mover, bills presented for payment must have the cost of the distance beyond 50 miles separately itemized. The amount shall be deleted from payment of the claim.

Where a move is accomplished under a self-move agreement, estimates or bids submitted shall be examined for amounts resulting from the extra distance.

The 50 mile distance limitation does not apply to moves based on Scheduled Moving Expenses as provided by this method.

7.14A9b Packing, crating, unpacking and uncrating of the personal property.

7.14A9c Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliance and other personal property. For nonresidential this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandates by Federal State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

7.14A9d *Storage* – when the Department determines that it is necessary for a relocated person to store their personal property for a reasonable time, not to exceed twelve months, the cost of such storage shall be paid as part of the moving expense. The time limit may be extended on the approval of the Right of Way Division Engineer.

NO storage payment shall be made:

- For storage of personal property on the property being acquired or on other property owned by the displacee.
- Where the claimant elects payment under any of the Moving Expense Schedules in the Residential Move Section.
- Where the business owner or farm operator elect to receive payment based on the In Lieu Payment.

Important: Storage will normally be authorized only where circumstances beyond the control of the displaced person are involved, such as inability to occupy their replacement location at the time the Department requires that they vacate the original premises.

7.14A9e *Insurance* – insurance premiums covering the reasonable replacement value of personal property against loss and damage while in storage or transit. Claims including insurance premiums must be supported by paid receipts showing the amount paid for such insurance and the amount of insurance coverage involved. The receipt must be prepared in a manner that will relate it to the subject move.

7.14A9f Losses in Moving – the reasonable replacement value of personal property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, their agent or employee) in the process of moving, where insurance coverage for such loss or damage is not available. Losses in moving are not reimbursable in cases where the fixed payment "in lieu of" actual moving cost option is elected. If insurance is reasonably available to the displacee, but not purchased by them either through choice or neglect, their losses will not be reimbursed by the Department. Before any losses are paid by the Department, the agent must make a thorough investigation and document the files accordingly, to determine that such losses were not caused by the displacee's negligence and that insurance was not available to cover the move. Moving cost claims which include losses must be accompanied by a narrative resume from the displacee advising what losses or damages were experienced and how such losses or damages occurred, as well as a certified and supported statement concerning the values of the items involved.

7.14A9g Other Expenses – Other moving-related expenses that are not listed as ineligible under Section 7.14A14, as we determine to be reasonable and necessary.

7.14A9h Telephone Equipment

The Department will pay actual and reasonable costs of moving telephone equipment. The Department cannot pay for betterments to telephone systems made in conjunction with moves. The Department should consult local marketing departments of the telephone company for advice and assistance if necessary.

The following general rules apply:

- Where the "actual cost" method is used for residential or nonresidential properties having one telephone number, and one or two extensions, a paid receipt from the telephone company may be used to document the cost.
- For larger installations, such as master phones, dial installations, etc., the Department shall obtain from the telephone company, in writing, a statement of the present cost of duplicating the existing system. After the move is completed, a paid receipt from the telephone company will be obtained to support the claim.
  - If the claimant installed a more expensive system in the new location than existed in the old location, the Department will pay no more than the "duplication" cost. The paid receipt required is simply proof that a new telephone system was installed.
  - If claimant installed a less expensive system in the new location than existed in the old location, the Department will pay the lower cost. The receipt will constitute evidence of actual cost.

7.14A9i Burglar and Fire Alarm Systems and Other Leased Equipment

Moving cost payments for burglar and fire alarm systems should follow the same principles as for telephones. However, many such systems are part of the realty and hence would not be paid for.

7.14A10 Owner Retained Dwellings

When an owner retains their dwelling, the cost of moving it onto remainder or replacement land is not eligible as a part of the cost of moving personal property. If the owner chooses to use their dwelling as a means of moving the personal property, payment shall be based on the moving expense schedules found in the Residential Move Section.

7.14A11 Additional Eligible Expenses

When the displacee elects to move on an actual cost basis, the following expenses are eligible for payment:

7.14A11a *Moving to Replacement Site* – the expenses of moving personal property beyond a 50-mile radius when the Department determines that relocation cannot be accomplished within a 50-mile area. Such exceptions are allowed to the nearest adequate and available site.

7.14A11b *Advertising for Bids* – advertising for packing, crating and transportation when the Department determines that such advertising is necessary, is eligible for reimbursement as a moving expense. This should be limited, however, to complicated or unusual moves where advertising is the only method of securing bids.

7.14A11c *Cost of Bids* – the Department's expenses in obtaining moving bids for estimates, not to exceed two bids per move, are reimbursable moving expenses. In instances where the two bids received are incompatible, the Department may obtain a third bid.

7.14A11d The remaining useful life of any yellow page ad, license, permit, or certification paid for by the displaced person at the replacement location.

7.14A11e For nonresidential moves the professional services necessary for planning the move of the personal property, moving the personal property, and installing the relocated personal property at the replacement location. Prior approval must be obtained by the displacee before these costs are incurred.

“Plant layout” is an example of an eligible expense with regard to both a move into a newly constructed building or into a preexisting building. These expenses are limited to rudimentary items, such as indicating the locations in the replacement building to which personal property is to be moved, and is related to “planning the move of personal property” from the displacement site to the replacement site. Eligible expenses do not include architectural or engineering type drawings, concepts, or

considerations at the replacement site, nor do they include plans, drawings, layouts, or other material related to the site acquired by the NDOT. Further, such expenses are not to be considered to be "professional services" under the Reestablishment section of this chapter. (See 7.15D)

7.14A11f Relettering signs and replacing stationery – provide for changing signs and stationery made obsolete due to the move. It is anticipated that when a business moves, its existing stationery, business cards, invoices, etc. may be obsolete due to changes in the business address and phone number. Generally, you may pay for replacement of all such items on hand at the time of the displacement.

Company vehicles depicting the old address or phone number may also be relettered so they are appropriate for the new business location. This could mean painting a new sign or manufacturing a plastic decal.

7.14A12 Transfer of Ownership

The displacee shall be requested to furnish a bill of sale or similar document that transfers their ownership of any personal property not moved, sold, or traded in.

7.14A13 Controls

All books and records kept by a claimant as to actual moving expense incurred shall be subject to review and audit by a Department representative during reasonable business hours.

7.14A14 Ineligible Moving and Related Expenses

A displaced person is not entitled to payment for:

7.14A14a Additional living expenses for residential displacements or additional operating expenses for nonresidential displacements incurred because of the new location.

7.14A14b Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

7.14A14c Physical changes to the real property at the replacement location of a business or farm operation, except as provided in 7.14A9c and 7.14D1a.

7.14A14d Interest on loans to cover moving expenses.

7.14A14e Loss of goodwill.

7.14A14f Loss of business and/or profits.

7.14A14g Loss of trained employees.

7.14A14h Personal injury.

7.14A14i Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department.

7.14A14j Payment for search cost in connection with locating a residential replacement dwelling.

7.14A14k Costs for storage of personal property on real property owned or leased by the displaced person.

7.14A14l Personal Property Abandoned

Any person, family, farm operation, or business who is displaced and who would be entitled to a payment for moving personal property, but does not do so, shall not be reimbursed for such abandoned or discarded property left on the premises. The displacee, if requested, shall transfer ownership to the Department of any personal property that has not been moved, sold, or traded in.

7.14A14m Refundable security and utility deposits.

7.14B RESIDENTIAL MOVES

7.14B1 General Provisions

A displaced person as defined in 7.03 is entitled to receive a payment of his or her actual moving and related expenses as we determine to be reasonable and necessary. The displacee has the option of payment on the basis of a commercial move, self-move or combination thereof.

Refer to 7.14A9a – g for Additional Eligible Moving Expenses.

Moving expenses do not include any additions, improvements, alterations or other physical changes in or to any structure in connection with moving personal property.

7.14B2 Special Instructions

There are procedures available to the Department in effecting residential moves but which are more commonly used in business and farm moves. These include advance and/or progress payments and payments directly to the mover other than by written prearrangement and assignment.

If desired, these special procedures can be used in connection with residential moves. These are fully covered in the General Moving Expense Section preceding this section.

7.14B2a Multiple Occupancy

- Two or more families occupying the same dwelling unit, who relocate in separate dwelling units, may elect to be reimbursed either on an actual cost basis or on a scheduled move. A scheduled move payment will be based on the number of rooms actually occupied by each family. Community rooms utilized by each family will also be counted provided they contain sufficient personality to count as a room.
- Two or more individuals, not a family, who occupy the same dwelling unit, are considered to be a single family.

7.14B2b Limits on Moving Payments

- One Move Per Person – Without prior approval. (See 7.14A8)
- 50-Mile Move Limit – Without prior approval. (See 7.14A9)

7.14B2c If an owner retains the dwelling for relocation and chooses to leave their personal property therein, payment for the cost of moving the personal property shall be based on the Moving Cost Schedule. (Attachment 705)

7.14B2d Payment for storage of personal property moved from a residence shall be in accordance with the instructions for storage contained in the General Moving Expense Section.

7.14B3 Types of Payments

All claimants have the option of payment on the basis of either:

7.14B3a Actual reasonable cost of move by a commercial mover. (See 7.14B4.)

7.14B3b Self-move.

- Fixed Residential Moving Cost Schedule. (See 7.14B5)
- Actual Cost Move. (See 7.14B6)

7.14B4 Actual Reasonable Cost of Move By A Commercial Mover

7.14B4a A displaced individual or family may be paid the actual, reasonable cost of a move accomplished by a commercial mover. Such expense will be supported by receipted bills. The reasonableness of the cost shall be determined by what commercial movers in the area actually charge. The displacee should obtain two lump sum moving cost bids from commercial movers who are qualified and equipped to accomplish the move. We are not obligated to accept unreasonable bid from companies with bad business practices or bids we find unacceptable for good cause.

7.14B4b The bids should be based on the same exact services and should be based on "straight time" rates, unless we have approved "overtime" rates.

7.14B4c The displacee can employ any moving firm they desire to conduct the move; however, their moving cost payment will be for the actual cost of the move, not to exceed the low bid.

7.14B4d If the Department has reason to believe that the lower of the two bids is not reasonable, a third bid should be obtained. Only in rare instances will it be permissible to go with the higher bid. In those cases, the file will be documented as to the reasons.

7.14B4e Displacees in this category are also entitled to reimbursement for their applicable incidental moving expenses as discussed in 7.14A9. They should not be reimbursed for their own labor or for any costs which were not actual "out of pocket" expenses.

7.14B5 Moving Expense Schedules

7.14B5a General

Any person displaced from a dwelling or a seasonal residence is entitled to receive a fixed moving cost payment as an alternative to a payment for actual moving and related expenses.

This payment shall be determined according to the Moving Cost Schedule.

7.14B5b Moving Expense Schedule

Moving Expense Schedule										
Occupant provides furniture									**Occupant does not provide furniture**	
Number of rooms of furniture										
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**Each Additional Room**	**First Room**	**Each Additional Room**
$400	$600	$800	$1,000	$1,200	$1,400	$1,600	$1,800	$200	$350	$50

7.14B5c Miscellaneous

- The payment to a person whose residential move is performed by the Department at no cost to the person shall be limited to $100.
- An occupant will be paid on an actual cost basis for moving his or her mobile home from the displacement site **not** the Moving Cost Schedule amount. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at our discretion.
- An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the Moving Cost Schedule.

- The payment to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons shall be limited to $100.
- When using the Moving Cost Schedule**,** a "counted room" means that space in a dwelling unit containing the usual quantity of household furniture, equipment and personal property. It shall include such space as a living room, dining room, bedrooms, kitchen, recreation room, library, study, laundry room, basement, garage, workshop and patio, and "out buildings" if such places do, in fact, contain sufficient personality as to constitute a room.
- Rooms or storage areas containing substantial amounts of personal property, equivalent to one or more rooms may be counted as additional rooms. Bathrooms will generally be excluded from the room count.
- Determination of equivalency requires judgment. An oversized room may contain sufficient furniture for two rooms and can be considered as two rooms. An alcove dining area may be considered as a separate room if it contains a normal amount of dining room furniture.
- A record shall be made of the rooms or room equivalents counted for payment of moving expense claim based on schedules.
- No additional eligible expenses, as noted in 7.14A9 (except storage, if approved) and 7.14A11, shall be paid to claimants electing the Moving Cost Schedule.
- Exceptions to this prohibition will be considered on a case by case basis for unusual or extenuating circumstances. Each exception must be approved by the Right of Way Division Engineer.
- The owner occupant of a multi-family dwelling unit or of a mixed use property may elect to receive payment for their own dwelling unit under the schedule and still be eligible to receive payment for moving personal property from the other units as a business move. (See Section 7.14C).
- Where rental units are partially furnished, tenants may elect to receive payment based on the schedule to the personal property they own, to the nearest full room. The cost of moving personal property owned by the landlord in such units can be paid only as a business move.

7.14B5d Requirements for Scheduled Payments

Scheduled payment of moving expenses requires that the move be verified by NDOT and "Moving Expense Claim" (Attachment 705) properly completed and signed by the claimant.

7.14B6 Actual Cost Move

These expenses should be supported by receipted bills for labor and equipment. Hourly labor rate should not exceed the cost paid by a commercial mover. Equipment rental rates should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

7.14C BUSINESS MOVING EXPENSES

7.14C1 General Provisions

7.14C1a The owner of an eligible displaced business is entitled to receive payments for either:

- Moving and related expenses which include:
  - Moving costs (e.g. actual, self-move, alternate payments) as provided later in this section; and refer to 7.14A11 for Additional Eligible Moving Expenses.
  - Losses of tangible personal property, as provided later in this section; and
  - Search costs, as provided later in this section; and
  - Reestablishment expenses at the new site, as provided later in this section.

OR

- In lieu of the above payments the business may be eligible for a payment based upon average annual net earnings of the business as provided in the section entitled "In Lieu Payment".

7.14C1b Notification and Inspection. The following requirements will apply to payments under this section:

- The displaced person must provide us with reasonable advance notice of the approximate move date or date of disposition of personal property and a list or inventory of the items to be moved. We may waive this requirement after properly documenting the file.
- The displaced person must permit us to make reasonable and timely inspections of the personal property as it is moved to the new location.
- We will inform the displaced person of these requirements in the "Notice of Relocation Amount."

7.14C2 *Moving Costs* – Types of Payments

7.14C2a The business owner may select one of the following options:

- Commercial move
- Self-move
- Combination commercial/self-move move

7.14C3 Commercial Move

Payment is based on actual reasonable costs of a move performed by a commercial mover or contractor. Costs that are reimbursable include such items as dismantling, disconnecting, packing, loading, insuring, transporting, unloading and reinstalling of personal property of the business, over printing of stationary, business cards and advertisements e.g., furniture, equipment, inventory, etc.

As a requisite for all businesses, the owner of a relocated business is required to submit a certified inventory of the items to be moved, in order to claim payment for moving costs. Typically, this inventory will be prepared by the owner of the business and signed and dated, to certify it as being true and correct as of the date of preparation. However, in the event that the owner fails to provide such inventory, the agent shall prepare an accurate and timely inventory and have the owner certify its correctness. If the inventory changes substantially by the time of the actual move, an updated certified inventory must be prepared and updated moving cost estimates should be obtained.

Reimbursable costs do not include any addition, improvements, alterations or other physical changes on or to any structure in connection with moving personal property.

The following are requirements for payment:

7.14C3a The Department shall secure at least two firm bids or estimates from responsible licensed commercial movers or contractors prior to the move. (Attachment 720).

Bid – An offer to perform a specified task at a specific price; a lump-sum fixed amount to do an identified task.

Estimate – A valuing by opinion.

These terms are sometimes used interchangeably but we need to clearly understand the difference. They are not different words meaning the same thing. A bid provides you an exact amount of money that you will pay for the completion of a specific moving job. For a bid to be realistic, the terms of the move and inventory must be clearly established. The validity of the bid declines as more issues are left unanswered. An

estimate, in contract, provides an approximation base on whatever is known. The accuracy of the estimate should improve if you can provide answers to question the mover may have.

Payment for the move will be based on the lowest reasonable bid or estimate. Payment for a low cost or uncomplicated move may be based on a single bid or estimate.

Low cost moves are those with amounts of $5,000 or less.

Uncomplicated moves are characterized by being easy to analyze and understand; they are neither intricate nor involved. The cost could exceed $5,000.

Questions on whether or not a move is uncomplicated should be referred to the Relocation Assistance Supervisor for decision.

7.14C3b Payment shall be made by the Department upon presentation of the paid, receipted and itemized bills after the claimant has moved from the premises. Written prearrangements or assignments to pay the mover directly may be used. (Attachment 719) When the move is completed, the displacee will submit to the Department a receipt for moving costs of the licensed mover or performer of services, as set forth as a minimum:

- Name and address of the displace.
- Name and address of mover or performer of services.
- Identification of personal property moved or description of services provided.
- Date or dates of move or services; and
- Address from which and to which personal property was moved or where services were rendered.

7.14C3c Such expenses will be supported by receipted bills and a certified inventory of the items actually moved. If the items listed on this "as moved" inventory deviate appreciably from the original certified inventory, the amount of the estimate will be appropriately adjusted for payment. The agent assigned to the tract will advise the displacee and/or the mover what is eligible for moving costs.

7.14C3d Where the final bill exceeds the estimate by 10% or more, a written explanation shall be secured from the mover and attached to the bill when payment is scheduled.

7.14C4 Self-Move

7.14C4a Bid Method

A business may be authorized to perform the moving of its personal property itself, under the following conditions:

- The amount to be paid is to be negotiated between the Department and the business, not to exceed the lower of at least two firm bids or estimates obtained by the Department from qualified specialists for moving bids or estimates based on the certified inventory. (Attachment 720) Care should be exercised to insure that provisions have been made in the bids or estimates for all allowable costs including insurance, permits, equipment rental, etc. However, it should be impressed upon the displacee that the bids or estimates contain only those expenses which can be fully supported and justified. All bids shall be based on the prepared certified inventory of the items to be actually moved.

  The Department may make payment based upon a single bid or estimate for moves which are low cost or uncomplicated.

  Self-moves apply to situations where the displacee performs the move with their own personnel and equipment, with the amount of compensation negotiated between the Department and the displacee in advance of the actual move. If the displacee decides to employ additional help, rent equipment or have a portion of the move performed under contract by a third party, only in order to more effectively relocate the business, and the additional cost is simply added to the amount originally negotiated, then such additional costs will not be reimbursed.

  Regulations specify that moving expenses be actual and reasonable. To fulfill the intent of the regulations, it is expected that the "negotiated" amount be reasonable and representative of the owner's expected cost. The low bid is not to be automatically used as the negotiated amount. If the actual cost for the move is greater than the authorized payment, the claimant will be paid the actual reasonable costs, provided all cost items are properly supported by receipted bills, certified payroll excerpts, and other appropriate evidence.

7.14C4b Actual Cost Method

- If bids or estimates cannot be obtained, the claimant may be paid actual, reasonable moving costs supported by receipted bills or other evidence of expenses incurred.

  The allowable expenses of a self-move under this provision may include:

- Amounts paid for truck and/or equipment rental fees should be based on the actual rental cost of the truck and/or equipment but not to

exceed the cost paid by a commercial mover.If vehicles or equipment owned by a business being moved are used, a reasonable amount to cover gas and oil, and the cost of insurance and depreciation directly allocable to hours and/or days the equipment is used for the move.

- Wages paid for the labor of persons who physically participate in the move. Labor costs are to be computed on the basis of actual hours worked at the hourly rate paid, but the hourly rate may not exceed that paid by commercial movers or contractors in the locality for each profession or craft involved.
- If a business proposes to use working foremen or group leaders regularly employed by the business to provide supervisory services in connection with the move, the amount of their wages covering time spent in actual supervision of the move may be included as a moving expense.

7.14C4c On complicated moves an agreement, spelling out the above factors plus any other pertinent data, should be completed and signed between the Department and the displacee before the move is commenced. The terms of a self-move agreement may include:

- A provision that in the event the actual cost of the move exceeds the amount agreed upon, only those additional costs which can be shown to have been required in order to complete the move will be reimbursed.
- A provision that no claim for payment shall be honored by the Department until the move has been completed (unless the agreement provides for partial payments).
- Any other provisions necessary to protect the interests of the parties to the agreement and any other special provisions occasioned by the nature of the move, type of business or farm operation involved or circumstances peculiar to the case.
- A provision that claim for payment shall be submitted within 18 months of the date of moving from the premises.

Self-move agreements shall be signed by the Right of Way Division Engineer and the claimant.

It is required by law that all moving expenses be actual and reasonable. To assure this, the Department will provide surveillance commensurate with the expected expenditures involved. Emphasis will be directed toward those moves that are of a complicated nature and/or a substantial expenditure.

7.14C4d Moving Expense Finding

The assigned Relocation Agent may make a moving cost finding not to exceed $5,000. The amount of the finding may be paid when the move is completed. Supporting evidence of actual expenses incurred is not

necessary; the itemized moving cost finding is sufficient. The Relocation Assistance Supervisor will approve the amount before the payment is offered. Documentation supporting the moving cost finding shall be prepared by the agent and reviewed and approved by the Supervisor. Attachment 721 shall be used in the preparation of the estimate.

It is our policy that the estimates not exceed $5,000. If the move is determined to be uncomplicated, the Relocation Assistance Supervisor may approve the use of this format. Therefore, all pertinent circumstances, including but not limited to the following, should be considered:

- Contact with certified moving firms in the project area to establish the hourly rate for movers, cost of moving vans, vans with hydraulic lifts (if necessary), cranes, and any other necessary equipment.
- A thorough study of the present and proposed location for moving the personal property, including the distance in miles between the two points.
- If the displacee elects to make a self-move, consideration should be given to the displacee's expected cost. See 7.14C4a.
- Computations relative to the estimated requirements of completing the move such as: the number of hours necessary, the types of personnel needed with an appropriate wage rate for same, and the expenses concerning various types of equipment that may be involved.

7.14C5 Combination Self-Move/Actual Cost Move

Combination self-move/actual cost moves are allowable. Self-move procedures, described above, shall be followed for that portion of the move; actual cost move procedures shall be followed for the portion of the move performed by a commercial mover or contractor.

7.14C6 Alternate Payments

In addition to the above-mentioned options, the owner may be paid moving costs under two alternate type payments:

7.14C6a Losses of tangible personal property, as explained below; or

7.14C6b Low-value-high-bulk personal property. When a business owner elects to move personal property which has low value and high bulk, such as junk, stockpiled sand, gravel, minerals, metals or similar items, and the cost of moving the property would be disproportionate to its value (in our judgment) the allowable moving cost payment shall not exceed the lesser of:

- The amount which would be received if the property were sold at the site; or

- The replacement cost of a comparable quantity delivered to the replacement site.

7.14C7 Losses of Tangible Personal Property

7.14C7a Actual direct losses of tangible personal property are allowed when a person who is displaced from their place of business is entitled to relocate such property in whole or in part, but elects not to do so. To be eligible for this benefit, the owner of the personal property must:

- Be eligible to receive payment for actual and reasonable moving expenses.
- Enter into a written agreement with the Department stating election of this method of payment, and agreeing that the personal property specifically described or tabulated therein is not to be moved.
- Make a reasonable effort to sell the described personal property, unless we determine that such effort is not necessary.

7.14C7b Payment for actual direct loss of tangible personal property may only be paid as a part of actual, reasonable moving and related expenses, in accordance with the following situations:

- If the business is to be relocated and an item of personal property which is used in connection with the business is not moved, but promptly replaced with a comparable item at the new location, the reimbursement shall be the lesser of:
  - The replacement costs, including installation, minus the proceeds of the sale. "Trade-in value" may be substituted for the proceeds of the sale where applicable; or
  - The estimated cost of moving the items, including installation, to the replacement site but not to exceed 50 miles, with no allowance for storage. At the Department's discretion, the estimated cost for a low cost move, may be based on one bid or estimate.

    As used in the above paragraph, a "comparable item" means a replacement, either new or used, which performs the same function as the item to be replaced. "Replacement cost" means the cost to acquire and install a replacement item, either new or used, which performs the same function as the item to be replaced. The trade-in value of old equipment may be used instead of the proceeds of the sale. The amounts received in trade, the proceeds of the sale, the replacement cost of the item, and the estimated cost of moving must be documented.

- If the business is being discontinued or the item is not to be replaced in the relocated business, the payment will be the lesser of:

- The difference between the fair market value of the personal property for continued use at its location (in place value)prior to displacement, less the proceeds of the sale, (When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not to the potential selling price); or

  An appraisal of the item may be required to determine depreciated value in place. The appraisal may be an estimate, in writing, by a knowledgeable employee or, if the nature and/or value of the equipment require it, an appraisal should be secured from knowledgeable outside sources. Proceeds of the sale and the estimated cost of moving must be documented

  The in place value must reflect only the “as is” condition and installation of the item at the displacement site

  The in place value estimate may not include costs that reflect code or other requirements that were not in effect at the displacement site; or equipment that is not operable or installed at the displacement site.

- Estimated cost of moving the item to the replacement site but not to exceed 50 miles, with no allowance for storage.

  If the piece of equipment is operational at the acquired site, the estimated cost to reconnect the equipment shall be based on the cost to install the equipment as it currently exists, and shall not include the cost of code required betterments or upgrades that may apply at the replacement site.

  The moving cost estimate must reflect only the “as is” condition and installation of the item at the displacement site.

- If a bona fide sale is not affected, as discussed above, because no offer is received for the property, and the property is abandoned, payment for the actual direct loss of that item may not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item 50 miles, whichever is less, plus the costs of the attempted sale, irrespective of the cost of the Department of removing the item.

- When personal property is abandoned with no effort being made by the business to dispose of such property by sale or by removal at no cost by a junk dealer, the owner will not be entitled to moving expenses, or losses, for the items involved. In this situation the Department should obtain a written statement from the owners that he/she is abandoning the property. The statement should itemize the abandoned items. If no such statement can be obtained, the owner shall be advised in writing, that unless the items are removed, the Department will presume them to be abandoned and will dispose of them as it sees fit.

Abandoned items may be left on the premise for removal by the Department's demolition contractor or by the buyer when buildings are sold for removal.

The cost of removal of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

- Payments may only be made after a bona fide effort has been made by the owner to sell the item involved. The sales prices, if any, and the actual, reasonable costs of advertising and conducting the sale shall be supported by copies of bills of sale or similar documents and by copies of any advertisements, offers to sell, auction records and other items supporting the bona fide nature of the sale. The reasonable cost incurred in attempting to sell an item not relocated will be reimbursed to the displacee.
- The estimated cost for an item is limited to the “as is” condition of the item at the displacement site. Therefore, estimated reconnect costs may not include costs to meet code or other requirements that would only be necessary to relocate the item to a replacement site. Since the item is claimed as a loss and is not to be relocated, allowable reconnect costs may only reflect an estimate of the cost that would be incurred to install the item as it currently exists at the displacement site. Also the moving cost estimate may not include reconnect costs for an item that is not operable or installed at the displacement site.
- This subsection does not apply to machinery and equipment which is classified as realty, but was retained by the owner. Also, Department Regulations exclude the cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

  This subsection does not apply where a displaced owner wishes to retain and move material which is of low value and high bulk. Such material is covered under Alternate Payments, 7.14C6 above.

7.14C8 Searching Costs

7.14C8a The owner of a business, farm, or nonprofit organization may be paid for actual, reasonable expenses in searching for a replacement business site, not to exceed $5,000. Alternatively, the owner of a business, farm, or nonprofit organization may be paid a one-time payment of $1,000 for search expenses with minimal or no documentation.

7.14C8b Expenses may include the following:

- Transportation.
- Meals and lodging away from home.
- Time spent searching or investigating potential replacement sites.

- Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
- Time required to apply for zoning changes.
- Time spent in obtaining licenses, permits, zoning changes and attending zoning hearings.
- Necessary attorney fees required to obtain such licenses or permits.
- Time spent negotiating the purchase of a replacements site.

7.14C8c Searching costs may be incurred by a displaced business at any time; however, the displaced business cannot be reimbursed for any costs incurred until such time as the displaced business qualifies as a displaced person as defined in 7.03.

7.14C8d Expenses must be itemized on a statement attached to the claim form. (Attachment 705) The claim form must also incorporate the attachment by reference.

7.14C8e Mileage claimed may be reimbursed at recognized State mileage rates or at actual costs incurred as verified by paid bills.

7.14C8f Time spent in searching may be claimed at the average hourly rate experienced by the claimant. This may be verified by review of income tax returns (claimant's net divided by estimated hours worked annually).

7.14C8g Claim for meals and minor incidentals such as parking fees and telephone expenses may be accepted without paid receipts, if reasonable.

7.14C8h Broker and agent fees as well as lodging, where allowed, will require receipted bills. Note that searching expenses incurred in searching beyond the 50 mile radius may be allowed only if the nature of the business to be relocated reasonably justifies such a move. Caution should be exercised to prevent payment for pseudo searches which may have involved time spent on vacation or other such purposes.

7.14C8i Search expenses may be included with claims for payment of all other actual expenses, but must be itemized and recapitulated on a separate statement as specified above.

7.14C8j The Department may consider waiver of the cost limitations subject to the approval of the Federal Highway Administration.

7.14C9 Guidelines for Business Moves

It is recommended that a pre-move discussion and agreement take place between the relocation agent and the business displacee **prior** to securing moving estimates. Items to be emphasized and, if possible, agreed upon:

7.14C9a Contemplated time of move and destination (new location) of move.

7.14C9b Decision by displacee as to self-move, actual cost move by a commercial mover, or a combination of the two. The displacee should be made aware of the options and the necessity to follow through as agreed.

7.14C9c Businesses having floating inventories which fluctuate widely from time to time should be encouraged to move on an actual cost basis using commercial movers. The responsible assigned relocation agent should closely check these moves, particularly just prior to the move, during the moving, and after the move.

7.14C9d Reaching an understanding as to whether there is need for a multi-phased move over a period of time or a move all at once.

7.14C9e Items not to be moved may not necessarily be real property. They may be items covered under the Direct Loss provisions. If possible, during the pre-move conference, these items should be identified and arrangements made for valuation in place and separate moving estimates for these items. Discussions should include explanation of options for replacement costs, if applicable, and requirements for disposal of items not to be moved and/or reinstalled.

7.14C9f Packing, crating, unpacking (if necessary) and moving specifications desired and needed by the displacees.

7.14C9g The necessity to have all movers bid on the same basis and to furnish an itemized inventory of items to be moved. Movers' estimates/bids should include complete specifications, conditions and inventory.

7.14C9h Arrangement for displacee to notify Department just prior to moving so the responsible relocation agent can verify the items to be moved. (The degree of verification would depend on the circumstances.)

7.14C9i Explain the need for a properly documented and inventoried bill from the selected mover on actual cost moves.

7.14C9j Explain that on all self-moves if the displacee's actual reasonable costs exceed the negotiated amount; a bill prepared by the displacee is needed completely documenting and supporting these costs.

7.14C9k Determine whether storage will be needed and the reasons therefore.

7.14C9l If the two moving bids vary widely, a third bid should be considered. Wide variations may indicate lack of uniformity in specifications used for the estimate. Widely divergent estimates may be reconciled by meeting with the estimators. Obviously, someone may be wrong.

7.14C9m Review qualifications and experience of various moving companies, particularly in large complex business moves. If there appear to be no well-qualified experienced movers, consideration should be given to hiring

well-qualified industrial engineering firms to prepare moving cost estimates.

7.14C9n When in doubt, the relocation agent should check realty items in the appraisal to make sure no inventoried items to be moved were paid for in the property valuation as realty items.

7.14C9o The relocation agent should check existence of moving inventory items on site just prior to the move and so document the parcel file.

7.14C9p The relocation agent should check moving inventory items at the new site**,** just after the move to make sure all inventoried items were actually moved, set in place, connected, etc., as provided in the estimate and so certify by signed memo.

7.14C9q Business moves requiring significant disconnect and reconnect costs should be supported by complete certified or original bills including specialists, installers or tradesmen's charges who actually performed the services. The assigned relocation agent should check to see that all work billed for has been accomplished.

7.14C9r Each estimator for a moving company should always be accompanied by the relocation agent and owner when making the estimate and the estimator should be furnished an inventory list. Specifications and inventory for the move should be agreed on at this time and all moving companies shall bid on the same basis.

7.14D REESTABLISHMENT EXPENSES

In addition to the moving payments described earlier, a small business, as defined in Section 7.03, farm or nonprofit organization is entitled to receive a payment, not to exceed $33,200, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

7.14D1 *Eligible Expenses* – reestablishment expenses must be reasonable and necessary, as determined by the Department. The test for reestablishment expenses is not a comparative standard. Therefore, it does not match the amenities or characteristics of the replacement site against the displacement site. Instead, the test is one of necessity, i.e., is the expense necessary to reestablish the displaced business? They may include, but are not limited to, the following:

7.14D1a Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

A business is often required to make improvements or repairs at its new location which were not required at the old location. These are often a prerequisite of an occupancy permit or business license.

The expense of modification or additions to accommodate the requirements of law is acceptable under this category. Determination of eligibility is evident and documentation is easily obtained.

The modifications authorized by this category must be clearly and directly associated with the reinstallation of the personal property and cannot be for general repairs or upgrading of equipment because of the personal choice of the business owner.

7.14D1b Modifications to the replacement property (structures) to accommodate the business operation or make replacement structures suitable for conducting the business.

This category will allow some expenses disallowed under category “a” above. The interpretation is less defined and therefore more subjective. Repairs, modifications or improvements to existing structures will generally be acceptable under categories a. b. or e., but care must be taken to be mindful of specific areas of ineligibility in Section 7.14D2, discussed later.

In addition, in contrast to category a., these types of changes to replacement property (structures) are voluntary elections of the business. They are intended to assure suitability and efficiency at the new site.

7.14D1c Construction and installation costs for exterior signing to advertise the business.

Eligibility for this payment exists whether or not the business had a sign at the displacement location. However, some sign expense is more properly assigned as a moving cost. A sign designated as personal property at the displacement site is eligible to be moved and reinstalled as a moving expense. Signs that can be relettered or otherwise modified due to the move can be claimed as a moving expense. Erection of signs not eligible in the moving cost category can generally be claimed as a reestablishment expense.

Exterior signs often have little or no contributory value in the real estate at the subject location. However, they are essential to most businesses. This category insures the availability of a sign.

7.14D1d Redecoration or replacement of soiled or worn surfaces at the replacement site (inside the structure), such as paint, paneling, or carpeting.

This category obviously cannot relate to any payment made in the moving cost category. It can, however, include costs that may have been eliminated from eligibility in 7.14D1a or b. This category may provide the most opportunity for different opinions of eligibility. Determination of “soiled or worn surfaces” is a highly subjective task in itself. Add the disqualification of improvements done for “aesthetic purposes” and disagreement becomes a certainty. Keep in mind when making such an

assessment what would appear reasonable and necessary for circumstances at hand. Installation of new carpet and wallpaper may not be as appropriate in an auto parts store as in a real estate office.

7.14D1e Advertisement of replacement location. It is again the responsibility of the local agency to determine how much expense is reasonable and necessary. A good guideline would depend upon the type and size of the business and how many customers they serve. There is no specific prohibition, however, against spending the entire $33,200 payment on advertisement of the new location.

7.14D1f Estimated increased costs of operation during the first two years at the replacement site for such items as:

- Lease or rental charges.
- Personal or real property taxes.
- Insurance premiums.
- Utility charges, excluding impact fees.

7.14D1g Other items that we consider essential to the reestablishment of the business.

7.14D1h Eligible costs if displaced business occupies a shell structure.

Basically all of the costs listed in 7.14D1a-f are eligible if considered actual, reasonable and necessary for the operation of the business. In markets where existing (used) and new buildings are available for rental (and sometimes for purchase), the buildings or the various units available within the buildings often have only the basic amenities such as heat, light, and water, and sewer available. These buildings or units are shells. The cost of a building (shell) is not an eligible expense because the shell is considered a capital real estate improvement (a capital asset).

However, this determination does not preclude the consideration of certain modifications to an existing (used) and new replacement business building. Eligible improvements or modifications up to the amount of $33,200 may include the addition of necessary facilities such as bathrooms, room partitions, built-in display cases and similar items, if required by Federal, State or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business.

Further, a displaced business could build a shell structure (with the basic amenities such as heat, light, water, and sewer available) and then claim the costs of eligible improvements or modifications up to the amount of $33,200 for the addition of necessary facilities such as bathrooms, room partitions, built-in display cases and similar items, if required by Federal, State or local codes, ordinances, or simply considered reasonable and necessary for the operation of the business.

7.14D1i Reestablishing a different business

A change in a displaced business does not affect eligibility for actual, reasonable, and necessary reestablishment expenses incurred in reestablishing a business. In some instances, it is not economically feasible to relocate a particular business operation and a change in the nature, character, or type of business may be the most practical solution for the business operator. Expenditures of funds for reestablishing the business must be reviewed for acceptability. Costs of new or used equipment purchased to serve the changed business operation are not eligible for reimbursement as reestablishment expenses. Similarly, general repairs or improvements to the replacement property made to the structure because of the personal choice of the business operator are ineligible. The costs of utility upgrades and necessary and reasonable modifications to the real property to accommodate the changed business may be eligible when properly supported.

7.14D2 *Ineligible Expenses* – the following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible.

7.14D2a Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

The cost of constructing a new business building on the vacant replacement property is a capital expenditure and is generally ineligible for reimbursement as a reestablishment expense. In those rare instances when a business cannot relocate without construction of a replacement structure, the Department may request a waiver of Part 24.304(b)(1) under the provisions of 49 CFR 24.7. An example of such an instance would be in a rural area where there are no suitable buildings available and the construction of a replacement structure will enable the business to remain a viable commercial operation. If a waiver is granted, the cost of constructing the new building will be considered an eligible reestablishment expense subject to the $33,200 statutory limit on such payment.

7.14D2b Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

7.14D2c Interest on money borrowed to make the move or purchase the replacement property.

7.14D2d Payment to a part-time business in the home which does not contribute materially to the household income.

7.14E IN LIEU PAYMENTS

The owner who relocates or discontinues a business may be eligible for a payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. The payment is equal to the average annual net earnings of the business except that the payment shall not be less than $1,000 nor more than $53,200, if we determine that:

7.14E1 The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site.

7.14E2 The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless we demonstrate that it will not suffer a substantial loss of its existing patronage.

7.14E3 The business is not part of a commercial enterprise having more than three other entities, which are not being acquired by the Department, which is engaged in the same or similar business activities. (Attachment 710).

In order to make such a determination it is necessary to establish that there is common control, management and ownership of the similar businesses, i.e. that they can be said to be owned, managed and controlled as a single operating unit. Examples would be: the branch offices of National banks, insurance companies or chain supermarket outlets.

The "chain operation" rule does not apply when the individual dealer or franchise holder renting or selling a national product is displaced by a highway project. The focus in determining whether the "chain operation" rule ought to apply should be on the proprietary interest of the individual dealer rather than the product which happens to be sold, rented or otherwise dealt with.

For purposes of this rule a remaining business facility that did not contribute materially to the income of the displaced person during the two taxable years prior to displacement shall not be considered "another establishment."

7.14E4 The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

7.14E5 The business is not operated at the displacement site solely for the purpose of renting the site to others; and

7.14E6 The business contributed materially (see definition in 7.03) to the income of the owner during the two taxable years prior to displacement.

7.14E7 In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

7.14E7a The same premises and equipment are shared.

7.14E7b Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.

7.14E7c The entities are held out to the public, and to those customarily dealing with them, as one business.

7.14E7d The same person, or closely related persons own, control, or manage the affairs of the entities.

7.14E8 Benefit Calculation and Limitations

Payment is based upon the average annual net earnings of the two taxable years immediately preceding the taxable year in which the business operation was displaced.

The term "average annual net earnings" means one-half of any net earnings of the business before Federal, State and local income taxes, during the two taxable years immediately preceding the taxable year in which the business relocated.

If the two taxable years immediately preceding displacement are not representative, we may use a two year period that would be more equitable.

"Average annual net earnings" include any compensation paid by the business to the owner(s), the owner's spouse, or the owner's dependents during the two year period.

If the business was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate.

For averaging purposes, zero will be used when one or both of the years has a negative income.

7.14E9 Documentation from Claimant

The displaced person shall furnish us with proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which we determine is satisfactory. The Relocation Agent assigned to the case should obtain copies of the U.S. Income Tax Return from displacee's tax preparer for the appropriate years. The tax preparer should furnish the following certification:

"I hereby certify that the attached copies of U.S. Income Tax Returns are from copies of those documents on file in our office. I further certify that these returns were prepared by this office and that the originals were given to _____ for signing, dating and mailing to the Internal Revenue Service."

If the displacee prepares their own tax returns, obtain copies of the U.S. Income Tax Return directly from them. They should provide the following certification:

"I hereby certify that the attached copies of U.S. Income Tax Returns are from copies of those documents that I maintain in my file. I further certify that these returns were prepared by me and the originals were mailed to the Internal Revenue Service."

Where the average annual net earnings of a business operation is known or is estimated to be $1,000 or less, it will not be necessary to obtain copies of income tax returns. The claimants may submit their own statement to that fact.

7.14E10 Payment Procedure and Processing Requests

Where there is personal property to be removed from the acquired premises, removal shall be completed before the payment is made.

Payments based on average annual net earnings are in lieu of all other types of moving expenses. If such payment is to be made, no payment for actual moving costs, search costs, direct loss of tangible personal property, or reestablishment costs may be made.

7.14F FARM MOVING EXPENSES

The owner of a displaced farm operation is entitled to receive payments for either:

7.14F1 Moving and related expenses, as described under Business Moving Expenses, which include:

7.14F1a Actual Reasonable Moving Expenses,

7.14F1b Actual Direct Losses of Tangible Personal Property,

7.14F1c Actual Reasonable Expenses in Searching for a Replacement Farm.

7.14F1d Reasonable and Necessary Reestablishment Expenses.

The principles which govern moving expense payments to businesses also govern those made to farms except for the specific differences listed below in qualifying for an in lieu payment.

OR

7.14F2 In lieu of the above payments the farm operator may choose a payment equal to the average annual net earnings of the farm operation except that such payments shall not be less than $1,000 nor more than $53,200.

In the case of a partial taking, the farm operation will be considered to be displaced if:

7.14F2a The taking caused the operator to be displaced from the farm operation on the remaining land; or

7.14F2b The taking caused a substantial change in the principal operation or the nature of the existing farm operation.

7.14G NONPROFIT ORGANIZATION MOVING EXPENSES

A displaced nonprofit organization is entitled to receive payments for either:

7.14G1 Moving and related expenses, as described under Business Moving Expenses, which include:

7.14G1a Actual Reasonable Moving Expenses,

7.14G1b Actual Direct Losses of Tangible Personal Property,

7.14G1c Actual Reasonable Expenses in Searching for a Replacement Site.

7.14G1d Reasonable and Necessary Reestablishment Expenses.

The principles which govern moving payments to businesses also govern those made to nonprofit organizations. Details may be found in the section, Business Moving Expenses.

OR

7.14G2 In lieu of the above moving payments a nonprofit organization may choose a payment of $1,000 to $53,200 if we determine that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless we demonstrate otherwise.

Any payment in excess of $1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other forms of fund collection that enables the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising and other like items as well as fund raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

7.14H ADVERTISING SIGNS

A displaced advertising sign will be appraised by NDOT to determine fair market value and purchased by NDOT.

7.14I RELATED NONRESIDENTIAL ELIGIBLE EXPENSES

The expenses described in this section do not relate specifically to a move of personal property, but are essential costs required to successfully relocate a business. Generally, professional services performed prior to the purchase or lease of a replacement site, to determine its suitability for the displaced person's business operation, would be eligible for reimbursement; provided we determine that they are actual, reasonable and necessary.

For example, attorney fees for representation before zoning authorities, or the cost of obtaining a soil analysis necessary in the preparation of a replacement site are directly related to relocation, and may be considered eligible expenses. By contrast, if these services are provided by regular employees of the displaced business, (such as staff engineers) or professional contractors ordinarily used by the business.

The following expenses, in addition to those provided in 7.14A11 and 7.14C shall be provided if we determine:

7.14I1 Connection to available nearby utilities from the right of way to improvements at the replacement site.

7.14I2 Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).

Consideration should be given to establishing a preapproved hourly rate for these fees. If questions arise, a comparison should be made of other similar professional providers in the area of the displacement.

7.14I3 Impact fees or one-time assessments for anticipated heavy utility usage, as determined by us.

7.14J PERSONAL PROPERTY ONLY

Eligible expenses for a person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home) business, farm or nonprofit organization include those expenses described in 7.14A9-14 and 7.14C6b.

7.14J1 Examples of personal property only moves might be:

7.14J1a Personal property that is located on a portion of property that is being acquired, but the business or residence will not be taken and can still operate after the acquisition.

7.14J1b Personal property located in a mini storage facility that will be acquired or be relocated.

7.14J1c Personal property that is stored on vacant land that is to be acquired.

7.14J2 Types of Payments

7.14J2a *Commercial Move Option* – the personal property may be moved by a commercial mover.

7.14J2b *Self-Move Option* – this option is based on either bids by qualified movers or an estimate prepared by the assigned Relocation Agent.

7.14J2c *Personal Property Schedule* – this option is for personal property located in a unit of a storage facility or vehicles, trucks, recreational vehicles, boats, other miscellaneous trailers whether operational or not and appliances that are located on property that will be acquired. This schedule can be viewed at: https://dot.nebraska.gov/media/30qbqfeg/personal-property-only.pdf

7.15 REPLACEMENT HOUSING

7.15A GENERAL

7.15A1 General Provisions

7.15A1a Individuals and families displaced from dwellings, including condominiums, cooperative apartments and mobile homes acquired for highway purposes are eligible for Replacement Housing Payments, as outlined in this section.

7.154A1b Displaced individuals or families are not required to relocate to the same occupancy status (owner or tenant), but have other options depending on their tenancy status and occupancy duration.

7.15A1c Only one replacement housing or rental payment shall be made for each dwelling unit except in the case of a multi-family occupancy of one dwelling unit as specified in 7.15A12, and in the case of subsequent occupants.

7.15A2 Occupancy Provisions

7.15A2a In addition to other requirements the displacee is eligible for the appropriate payments when they relocate to a decent, safe and sanitary dwelling within a one-year period beginning on the latter of the following dates:

- For a tenant, the date they move from the displacement dwelling; or
- For an owner occupant, the later of:
  - The date they receive final payment for the displacement dwelling or in the case of condemnation the date the required amount is deposited with the court; or
  - The date our obligation under 7.15A22 is met.

  The Department may extend this period of time for good cause.

7.15A2b A displacee may have either entered into a contract for the construction or rehabilitation of a replacement dwelling or entered into a legally binding contract for purchase of a replacement dwelling, and for reasons beyond their reasonable control, (such as acute or life threatening illness, bad weather preventing the completion of construction, or physical modifications required for reasonable accommodation of a replacement dwelling, or other like circumstances) cannot secure title and/or occupy the dwelling within the required period. In these situations, it shall be considered that the displacee purchased and occupied the dwelling as of the contract date to purchase the replacement property. However, they must have entered into the contract before the normal one-year replacement period expired.

A statement signed by the displaced person summarizing the "reasons beyond their reasonable control" shall be secured and retained in the case file.

The Replacement Housing Payment under the above situations shall be deferred until the person has actually occupied the replacement dwelling.

Replacement Housing Payments may only be made in a lump sum upon the completion of the construction or rehabilitation contract when it can be determined that the dwelling satisfies DSS standards. No "progress payments" may be made during the construction or rehabilitation period either from escrow or by direct payment.

7.15A3 Hardship Provisions

If the displacee needs a warrant for a relocation assistance payment immediately after meeting all the requirements to receive the payments, the following procedures will be implemented:

7.15A3a The displacee will notify the agent of the particular hardship.

7.15A3b The agent transmits the necessary documentation and forms for approval.

- Transmittal memo, stating facts of hardship.
- Complete and correct claim.

- Accepted purchase contract or lease.
- Decent, safe and sanitary inspection report.

7.15A4 Decent, Safe and Sanitary Inspection by the Department

The claimant should be instructed as to the importance of requesting a Decent, Safe and Sanitary Inspection prior to the time of committing either to purchase or rent a replacement dwelling. To permit an unwitting claimant to purchase a nonqualifying replacement dwelling may result in their loss of replacement housing benefits.

Before any Replacement Housing Payments can be made it must be determined that the replacement dwelling meets the standards for decent, safe and sanitary housing. (See Section 7.03 and Attachment 706.) The Department may utilize the services of any public Department ordinarily engaged in housing inspection to make the inspection.

If it is not possible under the circumstances for the Department to make the necessary inspection or to secure the needed inspection through a competent third party, a certification from the displacee that they have occupied decent, safe, and sanitary housing will be sufficient to establish the displacee's eligibility for payment.

The displaced person should understand that the determination that a dwelling meets these standards is made **solely** for the purpose of determining eligibility for payments under the relocation program and is not intended for any other purpose.

7.15A5 Statement of Eligibility to Lending Agency – Assignment

7.15A5a General

Where a displacee otherwise qualifies for the Replacement Housing Payments except that he/she has not yet purchased or occupied a suitable replacement dwelling, the Department after inspecting the proposed dwelling and finding that it meets the standards set forth for decent, safe and sanitary dwellings, shall upon the purchaser's request, state to any interested party, financial institution or lending agency, that the displacee will be eligible for the payment of the specific sum provided they purchase and occupy the inspected dwelling within the time limits specified. (Attachment 719)

7.15A5b Procedures

The following procedures will be used when the displacee elects to assign relocation assistance payments:

- The displacee must request the use of the assignment.
- The assignment will be completed when:

- The decent, safe, and sanitary inspection on the replacement property has been completed.
- The displacee has an accepted purchase agreement or lease.
- The displacee has claimed the relocation payment.

- The agent will have the assignment forms signed and dated by the displacee.
- The assignment package will be routed for approval and payment and will contain:
  - Completed assignment.
  - Complete and correct claim.
  - Decent, safe and sanitary inspection report.
  - Accepted purchase contract or lease.

7.15A6 Application for Replacement Housing Payments

Application for Replacement Housing Payments shall be made in writing on a form provided by the Department. (Attachment 705) All claims for a relocation payment shall be filed with the Department within 18 months after:

7.15A6a For tenants, the date of displacement.

7.15A6b For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Department for good cause.

The payments may be made directly to the relocated individual or family, or upon written instruction from the relocated individual or family, directly to the lessor for rent or the seller for use towards the purchase of a DSS dwelling. (Attachment 719) In cases where an applicant otherwise qualifies for Replacement Housing Payments, and upon specific request in the application, the Department may make such payments into escrow prior to the displacee's.

7.15A7 Advance Replacement Housing Payments in Condemnation Cases

No property owner should be deprived of the earliest possible payment of the replacement housing amounts to which they are rightfully due. An Advance Replacement Housing Payment can be computed and paid to a property owner if the determination of the Department's acquisition price will be delayed pending the outcome of condemnation proceedings. Since the amount of the Replacement Housing Payment cannot be determined due to the pending condemnation proceedings, a provisional Replacement Housing Payment may be calculated by deeming the Department's maximum offer for the property as the acquisition price. Under these circumstances, advance

payments may be made under the following conditions if the Nebraska Attorney General's office is in agreement:

7.15A7a The owner occupant shall sign an agreement which shall accompany the claim for payment, that states:

- The advanced payment being claimed is not necessarily the same as what they may be entitled to when the acquisition price of the dwelling is determined; and that
- The displacee will make restitution to the Department all or any part of such payment which is greater than the amount that would otherwise be paid after the acquisition price of the dwelling unit has finally been determined.

7.15A7b Pending final determination of the acquisition price of the owner's dwelling unit, the amount of the advance payment shall be determined as follows:

- For a Replacement Housing Payment, as described under Purchase Differential Payment 7.15B, except that the Department's maximum offer for purchase of the property shall be substituted for the amount which the Department acquired the dwelling.
- For an interest differential payment, as described in Section 7.17.
- For an incidental expense payment, as described in Section 7.16.

7.15A7c Restitution may be paid to the Department in cash or may be credited against the acquisition price in a negotiated settlement or may be credited by stipulation in payment of a judgment in condemnation.

7.15A7d In no event shall the eligible owner occupant be required to refund more than the amount of the replacement housing supplement advanced.

7.15A7e If the displaced owner occupant does not agree to make restitution as required above, the Replacement Housing Payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

7.15A7f In the event the Replacement Housing Payment finally determined is larger than the amount advanced under the provisions of this subsection, the Department shall pay the difference between such amount and the amount paid in advance.

7.15A8 Ownership of Replacement Dwelling or Land Prior to Displacement

Any person who has obtained legal ownership of a replacement dwelling, or land upon which replacement housing is constructed, either before or after displacement, and occupies the replacement dwelling after being displaced, but within the required one-year time limit, is eligible for Replacement Housing Payment, if the replacement dwelling meets the requirements of

DSS housing. The current fair market value of the land or dwelling, not the historical cost, will be used for the purposes of determining the cost of the replacement property. The Appraisal Section's minimal valuation method will be used to arrive at the fair market value.

7.15A9 Partial Taking

7.15A9a If the acquired dwelling is located on a tract typical in size for residential use in the area, the Maximum Replacement Housing Payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for the area less the acquisition price of the acquired dwelling on the tract on which it is located.

7.15A9b If the acquired dwelling is located on a tract larger in size than typical for residential use in the area, the Maximum Replacement Housing Payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the area.

7.15A9c If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, we may offer to purchase the entire property. If the owner refuses to sell the remainder to us, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the Replacement Housing Payment.

7.15A10 Dwelling on Land with Higher and Better Use

Where the acquired dwelling is located on a tract where the fair market value is established on a higher and better use than residential, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the area.

7.15A11 Joint Residential and Business Use

When displaced individuals or families occupy living quarters on the same premises as a displaced business, farm or nonprofit organization, such individuals or families are separate displaced persons for the purposes of determining entitlement to Replacement Housing Payments.

The value of the owner's unit is to be used as the base for the Replacement Housing Payment determination, not the entire fair market value of the subject property. The Replacement Housing Payment determination is that difference, if any, between the value of the owner's living unit and the value of the living unit on the most comparable available property. If the comparable is a triplex, the Replacement Housing Payment is based on the value of only

one of the three units; if a duplex, the payment is based on the one of the two units; if a single family dwelling, the payment is based on the entire value of the dwelling. The other living units of a multi-family dwelling cannot be included in the value of a comparable because these are considered as income producing and not part of the owner's personal living area.

7.15A12 Multiple Occupancy of Same Dwelling Unit

7.15A12a Families

If two or more eligible families occupy the same dwelling unit, and a comparable replacement is available, the occupants are entitled to only one replacement housing or rent supplement payment. If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family will be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants. The acquisition price to be used as the basis for Replacement Housing Payment computations is that amount each owner received from the total payment for the property to be acquired.

7.15A12b Individuals

If two or more eligible individuals occupy the same dwelling unit, they are to be considered as one "family" for Replacement Housing Payment or rent supplement purposes. When all individuals do not relocate to decent, safe and sanitary housing, the Department shall determine which individuals have relocated to decent, safe and sanitary housing and pay them a pro rata share of the appropriate payment that they would have received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations. Note: The Replacement Housing Payment to two or more eligible individuals with no identifiable head of the household MUST all be initially computed and paid upon the type of payment they would receive if they had relocated to the same occupancy.

7.15A13 Owner Retained Dwellings

The owner occupant of a dwelling may wish to retain the building and relocate it on to the remainder or elsewhere. The proper method for calculating the amount of the purchase differential for owner-retained dwellings is described later in 7.15B6e of this section.

7.15A14 Property – Ownership or Tenant

Ownership is the title. Eligibility requiring ownership may also be extended to cases of constructive ownership such as where the practical incidences of ownership are in the claimant, but legal title is in another. An example is the case of purchase contracts, where title is held for security by the seller until paid for under the terms and conditions of the purchase contract, at which such time, the seller transfers ownership by deed.

Another example is where a displaced elderly person retains all the incidence of ownership, but conveys title to a child to avoid probate.

Another example would be if names other than the displacee will appear on the replacement housing deed. This is sometimes necessary so that the displaced person can secure financing.

A tenant's property is described in the lease in which the owner has given up the right of possession to the tenant for a specified term and a specified consideration. Again, as in ownership, names other than the displacee can appear on the lease.

In either case, ownership or tenant, the fact that there are additional names on the deed or lease will not cause a reduction in the amount of the purchase differential, down payment or rent supplement.

7.15A15 Occupancy

To qualify for replacement housing benefits, the acquired dwelling must be the primary residence. A displaced tenant or owner "occupies" a replacement dwelling within the means of this section only if the dwelling is their permanent place of residence, and they have satisfied the eligibility requirements set forth in Section 7.15B, Section 7.15C, and Section 7.15D. Occupancy of the secondary residence, such as a vacation home, does not establish such eligibilities, except for actual moving expenses.

Constructive Occupancy – If the cause of the claimant's absences is temporary and beyond their control they shall be considered in occupancy. For example, where the dwelling is maintained as the principal residence and the occupant is (1) temporarily employed in another location; or (2) is in the hospital; or (3) on vacation; or (4) on temporary military duty; away from the property because of a disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Department; the claimant can be considered to be in constructive occupancy. All determinations of constructive occupancy should be referred to the Relocation Supervisor for decision.

7.15A16 Transients, Students and Vacation Homes

Relocation assistance housing payments may be paid only to those who are displaced from their permanent places of residence. Occupancies of a temporary or transient nature, such as a short term guest in motels, hotels

and transient-trailer parks will not qualify for any Replacement Housing Payment even though they may have been on the acquired premises at the date of the written offer. However, it is not intended to deny appropriate payments to bonafide, permanent residents in such establishments, especially those who cater to permanent guests.

Where students are displaced, relocation assistance payments will be paid the same as for any other displaced person.

Owners of vacation homes may be paid their actual reasonable moving expenses or the amount based on the residential schedule.

7.15A17 Prorated Payments for Divorced or Separated Occupants

The following considerations apply to eligible families at the time of the first written offer that subsequently separate or divorce and intend to establish separate eligibility. Whether the separation is a voluntary informal act, the result of litigation or the result of Dissolution of Marriage is not important. Separation is the only fact to be considered.

To calculate their respective relocation benefits, it is first necessary to view the occupancy status of the family as of the initiation of negotiations, not at the time of displacement or after relocation.

If the divorce or separation took place prior to the first written offer and one of the spouses vacated the property at that time, the vacating spouse would not be an eligible displaced person and all relocation benefits would accrue to the remaining spouse in occupancy.

If both husband and wife are in possession at the time of the first written offer and satisfy prior occupancy requirements, they qualify together as a displaced family. Their maximum entitlement is the amount the family would have received had the man and wife relocated together.

The family's entitlement may be divided between husband and wife in any proportion they agree upon. Each may claim payment, as a sole claimant, for his or her share of the family's entitlement. This procedure requires an agreement signed by both parties, which establishes the method of division and the agreed percentage which each party claims. The agreed upon division may not thereafter be changed without the written consent of both parties.

Example:

A long term owner (90 days or more) occupant family agrees to a proportion of sixty percent to the wife and forty percent to the husband. If the wife rents and occupies a decent, safe and sanitary replacement dwelling she may receive:

- -Sixty percent of the moving costs; and

- -Sixty percent of the rental differential payment the family would have received if they had relocated together as tenants.

If the husband purchases and occupies a decent, safe and sanitary replacement dwelling he may receive:

- -Forty percent of the moving costs; and
- -Forty percent of the purchase differential, interest differential and incidental costs the family would have received had they relocated together as owners.

Claimants may agree upon a division of the moving cost payment which differs from the other replacement housing benefit. For instance, the wife can receive ninety percent of the moving expenses and sixty percent of the Replacement Housing Payments.

All of the Replacement Housing Payments must be based on the **same** percentage division. In other words, the claimants cannot agree that one party is to receive ten percent of the incidental cost and seventy percent of the interest differential payment.

Payments of moving expenses can be based on actual costs or a scheduled room-count method. The two methods may be mixed.

The parties may move at different times. Each party is entitled to the current replacement amount for the point in time in which each specific relocation takes place.

If the parties cannot reach an agreement, their entitlement will be viewed as if the family had relocated together. Payment will be based on the relocation criteria of the first party to relocate, establish eligibility, and file claim for payment. (Attachment 705) The claim forms shall be signed by both parties. However, the checks will be made payable to both individuals.

Example:

A long term owner occupant family is eligible for moving expenses and may be eligible for either a Replacement Rental Payment or a Replacement Housing Payment. If the first party to relocate moves to a rental replacement property, and files a claim for payment, the family's maximum entitlement will be based on this specific move. No other claim will be honored by the Department except where the initial claim was less than the maximum entitlement and the parties thereafter reach agreement and file amended claims within the normal filing period.

The following demonstrates the method of proration for each of the three basic relocation possibilities of divorced or separated couples: (1) both rent, (2) both buy, or (3) one rents and the other buys.

7.15A17a Ninety-Day Tenants and Owners

- Moving Expenses – Determine that amount the "family" would have received if they had relocated together (actual cost or scheduled method); prorate to each party by applying the agreed percentage division.
- If Both Rent – Determine the amount the "family" would have received as a rental replacement housing entitlement if they had relocated together (not to exceed $9,570); prorate the amount to each party by applying the agreed percentage division payment to each. The aggregate rent paid by the parties is the amount of the replacement rent used to calculate the rental differential.
- If Both Purchase:
  - Determine the total amount they would have received (exclusive of incidental costs) if they had relocated as a "family".
  - Prorate the amount for each party, applying the agreed percentage division to the eligible amount.
  - Add the prorate share of the eligible incidental cost for each replacement property.
  - Total payment to each party cannot exceed the lesser of (a) the prorate share of the family maximum entitlement, or (b) the prorate share of the maximum $9,570 payment.
- *If One Rents and the Other Purchases* – each may be paid the prorated share of the total amount that would have been paid if they had relocated together in the same tenancy status, i.e. rental criteria is applicable in determining the replacement housing amount. The one who purchases may receive his/her prorated share of the rental amount if it is all applied to the down payment in purchasing.

7.15A17b Owners (90 days or more)

- *Moving Expenses* – determine the amount the "family" would have received if they had relocated together (actual cost or scheduled method); prorate the amount to each party by applying the agreed percentage division.
- If Both Rent – See procedure under 7.15A17a(2) of this Section.
- If Both Purchase – Each party would be entitled to the following:
  - *Purchase Differential Payment* – computation is based on the difference between the prorata share of the amount paid for the Department-acquired property (fair market value) and the prorata share of the Department's calculated replacement cost. Actual payment is based on the amount spent in excess of the prorata share of the Fair Market Value payment.

- *Incidental Cost Payment* – determine the eligible incidental costs applicable to each replacement property in the applied percentage division.
- *Interest Differential Payment* – Normal calculations based on a comparison of old loan data and each replacement loan. Apply the percentage division.
- *If One Rents and the Other Purchases* – apply the rental criteria to the one that rents and purchase criteria to the one that purchases, same as above.

7.15A18 Payments to Estates

A replacement housing payment is personal to the displaced person and upon their death the undisbursed portion of any such payment shall not be paid to the heirs or assigns. An estate as such, is not a displaced person and hence cannot be paid any replacement housing or rental housing payments.

Relocation Assistance payments may be made to the estate of an eligible displaced person under the following circumstances:

7.15A18a The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

7.15A18b Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of the displaced family dies.

7.15A18c Any portion of a Replacement Housing Payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

7.15A18d The actual cost of removing personal property may be made to an estate if the decedent was in occupancy or the estate had control of the acquired property at the date of the first written offer and the personal property was removed from the premises thereafter.

7.15A19 Replacement Housing Payments – Long-Term Owners (90 days or more)

The Replacement Housing Purchase Option is a system of payments to help displaced long term owners purchase and relocate to decent, safe and sanitary housing which is comparable to or better than the dwelling acquired for public use.

Under the Replacement Housing Purchase Option, eligible claimants may be entitled to receive payments for any or all of the following:

7.15A19a *A Purchase Differential* – a payment which is the difference in the purchase price between the Department-acquired dwelling and the most

probable selling price of the most comparable replacement dwelling, or the cost of the replacement dwelling actually purchased, whichever is less.

7.15A19b *An Interest Differential* – a payment which compensates for increased interest and other financing costs.

7.15A19c *Incidental Costs* – a payment to reimburse the owner for incidental expenses incident to the purchase of replacement housing.

7.15A19d *A Tax Differential* – a payment to compensate for the increase in property taxes resulting from the relocation for a three year period.

The aggregate of payments a. b. and c. above may not exceed $41,200, nor may any one of the three parts exceed that amount without utilizing the procedures contained in Section 7.20.

A thorough understanding of these benefits is required. (See Section 7.15B on Purchase Differential Payments, Section 7.16 on Incidental Costs; Section 7.17 on Interest Differentials and Section 7.19 on Tax Differentials).

Rental Differential – a long term owner may elect to receive a rental differential instead of the Replacement Housing Purchase Plan (See Section 7.15C).

7.15A20 *Replacement Housing Payments* – Short-Term Owners (90 days) and Tenants

Replacement Housing Down Payment Option is a system of payments to help short term owners and tenants purchase and relocate to decent, safe and sanitary housing.

Under the Replacement Housing Down Payment Option, eligible claimants may be entitled to receive:

7.15A20a Down Payment (See Section 7.15D); and

7.15A20b Incidental Costs (See Section 7.16).

The Department's contribution under this Option cannot exceed $9,570.

Rental Differential – short term owners and tenants may elect to receive a rental differential instead of the Down Payment Option (See Sections 7.15C and 7.15D).

7.15A21 Changes in Replacement Housing Offers

The Department recognizes its obligation to provide a total payment to the displaced person which will be sufficient to allow the purchase of a decent, safe and sanitary comparable dwelling. Recognizing this responsibility, the

total consideration, consisting of (1) the original fair market value and (2) the original replacement housing differential may not be decreased. The only allowable decrease is because of an error.

If the displacee requests assistance in finding replacement housing, we must offer housing which is comparable, open, and available for purchase within the offered amount. When such housing is no longer available, the Department will determine a new Replacement Housing Payment, based on available housing which is equal to or better than the dwelling acquired and meets the other comparability criteria. However, in no event will the new Replacement Housing Payment be less than the original computed amount.

7.15A21a *Erroneous Offers* – an error may result in an erroneous relocation assistance offer being made. All of these situations require some corrective action. The following rules will apply. Where the amount of the relocation assistance payment is erroneously represented to a displaced person, the following procedure should be adopted:

- The error should immediately be made known to the displaced person.
- The displaced person should be informed of the corrected relocation assistance payment and appeal rights should be reexplained.
- If it is determined that the displacee has reasonably relied on representations made by the Department, then we will recommend that the claim be paid upon the basis of contractual estoppel. The Legal Division shall be consulted for guidance.

7.15A21b *Report Revisions* – replacement housing amounts must be recalculated when a review indicates that they no longer reflect the market for, or availability of, replacement housing. If a report is found to be current, the files must be documented with the basis for such a conclusion. Documentation should consist of a recapitulation of the research involved.

Replacement Housing amounts shall be reviewed and may be increased or decreased (subject to the conditions in 7.15A21c, following this paragraph) when any of the following occur:

- Where there is a revised Fair Market Value appraisal; whether staff or independent.
- Where there is a settlement in excess of the Fair Market Value Appraisal; whether administrative, by condemnation award or stipulated judgment.
- Where information indicates the occupancy status changed prior to the first written offer or is different from that upon which the report was based.
- Where the comparable replacement housing market changes.

- Where an appeal is made to the Department for the amount of the replacement valuation.

7.15A21c *Reductions* – a displaced person, once being informed of the cost of purchasing a comparable replacement dwelling, is entitled to rely on that figure when selecting a replacement dwelling. If comparable replacements subsequently become available in the market for lower prices, the prices may not be substituted for those of the original comparables when computing the amount of the housing differential. Stated another way, the amount of the housing differential may not be reduced because of a change in the replacement market. It may be increased, however, by an increase in the cost of comparable replacements.

The amount of the purchase differential a displacee will actually receive may be decreased from the originally calculated payment because of an increase in the price paid (or offered) for the acquired premises or because the displaced person purchased a replacement for less than the originally calculated amount. This concept also applies in the same manner to rental differentials.

A down payment determination may not be reduced due to changes in the replacement housing market.

7.15A22 Availability of Comparable Prior to Displacement

7.15A22a General Requirements

No person to be displaced shall be required to move from their dwelling unless at least one comparable replacement dwelling has been made available to the person.

The Department will provide that each displaced person has sufficient time to negotiate and enter into a purchase or rental agreement for a comparable replacement dwelling and assure that each displacee will receive their acquisition and relocation payments in sufficient time to complete the purchase or rental of replacement property.

The Notice of Relocation Payments, as appropriate, (offer letter) (Attachment 713.1, Attachment 713.2, Attachment 713.3, Attachment 713.4, Attachment 713.5, and Attachment 713.6) issued to each displacee will contain the address of the comparable replacement dwelling and the date upon which it was available. The Relocation Agent will verbally inform the displacee of all the comparables used in determination of the payment.

If the Department finds it necessary to take eviction action, its records will be documented to verify the fact that the comparable replacement dwelling or one equally comparable as to price as well as all other factors is available.

To assure that the acquisition and relocation payments are available to the displacee in time to complete the replacement housing transaction, the Department will process all claims for payment in a prompt manner.

7.15A22b Circumstances Permitting Waiver

The FHWA may grant a waiver of the above policy in any case where it is demonstrated that a person must move because of:

- A major disaster as defined in Section 102 of the Robert T. Stafford Disaster Relief and Emergency Act as amended (42 USC 5122).
- A presidentially declared national emergency; or
- Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

  Whenever a person is required to relocate for a temporary period because of an emergency as described above, the Department shall:

  - Take whatever steps are necessary to assure that the affected person is temporarily relocated to a decent, safe, and sanitary dwelling
  - Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in monthly housing costs incurred in connection with the temporary relocation; and
  - Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)

7.15A23 Comparable Selection Criteria

7.15A23a Comparables can be selected by any qualified employee of the Department except the appraiser or review appraiser who appraised or reviewed the appraisals of the acquired dwelling.

7.15A23b The exterior of potential replacement dwellings and the neighborhood in which they are located must always be inspected by the person responsible for selecting comparable replacement housing. An interior inspection is not required on the nondesignated comparables when reliable information is available regarding the interior. An interior inspection should be made, if possible, on the designated comparable.

Experience has proven that it is unreasonable to expect home owners and/or real estate agents to expend the time and effort necessary to open dwellings that are for sale for the sole purpose of enabling an acquiring Department to decide whether or not they can be approved for referral purposes. In nearly every instance enough information can be obtained

concerning the description and condition of the interior to enable the Department to determine whether or not the dwelling meets DS&S standards. In case of doubt and/or in marginal cases an interior inspection should be made, if possible.

7.15A23c A Replacement Housing Payment may be based on a comparable property that has minor DS&S deficiencies, provided the owner agrees to correct the deficiencies at no increased cost to the displacee. If the owner increases the price, the payment computation should then reflect the cost to correct the item. The details should be noted on Attachment 722.

7.15A23d The requirement that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room.

Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Another example is when a displaced person accepts an offer of government housing assistance and the applicable requirements of such housing assistance program require that the displaced person occupy a dwelling that has fewer rooms or less living space than the displaced dwelling.

7.15A23e To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

7.15A23f A comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this Manual prohibits the offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Department is obligated to inform the person of his or her options under this Manual. (If a person accepts assistance under a government housing program, the rental assistance payment under 7.15C. would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

7.15A24 Conversion of Payment

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under Section 7.15C is eligible to receive a payment under Sections 7.15B or 7.15D if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under Sections 7.15B or 7.15D.

7.15B PURCHASE DIFFERENTIAL PAYMENT

7.15B1 General

The total Replacement Housing Payment for an eligible 90-day homeowner occupant is an amount, not to exceed $41,200, which is the combined sum of:

7.15B1a The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with 7.15B3; and

7.15B1b The amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with 7.17; and

7.15B1c The amount of the reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined in accordance with 7.16.

7.15B2 Eligibility

A displaced person is eligible for the Replacement Housing Payment for a 90-day homeowner occupant if the person:

7.15B2a Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and

7.15B2b Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of:

- The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the estimate of just compensation is deposited in the county court; or
- The date our obligation under 7.15A22 is met.

The Department may extend this period of time for good cause.

7.15B3 Required Computations

Three distinct computations are involved in determining the purchase differential payment:

7.15B3a Calculation of the Selling Price of a Comparable Replacement Dwelling

The most probable selling price of the most comparable dwelling must be determined in accordance with instruction for determining replacement housing costs.

- The Department will determine the probable selling price of a comparable dwelling by selecting at least three comparable dwellings representative of the dwelling unit to be acquired which are available on the private market and meet the criteria of a DSS "comparable replacement dwelling". Less than three comparables may be used for this determination when additional comparable dwellings are not available and the Department documents the file to this effect. (Attachment 723, Attachment 724 and Attachment 725)
- If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g. the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the replacement property actually purchased lacks certain attributes found in both the displacement and comparable property, it would be permissible to add the actual cost of the major exterior attribute to the purchase price of the replacement property in order to establish the total cost of the replacement.
- If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is

a buildable residential lot, we may offer to purchase the entire property. If the owner refuses to sell the remainder, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the Replacement Housing Payment.

7.15B3b Calculation of Entitlement

The maximum amount of purchase differential is calculated by subtracting the actual price the Department pays the claimant for displacement dwelling from the selling price of a suitable replacement dwelling. (Attachment 724)

Example:

If the selling price of the most comparable replacement dwelling is determined by the "three comparable method" to be $85,000 and the Department pays the claimant $80,000 for displacement dwelling, the calculation of claimant's maximum purchase differential entitlement is as follows:

$85,000 selling price
- 80,000 paid claimant for displacement dwelling
$ 5,000 maximum purchase differential

In order to receive the full $5,000 entitlement, the claimant must purchase an adequate DSS replacement dwelling for $85,000 or more.

The information and computations for 7.15B3a and 7.15B3b above shall be a part of the individual purchase relocation study prepared by the relocation officer. All relocation studies used to determine purchase differential payments must be approved by the Relocation Assistance Supervisor. (Attachment 708)

7.15B3c Calculation of Payment

If the amount which the claimant pays for the replacement dwelling equals or exceeds the Department's estimate of selling price, the calculated payment will be the same as the Calculated Entitlement.

If the Claimant's actual cost of the replacement dwelling is less than the amount determined by the Department as necessary to purchase a comparable dwelling (used in Calculation of Payment), calculation of purchase differential payment is made by subtracting the price the Department pays the claimant for the acquired dwelling from the actual price paid by the claimant for the replacement dwelling.

Example:

Using the previous example, if the claimant purchases a replacement dwelling for $81,500, the calculated payment is $3,500.

$81,500 actual replacement cost
- 80,000 paid claimant for displacement dwelling
$ 3,500 purchase differential payment

7.15B4 Amount of Payment to Occupant with Partial Ownership

7.15B4a When a single family dwelling is owned by several persons, and occupied by only some of the owners, Replacement Housing Payment will be the lesser of:

- The difference between the owner occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or
- The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Department as necessary to purchase a comparable dwelling.

7.15B4b If the displaced owner occupants do not purchase and occupy a decent, safe and sanitary dwelling, they will be entitled to receive a rent supplement payment if they rent and occupy a decent, safe and sanitary dwelling in accordance with the provisions of Section 7.15C.

7.15B5 Insurance Proceeds

To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (e.g. fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.

7.15B6 Controls on Purchase Price Paid

The actual price paid for a replacement dwelling must be known to calculate the payment. The following guidelines will be used to determine the purchase price:

7.15B6a Purchase of replacement dwelling. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- Purchases a dwelling; or
- Purchases and rehabilitates a substandard dwelling; or
- Relocates a previously owned dwelling or relocates a dwelling just purchased; or

- Constructs a dwelling on a previously owned site or a site just purchased; or
- Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases. If the site was previously owned, a minimum valuation method will be used for determining the fair market value of the property. The method must be reasonable and supportable, because its determination could be appealed.
- Currently owns a previously purchased dwelling and site. A minimum valuation method will be used for determining the fair market value of the property. The method must be reasonable and supportable, because its determination could be appealed.

7.15B6b The purchase price paid will normally be the amount established in an escrow or written contract as the selling price.

The Department will not pay any claims for work to be completed on the replacement dwelling after the close of escrow, except as indicated below.

7.15B6c Rehabilitating Nondecent, Safe and Sanitary Dwelling

Where the claimant has purchased a nondecent, safe and sanitary dwelling he/she may, with prior Department approval, either self-rehabilitate or hire a contractor to rehabilitate or enlarge the dwelling to meet decent, safe and sanitary standards. The Department will include in computing the cost of the replacement dwelling, only that work necessary to meet decent, safe and sanitary standards. See Payment Procedure below, for method of arriving at costs of rehabilitation.

7.15B6d Construction of Replacement Dwelling

Where the claimant has purchased vacant land he/she may self-construct or hire a contractor to construct a replacement dwelling. See 7.15B6e for value of land.

7.15B6e Owner Retention of Displacement Dwelling

If the owner retains ownership of the displacement dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the sum of:

- The moving expenses and the cost of restoration to a condition comparable to that prior to the move, including the retention value of the retained dwelling; and
- The costs incurred to make the unit a decent, safe, and sanitary replacement dwelling; and

- The cost of the replacement site
  - The actual cost of a just purchased residential building lot.
  - The current fair market value for residential use of a replacement site purchased earlier, unless the displacee rented the displacement site and there is a reasonable opportunity for the displacee to rent a suitable replacement site.
  - If the displacee relocates the dwelling on the remainder of the displacement lot, the portion of the lot not included in a partial acquisition, the "after value" of the remainder as shown in the appraisal will be considered to be the cost of the replacement site.
  - If the displacee relocates the dwelling on a parcel of land larger in size than a typical residential lot, the instructions in 7.15A9b apply. In this case, only the prorated portion of the total purchase price chargeable to a typical residential lot will be allowed as the cost of the replacement site.
  - If the displacee relocates the dwelling to a typical residential lot that was previously owned for some time, the fair market value of that lot will be used as the cost of the replacement site.

7.15B7 Payment Procedure

7.15B7a Payment into Escrow:

Whenever a claimant requests payment into escrow for the purchase of a replacement property the following procedures will be followed:

- The proposed replacement property shall be inspected to assure that it meets decent, safe and sanitary requirements. (Attachment 706)
- Payments may only be deposited into escrow with a licensed escrow agent, bank, building and loan or savings and loan associations, trust companies, or title companies.
- Escrow instructions shall be adequate to assure compliance with our requirements relating to purchase and occupancy and to assure return of funds to the Department if the requirements are not met.
- Deposit must be to the account of the claimant.

  Any Relocation Assistance Payment may be placed in the replacement escrow for the account of the claimant. Deposit into escrow must be by valid assignment.

  Copies of the signed closing statement and the assignment shall be included with the claim form.

  When replacement housing is being constructed or rehabilitated by the claimant partial or progress payments may not be made from escrow funds. Escrow funds may be released in these cases only when the work is complete and the dwelling satisfies DSS standards.

7.15B7b *Payment Drawn Before Displacee Eligible* – when the displacee needs a Relocation Assistance Payment immediately after meeting all the requirements to receive the payment, the Relocation Agent will submit the payment package and include the following:

- A memo which explains the reason the displacee needs the money immediately after qualifying. This memo should also explain that the warrant for the Relocation Assistance Payment will not be released until the displacee is fully eligible for the payment.
- An accepted purchase contract, rent receipt or other documentation which supports the amount the displacee is paying for the replacement dwelling. This is not required for moving expense payments.
- A decent, safe and sanitary inspection report. This is not required for moving expense payments.

7.15B7c *Payment After Closing* – when the purchase differential is claimed after the closing on the replacement property, the displaced person shall furnish a copy of the signed closing statement.

Closing statements obtained for the purpose of documenting the actual cost of a replacement property may also be used to support payment of interest differential and incidental expense payments, and shall be retained in the case files.

7.15B7d *Payment for Rehabilitation of a Replacement Dwelling* – prior to commencing rehabilitation of a replacement dwelling, the claimant shall secure at least two firm bids or estimates from responsible contractors of residential improvements and submit them to the Department for approval; or the Department, at its discretion, may secure such bids or estimates. The Department will use the lowest responsible bid or estimate for computation of the replacement cost. A qualified building cost estimator employed by the Department may be used in place of the contractors.

Where the final bill exceeds the estimate, a written explanation shall be secured from the contractor when the claim is submitted. Reasons for the excess costs shall be fully documented. The Department should be satisfied that these expenses are warranted before the payment of any additional amount. No increase in cost shall be based upon time spent by the claimant in construction where the work is done.

7.15B8 Rental Assistance Payment for 90-day Homeowner

7.15B8a Eligibility

A 90-day homeowner occupant, who is eligible for a replacement housing payment under 7.15B2, but elects to rent a replacement dwelling, is eligible for a rental assistance payment.

7.15B8b Determination of Amount

The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with 7.15C3a and 7.15C3b, except that the limit of $9,570 does not apply, and disbursed in accordance with 7.15C3d. Under no circumstances would the rental assistance payment exceed the amount that could have been received under 7.15B had the 90-day homeowner elected to purchase and occupy a comparable dwelling.

7.15C RENTAL DIFFERENTIAL PAYMENT

7.15C1 General

The rent differential is a payment designed to help the displacee relocate into decent, safe and sanitary rental housing comparable or better than the displacement dwelling from which they were displaced.

7.15C2 Eligibility

A tenant or owner occupant displaced from a dwelling is entitled to a payment not to exceed $9,570 for rental assistance, if such displaced person:

7.15C2a Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

7.15C2b Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year after:

- In the case of a tenant, the date the displacee moves from the displacement dwelling; or
- In the case of an owner occupant, the later of:
  - The date the displacee receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of just compensation is deposited in the county court; or
  - The date the displacee moves from the displacement dwelling.
  - The Department may extend this period of time for good cause.

7.15C3 Computations Required

7.15C3a Calculation of the Most Probable Rental Price of a Comparable Replacement Dwelling.

The most probable rental price of the most comparable dwelling must be determined in accordance with instruction for determining replacement housing costs.

The Department shall use the "three comparable method". (See 7.15B3a) The asking (or list) rental price of the selected unit is determined to be the most probable rental price of the most comparable available rental unit because rental rates are usually not subject to negotiations in this State. (Attachment 707 and Attachment 722)

7.15C3b Calculation of Entitlement

The payment shall be 42 times the amount obtained by subtracting the base monthly cost for rent of the displacement dwelling from the monthly rent and estimated utilities for a comparable replacement dwelling. (Attachment 725)

The base monthly rental for the displacement dwelling is the lesser of:

- The average monthly cost for rent and estimated utilities at the displacement dwelling.
  - Average monthly rent means the average of the actual rent paid by a displaced person during the last three months prior to the date of initiation of negotiations.
  - Estimated utility cost will be by use of the Utility Allowance established by the local housing authority. If the community doesn't have a local housing authority, the Relocation Agent will contact the utility companies to establish the estimated utility cost.
  - For an owner occupant or a tenant who pays little or no rent, the average cost for rent shall be the fair market rent. The use of market rent is to avoid providing a windfall payment to a displacee.

    The fair market rent will not be used in those situations where the displacee would be put in a hardship position. A hardship would be any condition of severe poverty. In order for the hardship to be considered, poverty conditions must be fully supported and documented.

    Poverty hardships will be when the displacee meets the low income rule noted in 7.15C3b. In those instances, economic rent will not be used. Instead, the actual amount paid by the displacee for housing expenses will be used.

    - For owners – the amount will be the expenses paid for utilities, real estate taxes, and mortgage payment (if any).
    - For tenants – the amount will be the expenses paid for utilities, plus the amount actually paid for rent, if any.

- Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual survey of Income Limits for the Public Housing and Section 8 Programs *(see note)*. The base monthly rental shall be established solely on the criteria in 7.15C3b for persons with income exceeding the survey's "low income" limits and for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

  Note: The Section 8 Program Income Limits are updated annually and are available on FHWA's website at:

  www.huduser.gov/portal/datasets/il.html#2023_query

  One factor in this calculation is to determine if a displaced person is "low income." To make such a determination we must:

  Determine the total number of members in the household (including all adults and children.)

  - Locate the appropriate table for income limits applicable to the Uniform Act for Nebraska.
  - From the list of local jurisdictions shown, identify the appropriate county, Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) in which the displacement property is located
  - Locate the appropriate income limit in that jurisdiction for the size of this displaced person/family. The income limit must then be compared to the household income which is the gross annual income received by the displaced family, excluding income from any dependent children and full-time students under the age of 18. If the household income for the eligible displaced person/family is less than or equal to the income limit, the family is considered "low income."

- The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

7.15C3c Calculation of Payment

If the rent and estimated utilities which the tenant actually pays for a replacement dwelling is equal to or greater than the amount determined by the Department as necessary for rent and utilities at the comparable dwelling, the payment calculation is the same as used for Calculation of Entitlement.

If the amount which the tenant actually pays for rent and estimated utilities at the replacement dwelling is less than the amount determined by the Department as necessary for rent and utilities for the comparable

dwelling (used in Calculation of Entitlement), calculation of payment will be made by using the lesser rent and utilities.

7.15C3d Manner of Disbursement

The payment under this section shall be disbursed in a lump sum amount, unless we determine on a case-by-case basis, for good cause, that the payment should be made in installments. The file will be documented as to the reasons for the decision. However, except as limited by 7.15A18, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or the condition or location of the person's housing.

7.15D DOWN PAYMENTS

7.15D1 General

An eligible displaced person who purchases a replacement dwelling is entitled to a payment for down payment assistance. A displaced person eligible to receive a Replacement Housing Payment for a 90-day homeowner occupant under 7.15B is not eligible for this payment.

7.15D2 Eligibility

A tenant or owner occupant displaced from a dwelling is entitled to this payment, if such displaced person:

7.15D2a Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

7.15D2b Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year after:

- In the case of a tenant, the date he or she moves from the displacement dwelling; or
- In the case of an owner occupant, the later of:
  - The date the displacee receives final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of just compensation is deposited in the county court; or
  - The date the displacee moves from the displacement dwelling.

  The Department may extend this period of time for good cause.

7.15D3 Amount of Payment

The amount of the down payment assistance payment is the same amount as the person would receive as a rent differential payment described in 7.15C. If the amount placed down or applied to eligible incidental costs on the replacement being purchased is greater than the computed rent differential payment, that amount will be paid, not to exceed $9,570. (Attachment 723)

Should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling, the payment would be limited to the cost of the dwelling being purchased.

However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under Section 7.15B if he or she met the 90-day occupancy requirement.

7.15D4 Owner Retention of Dwelling

The owner may retain the displacement dwelling, and a Replacement Housing Payment, if any, will be determined in accordance with the provisions of Section 7.15B6e and this section.

7.15D5 Application of Payment

The full amount of the Replacement Housing Payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

7.15D6 Conversion of Payments

If an owner occupant is otherwise qualified under this paragraph but has previously received a payment under Section 7.15C, the amount of such payment made under Section 7.15C shall be deducted from the amount to which the displacee is entitled under this paragraph.

7.15D7 Payment Procedures

The down payment/incidental costs benefit may be:

7.15D7a Placed in an escrow for the account of the displaced person who is in the process of purchasing a replacement dwelling (see 7.15B7a); or

7.15D7b Paid either to the displacee directly or to the displacee's mortgage lender for reduction of the loan balance where the replacement property has already been purchased.

- Determine the amount of the down payment, and include all eligible incidental expenses as shown by the closing statement.

- If the actual down payment on the replacement property is less than the calculated entitlement, the claimant's reimbursement will be limited to the actual down payment.
- The claimant should be informed of additional amounts to which he/she may be entitled. Such payment should be made directly to the mortgage lender using an assignment from the displaced person.

7.16 INCIDENTAL OR CLOSING EXPENSES

7.16A GENERAL

The incidental expense payment is the amount necessary to reimburse a displaced person for the actual costs incurred incident to the purchase of a replacement dwelling.

Only those persons eligible to elect the replacement housing option or the down payment option are eligible for an incidental expense payment.

Short term owner occupants and tenants who purchase decent, safe and sanitary replacement housing are subject to the limitations governing down payments.

7.16B TYPES OF EXPENSES

Reimbursable incidental expenses shall be those costs necessary and reasonable which are actually incurred by the displaced person incident to the purchase of a replacement dwelling. They will include, but are not limited to the following, if normally paid by the buyer:

7.16B1 Legal, closing and related costs, including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings or plats, and charges paid incident to recordation.

7.16B2 Lender's, F.H.A. or V.A. appraisal fees (only if displacement property was encumbered with a mortgage).

7.16B3 Lenders, F.H.A. or V.A. application fee (only if displacement property was encumbered with a mortgage).

7.16B4 Professional home inspection, certification of structural soundness and termite inspection. These types of inspections include electrical systems, plumbing, and HVAC.

7.16B5 Credit Report (only if displacement property was encumbered with a mortgage).

7.16B6 Owner's title policy not to exceed the costs for a comparable dwelling or the cost of an attorney's opinion of marketable title when the seller furnishes the buyer with an updated abstract of title.

7.16B7 Escrow fees.

7.16B8 State Revenue stamps (not to exceed the cost for the comparable).

7.16B9 Sales Tax on Mobile Homes based on an amount not to exceed the comparable.

7.16B10 Loan origination fees or assumption fees actually paid by the displaced person, if any, in connection with the election of the down payment option by short term owners and tenants only, provided they do not represent pre-paid interest.

7.16B11 The single premium collected by the Department of Housing and Urban Development (HUD) for mortgage insurance. It should be based upon not only the calculated buy down mortgage amount of the new mortgage or the amount of the old mortgage whichever is lesser, but should also be based upon the actual term of the new mortgage or the remaining term of the mortgage on the acquired property, whichever is lesser.

In cases where there is no mortgage on the acquired property, any payment made for mortgage insurance would not be eligible for reimbursement. In addition, a displaced long term owner is not eligible to receive this payment if the equity from the acquired property and the amount of the computed purchase differential is adequate to obtain conventional loan financing.

Tenants are eligible to receive this reimbursement. A mortgage insurance premium that is required as an expense incidental to obtaining a mortgage is eligible for reimbursement within the limits of down payment assistance.

Similar types of mortgage guarantee insurance premiums would be eligible if required from a lender (e.g. MGIC) to insure against default on a conventional loan.

The Department will not obtain a refund from the property owner if the owner receives a refund of a portion of the insurance premium from HUD upon prepayment of the insured loan. We are of the opinion that the expenses and red tape involved in assuring that a credit to project funds is received at some uncertain future date would not be cost effective.

7.16B12 Any costs incurred in securing a larger mortgage on the replacement dwelling than existed on the acquired dwelling would not be considered necessary expenses and, therefore, would be ineligible for payment.

7.16B13 Such other cost as the Department determine to be incidental to the purchase.

7.16C LIMITATIONS

Items NOT considered as reimbursable incidental expenses.

7.16C1 Incidental expenses incurred by the Department's Grantor in the acquisition of his/her property.

7.16C2 For long term owner occupants, any fee, cost, charge or expense which is determined to be a part of the debt service, or finance charge under the "Truth in Lending Acts" (Points) in the purchase of replacement housing. These are added to the interest differential payment.

7.16C3 The incidental closing costs as referred to herein relate only to the displacee's purchase of replacement property and in no way include or involve any closing costs related to the attempted purchase of a replacement dwelling.

7.16C4 Any items paid in advance by the seller of the real property and prorated between the seller and the buyer at the close of escrow such as real property taxes, fire insurance, homeowners' association dues and assessment payments, etc.

7.16C5 Sales or use tax on mobile homes based on an amount in excess of the calculated replacement cost.

7.16D PROOF OF PAYMENT

Proof of payment of actual expenses incurred will be documented as follows:

7.16D1 Payments made through closing.

Proper items must be separately itemized in the closing statement.

7.16D2 Payments made outside of closing.

Paid, receipted statements, or statements and cancelled checks evidencing payment.

7.16E METHOD OF PAYMENT

Claims for payment of incidental expenses shall be accomplished by use of Attachment 705.

The form shall be accompanied by supporting documentation such as a copy of the closing statement, receipted bills, etc.

7.17 INTEREST DIFFERENTIAL PAYMENTS

7.17A GENERAL

The Department shall determine the factors to be used in computing the amount to be paid to a displaced person under this section. The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. This payment is commonly known as the “buy down”.

7.17B ELIGIBILITY

To be eligible all of the following conditions must exist.

7.17B1 The claimant must have been an owner occupant for more than 90 days prior to the date of the first written offer or the date of the Notice of Intent to Acquire.

7.17B2 The claimant must have purchased and occupied a suitable replacement dwelling within the prescribed time limits.

7.17B3 The mortgage or contract of sale must be bona fide and have been valid lien for not less than 90 days prior to the date of the first written offer or the date of the Notice of Intent to Acquire. All mortgages shall be used to compute the payment.

7.17B4 There must be a mortgage or contract of sale on the replacement dwelling and it must bear a higher rate of interest than the interest rate on the existing encumbrance.

7.17B5 Mortgages or similar notes used to purchase mobile homes are mortgages for the purpose of this procedure.

7.17C INTEREST RATES

The difference between the interest rates of the existing and new loans is one of the basic factors in the calculation of the payment. The actual rate of the existing loan is used. On the new loan, the rate used is the actual rate not to exceed the rate currently charged by mortgage lending institutions in the vicinity of the replacement property.

If the combination of interest and points for the new mortgage exceeds the current prevailing fixed interest rate and points for conventional mortgages and there is no justification for the excessive rate, then the current prevailing fixed interest rate and points shall be used in the computations. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage, credit difficulties, or other similar reasons. See 7.17E2 for a discussion on prevailing interest rate.

The controlling date for determining the maximum allowable interest rate that may be used is the date of the new mortgage note.

7.17D PAYMENT PROCEDURES

Payment computation – the amount of the increased interest payment will be computed as specified in 7.17F below and on Attachment 726 and in accordance with the following procedures:

7.17D1 The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination the payment will be prorated and reduced accordingly. (See 7.17F) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

7.17D2 The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter. If the term on the new mortgage is shorter and, therefore, used in the determination of the payment, it will be necessary to recalculate a new monthly principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance(s) on the displacement dwelling and the term of the new mortgage. (See 7.17F)

7.17D3 The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

7.17D4 Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

7.17D4a They are not paid as incidental expenses.

7.17D4b They do not exceed rates normal to similar real estate transaction in the area.

7.17D4c We determine them to be necessary; and

7.17D4d The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

7.17D5 The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

7.17D6 To compute an interest differential payment when a subsidized loan is present, the loan balance is the balance without the subsidy, the term is the remaining term on the loan without additional time for repaying the subsidy, and the interest rate is the subsidized interest rate.

7.17E PAYMENT COMPUTATION REQUIREMENTS

7.17E1 To accomplish the computation of the increased interest payment, it will be necessary for the displacee to provide the relocation staff with the following documents:

7.17E1a A copy of all notes on existing mortgages on the displacement property.

7.17E1b A copy of all notes on the new mortgages on the replacement property.

7.17E1c A copy of the closing statement covering the replacement property purchased.

7.17E2 A determination of the prevailing interest rate currently being charged by mortgage lending institutions: The prevailing interest rate currently being charged by mortgage lending institutions is established by the Relocation Supervisor completing a periodic survey of interest rates and discount points being charged by residential lenders in the project area. The file must be documented to show how such prevailing interest rate was determined.

7.17F COMPUTATION STEPS

7.17F1 The provision in this section set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages. If the term on the new mortgage is shorter and, therefore, used in the determination of the payment, it will be necessary to recalculate a new monthly principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance(s) on the displacement dwelling and the term of the new mortgage.

7.17F2 The remaining principal balance, the interest rate, and monthly principal and interest payments for the old mortgage as well as the interest rate, points and term for the new mortgage must be known to compute the increased mortgage interest costs.

7.17F3 Sample Computations

Old Mortgage:

Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	$458.22
Interest rate (percent)	7

New Mortgage:

Interest rate (percent)	10

Points	3
Term (years)	15

Remaining term of the old mortgage is determined to be 174 months. (Determining, or computing, the actual remaining term is more reliable than using the data supplied by the mortgagee.) However, if it is shorter, use the term of the new mortgage and compute the needed monthly payment.

The amount to be financed to maintain a monthly payment of $458.22 at 10% is $42,010.18.

Old Mortgage:

Remaining Principal Balance on old mortgage	$50,000
Less amount of reduced loan	-42,010.18
Increased mortgage interest costs	$ 7,989.82
3 points on $42,010.18	1,260.31
Total buy down necessary to maintain payments at $458.22/month	$9,250.13

If the new mortgage actually obtained is less than the computed amount for a new mortgage ($42,010.18), the buy down shall be prorated accordingly. If the actual mortgage obtained in our example was $35,000, the buy down payment would be $7,706.57 ($35,000 divided by $42,010.18 = .8331 $9,250.13 x .8331 = $7,706.57).

The following sample is for computations involving a shorter term at the replacement property.

Old Mortgage:

Remaining Principal Balance	$50,000
Monthly Payment (principal and interest)	$458.22
Interest rate (percent)	7
Remaining Term (months)	174

New Mortgage:

Interest rate (percent)	10
Points	120
Term (years)	3

Because the new term is less than the remaining term at the displacement dwelling, it is necessary to recalculate a new monthly

principal and interest payment for the displacement dwelling based on the interest rate and mortgage balance on the old mortgage and the term of the new mortgage. The monthly payment for $50,000 at 7% for 120 months is $580.54.

The amount to be financed to maintain a monthly payment of $580.54 at 10% is $43,930.14.

Old Mortgage:

Remaining Principal Balance on old mortgage	$50,000
Less amount of reduced loan	-43,930.14
Increased mortgage interest costs	$6,069.86
3 points on $42,010.18	1,317.90
Total buy down necessary to maintain payments at $580.54/month	$7,387.76

7.17F4 We are obligated to inform the person of the approximate amount of this payment and that he or she must obtain a mortgage of at least the same amount as the calculated buy down mortgage amount and for at least the same term in order to receive the full amount of this payment. The displacee is also to be advised of the interest rate and points used to calculate the payment.

7.17G LIMITATIONS AND EXCLUSIONS

7.17G1 To Whom Payments Made

The payment described in this paragraph may be made directly to the displaced individual or family upon receipt of Attachment 705, or upon written instructions from the displaced individual or family, directly to the mortgagee of the replacement dwelling. In cases where an applicant is otherwise qualified for an interest payment, and upon the applicant's specific request, the Department may make an advanced payment into escrow prior to the displacee's moving.

7.17G2 Partial Acquisition

7.17G2a Where the dwelling is located on a tract normal for residential use in the area, the interest payment shall be reduced to the percentage ratio that the acquisition price bears to the before value; except the reduction shall not apply when the mortgage requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

7.17G2b Where a dwelling is located on a tract of land larger than normal for residential use in the area, the total mortgage balance should be reduced to the percentage ratio that the value of the residential portion bears to the

before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

7.17G3 Multi-Use Properties

The interest payment on multi-use properties shall be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

7.17G4 Other Highest and Best Use

If a dwelling is located on a tract where the fair market value is established on a higher and better use, and if the mortgage is based on the residential value, the interest payment shall be computed as provided in the appropriate paragraphs above. If the mortgage is based on a higher use, however, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

7.17G5 Mortgage Combinations/Variable Principals and Interest Payments and Terms

The many different combinations of details that could exist concerning amounts on each mortgage (different interest rates, etc.) and the number of mortgages involved, all of which could affect the payment computation procedure, makes it impractical, if not impossible, to include all instructions to cover the various situations which could be encountered. Therefore, if a situation is encountered or the need for such computations exist, present all facts to the Relocation Assistance Supervisor and request specific increased interest payment computations and instructions.

7.17G6 Displacee Assumes Existing Mortgage on Replacement Property

If an eligible displacee assumes a mortgage which already existed on the property he/she purchased as a replacement, consider it as a "new" mortgage. The unpaid debt balance he/she assumes, and the remaining term of such mortgage, shall be used in the "new mortgage" computations.

7.17G7 Condemnation Involved

The fact that the subject property was acquired through condemnation has no effect on the increased interest payment as such payment will be claimed in the "replacement housing claim" regardless whether such claim is filed before or after the case is finally settled. The increased interest payment amount will not be changed or affected even though the final Replacement Housing Payment amount may be adjusted to the amount of the final award.

7.17G8 Interim financing or a loan obtained for construction purposes is not considered an eligible loan and is excluded from the Interest Differential Payment.

7.17G9 Mortgages on timber, trade fixtures, growing crops and all types of personal property are excluded, with the exception of mobile homes.

7.17G10 Mortgages, the terms of which have been materially changed within the 180-day period prior to the date of the first written offer or the date of the Notice of Intent to Acquire are not eligible.

7.18 MOBILE HOMES

7.18A GENERAL

This section provides additional instructions which are intended to assist the relocation officer in dealing with the special aspects of mobile home relocation that are different or at variance with normal procedures and requirements applicable to relocation involving conventional dwellings. Since basic and universally-applied requirements ARE NOT REPEATED in this section, it is necessary that they be understood prior to applying the special variations found herein.

The eligibility requirements of displaced mobile home occupants are basically the same as those for occupants of conventional dwellings. The computation of benefits, however, presents unique problems due to the various combinations of ownership and tenancy found in mobile home occupancy, and the fact that different data is encountered in incidental expenses, down payment and loan criteria. The general difficulty in finding vacant spaces for mobile homes, which are more than two or three years old, also presents special problems in providing effective relocation.

It should also be noted that, generally, the relocation of an isolated single mobile home from a residential lot, farm property or privately-owned rural plot will not involve any unusual difficulties, because a replacement site will usually be available. Though the instructions contained in this section will be of assistance in such cases, they are primarily oriented to more difficult situations involving the displacement of more than a few units from an established mobile home park.

7.18A1 Acceptability of the Mobile Home

If otherwise eligible under this section, the owner of a mobile home is entitled to a Replacement Housing Payment if the displacement mobile home does not meet comparable mobile home park entrance requirements. The amount of such payment will be computed as the difference between acquisition cost (or the trade-in value of the mobile home that is personal and is not acquired) and the price of a mobile home acceptable to the mobile home park or, if less, the cost to rehabilitate the existing mobile homes, if practicable, to meet the entrance requirements.

7.18A2 Mobile Home Park Entrance Fees

If the displacee is required to pay an entrance fee in order to enter a mobile home park, such fees will be included in the moving expense payment provided:

7.18A2a The fee does not exceed the fee at a comparable mobile home park, if the person is displaced from a park; and

7.18A2b The fee is not returnable to the tenant like a security deposit would be; or

7.18A2c The Department determines the payment of the fee is necessary to effect relocation.

7.18A3 Partial Acquisition of Mobile Home Park

Where the Department determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move the remaining business or go out of business, the owners and occupants of the mobile home dwellings not within the actual taking but who are forced to move shall be eligible to receive the same payments as though their dwellings were within the actual taking.

7.18A4 Mobile Homes as Replacement Dwellings

A mobile home may be considered a replacement dwelling provided:

7.18A4a The mobile home meets standards of decent, safe and sanitary as provided in Section 7.03.

7.18A4b The mobile home is placed in a fixed location:

- In a mobile home park which is licensed and operating under State law; or
- In a mobile home subdivision wherein the displaced person owns the lot on which the mobile home is placed; or
- On real property owned or leased by the displaced person in other than a mobile home subdivision, provided such placement is in accordance with State and local laws or ordinances and provided such placement was made under permit from the State or local Department.

7.18A5 Computation on Next Highest Type

When a comparable mobile home is not available it will be necessary to calculate the Replacement Housing Payment on the basis of the next highest type of dwelling that is available and meets the applicable requirements and standards, i.e., a higher type mobile home or a conventional dwelling.

"Not available" as used in this subsection includes, but is not limited to, those cases where mobile homes cannot be relocated in mobile home parks within a reasonable distance from the place of dislocation because of lack of available spaces or because of the standards and rules of the mobile home parks where spaces are available.

7.18A6 General Rules for Replacement Housing or Rent Supplement Payment Computations.

The general provisions for moving expenses and Replacement Housing Payments of Section 7.14 and Section 7.15 are also applicable to owners and tenants of mobile homes.

7.18A6a The ownership or tenancy of the mobile home (not the land on which it is located) determines the occupant's status as an owner or a tenant.

7.18A6b The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 to make the occupant eligible for the appropriate payment limitations – $9,570.

7.18A6c After the determinations of a. and b. are made, the Replacement Housing Payment is computed in two parts:

- The Replacement Housing or Rent Supplement Payment is computed for the mobile home in accordance with the same procedures for any comparable dwelling unit.
- The Replacement Housing or Rent Supplement Payment for the mobile home site will be computed in accordance with the same procedures of comparability but the payment is limited to the maximum according to the displacee's ownership or tenancy of the land.

  The sum of the two parts computed in (1) and (2) above cannot exceed the maximum limitations of the $9,570.

7.18A6d If the displaced person desires to utilize his/her option for change of ownership or tenancy, the same procedures utilized for other dwelling units will be utilized and substituted for the appropriate part in c(1) or c(2) above.

7.18B ELIGIBILITY

Owner occupants and tenants of mobile homes are eligible for the same purchase, rental, tax, and interest differentials, and incidental expense payments as the owner occupants and tenants of conventional dwellings, apartments or condominiums.

Determination of eligibility for mobile home occupants may be more involved because of:

7.18B1 The possibility of divided ownership between the mobile home and the site on which it is located.

7.18B2 The fact that the Department may acquire the site and not the mobile home.

7.18B3 The possibility of replacement of the mobile home and/or site in an ownership and tenancy not identical with the type presently held by the displacee.

The most common type of necessary interest encountered in mobile home occupancy is where the occupant owns the mobile home and rents a site in a privately owned mobile home park. Providing relocation benefits to this type of occupant presents no unusual problems, if there is a suitable vacant space available and the unit can be moved. In this situation benefits can be administered in accordance with the instructions pertaining to moving benefits and rent differentials. Where the unit is not DSS or where it cannot be moved due to physical reasons or lack of a suitable vacant replacement site, the problems of applying the various benefits are more complex. Because of this complexity, anyone involved in the administration of these benefits should understand the specific mobile home Replacement Housing Payments which apply to mobile home relocation found later in this section.

7.18C PREPARATION AND DELIVERY OF RELOCATION ASSISTANCE SERVICES AND BENEFITS TO MOBILE HOME OCCUPANTS

The time limitation for presenting relocation information to eligible mobile home occupants on rented sites is the same as for conventional dwelling tenants.

The fact that a mobile home resident occupies a dwelling which is considered as personal property and which is normally capable of being moved requires special considerations in the determination and explanation of relocation benefits.

When possible, the primary method of effecting relocation of mobile home occupants should be the moving of the displaced mobile home to a suitable replacement site. Since the extension of various benefits depends on whether or not such a move can be accomplished, it is usually not possible to make a complete determination of benefits until the time of the relocation offer or thereafter.

The following steps should be included in preparing and delivering relocation information, in addition to the Relocation Brochure.

7.18C1 Where a substantial number of mobile home relocations are involved, it is desirable that a Relocation Officer be assigned at the time the market value appraisal is being prepared. This will provide sufficient lead time for the Relocation Officer to inspect the affected park and become aware of the specific amenities available to occupants. An interview with the park manager will be helpful in obtaining background information such as the extent of social activity (clubs, etc.) and trends of occupancy (mostly retired, etc.).

7.18C2 The Relocation Officer should also have a working knowledge of availability of suitable replacement sites. A field survey of surrounding parks found through reference to classified telephone directory, and the local Chamber of Commerce.

7.18C3 The Officer should also understand the special problems involved in moving mobile homes and be prepared to explain the moving benefits in relation thereto.

7.18C4 A review of replacement site rental should permit calculation of rental differential benefits.

7.18C5 If a move cannot be affected, the displacee may be eligible for purchase benefits, e.g. purchase differential or down payment (for the unit) as well as a rental differential (for the site).

7.18C6 The Officer should prepare the file so that the Decent, Safe and Sanitary status of the unit can be established or confirmed at the time of the initial interview. Information should include model, year manufactured (from registration slip) and presence or lack of a State of Nebraska Mobile Home Seal (normally affixed next to the outside door of each unit). Confirmation of occupancy date and current rental rate should also be made.

7.18D PRESENTATION OF INFORMATION TO NONELIGIBLE OCCUPANTS

In partial acquisitions of large parks or where occupants of excess land will not be displaced as a result of the acquisition, the dissemination of information to those not eligible is highly desirable.

Although mobile home sites are usually rented, occupancy in a mobile home park is a much more permanent residential arrangement than apartment occupancy. A primary reason for this is that most occupants own their mobile home, and the cost of moving often equals as much as fifty percent (50%) of the in-place value.

The overall result of these trends is a close-knit community with a greater degree of social activity among occupants. This is exemplified by the fact that a "clubhouse" or "assembly room" is one of the standard amenities of a modern mobile home park.

These factors, when coupled with substantial variances in eligibility for benefits from unit to unit, often results in excessive uncertainty, rumors and confusion concerning acquisition and relocation. Unless the acquisition is of a small and relatively insignificant part of a park, all occupants should be contacted either individually or by group meeting at the time of the initial interviews to eligibles.

It is also advisable that a "noneligible" file be established containing a list of names and space numbers. This file will also be a convenient place for documentation of communications and inquiries received from these people.

7.18E RELOCATION ADVISORY ASSISTANCE SERVICE

To provide effective relocation assistance to mobile home occupants, the Relocation Officer must understand the special aspects of this type of housing. It is vital that the Relocation Officer know these things prior to contact with affected claimants. Information concerning trends in occupancy is contained in the

preceding parts of this section. The reasons for the general difficulty in locating suitable vacant spaces is due in part to the following factors:

7.18E1 Mobile home parks occupy an unfavorable position in community planning and zoning considerations because of the low tax base and the fact that conventional residential owner/occupants do not want them around. Consequently, these parks are more difficult to establish.

7.18E2 When occupants of an occupied space find it necessary to move, the unit is sometimes sold in place due to loss in value when moved and the relatively high cost of moving. Some parks charge a fee when the unit remains, but this is usually less than the loss involved in moving. Thus, even though occupants move, the space remains occupied with the unit, and changes in occupancy rarely result in vacant spaces.

7.18E3 In cases where a vacant space does become available, the void is often filled as a result of a continuing agreement between the park management and local mobile home dealers who have what is tantamount to an option on the vacant site for their customers.

7.18E4 Normally new parks will accept only new or near new units. Where used units are accepted, park management often requires painting, new skirting, awnings, landscaping, etc. New parks are generally designed to accept "double-wide" units; this eliminates them as a source for single-wide units.

Because of these considerations it is often very difficult to find vacancies for displaced mobile home units. Since those vacancies, which do occur, are rapidly filled, successful advisory service requires a continuing liaison with the mobile home rental market.

In fulfilling the Department's obligation to provide suitable replacement sites, compliance with regulations defining comparable replacement dwellings is required; however, it should be stressed that the replacement need not be identical to be a reasonable one.

Where limited vacancies are encountered, claimants should be encouraged to take advantage of them even though three locations are not available from which to choose.

7.18F MOBILE HOME MOVING COSTS

The payment of moving costs to displaced mobile home occupants and owners are covered by the section on Moving Expenses. (See 7.14) A homeowner occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with Sections 7.14A9 and 7.14B5. A nonoccupant owner of a rented mobile home is eligible for actual cost reimbursement under Sections 7.14A9 and 7.14C. However, if the mobile home is not acquired, but the homeowner occupant obtains a Replacement Housing Payment under one of the circumstances described in Section 7.18H1, the owner is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving

personal property from the mobile home. Generally the most difficult aspect of moving a mobile home is finding a suitable vacant site as discussed under the topic of Relocation Advisory Assistance above.

7.18F1 Move From A Mobile Home

The displaced persons actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods:

7.18F1a *Commercial Move* – moves performed by a commercial mover.

7.18F1b *Self-Moves* – moves that may be performed by the displaced person in one or a combination of the following methods:

Self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section. Eligible expenses for moves from a mobile home include those expenses described in 7.14A9a to 7.14A9g. In addition, the owner occupant of a mobile home that is moved as personal property and used as the persons replacement dwelling, is also eligible for the moving expenses described below in 7.18F2a to .18F2ak.)

- Moving Expense Schedule. (See 7.14B5)
- Actual Cost Move. Supported by receipted bills for labor and equipment. Hourly rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

7.18F2 Actual Cost Mobile Home Moves

Because special equipment, skills and knowledge are required in moving a mobile home, these moves are usually done by mobile home moving specialists on an actual cost basis. As in other actual cost moves, two bids should be obtained and carefully reviewed before authorization is granted to move. Special attention should be given to the following items to see that they are considered.

7.18F2a The disconnection and reconnection of utilities and appliances.

7.18F2b The need to provide a flag car, or additional axles and/or brakes if required, in compliance with State requirements.

7.18F2c The alternative of shipping the unit on a "low-boy" trailer.

7.18F2d The need to rent suitable wheels and/or tires.

7.18F2e Specification of temporary protection for separated doubles such as plywood or plastic covers.

7.18F2f The need to reseal roofing (older units usually develop cracks in the roof when moved).

7.18F2g The need to remove, clean and reinstall or replace carpeting or other flooring material when double-wide units are moved.

7.18F2h Set up on replacement pad including leveling.

7.18F2i The reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "Hook-up" charges.

7.18F2j Nonreturnable entrance fees are reimbursable as part of actual cost moving expenses unless the Department determines that comparable mobile home parks are available which do not require entrance fees.

7.18F2k The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe and sanitary.

7.18F3 Special Moving Costs

In addition, moving costs may include those items genuinely required to place a mobile home in a suitable replacement site. These items usually include painting or waxing, the purchase and installation of such items as skirting, awnings, landscaping and minor modifications to hide tongues and air conditioners. It is also necessary that the need for these items be verified through a determination that they are based on requirements that are universally and consistently applied in the replacement park.

If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary, and we determine that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

The standard moving payment limitation of 50 miles also applies in the case of mobile home moves, but authorization to pay for voluntary moves in excess of this distance may be obtained through the Right of Way Division Engineer where suitable replacement sites are not available within 50 miles, and where the amount paid for moving would be less than the housing differential to an eligible occupant.

7.18F4 *Person Moves Mobile Home* – if the owner is reimbursed for the cost of moving the mobile home under this rule, he or she is not eligible to receive a Replacement Housing Payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

7.18G Mobile Home Decent, Safe And Sanitary Inspections

DSS requirements for mobile homes are basically the same as those required for conventional dwellings.

The mobile home must be placed in a fixed location which is either (1) a properly-licensed mobile home park, (2) an owner occupied lot in a mobile home subdivision, or (3) on other real property where placement is in accord with local laws or ordinances and pursuant to a permit.

Used mobile homes, which are purchased as replacement dwellings by claimants, should be inspected prior to purchase agreement, because used units often lack necessary qualifying features. If size requirements are met, new mobile home DSS inspections can be made at time of claimant occupancy, however, it should be stressed that every effort should be made to preclude the claimant's purchase of a mobile home which would prove to be a non-DSS dwelling.

7.18H MOBILE HOME PURCHASE DIFFERENTIALS

7.18H1 Department Acquisition of Mobile Homes

Mobile home purchase differentials are only paid when a unit owned and occupied by an eligible claimant qualifies under these procedures. The procedures authorize such a payment if we acquire the mobile home as real property, or the mobile home is not acquired but the owner is displaced because we determine that the mobile home:

7.18H1a Is not and cannot economically be made decent, safe, and sanitary; or

7.18H1b Cannot be moved without substantial damage or unreasonable cost; or

7.18H1c Cannot be moved because there is no available comparable replacement site; or

7.18H1d Cannot be moved because it does not meet mobile home park entrance requirements.

7.18H1e When the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, described at 7.15B, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

7.18H1f If the Department determines that it would be practical to relocate the mobile home, but the owner occupant elects not to do so, the Department may determine that, for purposes of computing the purchase differential, the cost of a comparable replacement dwelling is the sum of the value of the mobile home, the cost of any necessary repairs or modifications, and the estimated cost of moving the mobile home to a replacement site.

7.18H2 Suitable Replacement Sites

The requirements for comparable replacement dwelling must be satisfied in qualifying a park vacancy as a suitable replacement site. The question whether or not an available vacancy is a suitable replacement site must be determined **by the Department** using reasonable objective standards (subject to claimant's appeal). This is necessary because an eligible claimant, by capriciously refusing to accept a vacant site, could secure several thousand dollars in differential benefits to which he/she is not really entitled. In any event, the claimant should be given as many choices as are available at the time of relocation.

7.18H3 Payment Calculation

At the time it is determined that a mobile home qualifies the trade-in or salvage value of the unit shall be obtained and the replacement housing cost shall be calculated. The purchase differential will be the difference between the amount of the trade-in or salvage value and the calculated replacement housing cost.

7.18H4 Limitations

As in the case of conventional dwellings, the claimant's qualification for the purchase differential is limited by the amount spent in buying the replacement unit up to the calculated amount. The cost of all accessories such as awnings, carports, skirting, landscaping and installation charges may be included in qualifying for the payment. Reimbursable incidental expenses which are incurred in the purchase should not be included in this calculation. Before the purchase differential claim can be paid, the occupied replacement unit and site must comply with the requirement set forth in this section under Decent, Safe and Sanitary Inspections.

7.18H5 Site Differentials

Purchase differentials for mobile home sites are paid only when mobile home occupants are relocated from a site purchased from him/her to a replacement site purchased by him/her. The amount is a differential between the amount paid by the Department for the site and the amount the Department determines is necessary to purchase a comparable replacement site. Occupancy and expenditure requirements must be met before payment of this component of the purchase differential is made.

7.18H6 Use of Assignments and Escrows

To assist a claimant in purchasing a replacement mobile home it is sometimes necessary to place (or hold) the funds due the claimant in escrow. This procedure usually requires an assignment and a letter confirming the availability of funds and instructions for their use be issued to the mobile home dealer (seller) to secure the order. These instructions should be prepared to preclude release of the funds prior to complete and satisfactory installation of the unit.

7.18I MOBILE HOME DOWN PAYMENTS

Mobile home down payments are processed according to the same general principles that apply to conventional dwellings, subject to the following exceptions.

As in the case of rental differentials for mobile homes, it is only necessary that the Department acquire the site to fulfill the acquisition qualification for payment, and it is not necessary that the mobile home be acquired by the Department. The 90-day occupant may be considered to be displaced for any of the circumstances described at 7.18H1.

7.18J MOBILE HOME INCIDENTAL EXPENSES

The principles providing for payment of incidental expenses incurred in the purchase of mobile homes are the same as that for conventional dwellings (see Incidental Expense Payments, Section 7.16). Variations result, however, from the fact that expenses are encountered in the purchase of mobile homes that do not arise with other property acquisitions.

Examples of typical eligible incidental expenses with appropriate remarks follow.

7.18J1 Sales Tax – payment will be based on the applicable tax rate for the calculated replacement cost or the actual tax paid, whichever is less. The Sales Tax on additional improvements (i.e. skirting, awnings, etc.) is eligible for total reimbursement provided the items are required for park occupancy.

7.18J2 Transfer Fee – amount charged by Department of Motor Vehicles for transfer of title.

7.18J3 Permit Fees – amount charged for building permits, transportation permits (if not paid as part of moving expense), etc.

7.18K MOBILE HOME RENTAL DIFFERENTIAL PAYMENTS

7.18K1 Both Rental and Purchase Differentials May Be Paid to One Claimant

A displaced person may be paid a rental differential payment for the rental of a replacement mobile home or site together with any other payments a displacee may be entitled to, such as mobile home moving cost or down payment or purchase differentials on either the mobile home or site.

7.18K2 Acquisition Requirement

It is not necessary for the Department to acquire the mobile home from which the tenant is displaced before he/she may qualify for this payment. Acquisition of the mobile home site satisfies the acquisition requirement. The 90-day occupant may be considered to be displaced for any of the circumstances described at 7.18H1.

7.18K3 Calculation of Benefit

The amount of payment is calculated as the difference between actual rent for the acquired site or unit and that determined by the Department as necessary to rent an appropriate replacement site or unit for a period of 42 months (Attachment 725). The amount is limited by the rental expenditure as in the case of conventional dwellings; DSS and occupancy requirements must also be met.

7.18L MOBILE HOME INTEREST DIFFERENTIAL PAYMENTS

The section of mortgage interest differential payments (7.17) authorizes the payment of increased interest expenses incurred by eligible owner occupants in replacement mobile home and site purchases. Because mobile homes are personal, shorter terms and higher interest rates are used. The annual interest rates used in calculating mobile home interest differential payments may be obtained from local savings and loan associations which provide mobile home financing.

The following instructions cover the three basic situations involving mobile home interest differential payments.

7.18L1 Conventional Dwelling to Mobile Home

Where a displaced person elects to relocate from a conventional dwelling, with financing secured by a mortgage, to a mobile home, the maximum interest rate allowable in calculating the interest differential is that which is allowed for a conventional dwelling.

7.18L2 Mobile Home to Mobile Home

Where the Department uses a trade-in or salvage value on a mobile home and the owner occupant has financing secured by a lien, the interest differential payment will be calculated on the difference between the existing loan interest rate and the current maximum for mobile homes or the actual rate, whichever is less.

7.18L3 Mobile Home to Conventional Dwelling

Calculation of the interest differential payment, where the Department purchases an owner-occupied mobile home, is the same as in the preceding case where a mobile home is selected as a replacement dwelling. It is recognized that interest rates on the conventional dwellings are naturally lower (due to greater security), and that the calculation will generally result in no interest differential payment. The loss of payment in this case is because there was no loss of favorable financing, and the result must be adhered to even though the replacement loan may cover a period of 20 or 30 years.

7.18M PERSONS WITH BOTH AN OWNERSHIP AND TENANT INTEREST

A displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the Total Replacement Housing Payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section. However, the Total Replacement Housing Payment to a person shall not exceed the maximum payment (either $41,200 or $9,570) permitted under the section that governs the computation of the dwelling.

7.18N REPLACEMENT HOUSING PAYMENTS FOR 90-DAY MOBILE HOMEOWNER OCCUPANTS

7.18N1 A displaced owner occupant of a mobile home is entitled to a Replacement Housing Payment, not to exceed $41,200, under Section 7.15B if:

7.18N1a The person both owned the displacement mobile home and occupied it on the displacement site for at least 90 days immediately prior to the initiation of negotiations.

7.18N1b The person meets the other basic eligibility requirements in Section 7.15B.

7.18N1c The Department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Department but the owner is displaced from the mobile home because of one of the circumstances described in Section 7.18Ha through 7.18He.

7.18N2 A displaced owner occupant of a mobile home is also entitled to a rent supplement described in Section 7.15C. The most common situation involves a rent supplement for the difference in rent between the subject lot rent and the comparable replacement lot rent. It is important to remember that any rent supplement can be converted to a down payment, as described in Section 7.15D, in the amount the person would have received as a rent supplement.

7.18N3 In determining the amount of the combined payment to a displaced owner-occupant of a mobile home so they may purchase a conventional home for replacement housing, the cost of the conventional dwelling comparable will be the sum of the cost of the mobile home comparable and the amount of the rent supplement. This calculation will be noted on Attachment 724, by noting the following in the remarks area:

Purchase Price of Mobile Home Comparable	$_____
Plus Rent Supplement	$_____
Equals Purchase Price of Conventional Dwelling	$_____

Comparable	$_____
Less Subject Mobile Home Value	$_____
Purchase Differential for Conventional Dwelling	$_____

For the purposes of this section, conventional dwelling shall mean any dwelling unit described in 7.03 in which the owner owns not only the living unit but also the land, or a partial ownership interest in the land in the case of a townhouse or condominium.

7.18N4 All three amounts noted above in 7.18N1-3 above shall be offered to the displacee. See Attachment 713.5 and Attachment 713.6. It may be necessary to revise these letters on a case by case basis to fit the actual facts that pertain to the displacee.

7.18O REPLACEMENT HOUSING PAYMENTS FOR 90-DAY MOBILE HOME OCCUPANTS

7.18O1 A displaced tenant or owner occupant of a mobile home is eligible for a Replacement Housing Payment, not to exceed $9,570, under Section 7.15C if:

7.18O1a The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations.

7.18O1b The person meets the other basic eligibility requirements in Section 7.15C.

7.18O1c The Department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Department but the owner or tenant is displaced from the mobile home because of one of the circumstances described in Section 7.18Ha through 7.18He.

7.19 METHOD OF COMPUTING REAL PROPERTY TAX DIFFERENTIAL PAYMENTS

7.19A GENERAL

7.19A1 Tax Differential Payments are provided to compensate eligible displaced owner occupants for the increase in property taxes resulting from relocation for a three year period.

At the time of relocation, property tax statements will be obtained by the Relocation Agent for the subject property, the comparable dwelling designated in the Study, and the replacement dwelling. These documents will provide the information necessary to compute the displacee's Tax Differential Payment eligibility. Care must be taken to review each tax statement obtained to determine if they represent a typical property tax. Large Homestead Exemptions on the comparable dwelling, for example, may adversely affect the payment eligibility and, in such cases, the amount of the exemption should be disregarded in the computation.

7.19A2 Tax Differential Payments shall be made in either yearly disbursements or in lump sum, at the displacee's option. Displacees who are 62 years of age or older are not eligible for the lump sum payment, however, as such persons may be eligible for substantial Homestead Exemption benefits within the three year period of eligibility. Elderly displacees will be paid on an annual basis for a three year period, thus assuring that they will be reimbursed for taxes actually incurred at the replacement dwelling.

7.19B ELIGIBILITY

Tax Differential Payments shall be made to displacees who meet each of the following criteria:

7.19B1 The displacee was an owner occupant of not less than 90 days prior to initiation of negotiations for the property.

7.19B2 The displacee purchases and occupies a decent, safe, and sanitary replacement dwelling as defined in Section 7.03 of this Manual, within the one year period of eligibility following relocation.

7.19B3 The property taxes for the replacement dwelling and the designated comparable are higher than the property taxes for the subject dwelling. The Agent should review the comparable tax statement to assure that the tax amount does not reflect an unusually large Homestead Exemption which would adversely affect the payment eligibility.

7.19C PAYMENT DETERMINATION

It is the intent of this regulation to compensate displacees for their reasonable increase in property taxes. Displacees are to be compensated for an amount not to exceed the increase in property taxes they would have incurred had they relocated to the selected comparable.

7.19C1 **General Guidelines**

7.19C1a If the displacee purchases a house in which the taxes are less than the taxes on the comparable replacement dwelling obtained from the relocation study, the tax differential payment will be reduced accordingly. This procedure is consistent with Replacement Housing Payments. This method of payment determination, by selecting the most nearly comparable replacement dwelling, is intended to put the displacee into an equal position and not enrich the displacee, which is the intent of the law.

7.19C1b When circumstances warrant, such as the taxes on the comparable not being representative due to large tax exemptions, a Homestead Exemption, etc., the taxes from the remaining available comparables used in the study may be used to determine the tax differential payment. In unusual cases, the taxes on the dwelling actually purchased by the displacee can be used, provided that the file is properly documented.

7.19C1c A displacee eligible for a tax differential payment has the option of receiving three separate tax differential payments over a three-year period based on the actual taxes of the comparable used in the study. If this method is elected, the tax payments will be subject to both an increase or a decrease, depending on changes in the mill levy or assessment.

7.19C1d Status reports of disbursements can be obtained from the "Relocation Assistance Program Cost and Statistics Report" of the Department's computer program. Upon confirming that a tax payment differential is due, the Relocation Agent will forward Attachment 705 to the displacee for signature.

7.19C2 *First Year and Lump Sum Payment Computation* – at the time of relocation, the Relocation Agent will obtain Tax Statements for the subject, comparable, and replacement dwellings for the tax year in which relocation occurred. The year in which relocation occurs shall establish the base year for Tax Differential Payments.

The Agent will then complete the Computation of Real Property Tax Differential Payment Attachment 727, for the purpose of determining the amount of the reasonable increase in property taxes, as follows:

Line 1:	Enter subject property address.
Line 2:	Enter subject property legal description.
Line 3:	Enter year and mill levy.
Line 4:	Enter net assessed valuation, subject property; carve-out will be necessary for farmsteads or larger-than-typical residential lots.
Line 5:	Enter total subject property residential tax.
Lines 6-15:	Complete above data for the comparable and replacement properties.
Line 16:	Enter lesser of tax on comparable or replacement dwelling.
Line 17:	Enter subject property tax.
Line 18:	Subtract line 17 from line 16 to determine first year payment amount.
Line 19:	Multiply line 18 by 3 if lump sum payment.
Line 20:	Determine ratio (line 10 divided by line 15). This ratio must always be less than one. This ratio establishes how much of the replacement housing tax will be used for the Second and Third Year Computation.
Lines 21-25:	Omit.

7.19C3 *Second and Third Year Computation* – to compute the Second and Third Year Tax payments, the Agent must refer to the First Year Tax Computation form and make note of the ratio factor on Line 20. The ratio factor will be multiplied by the amount of the replacement dwelling's estate taxes to

determine the adjusted comparable tax. The Tax Differential Computation Form should be completed as follows:

Lines 1-5:	Complete as instructed in paragraph 2 preceding.
Lines 6-10:	Omit.
Lines 11-15:	Complete as instructed in paragraph 2 preceding.
Lines 16-20:	Omit.
Line 21:	Enter Replacement Property Tax.
Line 22:	Enter ratio (see previous year's payment):
Line 23:	Multiply Line 21 by Line 22 to determine adjusted comparable tax.
Line 24:	Enter subject property tax.
Line 25:	Subtract Line 24 from Line 23 to determine payment amount.

This method assures each eligible displacee that while the taxes on the replacement property may vary from year to year, the percentage of the total tax reimbursed by the Department will remain constant. The Agent must inform owners who elect to receive annual Tax Differential Payments that the amount of each subsequent annual payment may vary due to fluctuating taxes on the replacement property.

7.19D EXAMPLES

The following guidelines should be followed when applicable:

7.19D1 *Two or More Dwellings on Acquired Property* – if the displacee has been living on property on which there are two or more dwellings, a carve-out must be made to determine the residential taxes attributable to the owner occupied dwelling. All other dwellings shall not contribute to the subject property taxes.

7.19D2 *Owner Retention of Subject Dwelling* – displacees who buy their dwellings back from the Department, move them to another site, and occupy them may claim a Tax Differential Payment. In most cases, the first year payment eligibility will be $0.00 due to the relatively low real estate taxes at the previously unimproved site. Second and Third year payments should reflect a reassessment on the improved property.

7.19D3 *New Construction of Replacement Property* – as in paragraph 4, eligible displacees who relocate to new construction may claim a Tax Differential Payment, although the first year payment is likely to be $0.00 until the new property has been reassessed.

7.19D4 *Acreages* – the Relocation Agent must carefully consider the amount of land for an acreage at either the subject, comparable, or replacement site. The amount of land contributing to the total taxes of any dwelling used in a Tax Differential Computation must reflect the typical residential lot size for the area of the dwelling in question. The taxes attributable to any amount of land

in excess of a typical lot size for the area must be carved-out of the total residential tax value.

7.19D5 *Tenants in Common* – in cases where two occupants hold title to an acquired dwelling and purchase separate replacement dwellings, a pro-rata Tax Differential Payment will be paid (usually each party will receive one-half of the total eligibility). If two or more persons hold title to the acquired dwelling and only one of the persons is an occupant, only the occupant will be eligible for a pro-rata Tax Differential Payment.

7.19E HOMESTEAD EXEMPTIONS

Relocation Agents shall familiarize themselves with the Homestead Exemption Act (Section 77-202.13 R.S. Supp. 1973 and Section 77-202.14 R.R.S. 1943) of the State of Nebraska. This law applies to eligibility requirements for a Homestead Exemption. Also, the County Assessor's Office should be consulted on a yearly basis to ascertain local applications of the State Homestead Exemption Act.

All displaced owner occupants are to be encouraged to take advantage of their Homestead Exemption eligibilities so as to minimize the Department's Tax Differential Payments expenses.

7.20 HOUSING OF LAST RESORT

7.20A PURPOSE

Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants. See 7.15B, 7.15C, 7.15D, 7.16 and 7.17. As appropriate, the Department shall provide additional or alternative assistance under the provisions of this section. Any decision to provide last resort housing assistance must be adequately justified.

The Last Resort Housing Program allows utilization of project funds to construct or otherwise provide housing. **No** eligible person will be required to move from the right of way acquired until comparable decent, safe and sanitary housing is available for immediate occupancy. These procedures will be implemented when normal Relocation Assistance Payment limits are inadequate to affect a solution to the housing needs of eligible displacees.

The large variety of housing situations which will be encountered dictates a need for program flexibility. Innovative approaches to realistic solutions for implementing Last Resort Housing should be encouraged.

7.20B GENERAL

7.20B1 The provisions of this section are not intended to deprive any displaced person of his/her right to receive Relocation Assistance Payments for which he/she may be eligible nor of his/her freedom of choice in the selection of replacement housing.

The Department may not require a displaced person, without his/her written consent, to accept a dwelling provided by the Department under these provisions in lieu of his/her acquisition payment, if any, or the real property from which he/she is displaced or the Replacement Housing Payments for which he/she may be eligible. However, the Department's obligation of providing comparable replacement housing is discharged when such housing is made available to the displaced person in compliance with the Uniform Act.

If the displacee does not accept the comparable replacement housing provided by the Department, but obtains and occupies other decent, safe and sanitary housing, the Replacement Housing Payment shall be the amount necessary to provide comparable replacement housing or the amount actually incurred by the displacee for decent, safe and sanitary housing, whichever is the lesser.

7.20B2 Any person displaced because of the acquisition of real property for a last resort housing project under the Department's power of eminent domain (including amicable agreements under the threat of such power) is entitled to all benefits for which he/she is eligible under the relocation assistance provisions, except:

7.20B2a This provision is not applicable to an owner occupant who voluntarily acts to sell his/her property to the Department for last resort housing; and

7.20B2b See definition of displaced person at 7.03.

7.20B3 Ownership or tenancy status. It is the responsibility of the Department under this section to provide a replacement dwelling which places the displacee in the same ownership or tenancy status as prior to displacement, provided the displacee meets the appropriate occupancy criteria.

At the request of the displacee, the Department may provide a dwelling which changes the ownership or tenancy status of the displacee if such a dwelling is available and can be provided more economically. However, if the computed Replacement Housing Payment for owner occupant is less than $9,570, a rental supplement not to exceed $9,570 may be paid.

The Department is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement home than the Department would provide to such persons if they owned fee simple title.

7.20C APPLICABILITY

7.20C1 Utilization of last resort housing may be provided when:

7.20C1a Comparable replacement housing is not available for the displaced person; or

7.20C1b Comparable replacement housing is available for the displaced person but:

- The computed Replacement Housing Payment exceeds the $41,200 limitation of Section 7.15B; or
- The computed Rent Supplement exceeds the $9,570 limitation of Section 7.15C.

7.20C2 Replacement Housing Costs in Excess of $31,000 for a 90-day Owner – the 90-day owner is eligible for increased interest costs, closing costs, and a Replacement Housing Payment. When the sum of these items is estimated to exceed the $41,200 maximum, the last resort housing provisions are applicable.

7.20C3 Rent Supplement in Excess of $9,570 for a 90-day Owner or Tenant – a 90-day owner or tenant, in accordance with Section 7.15, is eligible for a rent supplement. When this payment is expected to exceed the $9,570 maximum, the last resort housing provisions are applicable.

7.20C4 Down payments for 90-day Owner or Tenant – a 90-day owner or tenant, in accordance with 7.15D, is eligible for a down payment. The amount of the down payment is the same as the person would receive as a Last Resort Rent Supplement calculated in accordance with 7.20C3.

For the purposes of this section, the entire amount, if claimed, shall be used as a down payment and/or eligible closing costs for the purchase of a replacement dwelling regardless of the amount of the "required down payment" defined in Section 7.15D3.

The amount of the down payment to a 90-day owner shall not exceed the amount the owner would receive under Section 7.15B.

7.20C5 Last Resort Housing payments shall be provided to a displaced person who is **not** eligible to receive a replacement housing payment under 7.15B2a (90-day owner requirements) and 7.15C2a (90-day owner and tenant requirements) because of a failure to meet the length of occupancy requirements when comparable replacement rental housing is not available at rental rates within the displaced person's financial means.

Comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as calculated on our form. Which is the lesser of:

7.20C5a For owners less than 90 days, the Replacement Housing Payment is an amount which is the combined sum of:

- The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with 7.15B3; and
- The amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with 7.17; and
- The amount of the reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined in accordance with 7.16; and
- Tax Differential Payments to compensate for the increase in property taxes resulting from relocation for a three year period, as determined in accordance with 7.19.

7.20C5b For tenants less than 90 days, the Replacement Housing Payment is:

- The amount as determined in accordance with 7.15C3b (rent supplement); or
- The amount as determined in accordance with 7.15D3 (down payment).

7.20C6 *Manner of Disbursement* – payments made under this section shall be disbursed in a lump sum amount unless the payment is for a rent supplement and the monthly rent and the estimated average monthly utility costs for the replacement dwelling exceeds 30 percent of the displaced person's gross monthly income.

In these exceptions, payment will be 25 percent of the total paid annually until paid in full, except if the total payment is $7,875.00, or less, then pay the total amount upon qualification.

The full amount vests immediately, except as limited by 7.15A18, whether or not there is any later change in the person's income or rent, or the condition or location of the person's housing

7.20D METHODS OF PROVIDING COMPARABLE HOUSING

When comparable replacement housing is not available and cannot otherwise be made available, the Department may provide such housing by methods which include but are not limited to the following:

7.20D1 A Replacement Housing Payment in excess of the limits set forth in 7.15B, 7.15C, or 7.15D.

7.20D2 The purchase of land and/or dwellings and subsequent sale, lease, or exchange with the displaced person. Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will apply when such acquisitions are made under the Department's power of eminent domain or the threat of eminent domain.

7.20D3 Rehabilitation of and/or additions to an existing dwelling.

7.20D4 The relocation and, if necessary, the refurbishing or rehabilitation of dwellings purchased by the Department for right of way purposes.

7.20D5 The construction of new dwellings.

7.20D6 The removal of barriers to the handicapped.

7.20D7 Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent in accordance with the definition of comparable replacement dwelling in Section 7.03.

This variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the comparable replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

7.20E LAST RESORT HOUSING PLAN

7.20E1 General

Whenever this section must be used to provide housing or payments in excess of the maximum limits a Preliminary Housing Study and a Last Resort Housing Plan must be completed by the Relocation Function and approved by the Right of Way Division Engineer.

When simple displacements are involved the study and plan may be combined and will be simple in content and nature. The document will advise the Right of Way Division Engineer of the necessity for such action and furnish a proposal for providing replacement housing.

If it appears that there will be a lack of available replacement housing two separate documents may need to be submitted separately. Any decision to provide last resort housing assistance must be adequately justified earlier:

7.20E1a On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

- The availability of comparable replacement housing in the program or project area; and
- The resources available to provide comparable replacement housing; and
- The individual circumstances of the displaced person; or

7.20E1b By a determination that:

- There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and
- A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
- The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs. (Will project delay justify waiting for less expensive comparable replacement housing to become available?)

7.20E2 Preliminary Housing Study

This document should discuss in necessary detail the following:

7.20E2a The characteristics and relocation needs, desires and intentions of those being displaced for whom there may be a need for last resort housing.

7.20E2b An inventory of currently available comparable replacement sale and rental housing.

7.20E3 Last Resort Housing Plan

This document should develop a plan to determine the method of providing comparable housing. In developing the plan, innovative approaches and methods will be utilized in providing housing. The plan should discuss, as needed, and in necessary detail, the following:

7.20E3a How, when and where housing will be provided.

7.20E3b The environmental suitability of the location of the housing.

7.20E3c The estimated amount of project funds to be used for such housing.

7.20E3d How construction, rehabilitation, relocation and refurbishing will be monitored.

7.20E3e Analysis of the prices at which the housing will be rented or sold and the relationship to the financial means of the families and individuals to be displaced.

7.20E3f Arrangements for rental housing management.

7.20E3g Other relevant information, as necessary.

7.21 PRECLUDING TENANCY BY NEW TENANTS

7.21A GENERAL

In certain situations it may be advantageous to the Department to rent from a property owner vacated/vacant tenant properties.

Large older dwellings, which would accommodate large families, multi-family structures and nondecent, safe and sanitary houses, present a relocation problem, and could possibly be kept vacant by paying rent to the landlord. This would result in a savings to the Department by not having to relocate any new occupants where a moving cost, rent supplement and possible last resort housing payment would be necessary and much more costly than the rent payment to the landlord.

Ordinarily, Relocation Agents will encourage tenants to remain in occupancy until the property is acquired. However, if it becomes feasible to commence relocation activities to meet a scheduled construction letting date, or because of the availability of a comparable dwelling or replacement site, or any other reason, the Department will proceed and consider implementing this section.

7.21B POLICY

The Department shall consider renting vacant rental units when it is reasonably anticipated to be cost effective as compared to relocation costs associated with any potential new occupants. The estimated payment should not exceed the cost that would reasonably be required to relocate any subsequent occupant.

7.21B1 Decision Information. The following information will be furnished to the Right of Way Division Engineer in order to make a decision on renting the vacant property:

7.21B1a An estimate of potential relocation costs. The Relocation Assistance Supervisor will prepare the estimate.

7.21B1b An estimate of the amount of time to keep the unit vacant. Input will be gathered from appraisal, negotiation and legal personnel, as necessary.

7.21B1c An estimate of the expected rental rate. The Appraisal Section will be consulted to confirm the economic rent of the unit, so as to compare it to the actual rent being charged by the owner.

7.21B2 If the decision is made to rent the property from the owner, the following actions will be completed:

7.21B2a The Property Management Section will prepare a lease.

7.21B2b The offer (lease) and the Notice of Intent to Acquire (Attachment 714.2) will be made to the owner by either a Property Management Agent or a Negotiator, whichever is most appropriate.

7.21B2c The fully executed lease will be returned to the Property Management Section. This section will be responsible for processing the monthly rent so it will be available on the rent due date. This section will also be responsible for utility payments, if necessary, and periodic inspection of the property.

7.21B2d The Negotiation/Relocation Section will advise the Property Management Section when the acquisition contract has been signed by the owner or when the condemnation award has been made by the County Board of Appraisers.

7.21B2e Rental payments will cease when the acquisition warrant has been paid to the owner or when the condemnation award has been deposited with the County Judge.

7.22 RELOCATION ASSISTANCE APPEAL PROCEDURES

7.22A GENERAL

Persons dissatisfied by the determination of their eligibility for Relocation Assistance payments, or the amount of payment, may have their eligibility

reviewed by means of an Appeal process developed by the Department. Such persons shall be promptly furnished with the forms necessary to file an Appeal and will be advised of the procedures required for presentation of their grievances. We will consider a written appeal regardless of form. The Appeal process consists of two stages, the first of which is an informal review by the acquiring agency's designated official; the second of which must follow the specific practices and procedures detailed in Section 7.22C of this Manual.

7.22B FIRST STAGE APPEAL PROCEDURES

Whenever a displaced person indicates dissatisfaction with the acquiring agency's determination of their Relocation Assistance eligibilities, or when such eligibilities are otherwise contested, it shall be the responsibility of the assigned Relocation Agent to furnish the displacee with a First Stage Appeal form (Attachment 718.1) and a return envelope. This appeal must be received no later than 60 days after the time limit for filing a claim or the date we acted on a final claim, whichever is later.

Upon receipt of a completed First Stage Appeal form, the acquiring agency's designated official will promptly review the applicable Relocation Assistance file and the Appeal form, with particular attention given to the dissatisfactions specified in the Appeal. Following such review and a subsequent consultation with the Relocation Assistance Agent, the acquiring agency designated official may adjust, correct, or sustain the original determination of eligibility. The designated official shall make a timely decision based upon the evidence submitted in the appeal and will inform the displacee of the decision by means of a written notice. Such written notice will include a full explanation concerning any denial of the Appeal. If all or part of the displacee's Appeal has been denied, the issuance of a written notice must be accompanied by a Second Stage Appeal Form. (Attachment 718.2)

7.22C SECOND STAGE APPEAL PROCEDURES

Displacees who remain dissatisfied with their Relocation Assistance eligibilities following a First Stage Appeal decision may file a second appeal, provided it is received within 60 days from the date of our First Stage Appeal decision. The Second Stage Appeal shall conform to these procedures:

7.22C1 General

7.22C1a *Scope and Application* – these rules shall govern practice and procedure in all hearings involving contested cases as that term is defined in Neb. Rev. Stat. § 84-901(3). Practice and procedure for hearings involving this Department is also governed by Chapter 84, Article 9, of the Revised Statutes of Nebraska. In the absence of a specific rule, practice pertaining to proceedings in the district courts of this State shall be applicable.

7.22C1b *Filings* – All correspondence and filings shall be addressed or delivered to the Department of Transportation, State of Nebraska, Attention: Director-State Engineer, P.O. Box 94759, Lincoln, Nebraska, 68509-4759.

7.22C1c *Time Computation* – in computing any period of time prescribed or allowed by these rules the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period as computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than five days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. When the federal government (Post Office) and the Department observe the same holiday on different days and such prevents a party from acting within the prescribed time, both days observed shall be considered as holidays.

7.22C1d *Forms Copies* – Copies of any forms referred to in these rules shall be made available, upon request, from the Nebraska Department of Transportation at its offices, 1500 Nebraska Parkway, Lincoln, Nebraska.

7.22C1e *Right to Representation* – a person may be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

Nothing in this rule shall prohibit attorneys representing the Department who are admitted to practice law in Nebraska from interrogating witnesses or otherwise participating in proceedings before the Department.

7.22C2 *Definitions* – as used in these rules of practice and procedure, the following definitions shall apply unless the context, to be intelligible or prevent absurdity, otherwise requires:

7.22C2a *Pleadings Defined* – pleadings shall mean any written application, petition, protest, complaint, answer or motion used in any proceedings pursuant to this rule.

7.22C2b *Department Defined* – Department shall mean the Department of Transportation, State of Nebraska.

7.22C2c *Filed with the Department Defined* – the filing of pleadings with the Department as required by these rules shall be made by filing them with the Director-State Engineer. If mailed to the Department, the date of receipt at the Department and not the date of deposit in the mails, is determinative.

7.22C2d *Holiday Defined* – a holiday is a day or any portion of a day designated by statute or authorized by the Governor in which no business is transacted by the Department.

7.22C2e *Office Hours Defined* – office hours are 8:00 A.M. to 5:00 P.M., Monday through Friday.

7.22C2f *Hearing Defined* – all hearings shall be informal hearings conducted by a hearing examiner. The record of the hearing will be transcribed or recorded. Either party may elect to be bound by the rules of evidence applicable in the district courts, if such election is in accordance with the requirements of Neb. Rev. Stat. § 84-914.

7.22C2g *Party Defined* – party shall mean the Nebraska Department of Transportation, an individual, corporation or other entity that is aggrieved by a decision resulting from an interpretation and/or application of the Rules and Regulations of the Nebraska Department of Transportation.

7.22C3 Hearing Examiner

7.22C3a *Appointment of Hearing Examiner* – upon receipt of a request for a hearing by a party, the Director-State Engineer shall appoint a Hearing Examiner to administrate, conduct and preside over all hearings.

The Director-State Engineer shall appoint an individual to act as Hearing Examiner who is an employee of the Department, so long as the individual so appointed can, in the opinion of the Director-State Engineer, serve as a Hearing Examiner in a competent and efficient manner. The Hearing Examiner shall not have been directly involved in the action appealed.

7.22C3b Duties of Hearing Examiner

- *Conduct of Hearing* – the Hearing Examiner shall preside at the hearing, open the proceedings, acknowledge appearance of parties and counsel, receive evidence for the record, rule on all motions and objections, may interrogate witnesses, and shall close the proceedings. If a party or parties are not represented by legal counsel, the Hearing Examiner shall explain to them the rules of practice and procedure and shall conduct the hearing generally in a less formal manner.
- *Custodian of All Pleadings* – upon appointment as Hearing Examiner, the Hearing Examiner shall become the custodian of all pleadings, exhibits, depositions, documents, and briefs entered, filed and introduced into evidence by the parties.
- *Limitation of Powers* – a Hearing Examiner shall have no power to take any action involving a final determination of proceedings.
- *Record of Proceedings* – the Hearing Examiner shall prepare an official record which shall include testimony and exhibits, however, it shall not be necessary to transcribe shorthand notes or recordings unless requested by either party, in which event the costs of such transcription shall be borne by whomever makes such request.
- *Notice of Hearing* – it shall be the duty of the Hearing Examiner to determine that notice of hearing has been given in accordance with the rules and regulations of the Nebraska Department of Transportation.

- *Oath* – all testimony presented before the Hearing Examiner shall be given under oath which the Hearing Examiner will have the authority to administer.
- *Conduct of Parties* – the Hearing Examiner shall have the power to exclude or remove from the hearing any person who engages in improper conduct.
- *Findings and Recommendations* – the Hearing Examiner shall, in writing, make complete findings of fact and conclusions of law together with a recommendation for disposition of the issue to the Director-State Engineer.

7.22C3c *Commencement of Proceedings* – a hearing shall be scheduled upon receipt of a written request of a party on Department of Transportation form Attachment 718.2.

7.22C3d *Scheduling of Hearing* – a hearing shall be held no sooner than ten (10) days after receipt of a written request, unless agreed upon in writing by the parties.

7.22C3e *Location of Hearing* – in setting the time and place for hearings in contested cases, appropriate consideration shall be made for the convenience and necessity of all of the parties, which includes the Department or its representative.

7.22C3f *Notice of Hearing* – the Director-State Engineer shall give reasonable notice of a hearing stating the date, time, location and general subject matter of the hearing. Notice shall be given by certified mail no later than five (5) days prior to a hearing. Failure of a party to appear at a hearing so scheduled shall be grounds for dismissal of the proceeding.

7.22C4 Motions

7.22C4a Motions made prior to a hearing shall be in writing and a copy thereof shall be served on the parties. Such motions, except motions constituting final disposition of a proceeding, shall be ruled on by the Hearing Examiner.

7.22C4b Motions constituting final disposition of a proceeding shall be ruled upon by the Director-State Engineer.

7.22C4c Motions may be ruled on exparte, without argument. A copy of the motion with the ruling thereon shall be mailed to the parties.

7.22C4d *Motion for Continuance* – motions for continuance shall be granted at the discretion of the Hearing Examiner, however, no continuance shall be requested and none allowed but for good cause shown and in no case shall a hearing be continued for a period of more than twenty (20) days.

7.22C5 Discovery

7.22C5a The party shall have the right to request answers to questions, and to request the production of specified documents relevant to the proceedings. The Department shall permit a party to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the Department. The Department may, however, impose reasonable conditions on the person's right to inspect.

7.22C5b Discovery requests and/or notice shall be addressed to the party from whom the information or documents are sought.

7.22C5c Answers and documents must be provided within ten (10) working days of receipt of request. Objections to such requests shall be made to the Hearing Examiner within five (5) days of receipt of the request. The Hearing Examiner shall affirm or deny such objection within five (5) days of receipt thereof and shall establish time limits for response when objections are denied.

7.22C5d Failure to respond to any discovery request, except where objections to such requests are sustained, may, at the discretion of the Hearing Examiner, result in the nonresponding party being denied the right to introduce any evidence on the subject of the request, or such other remedy as deemed appropriate.

7.22C5e The time limits of the discovery procedure may, if necessary and justified in the opinion of the Hearing Examiner, be adjusted to accommodate the time required by the circumstances.

7.22C6 *Subpoena* – a subpoena may be had upon request which shall indicate to the Hearing Examiner the names and the last known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced shall be adequately described. All requests for subpoena shall be directed to the attention of the Hearing Examiner no less than six (6) days prior to the published date of said hearing. The Hearing Examiner shall issue subpoena as requested and mail the same to the party so requesting within six (6) days of receipt of request therefore, but in no case, later than one day prior to the hearing. Service may be made either by mailing a copy thereof by registered or certified mail, return receipt requested, no less than three (3) days before the hearing date of the cause which the witness is required to attend, or personally by any person not interested in the action. No costs for serving a subpoena will be allowed.

7.22C7 *Conduct of Hearing* – the Department shall present its case first, setting forth the grounds and reasons for its actions, and then the other party shall be heard. In cases where the Department feels that the other party should be heard first, that party shall be notified not less than five (5) days in advance of the hearing.

7.22C8 *Decision of the Director-State Engineer* – the decision of the Director-State Engineer shall be in writing and a copy of the decision shall be mailed to the

party by certified or registered mail no later than thirty (30) days after the recommendation of the Hearing Examiner is received by the Director-State Engineer. The Director-State Engineer may adopt the recommendation of the Hearing Examiner, or may make an independent decision accompanied by findings of fact and conclusions of law.

7.22D JUDICIAL REVIEW

Any person dissatisfied with the final determination of the Second Stage appeal may seek judicial review of the Department's determination.

7.23 CIVIL RIGHTS

7.23A The Department should take affirmative action to ensure that replacement housing resources used are, in fact, open housing to all races and sexes without discrimination.

7.23B The Department should fully inform displacees of their fair housing rights and options in selecting replacement housing in areas of their choice and the available assistance from the Department in ensuring displacees that their fair housing rights will be protected in accordance with Title VII of the Civil Rights Act of 1968 and the HUD Amendment Act of 1974.

7.23C The Civil Rights Survey (Attachment 102) is hand carried by the Relocation Agent and presented to the displacee when the Relocation Assistance Offer is made to them. When the Relocation Assistance Benefit Offer cannot be made in person the attachment is mailed to each displaced person.

7.24 ESTIMATES

7.24A Preliminary relocation assistance estimates may be requested form other Divisions/Districts within the Department or the Appraisal Section in the Right of Way Division. Generally others need to know total Right of Way costs to aid in developing highway alignment and design alternatives on a tract or project basis.

7.24B The Appraisal Section is responsible for preliminary Right of Way cost estimates on the proposed Right of Way costs prior to the actual appraisal of the project. This function is primarily done by the Chief Appraiser or occasionally by the Appraisal Staff with input from other sections in the Division. The estimate is performed usually from the Appraisal Plans but if needed prior to the issuing of the Appraisal Plans; it can be done from Preliminary Plans when requested by the Chief Appraiser. When a State project will use Federal Aid funds in the ROW acquisition, the ROW cost estimate will be made in Phase II of the ROW preliminary engineering process and could become part of the Independent Cost Estimate (ICE).

7.24C Although estimates are opinions, they are expected to be as solidly based as possible using appropriate estimating principles. The estimator uses (Attachment 728) as a guide for estimating expenses.

7.24C1 The Type of Displacement column contains each type of displacement that can occur on a project. The estimator will use or delete these as appropriate for the estimate being requested.

7.24C2 The Expense column is based on a three year average. This average is prepared at the start of each calendar year based upon the last three year statistics that are maintained by the Negotiation/Relocation Section. For some nonresidential and personal property moves the moving cost estimate may need to be based on similar moves that have occurred in the past. In this case, an average would not be used.

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CHAPTER 8
HIGHWAY BEAUTIFICATION

8.01 OUTDOOR ADVERTISING CONTROL – GENERAL

8.01A *Federal Act* – Congress has declared through the 1965 Beautification Act that outdoor advertising in areas adjacent to the Highway Beautification Control System (HBCS) should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and preserve natural beauty.

8.01B *State Authority* – the State of Nebraska, by enacting 39-102(7), 39-201.01 to 39-226, 39-1302, 39-1311, 39-1320, 39-1393, 60-6,127 to 60-6,128, and 69-1701 to 69-1702, Neb. Rev. Stat., elected to participate in the Outdoor Advertising Control portion of the Highway Beautification Program. The State act includes provisions for control of the erection of new advertising devices, and the removal of illegal and certain nonconforming advertising signs with Federal participating funds.

8.02 OBJECTIVES OF CONTROL

8.02A To control outdoor advertising signs erected and maintained in areas adjacent to the Nebraska HBCS through a permit process, inventories, periodic surveillance, and in accordance with Nebraska Administrative Code (NAC) Title 410, Chapter 3, Signs.

8.02B To remove all illegal signs adjacent to the Nebraska HBCS.

8.03 PROCEDURE FOR SIGNS REQUIRING SIGN PERMITS ADJACENT TO THE NEBRASKA HBCS

8.03A APPLICATIONS TO ERECT NEW SIGNS

8.03A1 Sign applications (Attachment 801), along with all required documentation, shall be submitted to the appropriate District Permit Officer for review. Following District approval, the application shall be forwarded to the Highway Beautification Section for final review.

8.03A2 During the District review, if the new sign application meets all criteria for its sign classification, the District Permit Officer shall inspect the proposed sign location, complete the appropriate checklist, and forward the application to the Highway Beautification Section for further processing, which includes adding to the sign inventory. The District Permit Officer may return incomplete or unapproved sign applications to the applicant.

8.03A3 If the sign application will not be able to meet the specific criteria following review by the Highway Beautification Section, the Highway Beautification Section shall notify the owner by letter and return the application and accompanying documents and advise the applicant why the sign permit cannot be issued. If minimal additional information or documentation is

required to complete a sign application, the applicant may be contacted by the District Permit Officer or Highway Beautification Section to provide said information in order to complete the application. Sign applications submitted with no accompanying documentation will be returned to the applicant.

8.03A4 Following final review by the Highway Beautification Section, if the new sign application meets all criteria for its sign classification, Highway Beautification Section will order a sign permit tag, prepare a sign permit, and mail the sign permit and tag to the owner of the new sign permit.

8.03B SIGNS ERECTED ILLEGALLY WITHOUT A PERMIT

8.03B1 If the sign is eligible for a sign permit, and the sign owner can be determined, the District Permit Officer shall notify the sign owner of the requirement to obtain a permit for the sign.

8.03B2 If the owner of a sign has not obtained a sign permit, and the District Permit Officer cannot determine ownership of the sign, they shall notify the property owner by certified letter or by personal delivery that a sign permit must be obtained within 30 days or the sign must be removed.

8.03B3 After 30 days, if the sign owner or property owner has not complied by obtaining a sign permit, or the property owner has not advised the Department of the sign owner's name, the District Permit Officer shall forward the information obtained to the Highway Beautification Section so that removal procedures as outlined in Section 8.04 can be followed.

8.04 PROCEDURE FOR REMOVAL OF ILLEGAL SIGNS ON PRIVATE PROPERTY

8.04A If a sign has been erected illegally without a sign permit, and the sign is not permittable. The District Permit Officer shall notify the sign owner or the landowner if the sign owner cannot be determined, in writing by certified mail or by personal delivery, and require the sign be removed within 30 days. After 30 days has lapsed, the District Permit Officer shall again inspect the area. If the sign is still in place, the District Permit Officer will complete a sign data sheet (Attachment 802) and forward all documentation of the illegal sign, including photos, call reports, and any correspondence, to the Highway Beautification Section for further action.

8.04B Forward to the Transportation Section of the Attorney General's Office. Upon receipt of all required documentation, and after all efforts have been exhausted by the Highway Beautification Section to get the illegal sign removed, the Highway Beautification Section shall notify legal counsel of the violation and forward all necessary documentation to their office through the Right of Way Division Engineer and Deputy Director-Engineering.

8.04C *Transportation Section of the Attorney General's Office* – this office will advise the sign owner that the sign must be removed within a specific timeframe or action will be taken to force compliance with the Advertising Control Statutes.

8.04D *Final Inspection of Sign* – at the end of the required timeframe, the District Permit Officer shall make an inspection and notify the Highway Beautification Section if the sign has been removed.

8.04E *Court Proceedings* – if the sign has not been removed after the specified time, the Transportation Section of the Attorney General's Office will pursue a court action against all required parties to force removal of the sign.

8.05 PROCEDURE FOR REMOVAL OF ILLEGAL SIGNS IN STATE HIGHWAY RIGHT OF WAY

Signs located in the right of way are an encroachment, are not allowed, and must be removed from the right of way in accordance with NDOT's Encroachment Policy.

8.06 OPERATING PROCEDURES FOR ADVERTISING SIGN CONTROL BY THE FIELD DISTRICTS

8.06A *District Permit Officer Duties* – District Permit Officers shall be responsible for all field functions for the Control of Outdoor Advertising in the District. Basic guidelines of their duties are briefly stated as follows:

8.06A1 The District Permit Officer is responsible for maintaining the Outdoor Advertising Sign inventories in their District. These inventories are maintained on the Department's Outdoor Advertising Computer Program.

8.06A2 The District Permit Officer will be responsible for the first review of new sign applications as outlined in Section 8.03.

8.06A3 The District Permit Officer shall be responsible for documenting local zoning along the Nebraska HBCS, and determine which areas qualify as unzoned commercial and industrial areas in the District as defined within the NAC, Title 410, Chapter 3, Signs.

8.06A4 The District Permit Officer shall be responsible for the continual surveillance of the Nebraska HBCS in the District. During this surveillance, the District Permit Officer needs to look for new signs erected without a sign permit; modifications to conforming signs without first obtaining a permit, and illegal changes to nonconforming signs (changes other than routine maintenance). Upon finding illegal signs, the District Permit Officer shall follow procedures outlined in Sections 8.03, 8.04 and 8.05. This includes taking photographs of signs for inventory purposes and for documentation to be used for any sign issues.

8.06A5 Structures such as frames or posts only, without sign face(s), are not to be considered signs but should be monitored.

8.06B WIND DAMAGED AND VANDALIZED NONCONFORMING SIGNS

8.06B1 A nonconforming sign which is substantially damaged by wind or acts of God shall not be repaired or re-erected until the owner of the sign has been notified by the NDOT that such signs can be repaired or re-erected.

8.06B1a The District Permit Officer shall inspect the sign site, photograph the damaged sign, and forward all information on the damaged sign to the Highway Beautification Section for appraisal purposes if necessary. The Highway Beautification Section will notify the sign owner by letter if the sign can be repaired or if it must be removed.

8.06B1b A nonconforming sign which has been damaged by wind or acts of God may be repaired or re-erected to its original state, or acquired by the Department if the cost of repair, based on new construction costs and overhead costs, is less than 60 percent of the depreciated value of the sign. Signs which are damaged 60 percent or more cannot be rebuilt and must be removed by the sign owner without compensation. If the sign can be repaired or re-erected, said work must be done in accordance with the Maintenance definition found at Section 002.01M as stated in current Rules and Regulations.

8.06B2 The Rules and Regulations require the sign owner to notify the NDOT when a nonconforming sign is destroyed or substantially damaged by an act of vandalism.

8.06B2a The District Permit Officer shall take photographs of the vandalized sign and notify the Highway Beautification Section.

8.06B2b The NDOT shall have the option of acquiring the sign or permitting the re-erection of the sign to its original state.

8.06B2c Compensation for such sign shall be based on the estimated depreciated value of the sign prior to the vandalism, less cost to replace or repair.

8.07 OPERATING PROCEDURES FOR ADVERTISING SIGN CONTROL IN THE HIGHWAY BEAUTIFICATION SECTION

8.07A *Responsibilities* – the Highway Beautification Section has the final responsibility for maintaining the permanent inventories on the Department's Outdoor Advertising Computer Programs. These records contain the inventory of all active and inactive signs. This Section also issues the permits, issues renewal notices, and works with the District Permit Officer and Transportation Section of the Attorney General's office for the removal of illegal signs.

8.07B DUTIES

8.07B1 Review applications (Attachment 801) for new signs and issue new sign permits, if appropriate.

8.07B2 Periodically run a report to review what signs have been removed from the active list to the inactive list so that the “hard copy” files can be managed.

8.07B3 Prepare renewal notices for sign permits that are expiring, verify renewal information when returned from the sign owner, and issue the renewal permit.

8.07B4 Review all information submitted by the District Permit Officer on illegal signs to determine the course of action to be taken. In those instances where legal action is required to remove illegal signs, a completed sign data sheet (Attachment 802) and any other documentation necessary to pursue removal of the illegal sign shall be forwarded to the Transportation Section of the Attorney General's office.

8.07B5 Review information submitted by the District Permit Officer on wind-damaged and vandalized nonconforming signs.

8.07B5a Request the Appraisal Section to perform an appraisal to determine if the cost of the repair based on new construction and overhead costs are more or less than 60 percent of the depreciated value of the sign.

8.07B5b Notify owners of wind-damaged and vandalized signs whether the sign can be repaired, re-erected, or must be removed.

8.07B6 Maintenance of Records including the following:

8.07B6a Keep the sign inventory consistent with the information supplied by the District Permit Officer.

8.07B6b Maintaining records of illegal signs that have been removed or are in the process of being removed.

8.07B6c Recording changes to the Nebraska HBCS and supplying the District Permit Officers with the latest Nebraska HBCS Maps.

8.08 JUNKYARD CONTROL – GENERAL

8.08A *Federal Act* – Congress has declared through the 1965 Beautification Act and Map 21 that junkyards in areas adjacent to the Interstate and National Highway System (NHS) should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and preserve natural beauty.

8.08B *State Authority* – the State of Nebraska, by enacting 39-2601 through 39-2612, Neb. Rev. Stat., elected to participate in the junkyard control portion of the Highway Beautification Program. The State act includes provisions for control of the location of new junkyards.

8.09 OBJECTIVES OF CONTROL

8.09A To control junkyards placed and maintained in areas adjacent to the Nebraska Interstate and National Highway System Routes through a permit process, inventories, periodic surveillance, and in accordance with Nebraska Administrative Code (NAC) Title 410, Chapter 4, Junkyards.

8.10 PROCEDURES FOR JUNKYARDS REQUIRING JUNKYARD PERMITS ADJACENT TO NEBRASKA HBCS

8.10A APPLICATIONS FOR NEW JUNKYARDS

8.10A1 New junkyards adjacent to routes controlled by NDOT are required to obtain a permit prior to beginning operation.

8.10A2 An Application for Junkyard Permit form (Attachment 803) with all required documentation stated on the form must be supplied by the applicant to the appropriate District Permit Officer for review.

8.10A3 Following District approval, the application and completed Junkyard Inspection Form (Attachment 804) shall be forwarded to the Highway Beautification Section in Lincoln for final review and issuance of Junkyard Permit upon approval.

8.11 OPERATING PROCEDURES FOR JUNKYARD CONTROL BY THE FIELD DISTRICTS

8.11A *Surveillance* – Monitors assigned area and makes contact with anyone who starts an accumulation of wrecked or dismantled automobiles or other items that would constitute a junkyard as defined in State Statutes and Department Junkyard Rules and Regulations.

8.11B DISCOVERY OF A POTENTIAL JUNKYARD

8.11B1 Send a certified letter to the owner of the area following initial contact advising them that they have 30 days to remove the items or make application for a Junkyard Permit.

8.11B2 A copy of the letter will be provided to the Highway Beautification Section.

8.11B3 Provides the owner with a copy of the Junkyard Rules and Regulations along with an Application for Junkyard Permit form (Attachment 803).

8.11B4 Advises owners of the screening requirements in areas that are not properly zoned.

8.11B5 Notifies the Highway Beautification Section in Lincoln if the owner fails to either remove the junk or apply for a Junkyard Permit within 30 days.

8.11C APPLICATIONS AND INSPECTIONS

8.11C1 Reviews completed applications for new junkyards.

8.11C2 Completes a junkyard Inspection Sheet (Attachment 804) upon a field inspection of the proposed junkyard site if the application meets all of the required specifications.

8.11C3 If the junkyard can be permitted, the application, inspection sheet, and all accompanying documentation are forwarded to Highway Beautification Section in Lincoln for further processing.

8.11C4 Determine that areas which are not properly zoned have approval of the local zoning authority. If there is no local zoning authority, this step will be eliminated.

8.11D OTHER ASSIGNED DUTIES

8.11D1 Reviews owner's plans for screening to determine if the junkyard will be hidden from view of the traveling public or determine if it is screened by natural objects.

8.11D2 Conducts routine surveillance of existing junkyards.

8.11D3 Assists with maintaining an accurate inventory of permitted junkyards.

8.11D4 Conducts inspection of existing junkyards prior to their annual renewal in January. An Inspection Sheet (Attachment 804) is completed and provided to the Highway Beautification Section for renewal or cancellation purposes.

8.11D5 Assists with complaints received from concerned parties.

8.11D6 Monitors changes to local zoning within their assigned area.

8.11D7 Assists with delinquent renewals of existing junkyards.

8.12 OPERATING PROCEDURES FOR JUNKYARD CONTROL BY THE HIGHWAY BEAUTIFICATION SECTION

8.12A MAINTAINS RECORDS

8.12A1 The Highway Beautification Section is responsible for maintaining a permanent inventory of active junkyards.

8.12A2 Maintains files of inactive junkyards which have been cleaned up.

8.12B RESPONSIBILITIES OF THE SECTION

8.12B1 Provides guidance and assistance to District Permit Officers as situations warrant.

8.12B2 Performs final review of new Junkyard Application forms (Attachment 803) following review by the District Permit Officers.

8.12B3 Issues Junkyard Permit if applicant meets all criteria.

8.12B4 Following annual inspection of existing junkyards by the District Permit Officers, mails out renewal notices to permittees.

8.12B5 Issues new annual permit upon receipt of completed renewal form and receipt of required fees.

8.12B6 Issues second renewal notices to junkyard owners who have failed to respond, advising them that they must renew their Junkyard Permits immediately.

8.12B7 Requests, when necessary, assistance from the Transportation Section of the Attorney General's Office to enforce State Statutes and Junkyard Regulations.

8.13 PROCEDURE FOR THE REMOVAL OF ILLEGAL JUNKYARDS

8.13A DISTRICT PROCEDURES

8.13A1 The District Permit Officers shall notify the owner of the junkyard by certified mail to correct any violation within 30 days.

8.13A2 A copy of the letter will be provided to the Highway Beautification Section and the Transportation Section of the Attorney General's Office.

8.13A3 After 30 days have elapsed, the District Permit Officer shall inspect the area and notify the Highway Beautification Section whether or not the violation has been corrected.

8.13B *Highway Beautification Section Procedures* – if the violation has not been corrected, the Highway Beautification Section shall notify the Attorney General's Office regarding the violation and supply the necessary documents for their action through the Right of Way Division Engineer and Deputy Director-Engineering.

8.13C TRANSPORTATION SECTION OF THE ATTORNEY GENERAL'S OFFICE

8.13C1 The assigned legal counsel will contact the junkyard owner by certified mail and advise the owner to correct the violation within 10 days, or legal action will be taken.

8.13C2 Following the 10-day period, the District Permit Officer shall make an inspection of the site and notify the Highway Beautification Section whether or not the violations have been corrected.

8.13C3 If the violation has not been corrected, legal counsel will proceed with legal action to correct the violation.

APPENDIX

DEFINITIONS FOR HIGHWAY & RIGHT OF WAY TERMS

2-Sheet: Plan sheet in tabular form that contains general information such as owner name(s), location, and areas for each tract that ROW will be acquired from on a project.

4-3-2-1 Rule: An empirical rule which ascribes 40% of the value of the lot to the quarter (in-depth) of the lot fronting on the street, 30% to the next quarter, 20% to the third quarter, and 10% to the rear quarter.

Abandonment: Cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes (sometimes called vacation). In Nebraska Statutes 39-1302, abandon shall mean to reject all or part of the Department's rights and responsibilities relating to all or part of a fragment, section or route on the State highway system.

Abstract of Title: A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property and all liens, charges, encumbrances, and releases.

Access: See "Control of Access" and "Right of Access".

Access Connection: Any roadway facility by means of which vehicles can enter or leave an arterial highway. Included are intersections at-grade, private driveways, and ramps or separate lanes connecting with cross streets or frontage roads.

Access Control Break: Specific location within a control of access highway where an owner or occupant of abutting land, or other persons, has been granted the right to access the public road. Access control break locations are identified in the recorded deeds.

Access Rights: The right of ingress to and egress from a property to a public way.

Accretion: The increase of riparian land by the gradual deposit, by water, of solid material, whether mud, sand, or sediment, so as to cause that to become dry land which was before covered with water. The owner of the riparian land acquires title to all additions by means of accretion.

Acknowledgement: A declaration of a party to an instrument, before a proper officer, that it is his/her free and voluntary act; the certificate of such officer on the instrument that it has been acknowledged.

Acquiring Agency: A State agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

Acquisition or Taking: The process of obtaining right of way.

Administrative Settlement: Occasionally it is in the public interest to agree to a settlement that is in excess of the review appraiser's fair market value determination. Such settlements are broadly defined as administrative settlements due to the fact that they are the result of administrative decision. In all instances administrative settlements should be accomplished using caution, discretion, and proper judgment.

Ad Valorem Tax: A tax varying with the value of goods or property.

Adverse Possession: The act of an occupant of land in acquiring title against the real owner where possession has been actual, continuous, hostile, visible, and distinct for the statutory period. The possession must be actual and exclusive, open and notorious.

It must be continuous for the period provided by the statute. The possession of one adverse claimant may be tacked to the possession of successive adverse claimants, provided there is privity of estate between such claimants.

Affidavit: A statement or declaration reduced to writing and sworn or affirmed to before some officer who has authority to administer an oath or affirmation. (It is always made ex parte, and without cross examination. In this it differs from a deposition.)

Agreement of Sale: A written contract whereby the purchaser agrees to buy certain real estate and the seller agrees to sell upon terms and conditions set forth therein.

Airspace Use Agreement: See "ROW Use agreement."
"

Alley: An established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highways. (Nebr. Statutes 39-1302)

Amortization:
1. The process or recovery, over a stated period of time, of the cost of an asset by appropriate periodical charges to current operations. It is similar to depreciation, but also applicable to intangible costs such as financing or refinancing costs, development costs, and so on.

2. Provision for gradual liquidation of an obligation either by meeting serial principal payments periodically due thereon or by periodical allocations to a sinking fund.

Animal Unit: A mature beef animal or a dairy cow. Generally a two year old steer or cow weighing 1,000 pounds or more. A yearling may be rated at 3/4 animal unit and calf or weaner rated at 1/2 animal unit.

Annuity:
1. An annual income.

2. The return from an investment of capital in a series of periodic payments which comprise both interest and partial return of capital.

3. The annual return may be in equal amounts called a level annuity or in increasing or decreasing annual amounts called an increasing or decreasing annuity.

4. A series of periodical payments, usually, though not necessarily equal in amount and made at equal intervals of time; such as annually or semiannually.

Appraisal:
1. An estimate and opinion of value.

2. Usually a written statement of the market value or value as defined by the appraiser of an adequately described parcel of property as of a specific date. A conclusion that results from analysis of facts.

Appraisal Plans: Plans showing the existing public ROW along with any additional ROW that must be acquired in order to meet the needs of a highway project. These plans are issued when the additional ROW requirements have been determined, and the parcels are ready to be appraised.

Appraisal, Right of Way: See "Right of Way Appraisal."

Appraisal, Summation: See "Summation Appraisal."

Appreciation: The increase in cost, price or value that is due to improved economic conditions, increasing price levels, reversal of depreciating environmental trends, improved transportation facilities, direction of community or area growth, and many other factors.

Approach Nose: An end of an island, or neutral area between roadways, which faces approaching traffic that passes either on one or both sides.

Appurtenance: An item of property accessory to, or an adjunct of, a more important property, title to which usually passes with title to the principal property. Something which passes as an incident to land, such as right of way.

ARMS (Automated Right of Way Management System): Computer database where a variety of right of way project information is located.

Arterial Highway: A general term denoting a highway primarily for traffic, usually on a continuous route. (Nebr. Statutes 39-1302)

Assemblage: The combining of two or more sites so as to develop one site having a greater utility than the aggregate of each when figured separately.

Assessment:
1. The valuation of property for taxation; also the value so assigned.

2. Nonrecurring charges levied against property to meet some specific purpose.

Assignee: The person to whom an agreement or contract is assigned.

Assignment: The method or manner by which a right, a specialty, or contract is transferred from one person to another.

At-Grade Intersection: An intersection where all roadways join or cross at the same level.

Automobile Graveyard: Any establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

Auxiliary Lanes: Lanes that are not considered to be through travel lanes, but are intended to supplement through traffic movements by providing for specific vehicular movements such as left and right turns, climbing/passing, acceleration/deceleration, weaving, etc.

Average Daily Traffic: The average 24-hour volume, being the total volume during a stated period divided by the number of days in that period. Unless otherwise stated, the period is a year. The term is commonly abbreviated as ADT.

Avigation Easement: See "Easement, Avigation".

Azimuth: The angle between true (meridian) north and an object. In surveying, it is measured clockwise from the north.

Backfill: Material used to replace or the act of replacing material removed during construction; also may denote material placed or the act of placing material adjacent to structures.

Backslope: The slope from the bottom of the ditch to natural ground, on the opposite side of the foreslope. See "Foreslope."

Barrier Curb: Steep-face curb designed to inhibit encroachment on State right of way.

Basic Capacity: The maximum number of passenger cars that can pass a given point on a lane or roadway during one hour under the most nearly ideal roadway and traffic conditions that can be attained.

BELF: See "Board of Education Lands and Funds."

Belt Highway: An arterial highway for carrying traffic partially or entirely around an urban area or portion thereof. (Also called circumferential highway).

Bench Mark: An identified stable point for which there is a known elevation referenced to an assumed local, state, or national datum plane. Usually a bronze plate or mark on some durable material such as stone or concrete posts.

Berm: A horizontal ledge or bench part way up a slope. A longitudinal mound of earth used to deflect water; a dike-like earthen structure formed by materials excavated from a shallow ditch which parallels and adjoins it, used to control surface drainage.

Betterment: Any upgrading of the facility being improved or relocated that is not attributable to maintenance or reconstruction of the existing facility at its current level of service.

Binder: An agreement to cover a down payment for the purchase of real estate as evidence of good faith on the part of the purchaser.

Board-Foot: A unit of measure represented by a board one foot long, one foot wide and one inch thick.

Board of Educational Lands and Funds (BELF) : Section 7 of the Enabling Act passed on April 10, 1864 provides that Sections 16 and 36 in every township shall be, and are hereby

granted to the State for the support of common schools. BELF may also own other parcels of land as recorded by the Register of Deeds. These lands are owned and managed by the board with the purpose to generate funds for the educational trust fund through rent, leases, sales, etc.

Bonus Value: The value of any rental in excess of the rent reserved in the lease, which the tenant could obtain if he/she sublet the premises on the open rental market. It is the difference between the lease rent (contract rent) and the rent being paid by other tenants for comparable sale in the vicinity of the subject lease (economic rent).

Borrow: Suitable material from sources outside the roadway prism, used primarily for embankments.

Bridge: A structure of over 20-foot span. (Batteries of pipe culverts regardless of their length are not bridges).

Broker: One employed by another, for a fee, to carry on any of the activities, especially in the sale of real estate listed in the license law definition of the word.

Buffer Areas: The area between the back of curb and sidewalk.

Buffer Zones: An upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.

Building Line: A line established by ordinance or statute between which line and the street a structure is not permitted.

Building Residual Technique: A term designating a technique in which the land is valued independently of the building. The fair annual net return on the land value is deducted from the estimated net annual income to the property (land and building) and the residual amount is said to be attributable to the building, including depreciation, and is capitalized to indicate the building value.

Cadastre: A public record, survey, or map of the value, extent, and ownership of land as a basis for taxation. Usually found in the Tax Assessor’s office.

CADD: Computer-Aided Drafting and Design.

Capital: Accumulation of wealth used to further the production process. Capital goods represent such wealth when invested in specialized means of production. Liquid or unspecialized capital may be shifted between various types of capital investments. In many respects land and capital goods are similar in that they represent fixed investments for relatively long periods of time.

Capitalization: The process of converting into present value a series of anticipated future annual installments of income.

Capitalization Rate: An anticipated rate of return for an investment. A rate at which income is processed to indicate the probable capital value. The rate is generally considered to be composed of a pure interest rate plus a recapture rate.

Case Law: See "Law, Case".

Cattleguard: An opening in a fence which is not closed by a gate, but having a ground grill that cattle will not cross.

Cattle Pass: A structure under a highway for the use of cattle to cross from one field to another without interference by highway traffic. See “Pass”.

Causeway: A raised roadway across wet or low lying ground. Often created temporarily to facilitate the construction of a bridge or other items adjacent to or across a waterway.

Center Pivot: A structure that pumps water from the ground to an aerial sprinkler system that rotates about the structure; used for crop irrigation.

Certificate of Title: A document based on a title search stating that the title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

Change of Grade: The elevation of a point on the newly constructed or planned highway as compared to the elevation at the same location of the land, street, or highway prior to construction.

Changes in Concept: Alterations in the original project idea during the planning and/or design stages.

Changes in Scope: Modifications in the extent or size of the project.

Chain: A unit of land measurement, 66 feet, the length of a surveyor's chain.

Channel: A natural or artificial watercourse. (Nebr. Statutes 39-1302)

Channel Change: Altering or changing the course of an existing channel which may require the addition of certain mitigation measures depending on the magnitude of the change and/or the impact it has on the surrounding environment. Mitigation measures could include items such as preserving areas adjacent to the channel to act as a buffer, grading the channel banks in a certain way to control siltation, or constructing the channel in such a manner so as to minimize or eliminate any loss in channel length.

Channelization: The physical separation of vehicular and/or pedestrian traffic movements to regulate conflicting movements.

Channelized Intersection: An at-grade intersection at which various traffic movements are separated by auxiliary lanes, medians, islands, etc.

Chattel: Personal property such as household goods or removable fixtures.

Clarity: (CA PPM) A registered software product from CA Technologies employed by the Nebraska Department of Transportation for use in the planning and program management of projects. This software is used and accessed throughout the Department to record and communicate basic scope, location, task, assignment, schedule, cost, and other fundamental information of projects. This software is also used to record and track completed and uncompleted tasks and generate reports.

Clear Zone: The total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a no recoverable slope, and/or a clear run-out area. The desired width depends on the traffic volumes and speeds, and on the roadside geometry. Also called the recovery area or lateral obstacle clearance distance.

Climbing Lanes: Additional lane(s) provided on crest vertical curves to accommodate slow moving vehicles.

Closing: Final transactions between parties completing transfer of title to property conveyed, payment of consideration, release of liens, etc.

Cloud on Title: An outstanding claim or encumbrance which if valid will affect or impair the owner's title; a judgment or dower interest. (Acq. of ROW)

Cloverleaf: A four leg interchange with loops for left turns and outer connections for right turns or two way ramps for these turns. A full cloverleaf has ramps for two turning movements in each quadrant.

Collector-Distributor Roads: An auxiliary road system parallel to but separate from a freeway/interstate that collects and distributes local traffic with the intent of limiting the number of entrance and exit points on a freeway, while satisfying the demand for access to the freeway. Similar to frontage roads but collector distributor roads do not provide access to abutting properties.

Commercial Activity: Activities generally recognized as commercial by zoning authorities in this state and having adequate access, parking and utilities, except that none of the following shall be considered commercial activity for signs:

- Outdoor advertising structures.
- General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands:
- Activities normally or regularly in operation less than three months of the year.
- Activities conducted in a building principally used as a residence.
- Railroad tracks and minor sidings.
- Activities more than six hundred and sixty feet from the nearest edge of the right of way of the road or highway.

Common Law: See "Law, Common."

Community Property: All property acquired by either husband or wife or both during the marriage, except for that acquired by gift, descent, and devise, belongs to both as a community and not as an individual.

The death of either husband or wife dissolves the community and the survivor's interest becomes absolute. Where the descendant dies intestate leaving no descendants or ascendants, such descendant’s interest goes to the surviving spouse.

Comparable Sale: A sale of property which is as similar as possible to the property under appraisement as to location, community, services, size, and physical character. The sale must have been a recent sale on the open market.

Comprehensive Plan: A plan developed for a local, regional or statewide area that considers social, economic, cultural, transportation, environment, and other concerns.

Condemnation:
1. The process by which property is acquired for highway purposes through legal proceedings under the power of eminent domain.

2. The term "condemnation" denotes the acquisition of property by the exercise of the right or power, the sovereign, whether it is the State government or an agency to whom there has been delegated this right or power, may, upon payment of just compensation, acquire property for the benefit of the public.

Consequential Damages: Loss in value to a parcel, no portion of which is acquired, resulting from a highway improvement.

Construction Sequencing: The construction of a roadway in different phases so that the project may be built while maintaining through traffic and/or access to local residences or businesses.

Contiguous: In contact; touching; near (across the road); next.

Construction Notice: Notice given by the public records. The law presumes that everyone has the same knowledge of all instruments properly recorded as if he/she were actually acquainted with them.

Constructive Eviction: Breach of covenant of warranty or quiet enjoyment for example, the inability of a purchaser, or lessee, to obtain possession by reason of a paramount outstanding title.

Contour: A line connecting the points on land surface which have the same elevation. The edge of the water of a pond approximates a contour line.

Contract: An agreement between two or more persons, upon a sufficient consideration, to do or not to do a particular thing.

Contract Rent: The amount of rent provided for under the terms of the lease; the actual rent that is agreed to be paid. In the written lease it is specifically set forth as one of the terms and under an oral rental agreement, if the amount can be proved, it likewise is considered contract rent.

Control of Access: The condition where the rights of owners or occupants of abutting land, or other persons, to access, light, air or view, in connection with a highway, is fully or partially controlled by public authority. "FULL CONTROL" of access means that the authority to control access is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at-grade or direct private driveway connections. "PARTIAL CONTROL" of access means that the authority to control access is

exercised to give preference to through traffic to a degree that, in addition to access connections with selected public roads, there may be some crossings at-grade and some private driveway connections.

Controlled Access Facility: A road or highway designed for through traffic and upon which the Nebraska Department of Transportation may regulate, restrict, or prohibit access for efficient traffic flow and the reduction of traffic conflict areas. See “Control of Access.”

Conveyance: A written instrument by which a title, estate, or interest in property is transferred.

Corner Influence: The value effect of location at, or in proximity to the intersection of two streets. The increment of value resulting from such location or proximity.

Corporation: An artificial being created by law and endowed with certain of the rights, privileges, and duties of natural persons.

Corridor: A strip of land used as a passageway.

Corridor Protection: A Procedure whereby the Nebraska Department of Transportation notifies the public or the appropriate local governmental agencies of the intent to acquire right of way along a proposed Highway Improvement corridor. Thereby providing the Department of Transportation with a means to review and approve preliminary plats, building permit requests, and to make advance acquisitions within the corridor in order to coordinate modifications to property adjacent to the intended improvement, minimize acquisition costs, and reduce design complexity. (See Neb. Rev. Stat. § 39-1311).

Corridor Protection Plans: Plans, often aerial sheets, sent to affected landowners or filed with the local government that show property ownership and the corridor area to be protected. See “Corridor Protection.”

Corridor Studies: Studies of projects that may involve some relocation and/or community bypass. Study results usually are published in report form and include alignment, location, factors, and cost estimates. Plan and profile sheets may also be included.

Cost of Replacement:

1. The cost that would be incurred in acquiring an equally desirable substitute property.

2. The cost of reproduction new, on the basis of current prices, of a property having the utility equivalent to the one under appraisement. It may or may not be the cost of a replica of the property.

3. The cost of replacing unit parts of the structure to maintain it in the highest economic operating condition.

Cost of Reproduction: The cost of construction new of an exact duplicate or replica using the same material, construction standards, design, layout and quality of workmanship.

Cross Connection: A connecting roadway between two nearby and generally parallel roadways.

Crossover: Temporary pavement constructed on divided highways to temporarily route traffic across the median to the opposite lanes so that construction can occur on the vacated side.

Cross Section: View showing a vertical section of the ground taken at right angles to the centerline to illustrate the relationship of various components of the roadway.

Cross Slope: The slope across traffic lanes and shoulders perpendicular to the flow of traffic.

Cubage: Front or width of building multiplied by depth of building and by its height.

Cul-De-Sacs: A turning area provided at the closed end of a street that is opened at one end only.

Culvert: Any structure not classified as a bridge which provides an opening under any roadway.

Curb Loading Zone: Roadway space adjacent to a curb and reserved for the exclusive use of vehicles during loading or unloading passengers or property.

Cut Slope: A positive grade sideslope generally going upward and outward from the shoulder edge or ditch bottom to intersect with the natural ground.

Damage, Consequential: See "Consequential Damage."

Damage, Proximity: See "Proximity Damage."

Damage, Severance: See "Severance Damage."

Damages: The loss in the value attributable to remainder property due to the severance or consequential damages, as limited by State law, that arise when only part of an owner's real property is acquired.

Dead End Street: A local street open at one end only without special provisions for turning around.

Dedication: The setting apart by the owner and acceptance by the public of property for highway use in accordance with statutory or common law provisions.

Deed: A duly attested written instrument, under seal, conveying real property or interest therein.

Deficiency Judgment: The difference between the indebtedness sued upon and the sale price or market value of the real estate at the foreclosure sale.

Demise: A transfer; a lease; a transfer to another of an estate for years, for life or at will.

Depreciation: A loss in value brought about by deterioration through ordinary wear and tear, action of the elements, or functional or economic obsolescence.

Depreciation, Incurable: See "Incurable Depreciation."

Depreciation, Observed: See "Observed Depreciation."

Depreciation, Physical: See "Physical Depreciation."

Depth Factor: A factor (percentage) which represents the relative value of a given depth of a lot with respect to the value of the lot having an adopted standard or unit depth.

Descent: Hereditary succession. Succession to the ownership of an estate by inheritance, or by any act of law, as distinguished from "purchase". Title by descent is the title by which one person, upon the death of another acquires the real estate of the latter as an heir at law.

Design Capacity: The practical capacity or lesser value determined for use in designing the highway to accommodate the design volume.

Design Process Outline: An outline of regular roadway design activities.

Design Speed: A speed determined for design and correlation of the physical features of a highway that influence vehicle operation. It is the maximum safe speed that can be maintained over a specified section of highway when conditions are so favorable that the design features of the highway govern.

Design Volume: A volume determined for use in design, representing traffic expected to use the highway. Unless otherwise stated it is an hourly volume.

Devise: A gift of real property by last will and testament.

Diamond Interchange: A four leg interchange with a single one way ramp in each quadrant. All left turns are made directly on the minor highway.

Dike: A raised bank constructed to prevent flooding.

Directional Interchange: An interchange, generally having more than one highway grade separation, with direct connections for the major left turning movements.

Directional Island: Raised, flush, or painted medians used to guide and protect traffic during turning movements. Also, known as channeling islands.

Disposal: The transfer by sale or other conveyance of permanent rights in excess real property, when the real property interest is not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code. A disposal must meet the requirements contained in § 710.403(b) of this part. The term “disposal” includes actions by a grantee, or its subgrantees, in the nature of relinquishment, abandonment, vacation, discontinuance, and disclaimer of real property or any rights therein.

Dispossess: To oust from land by legal proceedings; to eject or to exclude from realty.

Divided Highway: A highway with separate roadways for traffic in opposite directions.

Donation: The voluntary transfer of privately owned real property interest, by a property owner who has been informed in writing by the acquiring agency of rights and benefits available to owners under the Uniform Act and this section, for the benefit of a public transportation project without compensation or with compensation at less than fair market value.

DOT-OI: Nebraska Department of Transportation Operating Instruction.

Dower: The right which a wife has in her husband's estate at his death.

Drainage Ditch: Any open water course, other than gutters, constructed beyond the limits of cut or fill slopes.

Drainage Easement: An easement providing for directing the flow of water.

Early Acquisition: Acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

Early Acquisition Project: A project for the acquisition of real property interests prior to the completion of the environmental review process for the transportation project into which the acquired property will be incorporated, as authorized under 23 U.S.C. 108 and implemented under § 710.501 of this part. It may consist of the acquisition of real property interests in a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.

Easement: An interest in real property that conveys a right to use or control a portion of an owner's property or a portion of an owner's rights in the property either temporarily or permanently Permanent Easements will remain in existence until they are terminated by either the grantee or under the conditions set forth by law. Temporary easements remain in existence for a limited amount of time.

Easement, Aviation: A right to fly over lands of another, usually within prescribed horizontal limits, which prohibits the use of the land above a specific level or series of levels, the height being determined by the lower limit of the "glide angle" required for safe approach to, and take off from, airport runways.

Easement, Line of Sight: An easement for maintaining or improving the sight distance.

Economic Life: The estimated period over which it is anticipated that a property will yield a return "on" and "of" the investment over and above the economic rent due to the land. This period can never exceed the physical life of the property and most generally is shorter.

Economic Obsolescence: Impairment of desirability or useful life arising from economic forces, change in optimum land use, legislative enactments which restrict or impair property rights, and changes in the supply demand relationships. Loss in the use and value of property arising from factors of economic obsolescence is to be distinguished from loss in value from physical deterioration and functional obsolescence.

Economic Rent: The amount of rent that could be reasonably expected if the property were available for rent. It is a fair, proper, and reasonable rental which would result from informed, intelligent, and prudent bargaining in the usual course of business.

Effective Age: The number of years of age indicated by the condition of a building. If a building has been maintained better than average, its effective age is less than the actual age; if there has been inadequate maintenance, it is greater.

Effective Income: The estimated gross income less allowance for vacancies and rent losses.

Embankment: Dirt, sand, or other such material that must be placed to construct the proposed roadway and its associated components.

Eminent Domain: The power to take property for public use with just compensation therefore.

Employee for Local Public Agencies: Any of these criteria: 1) elected LPA officer, 2) person who works for the LPA for wages 3) individual who receives an IRS W-2 Form from the LPA.

Encroachment: A building, a part of a building, or obstruction which intrudes upon or invades a highway, or a sidewalk, or trespasses upon the property of another.

Encumbrance: A claim, lien, charge, or liability attached to and binding upon real property, such as a judgment, unpaid taxes, or a right of way; defined in law as any right to or interest in, land which may subsist in another to the diminution to its value but consistent with the passing of the fee.

Engineering Review: A process conducted early in a project by the Project Development Division – Project Scoping and Location Studies Section that establishes the concept of work to be performed and the initial itemized cost estimate for major non-interstate projects. The review summarizes the existing highway conditions, traffic, classification, adjacent sections, alignment, and environmental conditions. It is sometimes completed by the Roadway Design Division for smaller projects.

Equity: The interest or value which an owner has in real estate over and above the mortgage against it.

Equity of Redemption: The right of the original owner to reclaim property sold through foreclosure proceedings by payment of debt, interest and cost.

Erect (Signs): To construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish. Erect shall not include maintenance as defined, but shall include reconstruction, as defined, and shall also include modification, as defined, to an existing sign or structure. It shall not include any of the foregoing activities when performed as an incident to the change of an advertising message or the maintenance of the sign structure.

Escheat: Reversion of property to the State by reason of failure of persons legally entitled to hold said property or because of lack of heirs.

Escrow: A deed delivered to a third person by the grantee, to be held by the third person until the fulfillment or performance of some act or condition.

Estate: A right in property. An estate in land is the degree, nature, or extent of interest which a person has in it.

Estate, Life: An estate or interest held during the term of some certain person's life.

Estate in Reversion: Residue of an estate left in the grantor, to commence in possession after the termination of some particular estate granted by him/her. In a lease, the lessor has the estate in reversion after the lease is terminated.

Estimate: An opinion developed from analysis of adequate data by one qualified to develop such an opinion; hence the opinion of an informed person.

A preliminary opinion, the approximate cost of doing certain work.

Et Al: And another; or, and others.

Et Ux: And wife.

Eviction: A violation of some covenant in lease by the landlord, usually the covenant for quiet enjoyment; also refers to the process instituted to oust a person from the possession of real estate.

Excavation: Material such as dirt, sand, or rock that must be removed in order to construct the proposed roadway, ditches, channels, entrances, etc.

Excess Condemnation: The policy on the part of the condemnor of taking by right of eminent domain, more property than is actually necessary for the improvement.

Excess Real Property: A real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.

Execution: A writ issued by a court to the sheriff directing him/her to sell property to satisfy a debt.

Executor: A person named in a will to carry out its provision.

Ex Parte: On behalf of, or by one party only.

Expense of Operation: The sum total of all costs of operation of a property which are necessary to the production of gross income, usually estimated and reported on a periodic (such as annual) basis; not to be included as dept. service or other capital charges.

Expressway: A divided highway for through traffic with full or partial control of access with interchanges at major intersections and at-grade intersections at designated minor public road intersections. It serves urban centers of 15,000 populations, or more, not served by the interstate system.

Fair Market Value: The highest price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used. The highest price which a buyer, willing but not compelled to buy, would pay; the lowest a seller, willing but not compelled to sell, would accept.

Fee Simple: An absolute estate or ownership in property including unlimited power of alienation. The largest estate or ownership in real property; free from all manner of conditions or encumbrances. It may be subdivided into numerous lesser estate, but the sum total of all existing estates in any piece of land is equivalent to a fee simple absolute. Any fee simple estate is potentially of perpetual duration. It will continue in the successive heirs and assigns, including the heirs of the assigns, until such time as the current title holder shall die without heirs. At that time, the estate will cease and the property will escheat to the State.

Federal Aid Project: A project funded in whole or in part under, or requiring an FHWA approval pursuant to provisions in, chapter 1 of title 23, United States Code.

Federal Highway Administration (FHWA): U.S. Department of Transportation Federal Highway Administration.

Federally Assisted: A project or program that receives funds under title 23, United States Code.

Fill: Use of material, or material used to equalize or to raise topography to a certain grade; to build up with fill; to fill low ground with sand, gravel, or earth, etc.

Fill Slope: A downward embankment slope connecting the graded road or shoulder to the ditch bottom or natural ground.

Fixture: A movable chattel (such as a machine, heating plant etc.) which by reason of its annexation to real property, and adaptation to continuing use in connection with the reality, is considered a part of the realty.

Flared Intersection: An unchannelized intersection, or a divided highway intersection without islands other than medians, where the traveled way of any intersection leg is widened or an auxiliary land is added.

Flexible Pavement: See "Pavement, Flexible."

Flood Plain: The areas along the courses of streams which are subject to overflow.

Floodway: The channel of a watercourse or drainway, and the adjacent land areas, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a reasonable height.

Flow Line: The profile of the low points on the inside of a drainage structure or channel.

Flush Median: A median that is on the same plane as the travel lanes, it is usually delineated by paint stripping on the pavement.

Foreclosure: A court process instituted by a mortgagee or a lien creditor to defeat any interest or redemption which the debtor-owner may have in the property.

Four Leg Construction: An intersection with four legs, as where two highways cross.

Foreslope: The slope from the edge of the shoulder to the bottom of the ditch or to the bottom of the roadway fill.

Freehold:
1. An estate of inheritance, an estate for life, or an estate during the life of a third person.

2. The unencumbered fee simple property free of any division of interests.

Freeway: An expressway with full control of access.

Frontage Road or Street: A local road or street auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for the control of access.

Front Foot: A standard of measure, one foot wide, extending from the street line for a depth generally conceded to be 100 feet.

Functional Obsolescence: The impairment of functional capacity or efficiency. Functional obsolescence reflects the loss in value brought about by such factors as overcapacity, inadequacy, changes in the art that affects the property item itself or its relation with other items comprising a larger property.

Functional Utility: The ability to provide usefulness, service, or profitableness. The combined effects on marketability of the usefulness and desirability of the property. The functional utility of a house is said to be good if the marketability of that house is not affected adversely by functional deficiencies.

General Benefits: The advantage accruing from a given highway improvement to the community as a whole, applying to all property similarly situated.

General Warranty Deed: A deed in which the grantor warrants the title against defects arising at any time, either before or after the grantor became connected with the land.

Geometric Design: Design of the visible dimensions and elements of a highway, street, or road.

Geometric Layout: A preliminary plan showing all the general geometric features to be included in the proposed project without indicating detailed design information.

Grade:

1. The slope of a surface, such as a lot or road, with a vertical rise or fall expressed as a percentage of the horizontal distance; e.g., a three percent upgrade means a rise of three feet per 100 feet of horizontal distance.

2. Sometimes used in a sense of "on or at about the same level: "e.g., a crossing at street grade; a lot at street grade."

Grade Line: The slope in the longitudinal direction of the roadbed, usually expressed in percent which is the number of units of change in elevation per 100 units horizontal distance. Also has a "general" use to mean the "highway profile."

Grade Separation: A crossing of two highways, or a highway and a railroad, at different levels.

Grantee: 1) A person to whom real estate is conveyed; the buyer. 2) The party that is the direct recipient of title 23 funds and is accountable to FHWA for the use of the funds and for compliance with applicable Federal requirements.

Grantor: A person who conveys real estate by deed; the seller.

Gross Income: The scheduled income from the operation of the business, or the management of a property, customarily stated on the annual basis. The total periodic income collectible from the operation of a property on the basis of existing rent schedules.

Gross Lease: A lease of property whereby lessor is to meet all property charges regularly incurred through ownership. A lease under which the lessor pays all the expenses of operation of the property as well as capital charges.

Gross Sales: The total amount of sales as shown by invoices, before deducting returns, allowance, etc.

Ground Profile: A line indicating ground elevations of vertical section along a survey line.

Ground Rent: The net rent paid for the right of use and occupancy of a parcel of unimproved land; or that portion of the total rental paid that is considered to represent a return on the land only.

Guarantee Title: A title, the validity of which is insured by an abstract, title, or indemnity company. (Sometimes called an Insured Title).

Gutter: Any prepared open water course, whether paved or not, constructed inside of the shoulder line. (Local usage, generally applies to paved area adjacent to a curb or a "curb and gutter section".)

Habendum Clause: The "To Have and To Hold" clause which defines or limits the quantity of the estate granted in the premises of the deed.

Headway: The time interval between passages of consecutive vehicles moving in the same direction by a given point.

Hereditaments: The largest classification of property includes lands, tenements, and incorporeal property such as rights of way. Anything capable of being inherited.

Highest and Best Use: The most productive use, reasonable but not speculative or conjectural, to which property may be put in the near future.

A use of land which may reasonably be expected to produce the greatest net return to land over a given period of time. That legal use of land which will yield to land the highest present value. Sometimes called optimum use.

Highway: A road or street, including the entire area within the right of way, which has been designated a part of the State highway system.

Highway Beautification Control System (HBCS): The National System of Interstate and Defense Highways, the system of federal-aid primary roads as they existed on June 1, 1991, any additional highway or road which is designated as part of the National Highway System under the federal Intermodal Surface Transportation Efficiency Act of 1991, and scenic byways.

Highway Capacity: A measure of the ability of a roadway to accommodate traffic. Capacity of a roadway is affected by the composition of traffic, roadway alignment, profile, number and width of traffic lanes, adjacent development, vehicular speed, and weather.

Highway Development Right: The right of owners to make changes in abutting property uses which, if exercised, would be inconsistent with present and future highway needs.

Highway-Road or Street: A general term denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

Hinge Point: The point where the rate of slope used from the edge of finished shoulder either continues at the same slope, or changes to a steeper slope based on the difference in elevation between the edge of the finished shoulder and the end of the foreslope.

Historical Cost: The total cost of a project on the basis of prices at the time of construction.

Holdover Tenant: A tenant who remains in possession of leased property after the expiration of the lease term.

Horizontal Curve: A curve joining two straight (tangent) portions of alignment.

Horizontal Sight Distance: The clearance required on the inside of a horizontal curve from a point on the roadway to an obstruction located off the pavement area. The straight-line distance a driver can look through a horizontal curve to the road ahead.

Improvement: Betterment in traffic service without major changes in the existing facility. This includes widening, signals, illumination, curbs, gutters, drainage, sidewalks, and other items that add value and serviceability to the existing facility.

Income Capitalization: A procedure in the appraisal process by which the value of real property can be estimated from the quantity, quality, and duration of its income expectancy. It is the process of determining the value through the use of a rate which is believed to represent the proper relationship between the value of the property and the net income it will produce.

Incompetent: A person who is unable to make or carry out important decisions regarding his or her affairs.

Increasing Annuity: An income stream characterized by periodic, fixed increase per period.

Incurable Depreciation: The loss from cost new which is impossible to offset or which would involve an expenditure substantially in excess of the value increment resulting therefrom; e.g., loss due to detrimental neighborhood influences, loss due to over and undersized rooms, excessive ceiling heights, poor design or layout, and loss caused by gradual deterioration of the bone structure i.e., skeletal or structural members of a building which are rarely replaced unless they happen to be exposed, such as uncovered floor joists.

Indenture: A deed to which two or more persons are parties, and in which these enter into reciprocal and corresponding grants or obligations towards each other.

Industrial Activities (Junkyards): Those generally recognized as industrial by zoning authorities within the State, except that none of the following shall be considered industrial activities:

- Outdoor advertising structures.

- Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
- Activities normally and regularly in operation less than three months of the year.
- Temporary activities.
- Activities not visible from the traffic lanes of the main-traveled way.
- Activities more than three hundred feet from the nearest edge of the main-traveled way.
- Activities conducted in a building principally used as a residence.
- Railroad tracks, minor sidings, and passenger depots.
- Junkyards as defined.

Industrial Activities (Outdoor Advertising Signs): Those activities generally recognized as industrial by zoning authorities in this state and having adequate access, parking and utilities, except that none of the following shall be considered industrial:

- Outdoor advertising structures.
- General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands.
- Activities normally or regularly in operation less than three months of the year.
- Activities conducted in a building principally used as a residence.
- Railroad tracks and minor sidings.
- Activities more than six hundred sixty feet from the nearest edge of the right of way of the road or highway.

Installment Contract: Purchase of property with the debt payable at different successive periods as agreed; upon default, payments is forfeited.

Intercepting Dikes: Small dikes constructed at the top of cut slopes that prevent storm water from flowing down the cut slopes by intercepting the runoff and redirecting the flow to where it can safely be discharged into a ditch, creek, stream, etc.

Interchange: A grade separated intersection with one or more turning roadways for travel between intersection legs.

Interchange Ramp: A turning roadway at an interchange for travel between intersection legs.

Interest: A sum paid or calculated for the use of Capital. The sum is usually expressed in terms of a rate or percentage of the capital involved, called the "interest rate."

Intersection: The general area where two or more highways join or cross, within which are included the roadway and roadside facilities for traffic movements in that area.

Intersection Angle: The angle between two intersection legs.

Intersection Entrance: That part of an intersection leg or traffic entering the intersection.

Intersection Exit: That part of an intersection leg for traffic leaving the intersection.

Intersection Sight Distance: The unobstructed sight distance along both road approaches at an intersection, and across their included corners, for a distance that will allow vehicle operators approaching simultaneously to see each other in time to prevent collisions.

Intestate: Without a will; a person who has died without leaving a will.

Intrinsic Value: A cost concept in that value is claimed to be inherent in the object itself, as opposed to the subjective theory of value which holds that goods or services have value because people will forego the use and enjoyment of goods and other services for the right of possession and use of them.

Inverse Condemnation: The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his/her property as a result of a highway improvement.

Island: A defined area between traffic lanes for control of vehicle movements or for pedestrian refuge. Within an intersection, a median or an outer separation is considered an island.

Joint Access: A single access provided to two or more properties.

Joint Estates: Two or more persons having concurrent and simultaneous estates or interests in the same parcel of land whether or not the estate in land is fee simple, a life estate, or an estate for years. Such cases of co-ownership are called tenancy by the entirety joint tenancy, tenancy in common, and community property.

Joint Tenancy: An undivided interest in property, taken by two or more joint tenants. The interest must be equal, accruing under the same conveyance, and beginning at the same time. Upon the death of a joint tenant, the interest passes to the surviving joint tenants, rather than to the heirs of the deceased.

Judgment: Decrees of court declaring that one individual is indebted to another and fixing the amount of such indebtedness.

Junk: Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

Junkyard: An establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills.

Just compensation: A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes.

Laches: Neglect to do a thing at a proper time, especially such delay as will bar a party from bringing a legal proceeding.

Land Residual Techniques: A term designating a technique in which the building is valued independently of the land. The fair annual net return on the building value (interest and provision for depreciation) is deducted from the estimated net annual income to the property (land and

building) and the residual amount is said to be attributable to the land and is capitalized to indicate the land value.

Land Survey: The establishment or reestablishment of corners, boundaries, and location of lots, parcels, tracts, or divisions of land, which may include distance, direction, elevation, and acreage, and the correct determination and description of lots, parcels, tracts, or divisions of land.

Lane: A portion of the traveled way for the movement of a single line of vehicles.

Lane, Parking: An auxiliary lane primarily for the parking of vehicles.

Larger Parcel: In condemnation, that portion of a property which has unity of ownership, contiguity and unity of use. These are the conditions which must be present to establish the larger parcel for the purpose of considering the extent of severance damage in most states. However, in federal cases and in some state cases, the matter of contiguity is sometimes subordinated to that of unitary use.

Lateral Extent of Hazard: The distance from the edge of the travel way to the far side of a hazard if the hazard is a fixed object, or to the outside edge of the clear zone if the hazard is an embankment or fixed object that extends beyond the clear zone.

Lateral Obstacle Clearance Distance: The unobstructed, relatively flat area provided beyond the edge of the travel way for the recovery of errant vehicles. The width depends on the traffic volumes, design speed and side slopes of roadway section. Also known as the recovery area or clear zone.

Law, Case: The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.

Law, Common: The body of those principles and rules of action relating to the government and security of persons and property which derive their authorities solely from usage and customs of immemorial antiquity, or from the judgment and decrees of the courts recognizing, affirming, and enforcing such usages and customs, and in this sense, particularly the ancient unwritten law of England.

Law, Statutory: The law as established by an enactment made by a legislative body and expressed in a formal document.

LCLC: Lincoln City Lancaster County.

Legal Description: A method of geographically identifying a parcel of land, which is acceptable in a court of law.

Lease: A contract, written or oral, for the possession of lands and tenements, on the one hand, and a recompense of rent or other income, on the other hand. It is a contract by which one person divests himself/herself of real property and another person takes possession thereof for a determinable and limited time, though not necessarily a definite period of time.

Leased Fee:

1. That title to a real estate subject to a lease.

2. A property held in fee with the right of use and occupancy conveyed under lease to another. A property with the right to receive ground rentals over a period of time and an ultimate repossession.

Leasehold: Property held under tenure of lease. A property consisting of the right of use; occupancy of real property by virtue of Highway ROW Use Agreement.

The right of the lessee to use and enjoy real estate for a stated time under certain conditions, such as the payment of rent.

Legal Access: A right which an owner of land that abuts a highway has to use the highway for ingress and egress.

Lessee: One who acquires the right of use of the property of another. The one to whom the lease is granted or the property is rented under the lease. The lessee's interest is known as the leasehold.

Lessor: One who rents real property to another or one who conveys or leases the right to the use of real estate to another. He/she is the landlord. He/she usually is the fee owner; however, this is not always so, as in the case of a lessee who subleases to another party. The original lessee then also becomes a lessor and the owner of a sandwich lease interest. The lessor's interest is known as the leased fee.

Lien: A hold or claim which one person has upon the property of another as a security for a debt or a charge, judgment, mortgage, taxes, etc.

Lienee: A person who possesses a right of lien on the property of another.

Lienor: A person on whose property the right of lien exists.

Limits of Construction: Line on plans showing the extent of the area required for the construction of the project. They include all grading, culverts, driveways, intersections, dikes, etc. for use in right of way design.

Limits Of Construction Plans: Design plans, developed after the public hearing showing the extent of the area required for the construction of the project. They include all culverts, driveways, intersections, dikes, etc. for use in right-of- way design.

Life Estate: An estate or interest held during the time of some person's life.

Lis Pendens:
1. A suit pending.

2. An instrument required to be filed with the Register of Deeds to indicate that a jurisdictional offer has been served on an owner.

Local Road or Street: A road or street primarily for access to residence, business, farm, or other property.

Location: The fixed position of the highway on the ground including curves and tangents.

Loop: A one way turning roadway that curves about 270 degrees to the right to accommodate a left turning movement. It may include a provision for left turn at a terminal to accommodate another turning movement.

Mailbox Turnout: A designated area, outside the travel lanes, provided for the use of vehicles accessing mailboxes.

Maintenance of Signs: The routine ordinary repairing or restoring of the sign to its as constructed condition with the same type of materials used in the original sign structure and face. Nonconforming signs must remain essentially the same as they were on the date they became nonconforming. Maintenance is permitted; however, reconstruction and modification is prohibited. The following shall constitute a substantial change to a sign and are therefore not maintenance of a sign:

- Any change in the location of the sign.
- Any increase in the size or dimensions of the sign.
- The addition of a new sign face or faces.
- Any change in the type of structural face material.
- The replacement of the sign supports with sign supports of a different material than material found on the sign when it became grandfathered.
- Covering the original sign supports with concrete, metal or wood for whatever purpose.
- Any replacement of poles that exceeds 25 percent per year or if less than four poles, one pole per year.
- An increase in the number of poles.
- An increase in the height of the poles.
- Adding or converting the sign to a variable or changeable message sign.
- Any addition of lighting, either attached or unattached.
- No modification that changes the existing lighting such that the illumination to the sign facing is substantially increased.
- No addition of reflective material on the sign.
- No modification that enhances the visibility of the sign's message or the period of time that the sign's message is visible.
- No addition of any other devices.

Mandamus: We command. A writ issued by a competent court commanding an official or a defendant or respondent in an action to perform some stated act.

MAPA: Metropolitan Area Planning Agency.

Market Value: The most probable price estimated in terms of money which a property will bring if exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used. The price which a buyer, willing but not compelled to buy, would pay; the price a seller, willing but not compelled to sell, would accept.

Marketable Title: A title not subject to such reasonable doubt as would create a just apprehension of invalidity in the mind of a reasonable prudent, and intelligent person; one that a

person of reasonable prudence and intelligence, guided by competent legal advice would be willing to take and pay fair value for.

Mechanic's Lien: A species of lien created by statute which exists in favor of persons who have performed work or furnished material in the erection or repair of a building.

Median: The portion of a divided highway separating the traveled ways for traffic in opposite directions.

Median Lane: A speed change lane within the median to accommodate left turning vehicles. Also called shadow lane.

Median Opening: A gap in a median provided for crossing and turning traffic.

Merging: The converging of separate streams of traffic into a single stream.

Merging End: An end of an island, or neutral area between roadways, beyond which traffic merges.

Metes and Bounds Description: A description of a parcel of land by reference to the courses (bearings, that is, the angles east or west of due north or due south) and distances (usually in feet or chains) of each straight line which forms its boundary, with one of the corners tied to an established point, that is, the bearing and distances to an established point, such as a section corner, or to the intersection of centerlines of two roads. If one part of the boundary is on a curve, this part is described by showing the number of degrees of the central angle subtended by the curve arc, the length of the radius, and the length along the curve.

Minor: As defined in Nebraska Statute 43-2101, all persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends. Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person (1) eighteen years of age or older and who is not a ward of the state may enter into a binding contract or lease of whatever kind or nature and shall be legally responsible therefor and (2) eighteen years of age or older may consent to mental health services for himself or herself without the consent of his or her parent or guardian.

Mitigation: Measures taken to offset or minimize the impact of construction on the environment.

Mitigation Property: Real property interests acquired to mitigate for impacts of a project eligible for funding under title 23.

Modernization: Alteration of internal plan or facilities or of external detail of property or equipment to conform to present usage, style, form, method, or taste.

Modification of Signs: A sign which was lawfully erected, but does not comply with the provisions of the State Law or State Rules and Regulations. Signs located on public right of way are not nonconforming signs whether the right of way has been designated a part of the highway system or the right of way was acquired in fee by the Nebraska Department of Transportation.

Mortgage Deed: A deed by way of mortgage which has the effect of the mortgage on the property conveyed and imposes a lien on the granted estates.

Mortgagee: A person to whom property is conveyed as security for a loan. One who takes a mortgage, or one who loans money secured by a mortgage.

Mortgagee in Possession: A mortgagee creditor who takes over the income from the mortgaged property upon default on the mortgage by the debtor.

Mortgagor: An owner who conveys his/her property as security for a loan (the debtor). One who gives a mortgage or one whose property is mortgaged.

MSE Wall: A mechanically stabilized earth retaining wall consisting of blocks or panels.

Multileg Intersection: An intersection with five or more legs.

National Highway System (NHS): The National Highway System as defined in 23 U.S.C. 103(b). The National Highway System consists of the highway routes and connections to transportation facilities that shall serve major population centers, international border crossings, ports, airports, public transportation facilities, and other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel and commerce.

NDOT Form 73: Highway Improvement Programming Request.

Negotiation: The process by which property is sought to be acquired for highway purposes through discussion, conference, and final agreement upon the terms of a voluntary transfer of such property.

Negotiation Plans: ROW plans used during the negotiation phase of ROW acquisition.

Neighborhood: An urban or suburban residential (commercial) area exhibiting a fairly high degree of homogeneity as to housing, tenancy, income, and population characteristics. They are often outlined by physical barriers such as railroad tracks, streams, commercial or industrial developments, hills, ravines, and by lines created by subdivision developments, difference in zoning ordinances, deed restrictions, or type or age of building development.

Net Income: The difference between the effective gross income and the expenses, including taxes and insurance. Usually the term is qualified as net income before depreciation.

Net Lease: A lease under which the lessee assumes complete responsibility for the operation of a property, including the obligation of operating expenses and all charges, including taxes, insurances, replacements, and any special assessments.

Net Profit: The term "net profits," without qualifying expression, is used to describe only the profits remaining after including all earnings and other income or profit and after deducting all expenses and charges of every character, including interest, depreciation, and taxes. Net profits should represent the amount available for dividends and surplus.

NHS: See “National Highway System.”

Nonconforming Use: A use which was lawfully established and maintained but which, because of the application of a zoning ordinance to it, no longer conforms to the use regulations of the zone in which it is located.

Nuisance Value: The price an abutter or a nearby owner would pay to get rid of an objectionable condition or occupancy.

Observed Depreciation: The loss from cost new which can be observed upon an inspection of the property under appraisal; in this restricted sense, ordinarily limited to physical deterioration or wear out and functional obsolescence.

The loss from cost new which can be estimated from observation of the property itself and also from observation of environmental influencing factors, all as developed from competent analysis of adequate market data; in this broader usage, it is ordinarily limited to physical deterioration or wear out, functional obsolescence, or environmental or economic obsolescence.

Obsolescence: The condition of being out of date. Obsolescence is caused by new inventions and improved processes for production or a change in the demand for the things produced. It is not the result of more age or wear (physical depreciation).

Offset: A distance measured perpendicularly from a line of reference.

Open End Mortgage: A mortgage which permits the mortgagee to make additional advances, to be added to the principal balance and to be secured by the mortgage, without prejudice to the position of the mortgagee as a senior lienor or encumbrancer.

Operating Expenses: Generally speaking, all expenses, occurring periodically, which are necessary to produce net income before depreciation. Under some conditions, these expenses are placed in two categories; namely operating expenses and fixed charges.

Operating Statement: An account in writing of the income, expense, and profits of an enterprise during a specific period. A section of the profit and loss account of an enterprise whose main source of revenue is the performance of a service.

Operational Delay: The delay caused by interference between components of traffic.

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

Outlots: Lot in a subdivision that is set aside for a specific purpose.

Outer Connection: A one way turning roadway primarily for a right turning movement. It may include provisions for a left turn at a terminal to accommodate another turning movement.

Outer Separation: The portion of an arterial highway between the traveled ways of a roadway for through traffic and a frontage street or road.

Overall Rate: A capitalization rate used in the processing (capitalizing) of the income to the property, that is, one rate for the total net income regardless of the amount attributable to any fractional part of the property.

Overimprovement: An improvement which is not the highest and best use for the site on which it is placed by reason of excessive size or cost.

Overpass: A grade separation where the subject highway passes over an intersecting highway or railroad.

Oversight Agreement: See “Stewardship/Oversight Agreement.”

Ownership Plans: See “Right Of Way Ownership Plans.”

Parcel Plat: A map of a single parcel of property or a portion thereof needed for highway purposes, showing the boundaries, areas, the remainder, improvements, access, ownership, and other pertinent information.

Parkway: An arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a part or a ribbon of park-like development.

Partial Taking: The acquisition of a portion of a parcel of property.

Party Wall: A wall erected upon and over a line which separates two properties and in which the respective owners have common rights of use.

Pass: A land service facility for private use which separates the highway lanes from the cross movement of persons, animals (stock pass), vehicles, and machine (equipment pass).

Passing Sight Distance: The minimum sight distance that must be available to enable the driver of one vehicle to pass another vehicle traveling 10 MPH slower than design speed, safely and comfortably, without interfering with the speed of an oncoming vehicle traveling at the design speed should it come into view after the overtaking maneuver is started.

Patent: A grant of some privilege, property, or authority made by the government or sovereign of a country to one or more individuals.

A muniment of title issued by a government of state for the conveyance of some portion of the public domain. The instrument by which a state or government grants public lands to an individual.

Pavement, Flexible: A pavement structure which maintains intimate contact with and distributes loads to the subgrade and depends upon aggregate interlock, particle friction, and cohesion for stability.

Pavement, Rigid: A pavement structure which distributes loads to the subgrade having as one course a portland cement concrete slab of relatively high bending resistance.

Pedestrian Overpass: A grade separation designed to carry only pedestrian traffic over the highway.

Pedestrian Underpass: A grade separation designed to carry only pedestrian traffic under the highway.

Percentage Lease: A lease which provides that a rental shall be based on a percentage of the volume of business done on the premises, usually with a guaranteed minimum and occasionally a maximum rental regardless of business volume.

Perch: A unit of land measurement of 16.5 feet, the same length as a rod. There are four perches to a chain.

Permanent Easement: See "Easement."

Perpetuity: A state of being continued forever; for example, an annuity which extends into the future without termination. Generally applied to an amount which accrues periodically for an indefinite number of installments, that is, without known or expected limitations.

Person: Any individual, family, partnership, corporation, or association.

Personalty: Movable assets which are not real property. (Furniture, equipment, machinery, building materials, appliances, supplies, books, records, computers, software, and animals) and other tangible personal property.

Physical Depreciation: The physical wearing out. Decay, impairment, wasting away, wear and tear through the actions of the elements, age, and use.

Plan-In-Hand: A field inspection of the proposed project, after preliminary design, by NDOT representatives and others as appropriate.

Plans: The officially approved drawings and supplementary drawings, or exact reproductions thereof which show the location, character, dimensions, and details of the work to be done.

Planting Easement: An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon.

Plat: A map or plan of measurement. A representation on paper of a piece of land. A subdivision of land marked upon the earth and represented on paper.

Plottage: The increment resulting from the combination of two or more parcels into a larger whole so as to develop one site having a greater utility than the aggregate of each when separately considered.

Police Power: The inherent right of government to pass such legislation as may be necessary to protect the public health and safety and to promote the general welfare. The control by the State, under which public welfare is served and to which property rights are subject.

Prescriptive Easement: The granting of an easement by a court, based on the presumption that a written easement was given (although none existed), after a period of open and continuous use of the land.

Prescription: The acquisition of incorporeal hereditaments by an adverse user.

Profile Grade: The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Property: The right or interest which an individual has in lands and chattels to the exclusion of all others. Although technically the term means a right or interest in things rather than the things themselves, common usage makes it applicable to things rather than to the right or interest.

Property Line: The division between two parcels of land, or between a parcel of land and the street.

Property, Personal: In a broad and general sense, everything that is the subject of ownership, not coming under the denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in realty, or any right or interest which one has in things movable.

Property, Real: The bundle of rights which arise by reason of the ownership of physical real estate. The rights and interests possessed in land and those things affixed to the land. Land and generally whatever is erected or growing upon or affixed to land.

Property Residual Technique: A method of processing an indication of property value, i.e., land and buildings treated as a unit, by the capitalization of net income before depreciation. Provision for the recapture of capital value of the entire property is included, together with pure interest, in the overall rate employed.

Proximity Damage: Damage to a property arising as a consequence of the nearness or proximity of a highway, or other type of construction, to the improvements on the property. The diminution of the market value of a property as a result of the encroachment and proximity of a highway or other type of construction.

Public Hearing: A formal process presided over by a Highway Commissioner to present the proposed project to the public, and to obtain public input. Hearing guidelines must be followed for notice of hearing, information presented, and hearing procedures. The hearing is recorded and a transcript is made of the verbal testimony.

Public Information Meetings: Informal meetings held to inform the public of a proposed project location and /or design, to obtain public input, and to answer questions from the public. They are usually held for major road relocations and location studies, right of way appraisal, design and scope changes, and sometimes for engineering review.

Quantity Survey Method: A method of estimating costs, that is, in its strictest application, a repetition of the contractor's original procedure of determining the quantity and grade of each type of material used in the structure, estimating labor hours required, and applying unit costs to the material and labor quantities, with additional allowances for such items as overhead costs, labor insurance, and contractor's profits.

Quasi: As if; of a similar nature.

Quiet Enjoyment: A covenant that the tenant or grantee of an estate shall enjoy the possession of the premises in peace and without disturbance by hostile claimants.

Quiet Title Action: An action in court to remove any outstanding clouds on an owner's title.

Quit Claim Deed: A deed conveying, without warranty, any title, interest, or claim the grantor may have in the estate conveyed.

Radial Highway: An arterial highway leading to or from an urban center.

Radius Return: The turning radius of an intersection.

Railroad Grade Crossing: The general area where a highway and a railroad cross at the same level, within which are included the railroad, roadway, and roadside facilities for traffic traversing that area.

Raised Median: A median that is elevated above the travel lanes to control access and left turns on urban highways and streets.

Ramp: See "Interchange Ramp."

Real Estate Acquisition Management Plan (RAMP): A written document that details how a non-State Department of transportation grantee, subgrantee, or design-build contractor will administer the title 23 ROW and real estate requirements for its project or program of projects. The document must be approved by the SDOT, or by the funding agency in the case of a non-SDOT grantee, before any acquisition work may begin. It must lay out in detail how the acquisition and relocation assistance programs will be accomplished and any anticipated issues that may arise during the process. If relocations are reasonably expected as part of the title 23 project or program, the Real Estate Acquisition Management Plan (RAMP) must address relocation assistance and related procedures.

Real Property or Real Property Interest: Any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility. As used in this part, the terms “real property” and “real property interest” are synonymous unless otherwise specified.

Reconstructed Statement: A statement setting forth certain facts concerning a property or a business wherein certain items or figures appearing on an accounting statement are eliminated, transposed, or changed for the purpose of reflecting a more complete or accurate statement under a variance of conditions for particular consideration.

Reconstruction of Signs: Defined as erect.

Reference Line: A line, such as a highway centerline, which can be located on the ground, from which a parcel may be dimensioned.

Relinquish: To surrender all or part of the rights and responsibilities relating to all or a part of a fragment, section, or route on the State highway system to a political or governmental subdivision or public corporation of Nebraska. (Nebr. Statutes) for continued transportation use.

Remainder: The portion of a parcel retained by the owner after a part of such parcel has been acquired.

Remainder Estate: An estate in property created at the same time and by the same instrument as another estate and limited to arise immediately upon the termination of the other estate.

Remaining Economic Life: The period of time (years) from the date of appraisal to the date when the improvements become valueless.

Remnant: A remainder so small or irregular that it usually has little or no economic value to the owner. See Uneconomic remnant.

Remodeling: Reconstruction of a property to adapt it to new and improved use.

Rent: The agreed upon payment for the right of way use or occupancy of property, usually reduced to the form of a written lease.

Residual Process: A term applied to a method of estimating the value of the land or the building, as indicated by the capitalization of the residual net income attributable to it.

Responsible Charge (RC): A full-time public employee is responsible charge of a Federal-aid transportation project who has decision making authority to assure project compliance with the LPA Guidelines Manual for Federal-aid Projects and all applicable Federal and State rules and regulations.

Retaining Walls: Vertical concrete walls, usually constructed adjacent to the roadbed or at the right of way line, normally emplaced where restrictive right of way design will not permit the use of normal slopes in embankment or cut sections.

Reversion: The right to repossess and resume the full and sole use and proprietorship of real property which temporarily has been alienated by lease, easement, or otherwise. The reversion right becomes effective at a stated time or under certain conditions such as the termination of a leasehold, etc., according to the terms of the controlling instrument.

Right of Access: The right of ingress to a highway from abutting land and egress from a highway to abutting land.

Right of Entry: The Right of Entry is a document signed by the landowner that gives the Department permission to take possession of the new right of way to construct the project. It is intended for those situations when, for whatever reason, it is determined that the right of way acquisition either cannot or should not be completed in the normal project time frame. If the landowner is not agreeable to the use of a Right of Entry it can't be used and it is never used on a regular basis.

49 CFR 24.102 (j) specifically states:

"Before requiring the owner to surrender…. the real property, the Agency shall pay the agreed purchase price to the owner, or…..deposit with the court for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property or the amount of the court award. 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".

Right of Immediate Possession: The right to occupy property for highway purposes, after preliminary steps for acquisition have been taken and before final settlement.

Right of Survey Entry: The right to enter property temporarily to make surveys, and investigations for proposed highway improvements. (See also Nebr. Statutes 39-1324).

Right of Way (ROW):
1. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street or highway.
2. Real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23, United States Code.

Right of Way Appraisal: The determination of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

Right of Way Appraisal Plans: ROW Ownership plans with the addition of limits of construction, construction details, right of way design, permanent and/or temporary easements, access control, and summary of areas.

Right of Way Certification: Certificate stating that all right of way is available to the contractor and clear of improvements, or the estimated date when all non-complying tracts will be clear and available.

Right of Way Costs: Costs associated with acquisition of right of way including real property, relocation assistance, fencing, improvements, etc.

Right of Way Estimate: An approximation of the market value of property including damages, if any, in advance of an appraisal.

Right of Way Negotiation Plans: Appraisal plans that incorporate all changes made during the appraisal process. Plans used for the acquisition phase of acquiring the ROW.

Right of Way Ownership Plans: Right of way plans showing plotted section and quarter section lines, surveyed centerline, topography, property lines, existing public right of way, and ownership of the adjacent land.

Right of Way Plan: A plan of a highway improvement showing its relation to adjacent property, the parcels or portions thereof needed for highway purposes, and other pertinent information. See “Right of Way Appraisal Plans,” “Right of Way Negotiation Plans,” and “Right of Way Ownership Plans.”

Riparian Rights: The rights of an owner of water fronting lands in the bed, banks, accretions, water, access, moorage, and related items.

Right of Way Survey: A survey conducted to establish section corners, quarter section corners and lot corners.

Rip Rap: Slope protection emplaced on steep cut banks or embankments to eliminate the occurrence of erosion, consisting of a thin concrete slab, grouted rock, stone blankets, or other locally available materials.

Road: A public way for the purposes of vehicular travel, including the entire area within the right of way. A road designated as part of the State highway system may be called a highway, while a road in an urban area may be called a street. (Nebr. Statute 39-1302).

Roadbed: The graded portion of a highway, usually considered as the area between the intersections of top and side slopes, upon which the base course, surface course, shoulders, and median, if any, are constructed.

Roadside: A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

Roadside Control: The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve the attractiveness of the landscape.

Roadside Geometry: The area outside of the hinge points; it is comprised of side slopes, foreslopes, backslopes, ditch bottoms, benches, etc.

Roadside Zoning: The application of zoning for roadside control.

Roadway: The portion of a highway, including shoulders, for vehicular use, a divided highway has two or more roadways.

Route: The general position of a highway relative to major features of topography such as centers of population or important terrain features.

ROW: See “Right of Way”.

ROW Manual: An operations manual that establishes a grantee’s acquisition, valuation, relocation, and property management and disposal requirements and procedures, and has been approved in accordance with 23 CFR 710.201(c).

ROW Use Agreement: Real property interests, defined by an agreement, as evidenced by instruments such as a lease, license, or permit, for use of real property interests for non-highway purposes where the use is in the public interest, consistent with the continued operation, maintenance, and safety of the facility, and such use will not impair the highway or interfere with the free and safe flow of traffic (see also 23 CFR 1.23). These rights may be granted only for a specified period of time because the real property interest may be needed in the future for highway purposes or other purposes eligible for funding under title 23.

Rural Area: An area where property abutting the roadway is predominately used for agricultural purposes and lies outside municipal boundaries. It may include isolated tracts devoted to light industrial purposes.

Salvage Value: The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer’s expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

This term can also be described as the estimated or actual price for the whole (e.g., a house); or a part of the whole (e.g., a fixture or piece of equipment) for removal from the premises, usually for use elsewhere.

Sandwich Lease: A lease in which the "sandwich party" is the lessee of one party and the lessor to another. Usually the owner of the sandwich lease is neither the fee owner nor the user of the property.

Scenic Easement: An easement for conservation and development of roadside views and natural features.

Schematic Layout: A preliminary layout showing generally the proposed method of providing for the various traffic movements not necessarily to scale.

Scoping: The initial estimation of project magnitude once a DR 73 form has been initiated.

SDOT: See “State Department of Transportation.”

Seizin (seisen): Possession of real estate by one entitled thereto.

Section 4(f): A portion of the 1966 Transportation Act which limits use of publicly owned parks, recreation areas, wildlife/waterfowl refuges, and lands having historic sites of national, state or local significance.

Section 404 Permits: Permits from the U.S. Army Corps of Engineers for activities involving waters of the U.S., including wetlands.

Section 6(f): A portion of the Land and Water Conservation Fund Act restricting use of public park land funded with Section 6(f) monies.

Setback Line: A line outside the right of way, established by public authority, on the highway side of which the erection of buildings or other permanent improvement is controlled.

Settlement: The result of negotiations based on fair market value in which the amount of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following: An administrative settlement is a settlement reached prior to filing a condemnation proceeding based on value related evidence, administrative consideration, or other factors approved by an authorized agency official. A legal settlement is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by State law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed. A court settlement or court award is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of just compensation for a taking under the laws of eminent domain.

Severance Damages: Loss in value of the remainder of a parcel resulting from an acquisition. (Sometimes called indirect damages) Any element of value arising out of the relation of the condemned portion to the tract of which it was a part. More specifically, in a partial taking, the diminution of the market value of the remainder area as a result of the severance of the part taken.

Shop Plans: Plans developed by the contractor to show how the contractor intends to construct specific structures, such as bridges, retaining walls, etc.

Shoulder: The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Sidewalk: A walkway primarily for pedestrian traffic at the side of a roadway.

Sight Distance: A length of roadway that is visible to the driver, or a distance available to a person within which they are able to see an object of a specific size at a specific position. See also “Horizontal Sight Distance,” “Vertical Sight Distance,” “Intersection Sight Distance,” and “Stopping Sight Distance.”

Sign: Any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing, whether placed individually or on a V-type, back-to-back, stacked or double-faced display, designed, intended or used to advertise or inform; with any part of the advertising or informative content visible from any place on the main-traveled way of the HBCS.

Signalized Intersection: An intersection where traffic movement is controlled by traffic signals.

Situation Description: The description of a parcel of land to identify its general location and footprint as narrowly and as briefly as reasonable. Information contained in the Situation Description will generally be limited to describing parcel of land as being in a section, part of a section, lot, block, subdivision, etc. along with other narrowing identifiers such as lying south of a river, the west half of a lot, etc. The township, range, principal meridian, city, county and other similar information shall also be included in the description. This information is usually contained in the preamble of the legal description in the deed(s) of the parcel and is not intended to describe the precise boundaries of the parcel which would be contained in the actual legal description of the parcel.

Slope: The inclined graded area beyond the shoulder and extending from the shoulder to the natural and undisturbed surface of the ground.

Slope Easement: An easement for cuts or fills.

Special Benefits: Advantage accruing from a given highway improvement to a specific property and not to others generally.

Special Provisions: A document with special directions, provisions or requirements peculiar to the project under consideration and not otherwise thoroughly or satisfactorily detailed or set forth in the Standard Specifications.

Special Warranty Deed: A deed in which the grantor warrants the title against defects arising after acquiring the real estate but not against defects arising before that time.

Specifications: A general term comprising all directions, provisions, and requirements contained within a specifications book together with such as may be added or adopted as supplementary specifications.

Special Performance: A remedy in a court of equity compelling the defendant to carry out the terms of the agreement or contract which was executed.

Speed Change Lane: An auxiliary lane, including tapered areas, primarily for the acceleration or deceleration of vehicles entering or leaving the through traffic land.

Spread: The width of storm water from the curb onto the roadway that flows along the pavement.

Spot Zoning: A provision in a zoning plan, or modification in such a plan, which affects only the use of a particular piece of property or a small group of adjoining properties and is not related to the general plan for the community as a whole.

Stakeholder: Person, group, or organization that has a direct or indirect stake in an organization because it can affect, or be affected by the organization's actions, objectives, or policies.

Standard Dept: The depth of a typical lot in a neighborhood or community usually applied to lots of a particular use category, such as central business lots, outlying commercial lots, and lots of different price residential neighborhoods.

State: State of Nebraska.

State Agency: A Department, agency, or instrumentality of a State or of a political subdivision of a State; any Department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States; or any person who has the authority to acquire property by eminent domain, for public purposes, under State law.

State Department of Transportation (SDOT): The State highway department, transportation department, or other State transportation agency or commission to which title 23, United States Code, funds are apportioned.

State Highway Commission: A group of individuals appointed by the Governor to conduct studies, advise the public, and hold public hearings regarding Nebraska highways and the activities of NDOT.

State Highway Inventory Report: A summary of results from the needs study segment evaluation.

State Highway System: The roads, streets, and highways shown on a map provided for in Section 39-1311, as forming a group of highway transportation lines for which the Department (of Transportation) shall be the primary authority. (Nebr. Statutes, Section 39-1302).

Station: A 100 foot length on a survey. Also denotes a position on a survey line e.g., Station 12+50 is 1,250 feet or 12 stations and 50 feet from the beginning of the survey.

Stewardship/Oversight Agreement: The written agreement between the SDOT and FHWA that defines the respective roles and responsibilities of FHWA and the State for carrying out certain project review, approval, and oversight responsibilities under title 23, including those activities specified by 23 U.S.C. 106(c)(3).

Stopping Sight Distance: The minimum length of roadway ahead visible to the driver that is long enough to enable a vehicle traveling at or near the design speed to stop before reaching a stationary object in its path. Stopping sight distance is the sum of the distance traversed by the vehicle from the instant the driver sights an object necessitating a stop to the instant that the

brakes are applied and the distance required to stop the vehicle from the instant brake application begins.

Storm Sewer: An underground conduit for the drainage of surface water. An enclosed conduit that carries off the surface drainage through a series of surface inlets.

Structural Snow Fence: Temporary or permanent fencing panels installed along a highway to reduce the snow drifting along a highway.

Subbase: The layer of layers of specified or selected material of designed thickness placed on a subgrade to support a base course.

Subdivision: A tract of land divided into lots suitable for home building purposes.

Subgrade: The top surface of a roadbed upon which the pavement structure and shoulders are constructed.

Subgrantee: A government agency or legal entity that enters into an agreement with a grantee to carry out part or all of the activity funded by title 23 grant funds. A subgrantee is accountable to the grantee for the use of the funds and for compliance with applicable Federal requirements.

Sublease: Usually considered synonymous with sandwich lease, except that often a sublease involves the subletting of but a portion of the premises included in the prime lease.

Substitution: The principle of substitution affirms that the maximum value of a property tends to be set by the cost of acquisition of an equally desirable and valuable substitute property, assuming no costly delay is encountered in making the substitution.

Substructure: All of that part of the structure below the bottoms of the bearings supporting the super-structures, together with the backwalls and wingwalls.

Summation Appraisal: The market value indication derived through the addition of the value of the land, considered to be vacant and available, and the depreciated replacement cost of the improvement.

Taking or Acquisition: The process of obtaining right of way.

Temporary Development Restriction: The purchase of a right to temporarily control or restrict development or redevelopment of real property. This right is for an agreed-to time period, defines specifically what is restricted or controlled, and is for an agreed-to amount of compensation.

Temporary Easement: See “Easement.”

Temporary Road: Temporary detours within the project right of way, generally on temporary embankments to bypass a construction site.

Tenancy: Nature of tenure; for example, month to month or short term.

Tenancy at Sufferance: A possessory interest in land which exists when a person who had an estate in land wrongfully continues in possession of the land after the termination of such estate. Notice to terminate is not essential, unless specifically required by statute.

Tenancy At Will: An estate which is terminable at the will of either the landlord or tenant and has no specific duration. The relationship between the landlord and tenant at will is personal in its nature and, therefore, such tenancy is terminated by the death of either party.

Tenancy By Dower: A life estate to which a widow is entitled on the death of her husband in a third of the lands of which he was seized in fee simple, at any time during the marriage.

Tenancy by the Entirety: Created by a conveyance to husband and wife, when upon each becomes seized and possessed of the entire estate after the death of one, the survivor takes the whole.

Tenancy in Common: An undivided ownership in real estate by two or more persons. The interests need not be equal, and, in the event of the death of one of the owner, no right of survivorship in the other owners exists.

Tenant: In the broadest sense, one who hold or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise.

Tenement: Everything of permanent nature which may be held.

Terre Tenant: One who has actual possession of the land.

Three Approaches: The basic methods or techniques by which market data are processed into an indication of value, designated as:

1. Market Data Approach or Comparative Sales Approach.
2. Cost Approach, sometimes referred to as Summation Approach
3. Income Approach or Net Income Capitalization Approach.

Throat: The narrowest portion of a drive or road at the end of a radius return.

Through Street or Through Highway: Every highway or portion thereof on which vehicular traffic is given preferential right of way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield right of way to vehicles on such through highway in obedience to either a stop sign or a yield sign, when such signs are erected as provided in this act. (Uniform Vehicle Code – 1956)

Title: The evidence of a person's right to property or the right itself.

Title Insurance: A policy of insurance which indemnifies the holder for any loss sustained by reason of defects in the title.

Title Opinion: An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title, and other infirmities.

Title Search: An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, encumbrances, charges, and other interests.

Toll Road: A highway, bridge, or tunnel open to traffic only upon payment of a direct toll or fee.

Topography: Graphical representation of the exact physical features, both natural and artificial, of a place or region on a map.

Toe of Slope: The intersection of the foreslope with level ground, or with a backslope forming a ditch.

Transportation project: Any highway project, public transportation capital project, multimodal project, or other project that requires the approval of the Secretary. As used in this part, the term "transportation project" does not include an Early Acquisition Project as defined in this section.

Traveled Way: The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Turning Movement: The traffic making a designated turn at an intersection.

Two Way Ramp: A ramp for travel in two directions. At a cloverleaf, it serves as both an outer connection and a loop.

Unchannelized Intersection: An at-grade intersection without islands for directing traffic into definite paths.

Underpass: A grade separation where the subject highway passes under an intersecting highway or railroad. (Also called an undercrossing).

Uneconomic Remnant: A remainder property which the acquiring agency has determined has little or no utility or value to the owner.

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

Unity of Title: The rule, both in federal and state courts, is that a parcel to be considered a part of the remainder property must be held by the condemnee under the same quality of ownership as that from which the taking occurs.

Unity of Use: The rule is that a parcel in order to be part of the remainder must be devoted to the same use as the parcel from which the taking is made. Traditionally, and in most states, the rule also requires that the parcels have unity of physical location. The federal rule holds that unity of use or operation carries greater weight than physical location.

Unzoned Commercial or Industrial Area (Junkyards): For purposes of junkyard control, the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within one thousand feet thereof, which is:

- Located on the same side of the highway as the principal part of said activity.
- Not predominantly used for residential or commercial purposes.
- Not zoned by State or Local Law, Regulation or Ordinance.

Unzoned Commercial or Industrial Area (Outdoor Advertising Signs): For purposes of control of outdoor advertising, shall mean all areas within six hundred sixty feet of the nearest edge of the right of way of the HBCS which are not zoned by the State or local law, regulation or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity, and in the case of the non-Interstate highway routes on the HBCS may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions: Provided, those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the Department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, storage and processing areas constituting an integral part of such commercial or industrial activity. [§ 39-1302(41) Neb. Rev. Stat.]

USPAP: The Uniform Standards of Professional Appraisal Practice (USPAP) is the generally recognized ethical and performance standards for the appraisal profession in the United States. USPAP was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business, and mass appraisal. Compliance is required for state-licensed and state-certified appraisers involved in federally related real estate transactions.

Valley Gutte: A depressed pavement area that is constructed across a side road at an intersection to carry runoff across the side road.

Valuation: The act or process of estimating value. The amount of estimated value.

Value, After the Taking: Market value of the remainder of the larger parcel considered as a new parcel in the case of a partial taking.

Value, Before the Taking: Market value of the unit of property affected by the taking.

Value, Three Approaches to: See "Three Approaches to Value."

Vendee: The purchaser of real estate under an agreement.

VeNDOT: The seller of real estate usually referred to as the party of the first part, in an agreement of sale.

Vertical Alignment: The line of the roadway curvature as related to the vertical direction.

Vertical Clearance: The clearance provided above the roadway to allow vehicles to successfully pass under a structure.

Vertical Curve: A curve drawn tangent to two intersecting grade lines to provide a smooth transition from one grade to another.

Vertical Sight Distance: The distance a driver can see across a vertical curve to the roadway ahead.

Volume, Traffic: The number of vehicles passing a given point during a specified time period.

Waiver: The renunciation, abandonment, or surrender of some claim, right, or privilege.

Warranty Deed: A deed containing covenants by the grantor, for him/her and his/her heirs, to the grantee and his/her heirs, to warrant and defend the title and possession of the estate conveyed.

Wasting Assets: Those assets that are subject to depletion, such as timber, mineral, or oil lands.

Water Table: The upper limit of that part of the soil or underlying material wholly saturated with water.

Wetlands: Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetland Impacts: The changes, alterations, or eliminations of existing wetlands.

Wetland Mitigation: Actions taken to minimize, replace, or offset wetland impacts.

Weighted Average: An average where each item in a series is adjusted by a judgment factor which reflects its relative importance. It is obtained by multiplying each item by its assigned weight (degree of importance or reliability), adding each product and then dividing the sum of the product by the sum of the weights.

Writ of Execution: A writ which authorizes and directs the proper officer of the court (usually the sheriff) to carry into effect the judgment or decree of the court.

Written Instrument: A deed or any other document that states a contract, agreement, gift, or transfer of property. (Nebr. Statutes 39-1302).

Zoning: The division of an area into districts and the public regulation of the character and intensity of use of the lands and improvements.

Zoning (Outdoor Advertising Signs): Local zoning actions must be taken pursuant to the State's zoning enabling statute(s) or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning or is created primarily to permit outdoor advertising structures is not recognized as zoning for outdoor advertising control purposes.

Zoning Ordinance: A law (generally at the city of county level) controlling the use of land and construction of improvements in a given area (zone).

NDOT

Right-of-Way