TRANSMITTAL LETTER

PUBLICATION:
Publication 378

DATE:
February 2018

SUBJECT:
Publication 378
The Right-of-Way Manual
February 2018 Edition

INFORMATION AND SPECIAL INSTRUCTIONS:
The 2018 edition incorporates all policy and procedure changes previously issued via Strike-off Letter or previously approved via Clearance Transmittal. The 2018 edition also incorporates changes to Appendix F, Signature Authority Guide. The changes to Appendix F are mandated by a change to the Pennsylvania Uniform Unincorporated Nonprofit Association Law.

Incorporated Strike-off Letters and Clearance Transmittals are as follows:

SOL 482-13-09 - Hostile Negotiations
SOL 482-13-10 - PennDOT Next Generation Initiatives (Net 15 due date and relocation operations delegations)
SOL 482-13-28 - Conditional Right-of-Way Clearances for 100% State Funded Projects
SOL 482-14-16 - Modified Forms and Local Project Sponsor Terminology
SOL 482-14-22 - Conceptual Stage Reports
SOL 482-14-30 - Uniform Act Benefit and Eligibility
SOL 482-15-02 - Waiver Valuation Policy (Waiver valuations, elimination of one-offer system, acquisition from railroads, and preliminary acquisition activities)
SOL 482-15-10 - Plan Review Procedures
SOL 482-15-11 - Administrative Appeals Process
SOL 482-15-12 - Temporary Access to Commonwealth Owned Property (OGM)
SOL 482-15-15 - Revised Waiver Valuation Policy
CT H-16-015 - Revised Chapter 4 (Relocation assistance, requirements for government subsidized housing, and recalculation of housing benefits)
CT H-16-051 - Revised Chapter 6 (Right-of-Way Clearance Certification)

CANCEL AND DESTROY THE FOLLOWING:

ALL PREVIOUS EDITIONS

Strike-off Letters:
482-13-09
482-13-10
482-13-28
482-14-16
482-14-22
482-14-30
482-15-02

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CHAPTER 1
ORGANIZATION

1.01 INTRODUCTION

The purpose of this Manual is to describe the Department's right-of-way organization, and provide policies and procedures to guide Department employees and others in acquiring and managing real property for the construction and maintenance of transportation projects.

This manual and the policies and procedures by which the Utilities and Right-of-Way Section of the Bureau of Project Delivery and the District Right-of-Way Units operate were developed in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the implementing regulation 49 CFR Part 24, 23 CFR Part 710, and the Eminent Domain Code of Pennsylvania.

1.02 ORGANIZATION

The responsibility for the acquisition and management of real property for right-of-way is divided between the Utilities and Right-of-Way Section and the eleven engineering district offices.

A. Utilities and Right-of-Way Section. The Utilities and Right-of-Way Section is comprised of three major units: Right-of-Way, Utility Relocation, and Grade Crossing. The Section is under the supervision of the Section Chief. For right-of-way acquisition the Section Chief is responsible for determining policies and procedures based upon federal and state statutes, regulations and guidelines for the administration of the acquisition program, statewide, including such adjuncts as appraisals, relocation assistance to displaced persons, and property management.

Right-of-Way related activities within the Section are separated into three units with different responsibilities. They are Appraisal, Acquisition, and Administration. Each section is under the supervision of a Section Chief.

The Appraisal Unit is comprised of the Chief and Real Estate Appraisal Reviewers (REAR). The Chief of the Appraisal Unit is responsible for all activities of Central Office Appraisal Review and is also responsible for maintaining a statewide list of available approved appraisers in the Right-of-Way Office System and for providing technical advice and guidance for all Department appraisal personnel. The REARs review appraisals prepared by qualified staff or fee appraisers to ensure that they meet applicable appraisal requirements.

The Chief of the Acquisition Unit is responsible for the review of the state's acquisition program. The Chief and/or staff provide functional guidance to District Right-of-Way Administrators whose staff performs the actual acquisition of lands required for transportation projects. The Acquisition Unit functions include preparation of declaration of taking packages, review of relocation and legal payments to ensure compliance with existing policies and procedures, assistance and guidance in the more difficult relocation problems, and processing District leases, property management contracts and requests to dispose of excess property.

The Chief of Administration Unit is responsible for maintaining the Right-of-Way Office System and providing the right-of-way clearance certification to the federal government on federally aided projects. Additionally, the Chief and unit staff maintains all permanent records and process direct claim payments and legal payments.

B. Engineering District Office. Each of the eleven engineering districts has a District Right-of-Way Administrator who is responsible for the District's right-of-way activities. The Administrator is responsible for and supervises a staff comprised of appraisers, negotiators, and property management specialist who perform the actual acquisition of right-of-way required for the construction of transportation projects.
1.03 TITLE VI OF THE CIVIL RIGHTS ACT

Title VI, Section 601 of the Civil Rights Act of 1964 states:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

PennDOT's policy, in accordance with Title VI of the Civil Rights Act of 1964, as amended, is "to ensure that no person in the Commonwealth of Pennsylvania shall, on the basis of race, color, national origin, sex, age, or disability; be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity" for which the Department receives Federal assistance.

Further, the Department ensures that as a recipient of Federal-aid funding, it will ensure nondiscrimination in all of its programs and activities whether those programs and activities are Federally funded or not. Those efforts that prevent discrimination will address, but not be limited to, a program's impact upon access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigation of complaints, allocation of funds, prioritization of projects, and the functions of right-of-way, research, planning, design, construction, and environmental.

Complaints will be investigated in accordance with the Department's Title VI Investigative Procedures. For details on the investigative procedures, contact the PennDOT Bureau of Equal Opportunity Title VI Specialist.

1.04 REQUEST FOR LEGAL OPINION

There are occasions when legal issues related to real property acquisition and right-of-way arise that are not clearly defined within the Department's existing policies and/or procedures. In these instances a legal opinion should be sought from the Office of Chief Counsel, Real Property Division. The process for requesting a legal opinion is different depending on whether the request is project-specific or affects statewide policy.

Project-specific requests for legal opinions related to real property acquisition and right-of-way will follow the process below:

1. The District Office will submit the project-specific request for a legal opinion with any backup or supporting information to the Deputy Chief Counsel of the Real Property Division, Office of Chief Counsel.

2. The Real Property Division will prepare the legal opinion and send it directly to the District with a copy provided to the Chief of the Utilities and Right-of-Way Section.

3. The Chief of the Utilities and Right-of-Way Section will review the legal opinion and determine if it could alter policies and/or procedures and thus have statewide significance that should be brought to the attention of all District Offices. If the legal opinion does have statewide significance, the Chief of the Utilities and Right-of-Way Section will coordinate with the Office of Chief Counsel to prepare and issue a policy and/or procedure that will be incorporated into this Manual.

Requests for legal opinions that are not project-specific or could have statewide significance will use the following process:

1. The District Office will submit the request for a legal opinion with any backup or supporting information to the Chief of the Utilities and Right-of-Way Section. A copy of the request should be sent to the Deputy Chief Counsel of the Real Property Division, Office of Chief Counsel.

2. The Chief of the Utilities and Right-of-Way Section will then request a legal opinion from the Real Property Division of the Office of Chief Counsel.

3. The Real Property Division will prepare the legal opinion and send it directly to the Chief of the Utilities and Right-of-Way Section with a copy provided to the District Office.
4. The Chief of the Utilities and Right-of-Way Section will review the legal opinion and determine if it could alter policies and/or procedures and thus have statewide significance that should be brought to the attention of all District Offices. If the legal opinion does have statewide significance, the Chief of the Utilities and Right-of-Way Section will coordinate with the Office of Chief Counsel to prepare and issue a policy and/or procedure that will be incorporated into this Manual.

1.05 LEGAL AND RELATED ISSUES

The legal and related topics below are discussed in detail in Appendix C, Legal Issues and Guidance.

A. Acquisition Issues.
   1. Interest to be Acquired.
   2. Acquisitions from other Government Entities.
   3. Acquisitions for Environmental Mitigation.
   4. Acquisitions from Railroads.
   5. Acquisitions of Cemetery Land.
   6. Acquisitions for Drainage Maintenance.
   7. Acquisitions for Local Project Sponsor (LPS) Projects.
   10. Dedications and Ordainments.
   11. License Agreements.

1.06 APPROVAL AUTHORITY / RESCINDING APPROVAL AUTHORITY

Noted throughout the various chapters of this Manual are actions that must be approved by someone in the chain of command higher than the person who took the action. Examples would be the review and approval of certain appraisals by the District Chief Appraiser and review and approval of relocation payments by the Central Office Acquisition Unit. When an action must be approved, the classification or job title of the person to whom approval authority has been given is listed. In some instances that authority may be delegated and, in every instance, the authority has been delegated to the lowest level practicable in order to facilitate processes.

Under the direction of the Chief, Utilities and Right-of-Way Section, the various Central Office Units conduct reviews of District work discussed in this Manual as a part of their quality assurance function.

If the Chief, Utilities and Right-of-Way Section determines that a District has developed a pattern of approving an action that has been delegated to the District that is not, in the Chief's opinion, reasonable, prudent, in the public interest and/or not in accordance with established policy and procedure, they may rescind the District's approval authority for that action. The restriction will remain in effect until lifted by the Chief, Utilities and Right-of-Way Section.

1.07 ALTERATION AND APPROVAL OF PRE-APPROVED FORMS

A. Summary of Law and Procedures. The Commonwealth Attorneys Act provides that both the General Counsel and the Attorney General shall review for form and legality all Commonwealth deeds, leases, and contracts to be executed by executive agencies.
All deeds, leases, and contracts that are to be executed by the Department must be submitted to the Office of Chief Counsel and entered into the Legal Agreement Tracking System (LATS). Legal documents not signed by the Department do not require entry into LATS, but are reviewed and approved for form and legality by the Office of Chief Counsel.

B. Pre-Approved Forms. Documents that have been pre-approved by the Office of General Counsel and the Attorney General (these forms include the letters "FA" in the form code number and are located below the RW Form number) only need to be reviewed and approved by the Office of Chief Counsel, as long as the form has not been substantially altered. The approved Right-of-Way forms include drop down boxes or text fields for the entry of required areas and other necessary information. The standard language on Right-of-Way forms may not be altered without the approval of the Chief of the Acquisition Unit. The Office of Chief Counsel will normally be consulted and will eventually review the documents as to form and legality.

C. General Considerations. There may be times when it is necessary to modify the standard language contained within pre-approved R/W forms. To help in determining whether the modification is appropriate, there are three rules which must be considered:

1. The Department, on behalf of the Commonwealth, cannot indemnify (e.g., transfer liability, impose obligation, etc.) a claimant in the event legal issues or certain expenses are incurred. This rule also applies to "hold harmless" and "release of all liability" language. This is due to principles of Sovereign Immunity;

2. The document must convey an unconditional and irrevocable interest in real estate; and,

3. The document must be a settlement of all right-of-way damages under the Eminent Domain Code.

NOTE: Specialized acquisitions from utilities and other government entities often require alterations to preapproved forms. Once approved, this type of language only applies to utilities and government entities and should not be deemed applicable to other types of claims. In addition, even though a document is modified pursuant to this guidance, the Office of Chief Counsel may still decide it must be forwarded to the Office of General Counsel and the Attorney General’s Office for individual review, which could affect the project schedule.

D. Procedure for Requesting Modifications to Pre-Approved Right-of-Way (R/W) Forms.

1. The District Office will submit requests to modify pre-approved forms to the attention of the Chief of the Acquisition Unit. Each request must be made on a case-by-case basis; that a requested modification to a pre-approved form has been authorized in the past does not relieve the District of following this policy in the event the same issue appears in a different claim.

2. Requests will include an unprotected (open) tracked-changes document illustrating the proposed changes and any backup or supporting information explaining the need for the modification.

3. The Chief of the Acquisition Unit will evaluate the request and provide guidance. Where necessary, coordination will be made with the Right-of-Way and Environmental Section, Real Property Division (OCC). If the matter is referred to OCC for review, the Acquisition Unit will enter the request into an internal database for tracking.

4. Where the matter has been referred to OCC for review, the Chief of the Acquisition Unit will review the results received and prepare a reply to the District Office making the initial request.

1.08 WAIVER OF RIGHT-OF-WAY MANUAL REQUIREMENTS

The policies and procedures set forth in this Manual must be followed. Deviation from established policy is only permissible after obtaining prior written approval from the Chief of the Utilities and Right-of-Way Section.

1.09 LOCAL PROJECT SPONSOR PROJECTS

The sponsor must follow Publication 740, Local Project Delivery Manual, Chapter 5. These procedures insure that the acquisitions comply with the Uniform Real Property Acquisition and Relocation Assistance Policies Act of
1.10 TRANSPORTATION ENHANCEMENT PROJECTS

Guidance for acquisition under the transportation enhancement program is set forth in the Transportation Enhancement Manual, Chapter 7. It provides that all acquisition must follow the procedures of Publication 740, Local Project Delivery Manual, Chapter 5. These procedures insure that acquisitions with Federal funds by entities having the power of condemnation comply with the Uniform Real Property Acquisition and Relocation Assistance Policies Act of 1970, as amended, and the regulations promulgated thereunder. 42 USC §4601 et seq., and 49 CFR Part 24 ("the Uniform Act").

Special acquisition rules apply to qualified conservation organizations as set forth in the Transportation Enhancement Manual. The Federal Highway Administration's Real Estate Guidance for Enhancement Projects revised September 28, 2009, is also a helpful resource for TE projects.

Due to the administration of Federal funds, an agreement is executed with the sponsor relative to such projects. The agreement sets forth procedures relating to the acquisition of property rights if that is part of the project. The sponsor is requested to complete property acquisition for TE projects. The Department does not perform acquisition functions or condemn for TE Projects. The Department has direct oversight responsibility for TE projects to insure Federal acquisition procedures are followed.

TE projects not involving work to a highway do not require a highway acquisition plan consistent with Publication 14M, Design Manual, Part 3, Plans Presentation. A plan showing the parcels within the project area should normally be required, however, as a means of insuring that all necessary land is properly acquired. Plans relating to rails to trails projects are more fully discussed in the Transportation Enhancement Manual.
Chapter 1 - Organization

See Appendix C, Section H for further information.

1.11 HIGHWAY OCCUPANCY PERMIT PROJECTS

The applicant/permittee must follow the procedures in Publication 170, Highway Occupancy Permit Manual, Chapter 3.7 and Publication 282, Highway Occupancy Permit Guidelines, Chapter 3.6. The following specific procedures apply depending on whether there is or is not Federal or state funding in the project.

A. Projects involving the use of Federal highway funds in any phase of the project. All acquisitions by local government agencies or private persons must conform to the Uniform Real Property Acquisition and Relocation Assistance Policies Act of 1970, as amended, and the regulations promulgated thereunder 42 USC §4601 et seq., and 49 CFR Part 24 ("the Uniform Act").

If the agency or person undertaking the project has the power of eminent domain, all requirements of the Uniform Act apply. Among other general requirements, negotiations must be held based upon an approved appraisal. 49 CFR §24.102. Publication 740, Local Project Delivery Manual, Chapter 5, is a good publication explaining the necessary procedures.

If the agency or person undertaking the project does not have the power of eminent domain, the general requirements of the Uniform Act do not apply. However, a written offer to purchase must be made advising the landowner that the agency or person does not have or will not exercise the power of eminent domain if negotiations fail and what the agency or person believes to be the fair market value of the property. 49 CFR §24.101(a)(2).

The Department has direct oversight responsibility for these projects to insure Federal acquisition procedures are followed.

B. Projects involving the use of State highway funds in any phase of the project. All acquisitions by local government agencies or private persons that have the power of eminent domain and intend to exercise it if necessary must conform to this Manual. These procedures are generally consistent with the Uniform Act requirements. Publication 740, Local Project Delivery Manual, Chapter 5, is a good publication explaining the necessary procedures.

If the agency or person undertaking the project does not have the power of eminent domain or does not plan to exercise it for the project in question, this Manual's procedures need not be followed. However, a written offer to purchase must be made advising the landowner that the agency or person does not have or will not exercise the power of eminent domain if negotiations fail and what the agency or person believes to be the fair market value of the property.

C. Projects not involving the use of Federal or State highway funds where a local government may condemn land for State highway right-of-way. All acquisitions by local government agencies or private persons must conform to this Manual. These procedures are generally consistent with the Federal Uniform Act requirements. Publication 740, Local Project Delivery Manual, Chapter 5, is a good publication explaining the necessary procedures.

D. Projects not involving the use of Federal or State highway funds or the possible condemnation of highway right-of-way by a local government. Acquisitions need not conform to the Federal Uniform Act or this Manual. However, the landowner must be informed in writing prior to the start of negotiations that although the land may eventually become part of a State highway, the Department is only involved because of its authority to issue highway occupancy permits for driveways onto State highways and will not exercise its power of eminent domain in the event negotiations fail.

1.12 EXCESS MAINTENANCE AGREEMENT PROJECTS

Guidance for acquisition under the excess maintenance program is set forth in the Publication 23, Maintenance Manual, Chapter 15. These procedures are directed mostly to the acquisition of occasional flowage easements by the users of bonded roads, but also include guidance on the acquisition of other property interests by or for users.
1.13 FHWA/PENNDOT STEWARDSHIP AND OVERSIGHT AGREEMENT

The FHWA/PennDOT Stewardship and Oversight Agreement can be found in Publication 10X, Design Manual, Part 1X, *Appendices to Design Manuals 1, 1A, 1B, and 1C*, Appendix C, *FHWA/PennDOT Stewardship and Oversight Agreement*. 
CHAPTER 2
APPRAISALS

2.01 PURPOSE AND OBJECTIVE

The Constitutions of the United States and Pennsylvania provide that private property shall not be taken for public use without the payment of just compensation.

The purpose of this Chapter is to describe the procedures used for determining the amount of compensation to offer property owners for the purchase and possible condemnation of their property, including the procedures for preparing appraisals, appraisal reviews and, where applicable, offers to be determined using the waiver valuation option. The main objective is to provide the negotiator with an estimate of compensation to be offered each property owner for the taking of their private property for public purposes.

This Chapter establishes general guidelines in regard to determining the amount of compensation offered. Exceptions to following these guidelines may be granted by the Chief, Utilities and Right-of-Way Section or a designated representative, on a case-by-case basis depending on the circumstances.

The Department has the responsibility to assure that appraisals:

1. Reflect established and commonly accepted Federal and federally-assisted program appraisal practice.
2. As a minimum, comply with both of the following:
   a. Definition of 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 a specific date, supported by the presentation and analysis of relevant market information.
   b. Appraisal Requirements.
      (1) An adequate description of the physical characteristics of the property being appraised including items identified as personal property.
      (2) All relevant and reliable approaches to value consistent with established appraisal practices.
      (3) A description of comparable sales.
      (4) A statement of value of the real property to be acquired.
      (5) The effective date of valuation.

The procedures set forth in this Chapter are supplemented by the Appraisal Guide included in this Manual. The Appraisal Guide describes how to fill out certain appraisal forms and addresses substantive legal principles relating to valuation under the Pennsylvania Eminent Domain Code.

2.02 APPLICATION OF THE UNIFORM ACT AND USPAP

A. Scope of Work Rule and Jurisdictional Exception Rule. The SCOPE OF WORK RULE is a part of USPAP implemented by PennDOT through its Appraisal Problem Analysis (APA) process or otherwise noted on standard PennDOT forms. PennDOT incorporates by reference into the scope of work all applicable assignment conditions. The JURISDICTIONAL EXCEPTION RULE is a part of USPAP that PennDOT may invoke as necessary. Invocation of the jurisdictional exception rule is limited to narrow circumstances such as the project enhancement rule.

B. USPAP Library. Each District is required to keep copies of all current and applicable USPAP reference
material, including past issues of USPAP if available. Past issues of USPAP are relevant to measure the credibility of older appraisal reports completed under those standards. However, with respect to revisions and updates, USPAP requires appraisers to comply with the USPAP standards in effect as of the date of the report.

2.03 COMPENSATION

A. Just Compensation. Just compensation is defined under Pennsylvania law as the difference between the fair market value of the condemnee's entire property interest immediately before the condemnation and as unaffected thereby and the fair market value of his property interest remaining immediately after such condemnation and as affected thereby, and such other damages as are provided in the Code. (Section 702(a) of the Pennsylvania Eminent Domain Code). This definition incorporates two basic types of damages—general damages and special damages.

The term "general damages" as referred to throughout this Chapter means damages for real estate based on the difference between the before and after condemnation value of the property. The term "special damages" encompasses all other damages payable under the Pennsylvania Eminent Domain Code, such as those for the displacement of businesses, farms and residential occupants and the limited reimbursement for appraisal, attorney and engineering fees.

This Chapter deals predominantly with the determination of general damages to real estate, including that for property taken as well as any loss in value due to severance and/or depreciation to remaining property. There are certain elements that may affect value of a property that must be considered in arriving at general damages. These elements are addressed in subsequent sections and Appendix A, The Appraisal Guide.

B. Fair Market Value. Fair market value is defined under Pennsylvania law as the price which would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

1. The present use of the property and its value for such use.
2. The Highest and Best Use.
3. The machinery, equipment and fixtures forming part of the real estate taken.
4. Other factors as to which evidence may be offered as provided by Article VII of the Pennsylvania Eminent Domain Code (Section 703 of the Pennsylvania Eminent Domain Code).

The comment to this section clarifies that a "willing" seller and buyer means that neither is under abnormal pressure or compulsion, and both have a reasonable time within which to act, and that an "informed" seller and buyer means that both are in possession of all the facts necessary to make an intelligent judgment.

There are similar definitions of fair market value in various recognized sources in the appraisal literature. The term "fair market value" is synonymous with "market value." This definition of Market Value is in accord with the general definitions that are present in any appraisal terminology. Implicit in these definitions is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised, and acting in what they consider their own best interest.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in cash or its equivalent.
5. Financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.
6. The price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs or credits incurred in the transaction.
C. Approved Amount and Offer of Just Compensation for General Damages. The result of the appraisal and appraisal review process is an approved amount representing damages to the property in question. The offer of just compensation to be made to a claimant for general damages to real property shall not be less than market value. Under certain circumstances, the offer of just compensation for general damages may be greater than market value. Any acquisition under the threat of condemnation may be said to violate the "willing seller" concept of market value. Therefore, Review Appraisers are encouraged to recognize and consider the non-market circumstances of eminent domain. Accordingly, the Review Appraiser may recommend just compensation for general damages in excess of market value. The Review Appraiser will remind the appraiser of possible "value in use" considerations above and beyond fair market value.

An example where a Review Appraiser may recommend just compensation greater than market value would be on a claim where the owners have constructed industrial buildings to suit their special and particular needs. The market value of such special use buildings may not adequately recognize their value to the owners. Had it not been for the transportation project, these owners would likely have continued to use the facilities for many years to their satisfaction, regardless of their market value. This also applies to commercial and residential owners who may have created a unique situation by building in obsolescence or features for which "the market" would assign no value, but which the owners consider desirable and important features. In such cases, what the market would pay (market value) may not fairly represent just compensation for general damages.

Establishing an approved amount based on a Review Appraiser's recommendation for greater than market value is different from an administrative settlement. An administrative settlement is above the approved amount to be paid for settlement of the claim.

D. Offer to Purchase Property Prior to Condemnation and Estimated Just Compensation After Condemnation. Pennsylvania law does not require that an offer of just compensation be made prior to condemnation. However, federal law for federal-aid projects and Department policy for all projects require a pre-condemnation offer to purchase the property at the approved amount. The offer of just compensation for general damages made prior to condemnation is made to fulfill these requirements, not those of the Pennsylvania Eminent Domain Code. Under Section 307 of the Pennsylvania Eminent Domain Code, a condemnor is entitled to possession of the property condemned only upon a written offer to pay or actual payment to the condemnee the amount of just compensation as estimated by the condemnor. This is consistent with federal law for federal-aid projects and Department policy for all projects that possession of the required property will not be taken until after payment is made.

The estimated just compensation, offered and paid by the Department under the Pennsylvania Eminent Domain Code after condemnation, will be at least the amount of the pre-condemnation approval. It may also be based on a greater approved amount updated to the date of condemnation.

The purpose of the pre-condemnation offer is to amicably purchase the required property by the execution of a deed without the need for condemnation. On the other hand, the offer and payment of estimated just compensation under the Pennsylvania Eminent Domain Code is for the purpose of securing possession of the required property after negotiations have failed and a condemnation is filed. The claimant then has a right to file for the appointment of a board of viewers to determine whether any additional amount above the estimated just compensation is due for the condemnation.

2.04 PENNDOT APPRAISAL POLICIES & PROCEDURES: THE APPLICATION OF UNIFORM APPRAISAL STANDARDS PURSUANT TO FEDERAL AND STATE LAW AND STATE EMINENT DOMAIN REQUIREMENTS—THE DEPARTMENT'S APPRAISAL FUNCTION

The Commonwealth of Pennsylvania, Real Estate Appraiser Certification Act (REACA) adopted a broad definition of what constitutes an appraisal. Essentially, an appraisal is any written analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real property. PennDOT, as a user of appraisal services in order to implement critical elements of its transportation safety and improvement program, must in addition follow a complex interplay of federal and state laws and regulations relating not only to appraisal but to all aspects of real estate acquisition.
Chapter 2 - Appraisals

The following 200 Series RW forms are utilized by PennDOT during the several stages of the appraisal process:

- RW-260OAD Outdoor Advertising Device Valuation
- RW-270 Strip Appraisal – Partial Take
- RW-270A Appraisal Report-Before & After
- RW-270ATF Appraisal Report-Across the Fence Method of Valuation
- RW-270B Appraisal Report-Total Takes Only
- RW-270E Appraisal Report-Enhancement Method of Valuation
- RW-270FR Appraisal Report-Fair Market Rental Valuation
- RW-270SA Appraisal Report-Stand Alone Method of Valuation
- RW-271 Appraiser's Breakdown of Damages
- RW-273 Appraisal Review Report
- RW-275A Notice of Revision–Appraisal Problem Analysis
- RW-275D Appraisal Problem Analysis – Disposition
- RW-275P Appraisal Problem Analysis Partial Take
- RW-275PS Appraisal Problem Analysis Partial Take – Specialty Report
- RW-275STRIP Appraisal Problem Analysis Partial Take – Value of Strip Take Only
- RW-275T Appraisal Problem Analysis Total Take
- RW-275TS Appraisal Problem Analysis Total Take – Specialty Report
- RW-276 Assembled Economic Unit Doctrine Checklist
- RW-277 Machinery & Equipment Valuation Report
- RW-278 Machinery & Equipment Review Report

The use and methodology of completing these forms is known as PennDOT's appraisal function. The appraisal function is to be applied uniformly in all transportation related acquisitions subject to the requirements of Pub. 378 regardless of the source of project funding (federal participation or 100% state funding). Due to the complexity of federal and state laws, policies and procedures on this subject and for future reference and use in understanding and implementing this information, a Flow Chart is attached graphically depicting the analysis in this section. The Flow Chart can be used in advising PennDOT personnel, fee appraisers, appraisal reviewers and acquisition consultants regarding these policies and procedures. The analysis and other information that follows support two distinct conclusions:

1. PennDOT may perform its appraisal function as a state transportation department in a manner that is entirely consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) provided that it is in conformance with all other law, policies and procedures applicable to PennDOT as a state transportation department under federal law and as an administrative department of the Commonwealth under state law.

2. PennDOT implements the Scope of Work Rule in its assignments and, as appropriate, the Jurisdictional Exception Rule of USPAP in the performance of its appraisal function to enable state certified real estate appraisers to develop and report facts, data and opinions required by PennDOT on PennDOT standardized forms in accord with approved PennDOT procedures.

PennDOT is subject to federal law (the Uniform Act) regarding its appraisal function, pursuant to 49 CFR Sections 24.103 (criteria for appraisals) and 24.104 (review of appraisals). PennDOT is also subject to state law pursuant to the Commonwealth's Eminent Domain Code and judicial decisions.

Regarding appraisals, the state law known as the Real Estate Appraisers Certification Act (REACA), which incorporates USPAP requirements in its regulations, is applicable to PennDOT's appraisal function and can be implemented consistent and in full compliance with the federal Uniform Act. The Scope of Work Rule is implemented through PennDOT's Appraisal Problem Analysis (APA) forms or otherwise on PennDOT standardized forms for specific assignments. The Jurisdictional Exception Rule may be invoked and applicable as noted.

Finally, there is a practical necessity and propriety for utilizing standardized, pre-approved appraisal forms on a state-wide basis. National organizations in the appraisal profession (the Appraisal Institute) and USPAP itself each recognize and approve of the use of such standardized appraisal forms for entities such as PennDOT in the performance of its appraisal function.

For excess land disposition assignments see Chapter 7, Excess Land, Section 7.02.C. For fair market rental value assignments see Chapter 5, Property Management, Section 5.03.I.1.
A. PennDOT’s Appraisal Function and Legal Jurisdictional Authority. PennDOT’s appraisal policies and procedures are contained within this Manual, specifically this Chapter. Included in this Manual is PennDOT’s Appraisal Guide (Appendix A), and all pre-approved right-of-way forms (Appendix B). This Manual is an official legal document required by federal law because PennDOT is a state transportation department under federal law.

PennDOT is subject to the mandatory legal requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The federal regulations promulgated pursuant to this federal law, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, are equally applicable to all PennDOT appraisal policies and procedures. This set of federal statutes and regulations is referred to as the Uniform Act as a matter of law.

Regarding acquisition of real property, the Uniform Act provides that, "[the] Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation." A substantial number of real property acquisitions occur amicably, that is, without the necessity of utilizing PennDOT’s power of eminent domain and the Commonwealth’s condemnation procedures found in the Eminent Domain Code. PennDOT is an administrative department of the Commonwealth and has the authority to acquire real property as provided by law.

Notwithstanding the method of acquisition (amicable or by condemnation) the federal provisions of the Uniform Act apply. However should condemnation become necessary PennDOT is also required to follow the exclusive provisions of the Eminent Domain Code with respect to both the offer of estimated just compensation (EJC) as well as the determination of all legal elements of damage on the broad question of what constitutes just compensation.

The Eminent Domain Code makes no reference to the terms appraisal or appraiser in those provisions that concern either the establishment of just compensation or evidence in legal proceedings. The Code, however, does provide:

A qualified valuation expert may, on direct or cross-examination, state any and all facts and data which he considered in arriving at his opinion, whether or not he has personal knowledge thereof, and his statement of such facts and data and the sources of his information shall be subject to impeachment and rebuttal.

The Eminent Domain Code, passed initially in 1964 and amended most recently in 2006, incorporates decades of court decisions interpreting the question of just compensation in the Commonwealth. The applicable law of just compensation is dynamic since a court having jurisdiction over PennDOT could render an opinion that can have an impact on some aspect of PennDOT’s appraisal function in any given case.

This Manual, therefore, is specifically designed to be amended and updated in order to remain responsive to changes in the Pennsylvania law of just compensation as well as amendments to, and applicable interpretations of, the federal Uniform Act. As explained in more detail in subsection B(1), below, this Manual, is an assignment condition in the Scope of Work that must be followed by both fee and staff state certified appraisers completing any assignments for PennDOT in accord with its appraisal function. As an example of the dynamic changes in applicable law, the Commonwealth Court of Pennsylvania has ruled in 2008 that REACA, by definition, applies only to a real-estate related financial transaction. From this finding the Court concluded that a condemnation of property did not fall within the definition of a real-estate related financial transaction and that, accordingly, it was not unlawful for a person who lacks a real estate appraiser certification to perform a real estate appraisal in connection with a condemnation proceeding. King v. West Penn Power Co., 946 A.2d 184 (Pa.Cmwlth. 2008) Notwithstanding this result, because PennDOT is subject to the Uniform Act and the Act requires certified appraisers in certain circumstances, PennDOT will perform its appraisal function as outlined in this section in full compliance with REACA and its requirements. The court decision does, however, provide legal support that PennDOT’s Waiver Valuation (WV) process is fully-authorized by state and federal law and not in conflict with REACA or USPAP. See Section 2.12.

B. The Legal Authority Governing Appraisal Practice in the Commonwealth. In 1990 the General Assembly enacted the Real Estate Appraisers Certification Act (REACA), to establish an education, certification and regulatory program for the practice of real estate appraising in the Commonwealth. In addition to sound public policy, however, the enactment of REACA was also made necessary by the enactment of a federal law entitled the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

Both FIRREA and, by separate provision of state regulatory law, REACA incorporate USPAP as their primary guidance standard for the performance and reporting of appraisals. In compliance with this law, all PennDOT personnel, acquisition consultants and appraisal consultants performing any aspect of PennDOT’s appraisal function
pursuant to this Manual are required to carry the appropriate REACA state certification. PennDOT recognizes the professional obligations of state certified appraisers in the performance of its appraisal function and, additionally, certified appraisers are frequently called-upon by PennDOT to provide analyses as to real estate value as qualified valuation experts under the Eminent Domain Code.

Under federal law the core appraisal functions required of state transportation departments pursuant to the Uniform Act are found at 49 CFR §24.103 (criteria for appraisals) and §24.104 (review of appraisals) and not in FIRREA. As explained in subsection (A), above, PennDOT recognizes and will adhere to USPAP as the applicable standard under REACA governing its appraisal function. This is accomplished in a manner that is consistent with the Uniform Act through two (2) provisions contained within USPAP itself: the Scope of Work Rule and the Jurisdictional Exception Rule.

1. The USPAP Scope of Work Rule. The USPAP Scope of Work Rule provides in relevant part as follows:

   For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:
   a. Identify the problem to be solved;
   b. Determine and perform the scope of work necessary to develop credible assignment results; and
   c. Disclose the scope of work in the report.

   An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

This Manual is required by federal law. Section 36.51 of REACA's regulations require an appraiser to follow the provisions of USPAP, 49 PA Code §36.51. To the extent that compliance with this Manual, is an assignment condition, such compliance is also deemed a USPAP requirement in PennDOT assignments. Appropriate citations to the Uniform Act, this Manual, and the Scope of Work Rule are made a part of many PennDOT standardized forms, including the appraiser's certification statement.

2. The USPAP Jurisdictional Exception Rule. The USPAP Jurisdictional Exception Rule provides as follows:

   If any applicable law or regulation precludes compliance with any part of USPAP, only that part of USPAP becomes void for that assignment.

   Similar to the Scope of Work Rule, Section 36.51 of REACA's regulations make the Jurisdictional Exception Rule a part of state law as well.

   The standards referred to by the Jurisdictional Exception Rule are the provisions of USPAP itself. By design, then, incorporating this Manual, as an applicable assignment condition within an appraiser's scope of work limits the necessity to invoke the Jurisdictional Exception Rule. Hence, the Jurisdictional Exception Rule is noted generally as being invoked only as may be appropriate.

C. The Uniform Act and the USPAP Requirements of REACA Are Consistent. The appraisal requirements of the Uniform Act and the USPAP requirement of REACA are not in conflict but, instead, are consistent with one another. PennDOT requirements not covered by the general standards of USPAP are those required due to the specialized nature of the assignments and are thus covered by the Scope of Work Rule.

The Jurisdictional Exception Rule, on the other hand, covers those situations where there is a general standard of USPAP, but the more specific appraisal standards contained within this Manual must be followed in order to comply with applicable law. A state-certified appraiser who properly performs any aspect of PennDOT's appraisal functions pursuant to the provisions of this Manual will be doing so without any REACA conflict or violation because the appraiser will be applying an assignment condition contained within the scope of work, following a general USPAP standard, or invoking a valid jurisdictional exception at the direction of PennDOT.

The final matter to be considered concerns the use of standardized appraisal forms in PennDOT assignments; a practical solution permitted by both USPAP and the appraisal profession.
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D. The Use of Standard Appraisal Forms. REACA does not provide either any specific reporting requirements or prohibit in any way the use of appraisal report forms (standardized forms) within the meaning of that term in the appraisal profession. USPAP recognizes the practical utility of standard reporting requirements as it contains the following specific acknowledgement on the subject:

[USPAP] STANDARD 2 does not dictate the form, format, or style of real property appraisal reports. The form, format, and style of a report are functions of the needs of intended users and appraisers. The substantive content of a report determines its compliance.

It is therefore consistent with REACA, as permitted by USPAP, for PennDOT to prescribe within this Manual the mandatory use of PennDOT standardized forms in order to ensure uniform, state-wide compliance with the law, policy and procedures required in order for PennDOT to perform its appraisal function.

On every standard PennDOT appraisal or appraisal-related form, proper citation to REACA, the Uniform Act, and this Manual, is provided. Standardized PennDOT appraisal forms are subjected to frequent review in order to keep them up-to-date. Furthermore, PennDOT makes every effort to integrate all available technology in the standardization process in order to make the forms as user-friendly as possible.

Applying Uniform Appraisal Standards Under State Law to Federal and State Eminent Domain Requirements

2.05 APPRAISAL GUIDE

The Appraisal Guide is the first appendix exhibit to this Chapter. The guide supplements the procedures set forth in this Chapter. The Appraisal Guide is made available to all staff and contract appraisers and Review Appraisers as guidance in the appraisal process and as an aid in completing the appraisal forms. The Appraisal Guide also addresses substantive legal principles relating to valuation under the Pennsylvania Eminent Domain Code. The District Office must provide a current copy of this Manual, or at least this Chapter and Appendix A, The Appraisal Guide, to all fee appraisers performing work for their District Office.
2.06 ELEMENTS OF GENERAL DAMAGES

There are two basic categories of general damages—direct and indirect. Direct damages are those paid for land and improvements actually taken. Indirect damages are those paid for negative impacts on land and improvements remaining after the taking.

There are several major factors that must be considered and supported in an estimate of just compensation for general damages:

1. The value of the land actually taken (direct damage).
2. The contributory value of any improvement situated on the land taken (direct damage).
3. The contributory value of any machinery, equipment and fixtures forming part of the real estate situated within the land and improvements taken (direct damage).
4. Severance or consequential damages to property remaining after the acquisition, including a reduction in the value of remaining land and a reduction in the value of remaining improvements (indirect damages).
5. Temporary construction easements (normally considered direct damage – see also Appendix A, Section A.10).
6. A cost of adjustment shall be considered indirect damages because the cost of adjustment:
   a. Replaces items of nominal value taken, such as driveway adjustments, landscaping, fence, mailbox, lamp post, etc.
   b. Mitigates indirect damages to the residue that would have been severance or depreciation if left unadjusted.

The appraiser must consider how and why the elements of damage mentioned above affect the after value of the property being appraised. Additional information on various elements of damage is included in the Appendix A, Appraisal Guide.

2.07 COMPENSABLE VERSUS NONCOMPENSABLE ELEMENTS OF DAMAGE

There are many elements to consider in appraising real estate. While most of these elements can be considered when appraising for condemnation in Pennsylvania, there are certain elements of damage and other factors that by law should not be considered when appraising for condemnation purposes. The most frequent considerations that raise issues relate to interference with access, business related damages, costs of adjustment, drainage, change of grade, fencing, retaining walls, flowers, shrubs, trees and other amenities. Any problems encountered by the appraiser or Review Appraiser in determining if an element of damage or other factor is legally compensable should be referred to the District Right-of-Way Administrator, who can then obtain a legal opinion from the Office of Chief Counsel.

2.08 GENERAL VERSUS SPECIAL BENEFITS

Pennsylvania law provides that, in determining the fair market value of property remaining after a partial taking, consideration shall be given to the use to which the property condemned is to be put and the damages or benefits specially affecting the remaining property, due to its proximity to the improvement for which the property was taken. Future damages and general benefits that will affect the entire community beyond the properties directly abutting the property taken shall not be considered in arriving at the after value. Special benefits to the remaining property will in no event exceed the total damages, except where the condemnor is authorized under existing law to make a special assessment for benefits (Section 706 of the Pennsylvania Eminent Domain Code).

Special benefits and damages that can be considered in partial taking cases are only those that are peculiar and direct to the remaining property. General benefits and damages that accrue to the community as a whole are not to be considered in arriving at the after value of a property being appraised. Special benefits are those that are direct and
peculiar to the particular property, as distinguished from the incidental benefits enjoyed to a greater or lesser extent by the entire general area surrounding the new highway improvement. There is no restriction that the property being appraised is the only property specially benefited by the project. The most common situations where the special benefit concept may be applicable are those involving properties located at newly constructed interchanges.

Under the law, special benefits may not exceed the total damages payable; that is, the claimant cannot be requested to pay the Department. As a matter of policy, the Department will offer the claimant at least the value of the land actually taken even if the special benefits concept results in a lesser determination of damages.

When an appraiser determines that the special benefits concept applies, the appraiser must fully explain and substantiate the basis for the determination. Due to the difficulty and sensitivity in applying the concept and ascertaining the extent of any special benefits, the Review Appraiser must submit all appraisals indicating special benefits to the Chief, Utilities and Right-of-Way Section (or the Chief's designee) for review and concurrence prior to approval of the appraisal.

2.09 APPRAISER QUALIFICATIONS

A. Use of Staff and Fee Appraisers. Generally, staff appraisers or fee appraisers (hired under contract) prepare appraisal reports. Appraisals are generally reviewed by District Chief Appraisers, Central Office Review Appraisers, or contract Review Appraisers. Fee appraisers are licensed (board certified) professionals hired under a public contract to perform appraisals in order to estimate property values and damages to real estate subject to the acquisition activities of the Department for transportation improvement projects.

The State Board of Certified Real Estate Appraisers governs all appraisers working in the Commonwealth of Pennsylvania. All appraisers must maintain a current and valid certification.

B. Qualification Standards for Staff Appraisers.

1. Competency Rule. Appraisers are responsible for assuring competency in any appraisal or appraisal review assignment.

2. State Board Certification. The following are the minimum requirements for each classification:

   a. Real Estate Appraiser. Residential or General Certification with the State Board of Real Estate Appraisers.

   b. District Chief Appraiser. General Certification with the State Board of Real Estate Appraisers.

   c. Review Appraiser. General Certification with the State Board of Real Estate Appraisers.

   d. Chief of Appraisal and Appraisal Review. General Certification with the State Board of Real Estate Appraisers.

C. Qualification Standards for Fee Appraisers.

1. Competency Rule. It is the responsibility of the appraiser to assure competency in any category of appraisal assignment in which the appraiser works.

2. Appraiser Pre-Qualification.

   a. Except as set forth below, all fee appraisers must qualify under the Invitation to Qualify (ITQ) requirements (see Section 2.13).

   b. Except as set forth below, all fee appraisers must be included on the ITQ list to participate in the Department's competitive selection of fee appraisers.

   c. The Department reserves the right to utilize sole source procedures and to waive pre-qualification standards when necessitated by the uniqueness or complexity of the appraisal problem or when required for litigation purposes.
3. **Appraiser Certification.**
   
a. Category 1 Assignments under the ITQ—at least residential certification.
   
b. Category 2 Assignments under the ITQ—general certification.
   
**D. Appraisal Certificate Renewal.** All appraisers are required to maintain their certification in good standing, which includes continuing education requirements and renewal every two years. The appraiser is required to pay the renewal fee. The Chief of Appraisal and Appraisal Review will monitor the Pennsylvania Department of State Bureau of Professional & Occupational Affairs website to verify certification status of all appraisers doing work for PennDOT. The status of all certificates will be reviewed immediately following the expiration of the previous year’s certification. If a licensee does not possess a current, valid license, his/her status will be changed to "unavailable" in ROW Office system. The licensee will not receive solicitations or be able to perform as a staff appraiser as long as his/her status is listed as "unavailable" and they will be notified of this action. It is the responsibility of this appraiser to notify the Chief of Appraisal and Appraisal Review if their status is to be reinstated.

If a fee appraiser does not renew their license or if their license has been suspended or revoked the Chief of Appraisal and Appraisal Review will notify the Bureau of Office Services for further action regarding their contract status.

**E. Acquisition Consulting Firms and Appraisal Activities.** When an Acquisition Consulting Firm is assigned to Task 2 of WBS Code 2.10.7, the individual(s) identified by the firm to perform Task 2 will have to be deemed qualified and knowledgeable by the District Right-of-Way Administrator and the District Chief Appraiser (see Section 2.11.I) on a project by project basis.

The individuals performing Task 2 will only work on a category of assignment that their license will permit as set forth in the current ITQ Contract for Appraisal Services, Categories of Assignment. Any appraisals received for review that were not prepared from an APA written by a qualified preparer will be returned to the District Office.

If the Acquisition Consultant firm does not have a qualified person to perform Task 2, then the District will rely on Department Chief Appraiser and the Consultant Reviewer to prepare the APAs and Facts and Data Book. Under no circumstances will anyone from an Acquisition Consultant staff act in the capacity of a Review Appraiser.

Waiver Valuation Procedure: Consultants may assist with the preparation of waiver valuations but an agency official must sign off on that waiver; thus taking full responsibility for the value conclusion. That agency official must possess the proper Appraiser Certification for the assignment. An Agency official for the Department of Transportation, a Local Public Agency, or other Agency that abides by the Uniform Act must establish the amount believed to be just compensation as per 49 CFR Part 24 §24.102(d).

**F. Conflict of Interest.** There can be instances where a fee appraiser or various right-of-way consultants may be performing work as part of the right-of-way acquisition consultant, and also be pre-qualified under the current ITQ for Appraisal Services. These persons can prepare appraisal reports under PennDOT’s appraisal function and also may prepare M & E or other specialty reports.

The Department is not going to restrict the tasks that a fee appraiser or right-of-way consultants may perform as long as they do not place themselves in a position of conflict, see 49 CFR Part 24 §24.102(n). See also Chapter 3, Acquisitions, Section 3.01.B. The District Right-of-Way Administrator must monitor the activities of the vendors working on their projects.

The appraiser may appraise for and testify for parties other than the Department in other right-of-way damage claims on the same project as that involving the assignment; provided, however, that written notice, including the name of the client, shall be given to the appropriate District Right-of-Way Administrator no later than ten (10) days prior to such undertaking. The District will then notify the vendor in writing if they are permitted to accept an assignment or if this presents a conflict of interest.

**2.10 APPRAISAL RELATED FORMS**

Below is a list of the appraisal-related forms.
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RW-215 Valuation Contract
RW-215A Valuation Contract Amendment for Time Extension, Revision, Update, or Litigation Testimony
RW-218 Real Estate Appraisal Fee Proposal
RW-256 Review of Updated Appraisal – Claim in Litigation
RW-260OAD Outdoor Advertising Device Valuation
RW-270 Strip Appraisal – Partial Take
RW-270A Appraisal Report – Before & After
RW-270ATF Appraisal Report – Across the Fence Method of Valuation
RW-270B Appraisal Report (Total Takes)
RW-270E Appraisal Report – Enhancement Method of Valuation
RW-270FR Appraisal Report – Fair Market Rental Valuation
RW-270SA Appraisal Report – Stand Alone Method of Valuation
RW-271 Appraiser's Breakdown of Damages
RW-273 Appraisal Review Report
RW-275 Appraisal Problem Analysis (Total Takes)
RW-275TS Appraisal Problem Analysis (Total Takes – Specialty Report)
RW-275P Appraisal Problem Analysis (Partial Takes)
RW-275PS Appraisal Problem Analysis (Partial Takes – Specialty Report)
RW-275STRIP Appraisal Problem Analysis Partial Take – Value of Strip Take Only
RW-275A Notice of Revision – Appraisal Problem Analysis
RW-275D Appraisal Problem Analysis – Disposition
RW-276 AEUD Checklist
RW-277 Machinery & Equipment Valuation Report
RW-278 Machinery & Equipment Review Report
RW-280 Appraiser Evaluation
RW-299 Intent to Appraise Letter

A. Form RW-270 Strip Appraisal — Partial Take. The Form RW-270 report form will be used to value the land actually being taken in the situation of a partial take where the remaining property will not sustain severance or depreciation damages. The Strip Appraisal Form is used to estimate the Market Value of the portion of the Subject Property being acquired, ONLY. The value of the land being acquired or affected shall be based on the contributory unit land value of the entire site. The total value shall also include the contributory value of any site improvements located upon the land areas being acquired or affected, including, but not limited to, paving, fencing, trees, and shrubbery.

Damages may include a cost of adjustment for minor improvements or plantings in the area of take.

See Appendix A, Section A.05 for details on completion of appraisal forms.

B. RW–270A Before-and-After Appraisal Report. This report form will be used for partial takes valuing the property before the take and as unaffected and then valuing the property after the take and as affected thereby.

See Appendix A, Section A.05 for details on completion of appraisal forms.

C. Form RW-270B Total Take Appraisal Report. This report form will be used to value properties that are total takes regardless of actual use or Highest and Best Use.

See Appendix A, Section A.05 for details on completion of appraisal forms.

D. Form RW-277 Machinery & Equipment Valuation Report. The Form RW-277 report form will be used to value items of fixed or movable property in a general business.

See Section 2.23 and Appendix A, Section A.10.E for details on completion of appraisal forms.

2.11 APPRAISAL PROJECT MANAGEMENT

The District Right-of-Way Administrator is responsible for overall appraisal project management. The District Right-of-Way Administrator will perform this function in close cooperation with the appraisal staff. Following are the major steps in the appraisal project management process.
A. Project Scope of Work/Field View. An important preliminary step in the appraisal project management is the Project Scope of Work/Field View in conjunction with the project manager and project development team. This is a first inspection of the proposed project and provides an opportunity for group discussion of the impact of the project on real property. Every effort should be made by the Right-of-Way Unit to be represented at this field view.

Following the field view, the right-of-way representative completes the scope/concurrence form. This preliminary report provides the design unit with the concerns and questions of each unit. See Section 2.11.C below for common issues. Early involvement and input by the Right-of-Way Unit in this process is crucial.

As a result of the field view, the Right-of-Way Unit will set up a file containing rough estimates of the number and type of claims involved.

At this time claims that may dislocate a business must be identified. The District Chief of Acquisition and Relocation will obtain an inventory of improvements and video tape the contents to gather the information necessary for the preparation of the AEUD Checklist (Form RW-276). The Appraisal Problem Analysis cannot be prepared until this information is provided to the District Chief Appraiser and assigned Central Office Review Appraiser.

This is also the time to identify the properties that will need to have an M & E Report (Form RW-277) or other specialty report to aid in the preparation of the Appraisal Problem Analysis.

B. Preliminary Data Collection. Upon delivery of a preliminary right-of-way plan, the Appraisal Unit should begin to collect preliminary data for all types of appraisals. This includes gathering potential comparable sales data and other market data deemed appropriate.

Data sources should include but not be limited to the following: public records; various sale data reporting services; real estate agents and multiple listing services; appraisers, owners and tenants; and internal Department appraisals and files.

Information collected should include but not be limited to the following: general and local demographic statistics and other pertinent data; zoning maps; codes and ordinances; FEMA flood plain maps; deed restrictions/covenants; land use and subdivision plans; availability of municipal utilities; planning department projections; tax assessment data; environmental reports; and all other information that may pertain or have an effect on the subject property, the immediate neighborhood or the general area.

The information collected should be compiled into a Facts and Data Book that can be made available to those working on the project. The necessity to create a Facts and Data Book and the level of detail required in the Facts and Data book is determined by the scope of work requested by the District. As additional information is gathered, this new information should be added to the Facts and Data Book.

C. Review of Right-of-Way Plan. During the right-of-way plan development process, the District Right-of-Way Unit is available to provide technical guidance. Technical guidance can include a right-of-way representative commenting on the details of a preliminary right-of-way plan. The right-of-way representative should also identify larger parcel issues. Any plan discrepancies or acquisition issues, including any additional tracts owned by the same party not shown on the plan, should immediately be brought to the attention of the Right-of-Way Administrator and the Project Manager. If property plats are required, they should be requested at this time.

Upon delivery of the right-of-way plan signed by the District Executive, the District Right-of-Way Administrator and District Chief Appraiser should begin to consider workload implications of the project. The right-of-way representative assigned to review the plan should color-code all of the indicated take areas, both fee and easement. Any plan discrepancies noted should immediately be brought to the attention of the Right-of-Way Administrator and the Project Manager.

D. Claim Damage Estimate and the WBS (Work Breakdown Structure). Also upon delivery of the right-of-way plan signed by the District Executive, the assigned right-of-way representative will prepare the Right-of-Way Project–Funding Estimate (Form RW-971). The Appraisal, Acquisition/Relocation and Property Management Units should have input into this process.

The assigned right-of-way representative will either enter or provide the individual claimant's data file for entry into ROW Office. All sub-claims should also be entered into ROW Office at this time. Lease and tenant information (if any) obtained by the Acquisition/Relocation Unit should be provided to the Appraisal Unit at this time.
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For projects with federal funding, the assigned right-of-way representative will cooperate with the Project Manager in preparing the Form D-4232 (Request for FHWA Authorization).

The assigned right-of-way representative will prepare the WBS (Work Breakdown Structure) to encumber funds for the project. The WBS will be provided to the Project Manager. A SAP-7 (Funds Commitment) form will be entered into SAP to allow project expenditures.

E. Appraisal Field View & Scoping the Valuation Assignment

1. Appraisal Field View. The District Right-of-Way Administrator, District Chief Appraiser, Chief Negotiator, Central Office Review Appraiser and/or their designated staff members and/or consultants will complete an in-depth field view to assist in preparing the appraisal assignments.

Team members will walk or drive the centerline of the entire project. Each claim (parcel) will be inspected to observe any improvements that will be affected. Exact details of each claim and comments from the viewers shall be noted; potential areas of concern should be addressed immediately via written order to the Project Manager.

2. Scoping of the Valuation Assignment. The District Chief Appraiser and Review Appraiser will determine the complexity of each case and the associated appraisal problems; identify claims that may involve an M&E report or other type of specialty report, and identify claims that may indicate the application of the Assembled Economic Unit Doctrine (AEUD). In addition, the District Chief Appraiser, with the concurrence of the Review Appraiser at the discretion of the District Right-of-Way Administrator, is responsible for the identification of claims where an offer for negotiation purposes can be prepared pursuant to the waiver valuation (WV) process. The WV process is authorized by the federal Uniform Act and is adopted into Pub. 378. See Section 2.12, Waiver Valuation (WV); Minimum Payment, and Chapter 3.02.F. All appraisers involved in the process of scoping any type of valuation assignment must carry the appropriate certification for the land type involved in the acquisition.

The District Chief Appraiser or a consultant acting as the District Chief Appraiser will prepare an Appraisal Problem Analysis (APA) for all claims that are not candidates for the WV process when contracting for appraisal services, and on very complex appraisal assignments that will be prepared by staff appraisers. The Review Appraiser must review, approve and sign all Appraisal Problem Analyses. The approval of the APA must be entered into ROW Office by the District. See Section 2.15.

F. Appraisal Assignments. Appraisal assignments should be made after the appraisal field view. The District Right-of-Way Administrator and District Chief Appraiser must manage the workload related to the number of appraisals in various projects, time constraints due to letting dates, and the complexity of the appraisal assignments. Consideration must be given to claims that are litigation candidates. Fee appraisers may be utilized at the discretion of the Department. Additionally, the Chief of Appraisal and Appraisal Review should be consulted to determine if the review function would require a consultant's services.

If the appraisal problem is complex or involves the dislocation of a business, the District Chief Appraiser must initiate procedures for determining whether the Assembled Economic Unit Doctrine applies. See Section 2.20.E.

The District Chief Appraiser may arrange for a pre-appraisal conference if necessary. Reasons for a conference would include the level of complexity of the assignment and the familiarity of the appraisers with Department requirements. The purpose of this conference is to discuss with the selected appraisers the APA, the documentation required, and any specialists needed. The District Chief Appraiser should involve the Review Appraiser in the conference. Considering environmentally-impaired properties are complex, the District Environmental Unit must be consulted.

The District Chief Appraiser, considering the resources available and other circumstances, will assign staff appraisers to all applicable assignments. Other assignments will be given to contract appraisers, normally under the ITQ. See Section 2.13. In certain circumstances, the Form RW-215 (Appraiser's Contract) can be used for contracting with an appraiser or specialists. The use of the Form RW-215 for obtaining new reports requires sole source justification for litigation purposes, competitive bidding, or a request for proposal process. See Section 2.13.C relating to existing contracts. The preparation of the Form RW-215 must include attaching current versions of the followings provisions: Nondiscrimination Clause, Contractor Integrity, Offset, Contractor Responsibility and
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Americans With Disabilities Act. Current versions are found on the PennDOT Shared drive P:\penndot\shared\Purchasing\Forms & Provisions - Website\Contract Provisions.

Normally only one appraisal per claim will be required. However, the District Right-of-Way Administrator or designee has discretion on the number of appraisal reports required for each parcel. The potential amount of damages is not a controlling factor.

G. The Rule for Appraisal Assignments. The Scope of Work "Appraisal Problem Analysis" certainly will dictate who may get an assignment.

1. If there is Zoning. A Residentially Certified Appraiser can only get assignments where the property is zoned residential. (Residentially Zoned Land or 1 to 4 Family Units)

2. No Zoning. If it is clearly observable that the present use is residential; a Residentially Certified Appraiser can be given the assignment.

   a. If the Highest and Best Use is not clearly observable, the Residentially Certified Appraiser can be given the assignment to proceed at least until that appraiser does the four tests for Highest and Best Use. If the conclusion is that the Highest & Best Use is residential the appraiser proceeds with the assignment to reach a value conclusion. If the Highest & Best Use analysis reveals that the use is other than residential then the appraiser will notify his/her supervisor and provide the supervisor with the work file. The supervisor will have to reassign the appraisal to someone with a General Certification to complete the value conclusion. Residentially Certified Appraiser classification does not include the appraisal of subdivision for which a development analysis/appraisal is necessary; nor should they prepare an APA for this property type.

   It is the responsibility of the staff appraiser to take the assignment and immediately notify the supervisor at the point at which they cannot continue with the assignment.

   There is no prohibition for a Residentially Certified Appraiser to collect market information and assist with appraisal related tasks short of reaching the value conclusion on a non-residential property.

   If the staff appraiser has any questions about what activities they may perform, the employee will prepare a written statement or question that will go up the chain of command for clarification. If the question requires clarification from the Appraisal Certification Board the question will be submitted to the Chief of Utilities & Right-of-Way. The Chief of Utilities & Right-of-Way along with the Chief of Appraisal & Appraisal Review and Legal Counsel will submit the question to the Appraisal Certification Board if the issue cannot be addressed in house. Under no circumstance will a Department Employee contact a licensing or certification board on matters that deal with Department work Assignments.

H. Real Property Appraiser Trainee. The guidelines for appraiser trainees are set forth by The Appraisal Foundation, Appraisal Qualification Board's document titled The Real Property Appraiser Qualification Criteria which can be found on The Appraisal Foundation's website.

The scope of practice for the Appraiser Trainee Classification is the appraisal of those properties which the supervising appraiser is permitted to appraise.

The appraiser trainee shall be subject to the Uniform Standards of Professional Appraisal Practice "USPAP".

The appraiser trainee shall be entitled to obtain copies of appraisal reports he or she prepared. The supervising appraiser shall keep copies of the appraisal reports for a period of at least five years or at least two years after final disposition or any judicial proceeding in which testimony was given, whichever period expires last.

The appraiser trainee must meet the following criteria when it comes to gaining experience:

1. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who shall be state licensed or certified in good standing.

2. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:
a. Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with USPAP;

b. Reviewing the appraiser trainee appraisal report(s); and

c. Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the COMPETENCY RULE of USPAP for the property type.

3. The appraiser trainee is permitted to have more than one supervising appraiser.

4. An appraisal log shall be maintained by the appraiser trainee and shall, at a minimum, include the following for each appraisal:

   a. Type of Property.

   b. Client name and address.

   c. Address of the appraised property.

   d. Description of work performed.

   e. Number of work hours.

   f. Signature and state license/certification number of the supervising appraiser.

5. Separate appraisal logs shall be maintained for each supervising appraiser.

Additionally, the Pennsylvania Code, Title 49, Professional and Vocational Standard, Chapter 36, State Board of Certified Real Estate Appraiser, further states:

§ 36.13 Experience options for preparation of appraisal reports.

(b) An assistant to a certified general appraiser or certified residential appraiser shall observe the following requirements when preparing an appraisal report:

   (1) The assistant shall perform an inspection of the interior and exterior of the property.

   (2) The assistant may not arrive at an independent determination of value.

   (3) The assistant shall sign the appraisal report as "assistant to the certified real estate appraiser: or be referenced in the certification section of the appraisal report, or in an addendum to the appraisal report, as having provided significant professional assistance.

Therefore, it becomes the obligation of the assistant to provide specifically a summary statement(s) describing the extent of the assistance or to develop a checklist that can be similarly used to describe the extent of the assistance that was provided.

Sample Statement:

Upon receiving this assignment, I __________________ Pennsylvania State Certified _____________ Real Estate Appraiser Certificate #____________ identified the real property being appraised and collected property-specific data available through public records, various data services and or MLS database when available. I then completed an interior and exterior inspection of the subject property, noting the condition, quality, utility, amenities and architectural style. Zoning data was obtained from public records, office files, and or city/county planning offices. The collected data was then used to develop a profile of the subject and to perform a search of the market for the most similar closed comparable sales, pending sales and active listings. The sales were inspected from the street and photos taken. The sales were confirmed and verified from public records, various data services and MLS, and as required by PennDOT with an agent or the owner. The sales data was then analyzed and I assisted in the value conclusion derived. This Report was then completed, signed and released to the client, my client being the Pennsylvania Department of Transportation, which I am an employee of. This report is intended to satisfy the requirements of the APA (PennDOT's appraisal problem analysis), USPAP and this Manual.

§ 36.54 Supervision of appraisal assistant.
(a) A certified residential real estate appraiser or certified general real estate appraiser who utilizes an appraisal assistant before October 1, 2010, shall:
   (1) Provide written notification to the Board of the name and address of the assistant when the assistant begins work for the appraiser.
   (2) Directly supervise and control the assistant's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.
   (3) Accompany the assistant during the physical inspection of the property until the assistant has logged 300 hours of appraisal experience or until the supervising appraiser determines the assistant is competent under USPAP to perform the physical inspection unaccompanied, whichever is the longer period.
   (4) Co-sign the appraisal report as a certified real estate appraiser under § 36.52 (relating to use of certificate number and title) and, unless the appraisal assistant checklist referenced in paragraph (5) is made part of the appraisal report submitted to the client, either have the assistant sign the appraisal report as assistant to the certified real estate appraiser or identify the assistant in the certification section of the appraisal report, or in addendum to the appraisal report, as having provided significant real property appraisal assistance.
   (5) Co-sign a Board-approved appraisal assistant checklist that has been completed by the assistant and relates to the assistant's work on the appraisal report.
   (6) Provide a current or former assistant who is applying for appraiser certification with copies of designated appraisal reports and appraisal assistant checklists requested by the Board to verify the assistant's experience.

(b) A certified residential real estate appraiser or certified general real estate appraiser who utilizes a licensed appraiser trainee shall:
   (1) Have at least 5 years' experience as a residential or general appraiser.
   (2) Supervise no more than three trainees at one time.
   (3) Directly supervise and control the trainee's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.
   (4) Accompany the trainee during the physical inspection of the property until the trainee has logged 300 hours of appraisal experience or until the supervising appraiser determines the trainee is competent under USPAP to perform the physical inspection unaccompanied, whichever is the longer period.
   (5) Co-sign a Board-approved appraiser trainee checklist that has been completed by the trainee, relates to the trainee's work on the appraisal report and is made part of the appraisal report submitted to the client.
   (6) Provide a current or former trainee who is applying for appraiser certification with copies of designated appraisal reports requested by the Board to verify the trainee's experience.

(c) A certified general real estate appraiser who utilizes a certified residential real estate appraiser as an assistant for an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units shall:
   (1) Directly supervise and control the residential appraiser's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.
   (2) Accompany the residential appraiser during the physical inspection of the property until the general appraiser determines the residential appraiser is competent under USPAP to perform the physical inspection unaccompanied.
   (3) Co-sign the appraisal report as set forth in § 36.52 and specify in the appraisal report the nature of the significant real property appraisal assistance rendered by the residential appraiser.
   (4) Provide the residential appraiser, at the time of application for general appraiser certification, with copies of designated appraisal reports requested by the Board to verify the residential appraiser's experience.

I. Coordination of the Review Function. Concurrent with determining the appraisal assignments, the District Chief Appraiser may request approval from the Chief of Appraisal and Appraisal Review to use a consultant Review Appraiser. The Central Office Review Appraiser or the consultant Review Appraiser (if any) should be informed of the letting date for the project and the estimated completion dates of the appraisal assignments. The Review Appraiser must also be provided a copy of the APA and a complete, full-size set of plans for the project.

The District Chief Appraiser and/or assigned staff should be available to locate comparable sales.
During the review process, the Review Appraiser will keep the District Chief Appraiser informed of review progress and any deficiencies. The Review Appraiser will forward written comments to the appraiser with a copy to the District Chief Appraiser and/or assigned representative. After receipt of written critique the appraiser may contact the Review Appraiser directly. A written response to the critique from the appraiser must be submitted to the District with a copy to the Review Appraiser. In order to expedite the process, correspondence may be by fax or electronic transmission, however, any correspondence requiring a signature such as a revised page 1 or a Certification page of the Appraisal Report will be required in hard-copy form.

Staff and/or fee appraisers (as applicable) will be responsible for providing the District Chief Appraiser and/or assigned representative a written response to the review concerns within ten business days of receiving the Review Appraiser's written request. The appraiser must request any extensions in writing from the District Chief Appraiser. The District Chief Appraiser's approval of the extension must also be in writing.

Review Appraisers will NOT prepare a Determination of Value (DOV) for any appraisal reports prepared by a staff appraiser.

After the approved amount has been established, the Review Appraiser will prepare the Form RW-273 Appraisal Review Report. The District Chief Appraiser or assigned representative will enter the appraisal log information in ROW Office. The Review Appraiser/District Chief Appraiser or assigned representative will then enter an approval in ROW Office.

The assigned right-of-way representative will prepare the offer letters to the claimants for signature by the District Right-of-Way Administrator.

J. Contracting for Various Right-of-Way Services. If an acquisition consultant is involved in a project, the consultant may be involved in many of the steps as outlined in Sections 2.11.A - 2.11.E, and Section 2.11.K. However, the District Right-of-Way Administrator is responsible for managing the consultant and for ultimately ensuring project delivery.

Whether or not the acquisition consultant is involved in the appraisal management process all documents, including appraisal and appraisal review documents, must be sent to the District Office for further distribution to all parties involved.

An employee of an acquisition consultant who will assist with the preparation of an Appraisal Problem Analysis "APA" must possess a current valid Pennsylvania Appraisal Certificate for the property type as outlined in Section 2.11.G, has been preapproved as a fee appraiser on PennDOT's current Appraisal ITQ Contract, and be competent and experienced with condemnation appraising as well as The Uniform Act; PA Eminent Domain Code; this Manual; and USPAP. If the acquisition consultant helps in the preparation of the APA the document must be signed by the Review Appraiser assigned to the District or that project. Prior to being assigned to the task of writing the APAs, the District Right-of-Way Administrator and District Chief Appraiser must insure that this individual meets the qualification outlined above and is competent to perform this task on a person-by-person, project-by-project, or even a parcel-by-parcel basis depending on the complexity of assignment. If the assigned Review Appraiser cannot approve the APA due to needing corrections or because the APA is not properly prepared for the appraisal assignment; the Reviewer should not correct this document for the consultant but rather return it unsigned. The District Right-of-Way Administrator has the authority to approve or remove an individual consultant from working on specific tasks even though the consulting company was awarded the job. The purpose of this policy is to ensure the quality of the appraisal product.

1. Contracting Methods:

   a. Department of Transportation Projects. Because there is interplay between acquisition and appraisal and appraisal review tasks the following information is being provided. Also note that non-professional services may not be obtained under a professional services contract.

   (1) Appraisal Services via the current Appraisal Invitation to Qualify "ITQ". An Invitation to Qualify Contract is a multiple award contract that pre-approves vendors to delivery non-professional services as per the Commonwealth Procurement Code.

   For more information on this contract and its use see Section 2.13.
Permitted tasks under this contract are:

- Writing real property appraisal reports.
- Writing or subcontracting for other types of valuation documents e.g. machinery & equipment reports, timber cruises, gas or mineral valuations, etc.

(2) Appraisal Review Services via the current Appraisal Review Services Contract is a single award contract for non-professional services as per the Commonwealth Procurement Code.

The tasks to be performed and as specified below will be determined on a project-by-project basis by the District Right-of-Way Unit personnel in conjunction with the Central Office Chief of Appraisal & Appraisal Review. The specific scope of work will be defined by PennDOT and discussed with the Review Consultant. The review consultant will prepare costs for the agreed-upon work. PennDOT and the review consultant will negotiate the scope of work and costs as necessary. When the scope of work and associated costs are accepted by PennDOT, a Purchase Order will be issued to the contractor to pay for the services. No work may begin or be reimbursed before the Purchase Order is completely executed. Tasks may include, but are not limited to, those listed below.

Permitted tasks under this contract are:

- Appraisal Planning.
  - Attend, as requested by PennDOT, field view(s) of the project(s) to assist the District Chief Appraiser in determining scope of work involved and establishing the cost of all of the real and personal property for the project(s). This will enable the District to establish the funding for the project, make preliminary decisions on the types and number of appraisals that will be needed, and determine the best assignment of resources to complete the appraisals.
  - Provide staff to work with the District Right-of-Way Units to assist with appraisal processes.
  - Be physically present and interface in a given Right-of-Way Unit as requested by PennDOT.
  - Writing/Reviewing of Appraisal Problem Analysis (APA).
  - Write APAs or review APAs written by others as required by PennDOT.
  - Prepare a Waiver Valuation.
  - Appraisal Review.

Perform both desk and technical reviews of appraisal documents and either recommend the appraisal, critique the appraisal, or compile a Determination of Value (DOV).

Provide written communication(s) to the Districts and Central Office to record the status and progress of the appraisal review process.

Determine and enter any approved damage amounts into the Right-of-Way Office (ROWO) System.

- Litigation/Testimony.

Assist PennDOT in preparing for litigation and/or testimony as requested by PennDOT.

- Policy/Procedure Review.

Be familiar with all laws, regulations, policies and procedures and act as a subject matter expert on appraisal & appraisal review issues. Assist in making recommendations that will
enhance the Right-of-Way Manual and the appraisal processes. This may include meetings to rewrite portions of the manual or brainstorm better ways of doing business.

- **Meeting Attendance.**
  
  Attend kick-off meetings, quarterly Central Office Review Appraiser meetings, Chief Appraiser meetings, statewide meetings, project status meetings, policy meetings, special project(s) meetings, and any specific training offered by PennDOT as it relates to appraisals and appraisal review, etc.

- **Advisory Services.**
  
  Serve in an advisory capacity to both the Districts and the Central Office Appraisal Sections as it relates to appraisal and appraisal reviews.

  Alert PennDOT to any changes in the industry that may affect the operation of PennDOT's Right-of-Way processes.

**NOTE:** It is highly recommended that if the Review Consultant will be performing the appraisal review then they should prepare the Appraisal Problem Analysis or be involved in the preparation of the Appraisal Problem Analysis.

(3) Right-of-Way Acquisition Services are considered professional services as per the Commonwealth's Procurement Code. For more information see Chapter 3, Section 3.01. E.

Permitted tasks are found in the Work Breakdown Structure "WBS" Code 2.10.7.

Those tasks include:

- Task 1. Relocation Assistance Plan/Problem Identification.
- Task 4. Title and Settlement Services.
- Task 5. Relocation Assistance and Payments.
- Task 7. Other Services.

It should be further noted that the Appraisal Planning/Services found in Task 2 are to provide administrative assistance with the appraisal processes, not to write appraisal reports or perform appraisal reviews. To be clear, Task 2 above does not include any of the following:

- **Directly hire the real estate appraiser.** The employee/client relationship must be directly between the Department of Transportation and the appraiser.

- **Write the appraisal reports needed on this project.** A Waiver Valuation (WV) is not an appraisal report. Acquisition consultants may perform WVs for the project as specified in the Scope of Work. The Scope of Work shall contain language specifically authorizing the District Right-of-Way Administrator to approve consultant staff who may perform the WVs.

- **Perform appraisal reviews.** All appraisal reviews will be performed only by those authorized by PennDOT to perform the appraisal review tasks; this includes PennDOT's Central Office Review Appraisers, PennDOT's District Chief Appraiser, or the Department's Appraisal Review Consultant as per the dollar limits as set forth in Section.
2.18.C. Not to do so may be a violation of 49 CFR Part 24 Subsection 24.102(d) in estimating just compensation and Subsection 24.102(n), the conflict of interest provision. For more information see Chapter 3, Sections 3.01B and 3.01E.

2. Local Project Sponsor Projects (LPS).

a. LPS Projects Involving State or Federal Funds in Any Phase of the Project. The LPS and/or their Acquisition Consultant may not perform appraisal reviews if there is state or federal money in any phase of the LPS Project. All appraisal reviews will be performed only by those authorized by PennDOT to perform the appraisal review tasks; this includes PennDOT's Central Office Review Appraisers, District Chief Appraiser, or the Department's Appraisal Review Consultant as per the dollar limits as set forth in Section 2.18.C.

To do so is a violation of 49 CFR Part 24 Subsection 24.102(d) in estimating just compensation and Subsection 24.102(n) the conflict of interest provision. For more information see Chapter 3, Sections 3.01B and 3.01E.

In performing Appraisal Planning/Services the Acquisition Consultant may assist the LPS with solicitations for appraisal services to hire the fee appraisers and preparing documents for bid opening(s); but may not conduct the bid opening, select or award contracts.

b. LPS Projects that do not involve State or Federal Funds: The LPS may directly hire the real estate appraiser. If no state or federal funds are involved in any phase of the LPS Project, the LPS may pay for the appraisal reports directly and they are not subject to PennDOT bidding procedures for obtaining appraisal services. The LPS is required to only use appraisers that have been pre-qualified on PennDOT's Appraisal ITQ Contract; and in this case the employee/client relationship is between the LPS sponsor and the appraiser.

If the LPS requests that the Acquisition Consultant on the project hire the appraisers directly as a pass through cost the LPS should be informed that the employee/client relationship is between the Acquisition Consulting Firm and the appraiser. The Acquisition Consultant needs to define in writing to the, the intended use and intended users of the appraisal report; and the LPS's ability to receive the appraisal documents, request corrections, or use that appraiser as an expert witness. The estimated pass through costs for the appraisal reports should be listed on the Acquisition Consultant's Project Estimate.

3. Appraisal Problem Analysis. Under either scenario of using state and federal funds or not, the District Chief Appraiser and Right-of-Way Administrator should determine if the Acquisition Consultant is capable of writing the APA's. If not, the District should advise the LPS who will prepare the APA's; be it District Office or Consultant Appraisal Review Services.

4. Appraisal Review. Under either scenario of using state and federal funds or not, the District Chief Appraiser and Right-of-Way Administrator will determine who will perform the appraisal reviews; be it the District Chief Appraiser, Central Office Review Staff or Consultant Review Appraiser. If the services of a consultant Review Appraiser are used, their contract may be through the District Office or directly with the LPS.

The following matrix provides a quick reference of permitted and non-permitted tasks under the various Right-of-Way services contracting methods. This applies to all PennDOT projects as well as LPS projects.
<table>
<thead>
<tr>
<th>Task</th>
<th>Notes</th>
<th>1.7 Other Services</th>
<th>1.5 Market Value</th>
<th>1.6 Property Assessor Appraisal Report</th>
<th>1.3 Title &amp; Site</th>
<th>1.2 Field Appraisal</th>
<th>1.1 Preliminary Appraisal</th>
<th>1.0 General Core on Appraisal Professional Services &amp; Other Appraisal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisal Review Contract</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Non-Professional Services Multiple Award Contract</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Non-Professional Services Single Award Contract</td>
<td>No</td>
<td>No</td>
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<td>No</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

**Type of Service**

- **Notes**: See Pub 378 Ch 2.1.1, Task 1:

WBS codes under 2.10.7
K. Document Transmittals. All documents must be accompanied by a transmittal letter, in a format similar to the sample transmittal letter. The letter should contain the reason for the transmittal, the requested action, and the nature of the attached document, as well as specific project and claim information. No action will be taken on submissions received without a transmittal letter. See transmittal letter Form RW-372.

L. Specialty Reports. Some appraisal assignments require machinery and equipment (M&E) or other specialty reports such as coal, oil, gas, timber, liquor licenses, engineering studies or cost of adjustment analyses. The method of obtaining the necessary report is a District decision. The District may require the appraiser to obtain and incorporate the report in their appraisal or the District may obtain the report and provide a copy to the appraiser. The method chosen by the District must be fully described in the APA. See Section 2.19.D.

If the appraiser obtains an M&E report, it must be delivered to the Department separate from the appraisal report. The Department may choose to obtain an M&E report and provide it to the appraiser.

District Offices should seek out and maintain an informal list of specialists that they can contact in their geographic region. Few people hold themselves out as M&E Appraisers. The yellow pages of the telephone book may prove to be a good source of providers that can competently provide costs for various types of equipment both new and used (i.e. restaurant kitchen equipment, etc.).

If the District chooses to obtain a specialty report other than an M&E report, the District may do so through another consultant on the project using normal contracting procedures. The District may also separately contract with the specialist through Form RW-215 Appraisal Contract. This can be done using sole source justification for litigation purposes competitive bidding or the request for proposal process.

All Specialty Reports must comply with the provisions of the Competency Rule of the Uniform Standards of Professional Appraisal Practice (USPAP).

M. Plan Revisions. Plan revisions occur frequently on highway projects. Revisions may change the areas being acquired and affect the acquisitions, damages or benefits. Minor plan revisions may not substantially affect the approved value of the take and damages less benefits. However, appraisers should be given the opportunity to decide the effect of plan revisions since ultimately they may be required to testify to their opinions of value. See Form RW-275A (Notice of Revision). If plan revisions are needed which add additional parcels to the right-of-way footprint, an updated environmental document may be necessary and should be discussed with the project manager.

N. Revising and Updating Appraisals. Appraisal revisions may be necessary due to changing circumstances. These may include plan changes, when the property owner sells part or acquires property during the appraisal process, a legal decision impacting the appraisal problem, or a change in local land use or market conditions. Updates within 6 months to one year and/or minor revisions to the appraisal may be requested as part of the fee proposal if the District so chooses. The RW-218 Real Estate Appraisal Fee Proposal allows for this provision.

O. If the Fee for Updating is Not Included in the Initial Bid. If the fee for updating is not included in the initial bid, then a fee may be negotiated based on fair and reasonable compensation for the work involved. If a revision is required due to extenuating circumstances beyond the control of the appraiser, the fee for such revision is to be negotiated commensurately with the work to be performed.

P. If a Strip Appraisal is Done Without Settlement. If a strip appraisal is done without settlement or a Declaration of Taking is filed, the update will require a Before and After Appraisal.

An appraisal will need to be updated if there was a significant delay (six months or more) in presenting the owner with an offer of just compensation. See Chapter 3, Section 3.01.A.8.

After the filing of a Declaration of Taking, the appraisal should be updated to the date of taking. When a petition for viewers is filed, the appraisal must be updated to the date of taking. The data used to estimate the value should be reviewed and an investigation of pertinent sales up to the date of taking should be conducted. The Eminent Domain Code permits all relevant market data, including sales that occur either before or after the date of the taking.

See Chapter 4, Section 4.03.H for information on revised and updated offers.
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Q. Litigation.

1. File Review by District and Updating Appraisals. When a petition for the appointment of viewers is filed, the trial attorney assigned to the case will notify the District Right-of-Way Administrator. The District Chief Appraiser or designee is responsible for reviewing the file to determine whether any appraisal work is required to proceed to a board of viewers hearing. This will include assuring that a before and after appraisal exists, that the appraiser is available to testify, and that a contract exists to pay the appraiser for preparing and testifying. The District must also have the appraisal updated to the date of condemnation and any revisions due to changed circumstances since the effective date of the original appraisal. Although performed by the District, all these activities must be coordinated with the trial attorney.

2. Updating Offers. Where an updated, revised, or new appraisal is obtained and the case is in litigation, the applicable Review Appraiser must coordinate the review with the trial attorney assigned to the claim to ensure conformance with the law of just compensation. Appraisals for claims in litigation are not deemed approved for damages unless the appraiser is intended to be called to testify in a legal proceeding. Once the review is complete the Review Appraiser will use Form RW-256 to inform the trial attorney of whether damages are unchanged or revised. The form is distributed as follows:
   a. The original to the trial attorney who is handling the litigation. If the approval has been revised, the trial attorney must transmit the revised offer in writing to the claimant and/or his attorney.
   b. One copy to the District Right-of-Way Administrator.
   c. One copy to the Central Office file.

If a revised offer does not give rise to a legal settlement, the trial attorney shall instruct the District no later than 30 days from receipt of the Form RW-256 to provide the claimant with an application for the payment (RW-448A) of the increased amount as supplemental estimated just compensation.

3. Obtaining Appraisal Services. As set forth in the ITQ contract, appraisal services for any category of appraisal required for litigation support and testimony purposes may be awarded to a single contractor without a request for quotes from multiple contractors, upon the recommendation of the Office of Chief Counsel. This exception to the bidding requirements applies to obtaining a new appraisal report as well as to providing testimony and other litigation support in regard to the new report. The content of the recommendation from the Office of Chief Counsel is discussed below. The trial attorney may elect to utilize the regular ITQ bidding procedures if desired. In either situation, the District will continue to administer the contracts.

Bidding is also not required where monies are needed for testimony and other litigation support by an appraiser whose report was paid for under the Form RW-215 procedures. In this situation, however, a special recommendation of counsel is not required. Such services are specifically allowed under the paragraph entitled "Existing Contracts" in the ITQ contract, as well as in the last paragraph in the section entitled "Procedures for Acquiring Services from Qualified Appraisers". For example, the ITQ procedures can be used to pay for testimony and other litigation support without a special recommendation of counsel if a Form RW-215 expires and the appraiser has an ITQ contract. If the District would like a recommendation from the trial attorney in these types of situations, such a memorandum will be supplied.

Even when the claim is in litigation, the ITQ procedures still apply only to those appraisers that have ITQ contracts. Trial counsel should only use those experts with ITQ contracts in litigation unless an existing Form RW-215 exists with the expert. In the latter situation, a Form RW-215A Form must be used if additional monies are needed for testimony purposes. Only under truly exceptional circumstances should consideration be given to using an expert that does not have an ITQ contract or an existing Form RW-215 contract. The methods for procurement of experts other than appraisers is described below.

4. Contents of Attorney Recommendation. The recommendation from the Office of Chief Counsel to obtain appraisal services for litigation support and testimony should be from trial counsel to the appropriate District Right-of-Way Administrator. It should reflect the following format:
   a. The main subject of the memorandum should be "Procurement of Appraisal Services for Litigation Purposes." The pertinent claim information should also be included in the subject.
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b. The first paragraph should include an affirmative statement that the claim for which the services are required is in litigation. It should state whether the claim is in litigation due to the filing of a petition for the appointment of a board of view, the filing of preliminary objections to a declaration of taking, or a request by the District for a writ of possession.

c. Subsequent paragraphs should include the following information:

(1) The nature of the claim, e.g., the total taking of a commercial building.

(2) A short history of the claim, e.g., after hearing, a board of view entered an award that has been appealed by the Department. Trial is pending.

(3) The scope of work to be accomplished, e.g., prepare a complete before and after appraisal and provide other litigation support and trial testimony as necessary. If applicable, include any estimates on the hours that will be required of the appraiser or M&E expert for pre-trial support and preparation as well as actual time on the stand for testimony purposes.

(4) Explain why the particular appraiser, M&E expert, or specialists was selected, e.g., he or she has testified previously for the Department and has performed well.

(5) Indicate whether other experts were considered and/or contacted to provide the services. Indicate why they were not selected. Such a solicitation is not required, but if it is done, it should be documented.

(6) If another expert has previously submitted a report on the claim, an explanation should be provided as to why it is not appropriate to use that expert in further litigation of the claim, e.g., he or she was discredited at the board of view hearing.

(7) State any time constraints imposed by the litigation, e.g., a board of view hearing or trial is scheduled in three months.

d. The Senior Assistant Counsel, Right-of-Way & Transactions and Litigation Section, must be shown as having been forwarded a copy of the memorandum when it is sent to the District. This will demonstrate to the Comptroller's Office that the Assistant Counsel in-charge has approved the request. If the request is not approved, the Assistant Chief Counsel will do so in response to reading the memorandum before the District processes the request. The approval of the Utilities and Right-of-Way Section is not required.

The recommendation of trial counsel must be included in the package forwarded by the District to obtain approval of the Comptroller's Office for the services. The District will be responsible for negotiating an appropriate fee for any appraisal, M&E, or specialty report requested. Trial counsel can assist in these negotiations if requested by the District. The fees for pre-hearing and/or pre-trial support and preparation and testimony will be in accordance with the standard fees established by the Department.

To reiterate, the recommendation from trial counsel is required to obtain appraisal services only where an initial report is being obtained for litigation. This is because obtaining this service is in the nature of a sole source request. If a previous contract exists for an appraisal on the particular claim, either by virtue of a Form RW-215 or a previous Purchase Order, or another type of encumbrance document, under the ITQ, a recommendation is not necessary to have the appraisal updated or revised or to obtain monies for testimony and other litigation support. However, where counsel has made a recommendation for services involving an update, revision, testimony or other litigation support, the recommendation should be forwarded with the package to the Comptroller's Office. The package submitted should clearly state that a previous Form RW-215 or a previous Purchase Order, or another type of encumbrance document, under the ITQ exists for an original appraisal.

5. Obtaining Specialty Reports Other Than Machinery and Equipment (M&E) Reports. The ITQ procedures do not apply to directly hiring experts other than real estate appraisers for claims in litigation. That is, specialty reports other than M&E evaluations are not included under the ITQ procedures. However, similar to non-litigious situations, the ITQ procedures can be used for this purpose where an ITQ qualified appraiser is required to obtain a specialty report from another type of expert as part of their contract with the Department.
Where a specialty report is required for a case in litigation, other procedures must be used. See Section 2.11.L relating to specialty reports. The District should perform this function through standard contracting avenues, with the assistance of the trial attorney. In extraordinary circumstances, trial counsel may assume direct responsibility for processing a service purchase contract for a specialty report needed for litigation purposes.

Sole source procedures can be justified for obtaining these services for testimony. Trial counsel must provide a sole source justification. The justification should be similar to that set forth above for obtaining appraisers and M&E experts in litigation. It must explain that the services are needed for litigation testimony purposes and why the particular expert was chosen.

6. Obtaining Fact Witnesses. A procedure is also available to reimburse expenses for fact witnesses during litigation that are located away from the hearing or trial site. This is done through a memorandum submitted to the Office of Chief Counsel and forwarded to the Comptroller's Office. The District should normally perform this function, with the assistance of the trial attorney. If deemed appropriate, trial counsel may assume direct responsibility for processing the necessary approvals and payment. The witness could also be compensated for his or her loss of time in attending or testifying, but not for preparation time. This form of compensation would need to be supported by a service purchase contract.

7. Testimony from Retired Department Employees. Where the needed witness is a retired Department employee, the limited annuitant rehiring procedures under Management Directive 515.20 can be used. The witness would then be paid a salary in regard to the testimony. The Department office attempting to hire the retiree would work with the Department's Bureau of Personnel to obtain the necessary approval from the Office of Administration. If this avenue of payment does not exist, the procedures set forth above for specialty experts or for fact witnesses located away from the hearing or trial site would apply. Where the former Department employee will be both an expert and a fact witness, the witness may be paid for preparation time in both regards, since it would be virtually impossible to separate that time devoted to preparation on fact issues from that for expert issues. Again, the District should normally arrange these matters with the assistance of the trial attorney. If deemed appropriate, trial counsel may assume direct responsibility for processing the necessary approvals and payment.

8. Appraiser Evaluation Form. The District Chief Appraiser remains responsible for completing the Appraiser Evaluation Form RW-280 at the conclusion of each assignment even though the claim is in litigation. Following a board of viewers hearing or trial, the trial attorney should also complete an Appraiser Evaluation Form RW-280 to be supplied by the District. The trial attorney should answer all applicable questions on the form, particularly those concerning the appraiser's testimony.

R. Appraisal Services for Emergency Situations. An emergency exists when there is a threat to public health, welfare or safety; when circumstances outside the control of the Department create urgent needs that do not permit the delay involved in using more formal competitive methods; or in any situation in which the governor has declared a state of emergency. Approval is required in writing from the District Executive prior to using emergency appraisal services. Complete documentation is required when this procedure is used.

In emergency situations, follow the procedures as outlined in the Service Purchasing Guide (Publication 1, Supplement to the DGS Field Procurement Handbook) and reference the current ITQ for Appraisal Services, Exhibit A, Pages 19 thru 20 of 23, Item 25 Emergency Situations. District Right-of-Way Offices may request written fee appraisal quotations in the most expedient manner possible, e.g. fax communication from a minimum of two contractors. The District Right-of-Way Office evaluates the bids and may give the selected appraiser a verbal notification to proceed. Upon receipt and acceptance of an invoice for emergency services, the District will prepare and process the appropriate documentation for payment.

S. Payment for Appraisal Services and Penalty. An appraiser will be paid for services upon submission of the report. A penalty may be applied for late submission according to the appraisal contract. Under the ITQ, the contractor is required to pay as liquidated damages a sum equal to one percent of the consideration for each working day beyond the designated submission date during which the services have not been completed and submitted or made available to the Department. The total amount of liquidated damages, if any, shall be deducted from the consideration which otherwise would be payable by the Department. However, the date of completion and submission or availability may be extended, in writing by the Department, due to factors beyond the control of the appraiser upon their written request for an extension. In cases in which a penalty is applied, the District Chief Appraiser will adjust the payment upon submission to the Comptroller's Office.
2.12 WAIVER VALUATION (WV) AND MINIMUM PAYMENT

A. WAIVER VALUATION (WV) POLICY.

1. The federal Uniform Act contains express criteria for appraisals and appraisal reviews in projects that involve federal funding. 49 CFR Sections 24.103 and 24.104. These appraisal and appraisal review criteria are applied in all matters where a valuation is required under Pub. 378 pursuant to the Department's appraisal function, regardless of the source of funding. See Section 2.04.

The Uniform Act also contains a waiver valuation (WV) process that the Department has integrated into its acquisition policy for use under the following circumstances:

a. Where the Department has determined that the valuation is uncomplicated through the appraisal scoping process;

b. Where the anticipated value of the proposed acquisition meets the dollar thresholds as set forth in this section;

c. Where there are no indirect (severance) damages apparent in the assignment that cannot be addressed through the cost of adjustment policy; and

d. Where the costs of adjustment (if any) are limited to the cost to replace specific items, such as landscaping, sidewalk or driveway adjustments, or other improvements (fencing, mailboxes, lamp posts, etc.) that have been taken or injured.

2. It is the purpose of the WV process to identify, as early as possible, those claims that can be expeditiously advanced to the negotiation stage. A damage estimate for those claims is to be established promptly through use of the WV process in order to make a written offer to purchase in an attempt to reach an amicable settlement. See Section 3.02.F.1.

3. The Uniform Act provides the following further explanation of the WV process hereby made a part of Department policy guidance:

The purpose of the WV provision is to provide Agencies a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent is that non-appraisers make the waiver valuations, freeing appraisers to do more sophisticated work.

The Agency employee making the determination to use the WV process must have enough understanding of appraisal principles to be able to determine whether or not the proposed acquisition is low value and uncomplicated.

Waiver valuations are not appraisals as defined by the Uniform Act and these regulations; therefore, appraisal performance requirements or standards, regardless of their source, are not required for waiver valuations by this rule. Since waiver valuations are not appraisals, neither is there a requirement for an appraisal review. However, the Agency must have a reasonable basis for the waiver valuation and an Agency official must still establish an amount believed to be just compensation to offer the property owner(s).

The definition of "appraisal" in the Uniform Act and WV provisions of the Uniform Act and these regulations are Federal law and public policy and should be considered as such when determining the impact of appraisal requirements levied by others. 49 CFR Section 24.102(c)(2), App. A (2014 Edition).

4. It is therefore not required that the WV process follow the appraisal and appraisal review criteria of the Uniform Act as made a part of the Department's appraisal function by Publication 378. 49 CFR Section 24.102(c). In addition, the WV process is not an appraisal under state law requirements and is therefore not subject to the requirements of either REACA or USPAP.

5. Even when the District identifies a claim that meets WV criteria use of the process is not mandatory. The District Right-of-Way Administrator has the discretion to direct that an appraisal pursuant to the Department's appraisal function be performed instead to generate the offer.
6. Offers generated through the WV process may not be used in litigation as to just compensation damages, although they may be used in litigation as to possession at the discretion of the Office of Chief Counsel and the trial attorney assigned to the claim.

7. The WV process may be used for total or partial takings; whether acquired amicably or by condemnation; where there is an unknown owner or a known but unlocatable owner; and where there are improvements to real estate in the area of the acquisition, as long as criteria in this section is met.

8. The WV process may be used by acquisition consultant firms employed by the Department, as well as local project sponsors as long as criteria in this section is met.

B. Waiver Valuation Preparers.

The waiver valuation preparer must possess both a sufficient understanding of the local real estate market and the skill to assess the impacts caused by an acquisition of real property for transportation purposes.

1. Non-Appraisers (District Chief Negotiator, Real Estate Specialist or their equivalent). A waiver valuation preparer must, through education, experience or a combination of the two, possess a sufficient understanding of the local real estate market in the project area and be capable of collecting, analyzing and using real estate market data as to land values. The preparer must be able to read and understand right-of-way and other types of plans and, in addition, must be able to understand and use cost manuals and other data sufficient to calculate the value of costs of adjustment made reasonably necessary as a result of the acquisition.

2. Certified Real Estate Appraisers (Broker Appraiser, Residential or General). A certified real estate appraiser carrying any type of current appraisal certification is deemed to possess all of the qualifications to perform a WV regardless of land type in the assignment (for example, a residually certified appraiser may perform a WV of commercial property).

C. Minimum Payment. By policy the Department establishes the sum of $500 as the minimum payment in all applicable claims.

D. Waiver Valuation Types.

Use of the WV process is divided into two types based upon the anticipated value of the proposed acquisition. This process is adopted from the Uniform Act, 49 CFR Section 24.102(c)(2)(ii)(C), and may be used in all transportation projects subject to Publication 378.

1. Type I—between $500 and $10,000. Claims that are identified by the District Chief Appraiser through the assignment scoping process as not anticipated to exceed the $10,000 threshold and the valuation to be uncomplicated. The concurrence of the Central Office Review Appraiser is required only at the discretion of the District Right-of-Way Administrator.

2. Type II—between $10,000.01 and $25,000. Claims that are identified by the District Chief Appraiser through the assignment scoping process as anticipated to exceed the $10,000 threshold but not anticipated to exceed $25,000 and the valuation to be uncomplicated. The concurrence of the Central Office Review Appraiser is required only at the discretion of the District Right-of-Way Administrator.

E. Waiver Valuation Procedure.

1. The District Chief Appraiser will identify the parcels for the use of the WV process. At the request of the District Right-of-Way Administrator a Central Office Review Appraiser may concur in the identification of parcels for the WV process. Claims are to be identified specifically as Type I or Type II WVs.

2. The District Right-of-Way Administrator or designee will then assign the waiver valuation preparer on a claim-by-claim basis.

3. The estimate of damages under the WV process is not arbitrary but instead must be based upon some manner of tangible data and/or process. A WV may only be determined by use of the following methods:
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a. Facts & Data Book. This is a formal project-specific compilation that must comply with the following minimum content requirements:

1. Recent comparable sales data (within the previous three years, if available) for all of the land types in the project area subject to acquisition. A minimum of three (3) comparable sales for each land type are required, but more may be included at the discretion of the District. Copies of the deeds are required at the discretion of the District Right-of-Way Administrator. Public records may be used as the sole verification source for comparable sales.

2. Zoning and land use data, including comprehensive plans if available, for the municipalities in the project area. Copies of zoning ordinances and zoning maps and other plans are not required as long as sufficient reference data is included to accurately identify zoning and other land use regulation for the parcels identified for the WV process;

3. Data relevant to the availability of public utilities in the project area; and

4. List of sources for establishing costs of adjustment. Cost of adjustment estimates can be derived from a published cost manual, local cost data or any other credible, identifiable source within the discretion of the District Right-of-Way Administrator.

NOTE: The Facts & Data Book is not an appraisal report. It does not need to be compiled, reviewed or approved by a certified appraiser under the Department's appraisal function. It may be compiled by either appraisal or non-appraisal staff or consultants. Assignments may begin as long as sufficient, basic information has been compiled. The Facts & Data Book may be supplemented as WVs and appraisals are completed. The detail, extent and use of a Facts & Data Book are within the discretion of the District Right-of-Way Administrator.

b. Prior Approved Appraisal Reports for similar-type land from recent projects in the immediate vicinity.

1. Appraisal reports used for this WV method may not be over three years old. Accurate data from older reports, however, may be used in either a Facts & Data Book or placed in the General District Compilation of market-based data. Examples of this type of data would be a zoning map or comparable sales data sheets.

2. Only appraisal reports (fee or staff) prepared and approved pursuant to the Department's appraisal function may be used for this WV method.

3. Any appraisal report used for this WV method must contain the following as part of the standard Certification of Appraiser statement:

   • I understand that this report is intended to be used in connection with the acquisition of right-of-way for a highway project, or other related purpose and that the client and intended user is the Pennsylvania Department of Transportation.

4. The appraisal report in its entirety or portions thereof should not be reproduced and/or placed in the claim file approved under this section for the WV process. It is sufficient for the waiver valuation preparer using the appraisal report to instead refer to the County, State Route and Section, and Parcel Number for the appraisal report as kept and maintained in District records.

c. General District Compilation of Market-Based Data. The District may maintain an informal, ongoing file containing market-based data for use in the WV process for projects in its District. Care must be taken to ensure the data is accurate and up-to-date if this method is used. The informal District compilation should contain at a minimum the same types of data required in a project-specific Facts & Data Book. Sufficient data or a note stating the location of the data should be maintained in the general work file for the project.

4. Once an estimate of damages to be offered through the use of the WV process is prepared the amount, method used and any other information deemed relevant is to be documented using the Waiver Valuation Worksheet. Form RW-356WVW. The Waiver Valuation Worksheet is to be maintained in the claim file. It is
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not to be used to communicate the offer to the claimant nor is it intended to be attached to the offer letter. At the discretion of the District Right-of-Way Administrator the RW-356WVW and any other available data used to prepare the WV may be disclosed in accord with the Department's Disclosure of Valuation Documents policy. See Section 3.02.D.

5. The Uniform Act and Pub. 378 require an agency official to establish the amount believed to be just compensation. The District Right-of-Way Administrator is designated as the agency official under the WV process. The offer is to be communicated to the claimant in writing by the District Right-of-Way Administrator through the use of the RW-356WV. The District Right-of-Way Administrator may use the RW-356WVW and any other data deemed relevant to the claim to complete the RW-356WV.

F. Quality Control. The Central Office Review Appraisers will perform periodic Quality Assurance audits to ensure proper Waiver Valuation procedures are being followed. When all the valuations and appraisals are completed on a project the District Chief Appraiser must document in writing the total number of parcels on the project and the number of parcels that had been identified as WV candidates. The WV list must be specifically divided into Type I & Type II WVs.

2.13 APPRAISAL INVITATION TO QUALIFY (ITQ)

A. Purpose. The ITQ contract for appraisal services is a multiple award contract that has been coordinated among the Bureau of Office Services, the Comptroller's Office, the Office of Chief Counsel, and the Bureau of Project Delivery. The ITQ contract process is an alternative to the invitation for bid and request for proposal. It enables the Department to issue a Purchase Order (PO) to acquire services from qualified fee appraiser contractors who are awarded a contract under the ITQ. The ITQ qualifying process is ongoing and contract applications are reviewed and processed as they are received.

The purpose of the ITQ contract is to provide the Department of Transportation with appraisal services in connection with the acquisition of property for transportation purposes, the sale of property no longer needed for transportation purposes, the lease of property not needed for the free movement of traffic, and to qualify appraisers for these purposes.

B. Categories of Assignments. Real estate appraisal assignments for determining damages in eminent domain fall into two general categories: Category 1, which includes assignments concerning relatively simple takings of residential properties up to and including one-to-four unit apartment buildings, (Category 1 assignments require a Pennsylvania Residential Appraiser Certification) and Category 2, which includes more complex assignments requiring appraisals of all types of real estate. (Category 2 requires a Pennsylvania General Appraiser Certification).

Machinery and Equipment (M & E) appraisers and other specialty appraisers are not included in the ITQ. The contracted real estate fee appraiser should subcontract for these services, if directed to do so through the Appraisal Problem Analysis (APA). If the Department chooses to hire the M & E appraiser directly, follow the Publication 1, Supplement to the DGS Field Procurement Handbook, procedures for acquiring services through a valuations contract form RW-215.

C. Ordering of Appraisals and Selection Procedures. The procedures for acquiring appraisal services follow the Department of General Services (DGS) procedures for obtaining goods or services, and as detailed in the current ITQ. The ordering procedures fall into three classes based on the cost of the services: $10,000.00 and less; $10,000.01 to $50,000.00; and $50,000.01 and above. There are two alternatives for selecting appraisers when the estimated amount of the assignment is between $10,000.01 and $249,999.99: low bid and best value. The District Right-of-Way Administrator will make a decision as to which selection alternative will be used for assignments between $10,000.01 and 249,999.99. The Department may alter these procedures if they become too cumbersome and replace it with another system.

1. Ordering Procedures (Appraisal Services anticipated to cost $0.00 - $10,000.00). For Appraisal Services anticipated to cost $0 - $10,000.00, the Department will prepare an APA. The Department will contact any appraiser from the list of prequalified appraisers under the current ITQ who is qualified for the category of appraisal assignment and has expressed an interest in the county where the property is located. If there are no qualified appraisers in the county in which the property is located, the Department reserves the right to solicit interest from a qualified appraiser outside of that county. The Appraiser will submit a quote signed by an
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2. Ordering Procedures (Appraisal Services anticipated to cost $10,000.01 - $50,000.00).

   a. Low Quote Option. For Appraisal Services anticipated to cost $10,000.01 - $50,000.00, the Department may choose to award the contract based upon low quote when the Department determines that it is in its best interest to do so. The Department will prepare an APA and solicit via telephone, FAX or e-mail a minimum of three (3) appraisers from the list of prequalified appraisers under this ITQ who are qualified for the category of appraisal assignment and have indicated an interest in providing appraisal services in the county where the property is located. If available, one of the three (3) appraisers shall be a DGS-certified MBE/WBE, if 100% state funded. In counties where there are less than three (3) qualified appraisers, other prequalified appraisers may be invited to submit a quote. The Department may hold a pre-quote meeting, if deemed appropriate. Prequalified appraisers who have been contacted by the Department may submit a quote signed by an authorized representative, within the specified time period. The Department will award to the lowest responsive and responsible appraiser.

   OR

   b. Best Value Option. For Appraisal Services anticipated to cost $10,000.01 - $50,000.00, the Department may choose to award the contract based upon best value criteria when the Department determines that it is in its best interest to do so. The Department will prepare an APA that will include the best value criteria that will be applied and detail what information will be required in the quote. For the purposes of this paragraph (2), "best value" refers to the process of selecting the quote which provides the greatest values to the Department based on evaluating and comparing all pertinent criteria, which may include cost, so that the overall combination which best suits the Department's needs is selected. Best value criteria may include, but is not limited to, such evaluation criteria as cost, ability to meet the requirements of the APA based upon prior experience with the subject matter of the appraisal, prior experience with the Department in meeting time requirements, prior performance in delivering quality products, and prior performance in litigation. The Department will solicit a minimum of three (3) appraisers from the list of prequalified appraisers under the current ITQ who are qualified for the category of appraisal assignment and have indicated an interest in providing appraisal services in the county where the property is located. If available, one of the three (3) appraisers shall be a DGS-certified MBE/WBE, if 100% state funded. In counties where there are less than three (3) qualified appraisers, other prequalified appraisers may be invited to submit a quote. The Department may hold a pre-quote meeting, if deemed appropriate. Prequalified appraisers who have been contacted by the Department may submit a sealed quote, signed by an authorized representative, within the specified time period. The Department will award to the Appraiser whose quote best meets the Department's evaluation criteria to provide the needed appraisal service.

3. Ordering Procedures (Appraisal Services anticipated to cost $50,000.01 and above).

   a. Low Quote Option. For Appraisal Services anticipated to cost $50,000.01 - $249,999.99, the Department may choose to award the contract based upon low quote when the Department determines that it is in its best interest to do so. The Department will prepare an APA and solicit via FAX or e-mail all appraisers from the list of prequalified appraisers under this ITQ who are qualified for the category of appraisal assignment and have indicated an interest in providing appraisal services in the county where the property is located. If available, one of the participating appraisers shall be a DGS-certified MBE/WBE, if 100% state funded. In counties where there are less than three (3) qualified appraisers, other prequalified appraisers may be invited to submit a quote. The Department may hold a pre-quote meeting, if deemed appropriate. Prequalified appraisers who have been contacted by the Department may submit a sealed quote, signed by an authorized representative, within the specified time period. The Department will award to the Appraiser whose quote best meets the Department's evaluation criteria to provide the needed appraisal service.

   OR

authorized representative. The Department will issue a CPO or other purchasing document compatible with the Commonwealth's most current software system providing authorization for work as agreed upon. The Department may use the Commonwealth Purchasing Card as a method of payment.
b. Best Value Option. For Appraisal Services anticipated to cost $50,000.01 and above, the Department may choose to award the contract based upon best value criteria when the Department determines that it is in its best interest to do so. The Department will prepare an APA that will include the best value criteria that will be applied and detail what information will be required in the quote. For the purposes of this paragraph (2), "best value" refers to the process of selecting the quote which provides the greatest values to the Department based on evaluating and comparing all pertinent criteria, which may include cost, so that the overall combination which best suits the Department's needs is selected. Best value criteria may include, but is not limited to, such evaluation criteria as cost, ability to meet the requirements of the APA based upon prior experience with the subject matter of the appraisal, prior experience with the Department in meeting time requirements, prior performance in delivering quality products, and prior performance in litigation. The Department will solicit all appraisers from the list of prequalified appraisers under the current ITQ who are qualified for the category of appraisal assignment and have indicated an interest in providing appraisal services in the county where the property is located. If available, one of the appraisers shall be a DGS-certified MBE/WBE, if 100% state funded. In counties where there are less than three (3) qualified appraisers, other prequalified appraisers may be invited to submit a quote. The Department may hold a pre-quote meeting, if deemed appropriate. Prequalified appraisers who have been contacted by the Department may submit a sealed quote, signed by an authorized representative, within the specified time period. The Department will award to the Appraiser whose quote best meets the Department's evaluation criteria to provide the needed appraisal service.

c. Best Value in General.

(1) Definition. Best Value refers to the process of selecting the quote which provides the greatest value to the Department based on evaluating and comparing all pertinent criteria, including cost, so that the overall combination which best suits the Department's needs is selected. See Appendix H, Figure H.1, Flow Chart setting forth the steps in this process.

(2) Best Value Criteria. Best Value criteria may include, but are not limited to:

- Understanding of the appraisal problem.
- Soundness of the approach to solving the appraisal problem.
- Timeliness* - Prior experience in meeting time requirements with the Department and other clients.
- Cost.
- Quality products* – Prior experience in producing a well-written and supported appraisal document for the Department and other clients.
- Prior experience appraising this type of property or a related type of property.
- Current workload.
- Litigation experience.
- Personnel qualifications.
- Other – Any other factor not included in the above criteria determined especially relevant for a specific assignment.

* If the appraiser has no prior history of performance with the Department, this will not adversely affect the outcome.

Understanding the problem, soundness of approach, timeliness, and cost are core criteria that must be evaluated for every assignment. Failure to include these core criteria will result in rejection of the purchasing document. Other criteria should be chosen and listed to meet the needs of a particular assignment.
d. Best Value Process. Once it has been determined that Best Value will be the method for acquiring services, the following process will be followed:

1. Select Evaluation Team.
   - The district shall establish and assemble a team to evaluate the individual quotes received. At a minimum, the team should include three members, with at least two members from the following categories: Right-of-Way Administrator; District Chief Appraiser; Design Services Engineer; or Central Office Review Appraiser. Once assembled, the team should designate a team leader, who shall be the arbiter of any disputes within the team.
   - The duties of the Evaluation Team are to select the best value criteria and then to evaluate the quotes received.
   - The Best Value process must be documented in writing and be retained in the claim or contract file for the particular assignment.

2. Select Best Value Criteria. Using Appendix H, Figure H.2, Best Value Criteria Checklist, the Evaluation Team will determine which criteria, in addition to the core criteria, are applicable to the assignment. Then the team will indicate the order of importance of the selected criteria by placing the number one (1) to the left of the criteria that is considered most important, a two (2) at the next most important, and so on.

Criteria not selected by designation of a number will not be considered in the evaluation process.

If a special "other" criterion is selected, the team must specifically set forth the criteria on the "Best Value Criteria Checklist" and determine what information the contractors must supply to evaluate that special criterion.

3. Prepare Request for Quotes Package. To assist in the preparation of the quotes package for the Best Value option, a sample cover letter has been provided. See Appendix H, Figure H.3, Best Value - Quotes Package Cover Letter. At a minimum, the following items will be part of the package: the Appraisal Problem Analysis (APA); the Right-of-Way Plan and/or Plat Sheets; Appendix H, Figure H.2, Best Value Criteria Checklist; and Appendix H, Figure H.4, Information Required from Contractors Checklist. Other information deemed necessary should also be included.

The "Information Required from Contractors Checklist" sets forth that information the contractor must supply for proper evaluation of the quotes. It corresponds to the "Best Value Criteria Checklist." Information must be supplied only for those items that will be criteria for the particular assignment. Thus, only the information requests for the selected criteria should be checked on the "Information Required from Contractors Checklist." If a special "other" criterion has been included on the "Best Value Criteria Checklist," any specific information needed to evaluate that criteria must be included on the "Information Required From Contractors Checklist" under "Other."

4. Prepare Solicitation of Interest Letter. A sample "Solicitation of Interest Letter – Best Value" has been provided (Appendix H, Figure H.5). Attach the "Best Value Criteria Checklist" and the "Information Required from Contractors Checklist" to the Solicitation of Interest Letter.

When estimating which class the assignment will fall within, the District should err on the high side. That is, whether making an assignment for one or more than one appraisal, if the District Chief Appraiser estimates the quote may exceed the dollar limits of one class, then the procedures for the next class should be followed. POs cannot be increased over any of the dollar thresholds. For example, if three contractors are solicited, but the selected quote is over $50,000, all bids must be rejected and the over $50,000 procedures used.

When soliciting for assignments, the District Chief Appraiser may request quotes that include the cost of writing the appraisal, an update fee, and a fee for making minor revisions to the appraisal. The cost of these items would be listed separately in the quote documents and PO or other
purchasing document, and the total of the cost cannot exceed the procedures for bidding in that cost class.

If the District Chief appraiser estimates a quote will exceed $50,000 and the project is 100% state funded, an STD-168, "MBE/WBE Subcontractor and Supplier Solicitation and Commitment Form" and the "Special Provisions for Invitation for Bids" (see Exhibit D of the current ITQ) will be attached to the "Solicitation of Interest Letter – Best Value."

The District Chief Appraiser must maintain a list of all contractors sent a solicitation of interest letter for each assignment.

(5) Send Solicitation of Interest Letter.

- $10,000.01-$50,000.00.

The Department will send a "Solicitation of Interest Letter – Best Value" by telephone, fax, or e-mail. The use of e-mail is encouraged.

The District Chief Appraiser will solicit a minimum of three qualified appraisers in the category of assignment and project-county for the appraisal problem. If less than three appraisers are available in that county, then appraisers from other counties may be solicited. If available in that county, one of the three appraisers must be a DGSCertified MBE/WBE if the project is 100% state funded.

- $50,000.01 and above.

The Department will send a "Solicitation of Interest Letter – Best Value" by fax or e-mail. Telephone solicitations for this category are not permitted. The use of e-mail is encouraged.

The District Chief Appraiser will solicit all appraisers who are qualified for the category of assignment in the project-county. If there are less than five appraisers available in the county then appraisers from other counties may be solicited.

If an appraiser fails to submit a quote for three (3) consecutive assignments for which the appraiser has requested a quote package in a particular engineering district, the Department will not notify the appraiser of future assignments in that engineering district. The Department will resume notifying the appraiser of future assignments in the engineering district when the appraiser satisfactorily justifies to the Department, in writing, the reason for seeking packages but not submitting quotes. The District Right-of-Way Administrator will decide whether the reason is acceptable and the district will again solicit quotes from this appraiser.

(6) Send Request for Quote Package to all Interested Appraisers. A "Best Value – Quote Package Cover Letter" (Appendix H, Figure H.3), with attachments, as previously prepared, should be sent to those solicited appraisers requesting a package. The Department may hold a pre-quote meeting, if deemed appropriate.

Those appraisers receiving a quote package can submit a sealed quote, signed by an authorized representative, within the specified time period, including the information needed to select the appraiser that will provide the best value. A PO or similar document will be awarded to the appraiser whose quote best meets the required evaluation criteria.

(7) Evaluate Best Value Quotes. The District Chief Appraiser is responsible for maintaining a summary of bids, which records all contractors who requested a quote package; those who submitted quotes; those whose quotes were rejected; and the selected contractor. There is a two-step process for evaluating the quotes.

- Initial Screen for Responsiveness.
The initial screen for responsiveness is to insure that the appraiser provided all the necessary information required to evaluate his/her quote under the best value selection process. Incomplete quotes or quotes that arrive after the deadline will be rejected.

- Evaluate Best Value Criteria.

The criteria will be written onto the grid on the "Best Value Matrix" (Appendix H, Figure H.6) in their order of importance. The team members will collectively rate the criteria using the words "excellent," "good," "average," "fair" and "poor" on the grid; except for costs, which will be the actual quote amount. The CRP file for each appraiser being evaluated should be checked for relevant information on past performance.

(8) Select the Appraiser. After the team has completed the "Best Value Matrix," the team will then select the appraiser whose quote best meets the Department's evaluation criteria. The team must write a narrative explanation at the bottom of the matrix that will explain why a particular appraiser was selected.

The "Best Value Matrix" with the narrative explanation will be retained in the procurement file for the assignment.

An example of how to evaluate quotes and document selection using the "Best Value Matrix" follows:

Example: An appraisal is needed for a total take of a commercial property that is improved with a hotel facility. The factors for selecting an appraiser include: understanding the appraisal problem; the soundness of the approach to the problem; prior experience with similar properties; finishing the assignment on time (timeliness); the quality of the product; utilizing qualified personnel for the assignment, and cost. Although cost is a factor, receiving a quality appraisal report is more important. The criteria will be placed on the matrix, in their order of importance, with the most important item listed first.

**BEST VALUE MATRIX**

<table>
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<tr>
<th>ROW OFFICE PROJECT NO.</th>
<th>COUNTY</th>
<th>SR – SECTION</th>
<th>MUNICIPALITY</th>
<th>PARCEL(S)/NOS.</th>
<th>CLAIM NO(S)</th>
<th>CLAIMANT(S)</th>
<th>Appraiser A</th>
<th>Appraiser B</th>
<th>Appraiser C</th>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appraiser A</td>
<td>Appraiser B</td>
<td>Appraiser C</td>
</tr>
<tr>
<td>Understanding the Appraisal Problem</td>
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<td>Good</td>
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<td>Soundness of Approach</td>
<td>Average</td>
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<td>Prior experience</td>
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<td>Excellent</td>
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<tr>
<td>Quality of Performance</td>
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<td>Good</td>
<td>Good</td>
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<tr>
<td>Timeliness</td>
<td>No history</td>
<td>Good</td>
<td>Good</td>
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Scoring: Excellent, Good, Average, Fair, Poor; except for costs, which will be the actual quote amount.

Narrative: Reasons for Selection.

Because of the importance of understanding the appraisal problem and the approach to the problem, Appraiser C was selected as the best value.
Both Appraiser B and C stated that all three approaches to value (market, income and cost) should be developed to produce a credible report. However, Appraiser C developed the best action plan for collecting and analyzing the data and producing the completed document, and demonstrated more experience in appraising this type of property.

The additional cost of $1,000 over that of Appraiser A or B is a good investment because a quality product that should arrive on time should reduce the number of rewrites that may otherwise be required.

(9) Purchase Order (PO). After the appraiser is selected, the PO or other procurement document will be prepared.

- Prepare a package to send to the Comptroller’s Office. All packages must include:
  - PO Cover Memo – (see Appendix H, Figure H.8)
  - Original PO and a copy.
  - Summary of Bids – list all contractors who requested quote package and indicate any MBE/WBE contractors.
  - Awarded contractor’s signed quote.
  - Best Value Matrix with narrative reason for selection of the appraiser.
  - Best Value Criteria Checklist.
  - Information Required from Contractors Checklist.
  - APA.
  - CRP Certification - if over $10,000.
  - MBE/WBE Contractor and Supplier Solicitation and Commitment Form (STD-168) if 100% state-funded and cost is $50,000 or more.
  - BEO Evaluation and Determination Letter if STD-168 is included and cost is from $50,000 to $250,000.
  - BMWBO Evaluation and Determination Letter if STD-168 is included and cost is over $250,000.

- Comptroller Approval.

If the package to the Comptroller is correctly prepared and complete, the Comptroller will approve the PO.

(10) Notice to Proceed. The Department will issue a Notice to Proceed to the selected appraiser only after receiving approval from the Comptroller. E-mail the successful appraiser and copy the unsuccessful appraisers on that e-mail. The invoicing instructions set forth in Attachment I must be attached to the Notice to Proceed. These instructions are in addition to the number of copies required by the current ITQ, Exhibit A, Page 20 of 23, Section 26.

4. Low Quote Option for Selection.

a. Low Quote in General. The Department may choose to award the contract based upon low quote when the Department determines that it is in its best interest to do so. See Appendix H, Figure H.1, Flow Chart setting forth the steps in this process.

b. Low Quote Process. Once it has been determined that Low Quote will be the method for acquiring services, the District Chief Appraiser will follow the following process:
(1) Prepare Request for Quote Package. To assist in the preparation of the quotes package for the Low Quote option, a sample cover letter has been provided. See Appendix H, Figure H.7, Low Quote Package Cover Letter. At a minimum, the following items will be part of the package: the APA and the Right-of-Way Plan and/or Plat Sheets. Other information deemed necessary should also be included.

(2) Prepare Solicitation of Interest Letter. The sample "Solicitation of Interest Letter – Low Quote" included as Appendix H, Figure H.5.b should be prepared. All those comments set forth in Section 2.13.C.3.d(4) relating to Best Value, except for attaching certain best value documents to the Solicitation Letter, apply to Low Quote.

(3) Send Solicitation of Interest Letter.
   - $10,000.01 to $50,000.00.
     Those procedures set forth in Section 2.13.C.3.d(5) relating to Best Value apply to Low Quote.
   - $50,000.01 to $249,999.99.
     Those procedures set forth in Section 2.13.C.3.d(5) relating to Best Value apply to Low Quote.

(4) Send Request for Quote Package to Interested Appraisers. Those procedures set forth on in 2.13.C.3.d(6) relating to Best Value apply to Low Quote, except that the "Low Quote – Quote Package Cover Letter" (Appendix H, Figure H.7), with appropriate attachments, will be used.

(5) Select the Appraiser. The Department will award to the lowest responsive and responsible appraiser.

(6) Contract Purchase Order (PO). After the appraiser is selected, the PO or other procurement document will be prepared.
   - Prepare a package to send to the Comptroller's Office. All packages must include the following items:
     - PO Cover Memo – Low Quote Option for Selection (see Appendix H, Figure H.8.b).
     - Original PO and a copy.
     - SAP-7 Funds Commitment.
     - Summary of Bids – list all contractors who requested quote package and indicate any MBE/WBE contractors.
     - Awarded Contractor's Signed Quote.
     - APA.
     - CRP Certification - if over $10,000.
     - MBE/WBE Contractor and Supplier Solicitation and Commitment Form (STD-168) – if 100% state-funded and cost is $50,000 or more.
     - BEO Evaluation and Determination Letter – if STD-168 is included and cost is from $50,000 to $250,000.
     - BMWBO Evaluation and Determination Letter – if STD-168 is included and cost is over $250,000.
   - Comptroller Approval.
If the package to the Comptroller is correctly prepared and complete, the Comptroller will approve the PO.

(7) Notice to Proceed. The Department will issue a Notice to Proceed to the selected appraiser only after receiving approval from the Comptroller. E-mail the successful appraiser and copy the unsuccessful appraisers on that e-mail. The invoicing instructions set forth in Appendix H, Figure H.9 must be attached to the Notice to Proceed. These instructions are in addition to the invoicing procedures set forth in the current ITQ contract.

5. Liquidated Damages. Under the current ITQ contract, the Department can assess liquidated damages for late appraisal submissions. Liquidated damages are deducted from the amount contracted for under the PO before payment.

This procedure supports the Department in efforts to manage the delivery of the initial appraisal product performed under an assignment, whether that is an initial appraisal, a revised appraisal, or an appraisal update. It does not apply to responses required when an appraisal is being reviewed.

The Department will deduct 1% of the contracted amount for each working day beyond the designated submission date during which the services have not been satisfactorily completed and submitted. A satisfactory submission is defined as an appraisal document that is acceptable to the Department. This means an appraisal document that contains all the necessary information: the appraisal was prepared on the proper form and in the correct format; all necessary information has been provided and photographs attached; and it contains any necessary specialty reports. The District Chief Appraiser will only give an acceptably complete appraisal to the Review Appraiser.

The District Chief Appraiser will need to track and maintain accurate documentation of the Notice to Proceed and submission dates to support any liquidated damages.

If the appraiser needs a time extension for reasons beyond his/her control (e.g. a plan change), the appraiser will request an extension in writing. If the extension is granted, the Department will do so in writing to the appraiser. See also the current ITQ contract on force majeure situations that may affect time of performance.

Subject to retainage as discussed below, the entire amount contracted for under the PO should be paid to the appraiser upon receipt of an acceptably complete appraisal document, unless liquidated damages are assessed.

If liquidated damages are assessed, the appraiser will be entered into CRP by the District Chief Appraiser.

6. Retainage. In accordance with the current ITQ contract, the Department may elect at its option to retain 10% of each billing of an appraisal assignment. This can only be done if specifically set forth in the solicitation of interest for the assignment. Payment of the retainage will be made after receipt and acceptance of the final product. For purposes of this procedure, "final product" means the Department has either approved the appraisal or decided not to proceed further in the appraisal review process. The Department may decide not to proceed further in the review process because it has approved another appraisal or decided to pursue the determination of value procedures.

7. Evaluation of Appraisers' Performance. Under the current ITQ contract, the Department may evaluate appraisers on each work assignment. Appraisers who perform poor work, do not provide services on time or engage in other unacceptable conduct will be entered into CRP, which may affect the appraiser's ability to contract with all Commonwealth agencies. If liquidated damages are assessed, the appraiser will be entered into CRP by the District Chief Appraiser. Entries into CRP may be considered in determining whether to exclude an appraiser from award of assignments under the ITQ and may lead to termination of an appraiser's ITQ contract.

Except as set forth below, the District Chief Appraiser is responsible for completing the Form RW-280 Appraisal Evaluation Form. The Chief Appraiser may solicit the input of the review appraiser, legal counsel and others to complete the Form RW-280. The Form RW-280 and letters to the appraiser will be the supporting documentation if it is necessary to enter an appraiser into the CRP program. The Bureau of Office Services will provide guidance for entries into CRP.
If an appraisal is being reviewed by a review consultant, the review consultant will submit a Form RW-280 for each appraisal that they cannot approve or have difficulties with meeting an approval. They will answer only those questions that apply to their review and submit a copy of the Form RW-280 to the District Chief Appraiser and the Chief of Appraisal and Appraisal Review.

8. Revisions, Updates, and Services for Litigation. Under the current ITQ contract, the Department may award assignments for revisions, updates and services for litigation to the appraiser who previously prepared a fair market value report, without requesting quotes from other appraisers.

In addition, the Department may award appraisals and services required for litigation purposes to a single appraiser, without a request for quotes from multiple appraisers, upon the recommendation of the Office of Chief Counsel. See generally Real Property Division Directive dated November 24, 1999, RPDD 03-11-99.

a. Instruction for Preparation of Valuation Contract Forms RW-215 and RW-215A. These forms are designed for use when obtaining valuation services from contractors who are not on the Department's Appraisal ITQ list. Some examples of these types of services would be to obtain an appraiser as an expert witness, timber or mineral valuation, and valuation of junk/salvage motor vehicles or other specific situations which require unique preparation that cannot be obtained through the ITQ process.

Prepare and submit only the original for review and signatures. When all approvals have been secured, photocopies of the document may be made and distributed to the contractor, Treasury Audits, Comptroller and the originating District Office, with Central Office retaining the original document.

The form fields "Made," "Award Date," and "Termination Date" will be entered by the Comptroller upon completion of the approval process.

If multiple owners must be cited, insert an X in the space provided in the information box and list owners on Attachment A. Provide the name of the contracting party which matches the name at the conclusion of the signature space.

NOTE: The number of days from the Date of Written Notice to Proceed constitutes the Due Date for the completed, revised, or updated valuation report. There must be a number in this space. If preparing for litigation testimony, the number of days for preparation from the Date of Written Notice to Proceed must be indicated in the space provided. Valuation Contracts or Valuation Contract Amendments without these Due Dates as appropriate will not be accepted for processing and will be returned to the originating District Office.

9. Insurance. Under the current ITQ contract, the Department, at its option and as deemed necessary, may require an appraiser to provide proof of insurance for a particular assignment. This requirement should be set forth in the solicitation of interest letter. Insurance should not be required on a routine basis. It may be appropriate for assignments on contaminated or other dangerous properties.

10. Emergency Procedures. Under the current ITQ contract, special procedures apply to emergency situations. This allowance is very limited and may not be used in lieu of the normal ITQ process. Emergency is defined narrowly in Section 26(b) of the current ITQ contract. Approval is required in writing from the District Executive prior to using these procedures. Complete documentation is required when they are used.

If the emergency procedures have been approved, the District right-of-way office may request written fee appraisal quotations via e-mail from a minimum of three appraisers qualified to perform the assignment. The district evaluates the quotes and may give the selected appraiser a verbal notification to proceed to provide the required services. Upon receipt and acceptance of an invoice for emergency services, the district will prepare and process the appropriate documentation for payment.

11. Record Keeping and Retention. The following shall be placed in the claim file or contract file for each assignment: a copy of the approved PO; the solicitation of interest notice; the list of contractors solicited; the list of contractors receiving quote packages; the "Summary of Quotes"; the "Best Value Criteria Checklist," if any; the "Information Required of Contractors Checklist," if any; the "Best Value Matrix," if any; and all quote packages received. The original ITQ contract, with original signatures and attachments, will be kept in the Bureau of Office Services.
All documents relative to appraisal services will be retained as per the time frames set forth in the Records Management Manual.

12. ROW Office System. The ROW Office System lists ITQ contracts and qualified appraisers, and tracks appraisal assignments. A copy of the appraiser evaluation forms will be maintained by the Utilities and Right-of-Way Section. The appraisal assignments screen will be maintained by the districts.

Appropriate security levels are in place to preserve the integrity of ROW Office.

2.14 FORM RW-215 CONTRACT PROCEDURES

The Form RW-215 Valuation Contract is used when there is a need for a Contractor to perform services related to real property valuation and that Contractor is not approved under the current Appraisal Services Invitation to Qualify (ITQ). The Form RW-215 is most often utilized for the procurement of: 1) services that can only be provided by the Contractor selected; 2) litigation consultant services; or 3) expert witness services.

This contracting procedure is often utilized for services such as machinery and equipment (M&E) valuations, mineral valuations, timber valuations, and other specialty valuations. Where the services are of the type that can be performed under the terms and conditions of the ITQ, it is recommended that the purchasing agency shall assist the Contractor with prequalification under the ITQ, when possible. The Form RW-215 contracting process consists of three steps:

A. Identification of the Need. The need for a specific service is identified by the purchasing agency and it is determined whether or not that need can be fulfilled by a contractor qualified under the ITQ. If the service can be provided under the ITQ, then proceed with the procedures set forth in the ITQ. If the ITQ cannot be utilized, proceed to step two;

B. Selection of the Service Provider. The selection of a Contractor occurs in one of three ways:

1. Invitation for Bids. For services outside the scope of the ITQ, but which can be provided by several contractors, an Invitation for Bids conducted in SRM should be utilized.

2. Sole Source. Where the purchasing agency determines that only one contractor can provide the service, and the contractor will not be used as a litigation consultant or expert witness, established protocols for sole source justification and approval must be followed under Section 515 of the Commonwealth Procurement Code, 62 Pa.C.S. § 515. Additional information pertaining to sole source procurement can be obtained by contacting the Bureau of Office Services. Sole Source justification and approval will require, minimally, the review and signature of the head of the purchasing agency (District Executives at the district level), the Bureau of Office Services and the Office of Chief Counsel [NOTE: If time does not permit use of this process, an emergency procurement can be conducted under Section 516 of the Procurement Code, 62 Pa.C.S. § 516, only where "circumstances outside the control of the agency create an urgency of need which does not permit the delay involved in using more formal competitive methods"].

3. Litigation Services. Where legal counsel identifies and requests, in writing, a specific Contractor for litigation consulting or expert witness services (including preparation and trial testimony), the form of this request should be similar to that used when trial counsel seeks a specific expert for litigation purposes under the ITQ procedures. (See Section 2.11.Q.4)

C. Preparation, Submittal, and Approval of the Purchasing and RW215 Documents. In all three selection scenarios listed above the potential service providers should be provided with an Appraisal Problem Analysis (APA), which sets forth the scope of work by detailing the requirements of the expected service. Once the provider has been selected, the District prepares a Purchase Order (PO) in SRM. All service providers who enter into a contract with the Commonwealth of Pennsylvania must have a vendor number.

In preparing the PO, the Purchaser shall do the following:

1. Add a reference in the header text of the PO indicating that "The Contractor shall conduct the work set forth in the APA, at the price set forth in its proposal letter, in full compliance with the Form RW-215, this Manual and the Commonwealth's standard terms and conditions set forth in STD-272 (SAP). The terms and
conditions attached to this PO are the only terms and conditions applicable to this procurement, notwithstanding anything contained in Contractor's proposal letter." [NOTE: When an IFB is conducted, there is no need to reference STD-272 because terms and conditions will be populated in Document Builder. Be sure to confirm that the terms and conditions generated by Document Builder are consistent with the intent of the purchasing agency].

2. Attach the APA, RW215 form (usually left blank) and STD-272, where applicable, to the PO.

3. Attach the Contractor's proposal letter that states the cost of the service to be provided [NOTE: No additional or conflicting terms and conditions should be set forth in this letter. In lieu of such a letter, one could simply use the RW215 form for the pricing and basic terms and conditions].

2.15 APPRAISAL PROBLEM ANALYSIS

Because all appraisal reports must include a stated scope of work, the Department prepares an Appraisal Problem Analysis (APA) as a contribution to the process of establishing a scope of work and to assist the appraiser in understanding the assignment. The APA is utilized by the appraiser to get a preliminary understanding of the appraisal problem and to establish the basis for a fee proposal, if applicable.

There are six APA forms approved by the Department: Form RW-275T (Total Take), Form RW-275TS (Total Take – Specialty Report), Form RW-275P (Partial Take), Form RW-275PS (Partial Take – Specialty Report), Form RW-275STRIP (Partial Take – Value of Strip Take Only), and Form RW-275A (Notice of Revision). Only experienced and competent personnel familiar with eminent domain appraising may write an APA. The District will normally determine competency.

If a District Office is using an acquisition consultant on a project, they should coordinate with the Chief of Appraisal and Appraisal Review as to whom will be preparing the APA's before including that task in the Request for Proposal for acquisition services.

The completed APA will be submitted to the Review Appraiser assigned to the District for review and approval.

The Department is to participate in defining the appraisal problem and developing the APA. This APA is a written statement developed by the Department and the Appraiser may have input if some elements of damage were not considered. The APA defines general parameters of the work to be performed before the appraiser starts the assignment, and maybe updated as needed. The APA will also identify any personal property that should or should not be included in the value conclusions.

The APA should address the purpose and function of the appraisal, define the estate to be appraised, state the definition of fair market value, and set forth any assumptions and limiting conditions. The APA may also include data search parameters and analysis approaches.

An APA is required for all fee appraiser assignments. For staff appraisals, an APA is required for complex appraisal problems. The APA must also be provided to the M&E appraiser. A complex appraisal problem includes one or more of the following situations:

- The take will have a significant impact on the remainder.
- There is a change in the After Highest and Best Use.
- More than one approach is appropriate for the estimation of the Before-and-After Values.
- A business relocation or closure is involved.
- Portions of the subject property have different zoning or Highest and Best Uses.
- Determination of the larger parcel is an issue.
- M&E or specialty reports are required.
• The parcel may be an assembled economic unit.
• Multiple title interests exist on one parcel.

See Section 2.15.B concerning situations in which the appraiser disagrees with the APA.

A. Development of the APA. Prior to requesting bids for or assigning staff to perform complex appraisals, the APA (Forms RW-275T, RW-275TS, RW-275P, or RW-275PS) must be completed. The APA contains available factual information regarding the property, the claimants, and the effects the project will have on the property. Also included are specific requirements of the appraisal assignment based on the study and understanding of the appraisal problem by Department personnel.

The APA may include, but is not limited to: project and parcel identification; property owners' (including tenants') interests; property description effective before area to be appraised; areas of land and improvements to be acquired or temporarily encumbered; probable impact of the taking/project on the remaining property; and special appraisal requirements (e.g., larger parcel questions, allocation of damages, Assembled Economic Unit Doctrine issues, non-conforming use problems, hazardous materials/waste, leaking underground storage tanks, specialty reports and the substance of legal issues that may impact the appraisal process). See Section 2.23 on Machinery and Equipment, Chapter 5, Section 5.11, and Appendix A, Section A.10.

The Review Appraiser must concur and sign the APA regardless of who was assisting in the preparation of the document.

The APA must include a statement that indicates that the appraisal or Determination of Value may be provided to the property owner.

B. Revision of APA. The APA may be added to or updated only until it is included in a bid request package or assigned to a staff appraiser. After the APA has been officially issued, a Notice of Revision Form RW-275A will be prepared by the District Chief Appraiser if there is a plan revision, an ownership change, or if additional factual information significantly affecting the assignment becomes available. The notice of revision shall be issued to the assigned appraiser, the Review Appraiser, any right-of-way acquisition consultant working the project, and others requiring this information.

If an appraiser disagrees with or has additional information that affects the appraisal problem he/she should immediately notify the District Chief Appraiser and voice the concerns. The District Chief Appraiser and assigned Review Appraiser will consider the concerns raised by the appraiser. If necessary the District will issue a revision of the APA.

C. Filing of the APA. On all claims requiring an APA, a copy must be included in the claim file.

D. Outdoor Advertising Devices. The following guidance is provided for consideration of valuing OADs and the instruction that should be listed in the Appraisal Problem Analysis.

1. General. The following outlines the Department's policies that apply to all Outdoor Advertising Devices (OADs) which are in the required right-of-way or other areas to be acquired as a part of a highway project. It explains that there are three categories for the acquisition of OADs with different policies applying to each. The three classifications are listed below.

   a. On-premise OADs physically annexed to the land or building will be acquired as real property.

   b. Off-premise OADs will be acquired as personal property and will be eligible for relocation benefits and payments.

   c. Portable OADs – On-premise OADS not physically annexed to the land or building will be acquired like any other business-owned personal property.

It gives the exceptions to the policy, and explains what to do in those cases.

2. Classifications as Real or Personal Property. Under Pennsylvania law, an OADs classification as real or personal property is determined primarily by the manner of installation and the intention of the parties. To
avoid the need for a legal opinion in every instance, OADs are presumed to be real or personal property based on the two factors listed below.

a. Is the OAD on-premise or off-premise?

b. Is the OAD physically annexed to the land or building?

3. The three classifications for OADs and a summary of the acquisition policies that apply to each are listed below.

a. On-Premise OADs. All OADs that advertise a business conducted on the site (on-premise OADs) and are physically annexed to the land or buildings are considered fixtures and will be acquired as real property.

When acquired as real property, the fair market value of the OAD will be determined and included in the fair market value offer. If the OAD is owned by a tenant on the land, it will be considered to be a tenant owned improvement and those procedures will apply.

Whether or not the on-premise OAD is being retained by the owner, "OAD" (Outdoor Advertising Device) and "D" (Demolition) must be selected as claim description codes on the Claim Description Maintenance screen of ROW Office. The "OAD Moving Costs" or "OAD Personal Property Loss" Claim Description Codes should never be selected for an on-premise OAD acquired as real property. If the on-premise OAD is owned by a tenant, then direct damages attributable to the OAD should be entered on the "Appraisal Direct Damage Allocation Maintenance" screen.

In addition, the owner of an OAD on land that is leased may be entitled to a leasehold interest payment. See Section 2.15.F below.

b. Off-Premise OADs. All OADs advertising third-party matters not conducted on the site (off-premise OADs) are presumed to be personal property and are included in the definition of a business. Traditional billboards are the most common example of an off-premise OAD.

Off-premise OADs owners will be given the opportunity to move the off-premise OAD and be paid a moving cost payment or to abandon the device in place and be paid a tangible personal property loss payment. In addition to relocation benefits, the owner of an off-premise OAD on land that is leased may be entitled to a leasehold interest payment. See Section 2.15.F below.

Relocation benefits and payments as they pertain to off-premise OADs are outlined in Chapter 4, Section 4.05.K.

c. Portable OADs. On-premise OADs that are not physically annexed to the land or building will be acquired as personal property. Owners of these OADs meet the definition of a "displaced person", but they do not qualify as a business. Therefore, the procedures for relocation of off-premise OADs in Chapter 4, Section 4.05.K do not apply. Portable OADs will be valued, purchased or moved like any other personal property as prescribed in Chapter 4, Section 4.05.E.

4. Exceptions to Classification as Real or Personal Property. The criteria established in Part 2.14.D above will normally be used to determine an OADs classification. If a District wants to acquire an OAD differently than the established classification criteria would indicate, they must first obtain a written legal opinion from the Office of Chief Counsel. The District must follow the procedures for obtaining a legal opinion as outline in Chapter 1, Section 1.04.

5. Exceptions; The Highway Beautification Program and Illegal OADs. The provisions of this section do not apply to nonconforming OADs acquired under the Highway Beautification Program using the Outdoor Advertising Control Act 160 of 1971 (OAC Act). See the Highway Beautification Manual.

The provisions of this section also do not apply to OADs that are considered to be illegal because the owner of the OAD has no legal relationship with the property owner or because the owner is required to have a permit from the Department, but does not.
An OAD owner that has no legal relationship with the owner of the property upon which the OAD is located has no legally recognized property interest in the property, and is therefore not a condemnee under the Eminent Domain Code. Such an OAD owner is thus not entitled to compensation when the land upon which the OAD is situated is acquired. Moreover, such an OAD owner is also not a displaced person entitled to relocation benefits. The OAD owner only has a right to move the OAD from the property at its own expense.

The owner of an OAD that is located within the Department's legal right-of-way is in a similar position as the owner of an OAD on private land without any legal relationship with the landowner. That is, the owner is not entitled to compensation if required to move the OAD as the result of a project and is not a displaced person entitled to relocation benefits. The Department may allow the owner to remove the OAD from the property at its own expense, or may remove it with or without notice to the persons responsible for placing the sign.

The owner of an OAD located outside the legal right-of-way that is required to have a permit from the Department under the OAD Act, but does not, may still be entitled to compensation for its leasehold interest (see Leasehold Interest Payments below) when the land is acquired for a project. See generally the Appendix A, Section A.10.O. The owner will also be a displaced person if required to move the OAD as a result of the acquisition of land upon which it is located. However, the Department can avoid this result if the owner is required to remove the illegal OAD pursuant to the authority granted by Section 10 of the OAC Act. Removal of prohibited advertising devices under the OAC Act is an exercise of the Department's police power, not its power of eminent domain.

E. Valuation of OADs.

1. Valuation of On-Premise OADs. On-premise OADs are considered real property and will be valued by the Reproduction Cost on the Form RW-260OAD. This form must be incorporated into the appraisal and the value in place is a direct damage. Note: that the moving costs are not applicable for on-premise OADs.

2. Valuation of Off-Premise OADs. Form RW-260OAD (Off-Premise OAD Valuation) will be valued by the Reproduction Cost and the form must be used to estimate the primary relocation assistance payment associated with the purchase or relocation of an off-premise OAD as personal property. This form must be used for all off-premise OAD valuations and may also be used in place of a moving cost finding memorandum where the moving cost estimate is $5,000 or less and a relocation advisor approves the moving cost finding consistent with Chapter 4, Section 4.05.D.10 by signing the form. Because the form is not an appraisal, no "Appraisal Problem Analysis" or "Appraiser Certification" is needed, nor is it within the scope of the appraisal review process.

As an estimate of a relocation assistance payment, the form will be reviewed for reasonableness in the Central Office Acquisitions Unit. Because off-premise OADs are personal property, the Appraisal Problem Analysis for the parcel on which the device is located should specifically direct the appraiser to exclude off-premise OADs from the appraisal report. Off-premise OADs should be separately valued on Form RW-260OAD. As personal property, they can be valued by a machinery and equipment appraiser, real estate appraiser, a qualified District staff member other than the relocation advisor assigned to the claim, or sign company with no financial interest in the OAD being affected. While a real estate appraiser can value an OAD as personally, he/she may not estimate a moving cost.

F. Leasehold Interest Payment. It is important to note that a tenant who owns an off-premise OAD or an on-premise OAD may be entitled to compensation for the taking of the leasehold based on bonus value. This is a real property interest to be dealt with as part of the real estate claim like any other leasehold interest. That is, the property is to be valued as if owned by one owner, and then the value of the leasehold interest allocated to the tenant and the remainder of the damages allocated to the landlord, see generally Appendix A, Section A.10.O. The offer and payment to the OAD owner for its leasehold interest would be a real estate (fair market value) damage payment separate and apart from relocation payments for the off-premise OAD as discussed in Chapter 4, Section 4.05.K.

If the OAD is owned by a tenant, and their leasehold interest has a bonus value, then Form RW-356LHI (Offer to Purchase and Summary of Just Compensation (Leasehold Interest)) could be used to acquire the leasehold interest. If Form RW-356LHI is provided to the tenant, Form RW-356 should be provided to the fee owner with the last sentence of the first paragraph modified as follows: "This offer is intended to provide just compensation for all of your property interests including tenants, if any." As an alternative to using Form RW-356LHI, both the fee owner and the tenant can be listed as co-claimants along with their separate claim numbers on Form RW-356. Under this
option, the "total damages offered" would include the bonus value. However, the amount of the bonus value payable to the tenant should be stated in the section titled, "The areas required are as follows.”.

### 2.16 INFORMATION PROVIDED TO THE FEE APPRAISER

At the time an assignment is made, the District Chief Appraiser or designee should provide the following to the fee appraiser:

1. Notice to Proceed.
2. The APA.
3. A copy of the latest plan sheets depicting the area required from the property to be appraised (any revised plan sheets must be sent to the appraiser promptly).
4. A copy of the profile sheets (when available).
5. A copy of the property plat (when available).
6. A copy of the applicable cross section sheets, when available, that applies to the property to be appraised if the elevation changes are significant, or if they will be of assistance to the appraiser in envisioning the after situation.
7. The effective before area of the property, the required area or areas, the after area.
8. Title information (when available).
9. The route number, claim number, parcel number, and project numbers (when available).
10. An executed copy of the appropriate contracting form, dated to allow the appraiser the agreed upon amount of time to complete the assignment.
11. Any leases on the subject property available in the District Office.
12. The ratings of the Fee Appraisers developed under "Best Value Option of the ITQ" may not be revealed to the Fee Appraisers.

If any information changes, the District Chief Appraiser or designee will notify the fee appraiser accordingly.

The District Chief Appraiser or designee will ensure that assigned fee appraisers are aware of the availability of this Chapter, Appendix A, The Appraisal Guide, and Appendix B, Right-of-Way Manual Forms, with the 200 Series of the Right-of-Way forms.

### 2.17 ROLES AND RESPONSIBILITIES OF APPRAISERS

1. The appraiser must observe the highest standards of professional ethics and have the knowledge and experience to complete assignments competently as provided by the Federal Uniform Act, PennDOT this Manual, and the Uniform Standards of Professional Appraisal Practice (USPAP), 49 PA Code §36.51.
2. The appraiser should favor neither the property owner nor the Department when developing the appraisal.
3. The appraiser must communicate his or her analysis, opinions and advice in a manner that will be meaningful to the Department and will not be misleading. Standard, pre-approved appraisal forms are to be used for this purpose. The intent is to have a written appraisal report that has been accurately, fairly and impartially prepared.
4. Fee appraisers will be contracted for services based upon the nature and complexity of the assignment. This allows the Department to select appraisers considering experience, cost, education, professional
reputation, court experience and demonstrated competency. The District Chief Appraiser is responsible for making appraisal assignments.

5. It is the responsibility of the Department to provide the appraiser with accurate and sufficient information in order to: 1) establish a reasonable fee, if hired under a contract; 2) schedule work on the assignment; and 3) complete the appraisal assignment in a timely manner.

6. Both fee and staff appraisers will utilize the Appraisal Problem Analysis Form RW-275A that is provided by the Department to contribute to establishing the scope of work and to assist the appraiser in understanding the assignment.

7. The elements of an APA shall include, but are not limited to: project and parcel identification; property owners' (including tenants') interest; property description; description of the impacts of the taking/project upon the subject; special appraisal requirements (such as unity of use, allocation of damages, and specialty reports); and the substance of legal issues that may impact the elements of just compensation or valuation approaches.

8. Appraisers are to understand that the APA is a starting point for the appraisal assignment and that it is the responsibility of the appraiser to accurately identify the appraisal assignment and address fully all elements necessary to complete the assignment.

9. The District Chief Appraiser must initiate the required consultations, documenting the appraisal file accordingly using the APA, consistent with Section 2.15, in the event that the appraisal problem involves the dislocation of a business.

10. A Review Appraiser will thoroughly review appraisal reports before they are accepted and/or recommended based upon USPAP Standard 3. The review will be a "Technical Review" as defined by the Appraisal Standards Board.

11. Review Appraisers must complete the Forms RW-273 and RW-278 if necessary, along with any supporting documentation before the appraisal can be approved. Appraisers are to understand that they have an obligation to respond in a timely and complete manner to any comments, questions and/or concerns directed to them during the review process.

12. Appraisers and Review Appraisers are mutually required to document contacts made during the review process and to document and maintain a record of corrections and/or changes to the report that may have occurred as a result of the appraisal review.

13. Notwithstanding the review process, appraisers must understand that although they must consider comments and guidance offered by a review of their work product, ultimately they are professionally responsible for their written reports, opinions and conclusions.

2.18 ROLES AND RESPONSIBILITIES OF REVIEW APPRAISERS

1. The Review Appraiser is responsible for appraisal quality and for recommending the amount of just compensation that will be formally offered by the Right-of-Way Administrator based upon the approved appraisal report.

2. The function of the Review Appraiser is to analyze the contents of the appraisal report, not to appraise the subject property.

3. The Review Appraiser will ensure that the final appraisal is consistent with federal and state law, reflects sound appraisal practices and is consistent with appraisals of similar properties in the same project area.

4. The Appraisal Problem Analysis Forms RW-275 series developed by the Department must be approved by the District Chief Appraiser and Review Appraiser. The APA contributes to establishing the scope of work for the appraiser and assists the appraiser in understanding the assignment.

5. The elements of an APA shall include, but are not limited to: project and parcel identification; property owners' (including tenants') interest; property description; description of the impacts of the taking/project upon
the subject; special appraisal requirements (e.g., unity of use, allocation of damages, specialty reports); and the substance of legal issues that may impact the elements of just compensation or valuation approaches.

6. Review Appraisers are to understand that the APA is a starting point for the appraisal assignment and that it is the responsibility of the appraiser to accurately identify the appraisal assignment and to fully address all elements necessary to complete the assignment.

7. The Review Appraiser must participate in the required consultations, documenting the appraisal file accordingly using the APA, consistent with Section 2.15, in the event that the appraisal problem involves the dislocation of a business.

8. Review Appraisers will not direct appraisers on how to prepare their work or on what values to assign to the properties. Instead, they should provide assistance in meeting federal and state guidelines, the Uniform Standards of Professional Appraisal Practice (USPAP), and standards developed by any other national organization or generally accepted resource.

9. A Review Appraiser will thoroughly review appraisal reports before they are accepted or recommended based upon the Federal Uniform Act, this Manual, and the Uniform Standards of Professional Appraisal Practice (USPAP), 49 PA Code §36.51. The review will be a "Technical Review" as defined by the Appraisal Standards Board.

10. The USPAP Technical Review is consistent with applicable federal law, 49 CFR §24.104(b), which, in the event that an appraisal cannot be approved, encourages that an additional appraisal be obtained or, alternatively, permits the Review Appraiser to develop appraisal documentation in order to support a recommended value. See Section 2.19.1.

11. Review Appraisers must complete Form RW-273, along with any supporting documentation, before the appraisal can be approved. The Review Appraiser must make reasonable efforts to verify that factual data in the report is correct and must determine whether the appraiser's conclusions are supported.

12. The Review Appraiser must recognize issues of law that could impact valuation and is responsible for obtaining prompt legal review of these issues from the Office of Chief Counsel and incorporating any legal advice received into the appraisal review.

13. Review Appraisers and Appraisers are mutually required to document contacts made during the review process and to document and maintain a record of corrections and/or changes to the report that may have occurred as a result of the appraisal review.

2.19 APPRAISAL REVIEW FUNCTION

An appraisal review process is required and the review appraiser must possess the competency to examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of an appraisal and other applicable requirements to support the appraiser's opinion of value. The review appraiser shall prepare a written report, Form RW-273 Appraisal Review Report, that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s).

The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions.

As per 49 CFR Part 24 §24.104(a), the review appraiser shall identify each appraisal report as:

- **Recommended** as the basis for the establishment of the amount believed to be just compensation.
- **Accepted** meets all requirements, but not selected as recommended.
- **Not accepted** include reasons for not accepting this appraisal.

The review appraiser will recommend the appraisal as the basis for the establishment of the amount believed to be just compensations and develop and report the amount believed to be just compensation.
If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the review appraiser may, as a part of the review, present and analyze market information to support a recommended value. This process is a Determination of Value "DOV". See Section 2.19.I.

A. Review Process Requirement. All agencies using federal funds must have an appraisal review process as follows:

1. A qualified Review Appraiser will examine all appraisals to assure that they meet applicable appraisal requirements and will, prior to acceptance, seek necessary corrections or revisions.

2. The Review Appraiser's Certification of the recommended or accepted value of the property will be set forth in a signed statement that identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property will also be identified in the statement.

B. Selection of Review Appraisers. All appraisal reviews will be performed only by those authorized by PennDOT to perform the appraisal review tasks; this is limited to PennDOT's Central Office Review Appraisers, PennDOT's District Chief Appraiser as per the dollar limits as set forth in Section 2.19.C, or the Department's Appraisal Review Consultant. In addition to the required qualifications for appraisers, consideration is given to competency, education, experience, training, certification/licensing, and professional designations and/or demonstrated analytical ability of the individual. The Chief of Appraisal and Appraisal Review, Central Office Review Appraisers, District Chief Appraisers, and contract Review Appraisers must be a Pennsylvania Certified General Real Estate Appraiser in good standing.

Unauthorized appraisal reviews will be in violation of 49 CFR Part 24 §24.102(d) in estimating just compensation.

Contract Review Appraisers must comply with the same requirements as a staff Review Appraiser.

C. Review Process. Appraisal reports are first examined at the District level immediately after submission to ensure compliance with the appraisal contract. The report will then be forwarded to the appropriate Review Appraiser.

The District Chief Appraiser will be responsible for reviewing appraisals with damages up to $50,000.00 or total take residential with no dollar limit. The Districts may request Central Office involvement if the District workload demands. The Central Office Review Appraisers will review appraisals with damages exceeding $50,000.00.

The person responsible for the review will prepare the Appraisal Review Report Form RW-273, which is the Review Appraiser's recommendation of just compensation (and also the Review Report Form RW-278 for Appraisals which include M&E). When necessary, the person responsible for the review will submit a memo to file, referred to as a "critique," which outlines necessary corrections or revisions to the report. The critique is forwarded to the appraiser with a copy to the District Chief Appraiser coordinating the appraisal.

D. Duties of Central Office Review Staff. Central Office Review Appraisers will perform as technical experts and advisors to the District. Additionally, Central Office Review Appraisers will perform periodic spot checks to ensure compliance with policies and procedures.

The Chief of Appraisal and Appraisal Review, in conjunction with the review staff, may perform periodic process reviews of the appraisal function.

The assigned Review Appraiser will examine the appraisal report to ensure it meets applicable appraisal requirements, and will, prior to acceptance, seek any necessary corrections or revisions as described below.

When necessary, the Review Appraiser may make a Determination of Value. See Section 2.19.I.

E. Math and Logic Checks. Correct arithmetic is certainly important in any analysis dealing with value. More important is the logical progression of thinking and computation that develops a logical conclusion. It is entirely possible to have an arithmetically accurate appraisal that results in an illogical and incorrect value. Anyone who can operate a calculator can check arithmetic; it takes a trained, experienced appraiser to review for logical value conclusions. The Review Appraiser should be satisfied that the appraiser's conclusion logically follows from the
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premises upon which it is based before approving the value.

F. **Minor Corrections and Revisions.** The Review Appraiser may make minor changes and corrections that do not significantly affect value without returning the report to the appraiser. Examples of such minor changes include the correction of insignificant mathematical errors, misspellings, and typographical errors. Whenever a Review Appraiser makes such a correction, the correction should be clearly initialed and dated. The Review Appraiser must send a copy of the corrected report pages to the appraiser and the District Chief Appraiser.

G. **Significant Corrections and Revisions.** When a Review Appraiser finds a need for significant changes or corrections, the concerns must be presented to the appraiser in writing. The appraiser's response must be in writing and returned in a timely manner as specified in the appraisal assignment. All such correspondence should then become part of the claim file.

All efforts should be made to reconcile differences. If the reviewing appraiser is unable to accept or recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, the Review Appraiser can recommend obtaining an additional appraisal or develop a Determination of Value (see Section 2.19.I. below).

It is the responsibility of the Review Appraiser to contact the appraiser when requesting additions, corrections or explanations for all items in question. After the District receives all pertinent information required to fully document the appraisal report, the final acceptance of the appraisal report is the responsibility of the Review Appraiser assigned to the project. The file will be completed with a memorandum from the Review Appraiser. Concurrence may be requested from the Chief of Appraisal and Appraisal Review on highly complex appraisal reviews.

H. **Divergent Values.** When there is more than one appraisal on a parcel, the Review Appraiser should compare all elements within the reports, noting any significant differences. Appraisals can have similar final value conclusions, but differ significantly on individual elements within the appraisal.

The Review Appraiser has a responsibility to explain or reconcile all significant differences between the appraisals.

Factual differences such as the size of the property, the age of improvements, the property's zoning, the selling price of a comparable, whether the property is leased or encumbered by an easement, or the physical characteristics of access to the remainder can usually be resolved by the Review Appraiser. When a factual difference is found, the Review Appraiser should inform the appraisers in writing and have the appraisers verify the facts and revise their appraisal reports accordingly.

Some differences between appraisals are matters of judgment. Appraisers may disagree on Highest and Best Use, damages to the residue, selection of valuation techniques, contributory value of improvements, types and amounts of depreciation, or the suitability of using certain comparable sales or rentals.

If the Review Appraiser is satisfied with the judgment and conclusions from one appraiser, that report may be recommended as the basis for the offer of just compensation. The Review Appraiser's written report should point out the differences and explain why the Review Appraiser agrees with one and not the other. The Review Appraiser must also provide written comments to the other appraiser on the basis of the disagreement in judgment and conclusions. If the report is resubmitted and approved by the Review Appraiser, the procedures regarding revised offers under Chapter 3, Section 3.02.F.2 must be followed.

If the Review Appraiser is not satisfied with the judgments and conclusions from either appraiser and is unable to obtain an acceptable report, the Review Appraiser should recommend that the District secure an additional appraisal. The Review Appraiser may also utilize and combine elements of the different appraisal reports and other data and information available into a Determination of Value.

Under no circumstances should a Review Appraiser prepare a DOV for an appraisal prepared by a Department staff appraiser.

I. **Determination of Value by Review Appraiser.** If the Review Appraiser is unable to approve an amount to be offered as fair market value based on reviewed appraisal reports and after reasonable attempts have been made to resolve issues about the appraisal report with the appraisers, the Review Appraiser may write a Determination of Value if it is not practical to obtain an additional appraisal.
Before preparing the DOV, the Review Appraiser must coordinate with the District RW Administrator and District Chief Appraiser to ascertain the impacts writing a DOV will have on the letting schedule and/or pending litigation. The preference is not to reward a fee appraiser by resorting to the DOV process as a safety valve for their incompetence and/or failure to timely respond during the review process.

The other circumstance where a DOV is acceptable is when a plan change or additional fact is introduced at a late date and an otherwise approved appraisal can be more easily modified by the DOV process than updated by the fee appraiser.

The Review Appraiser must develop appraisal documentation to support the Determination of Value and comply with USPAP in developing the determination. The Review Appraiser is not required to write an appraisal report; however, the Determination of Value must contain sufficient information and analysis to provide a credible value conclusion. Portions of the appraisal reports reviewed that were acceptable may be included in the determination by reference. Any other valuation information available to the Review Appraiser, such as sales or rentals found in appraisal reports on other parcels or other projects, bona fide listings of comparable properties for sale or offers to purchase, may become part of the Determination of Value.

The Determination of Value can be as simple as including the Review Appraiser's values in the Appraisal Review Report Form RW-273 with an explanation in the remarks section or additional pages supplementing the Form RW-273.

J. Review of Property Owner's Appraisal. The District, through the District Chief Appraiser, must consider an appraisal submitted by a property owner and must consider any new information not previously considered or known. The District Chief Appraiser may provide the property owner's appraiser copies of PennDOT's appraisal requirements upon request. Information obtained from a property owner's appraisal may be provided to the agency appraiser as well. Upon a District determination that the property owner's appraisal conforms to agency appraisal requirements, the District may submit the report for appraisal review.

K. Documentation. All value-related communication made in the review process must be in writing and placed in the hard-copy claim file. Appraisal corrections and revisions must be attached to all copies of the original appraisal report, with voided pages marked as such and left in the report.

L. Uneconomic Remnants. Existing law and regulation require the Department to offer to purchase, but not condemn, any uneconomic remnants. An uneconomic remnant is defined as a remaining part of a property, after a partial acquisition, that the Department has determined is of little or no value or utility to the owner, regardless of market value.

When applying the law to specific properties, the Review Appraiser and Administrators must consider the intent of the law. The legislative history of the law indicates that the intent is to not leave the owner a remnant of property that is no longer economic for them to retain, or constitutes a loss to the owner not compensated for in the laws of eminent domain.

The present regulations concerning uneconomic remnants encourage rather liberal interpretations as to what constitutes an uneconomic remnant. If the Department acquires an uneconomic remnant, and does not incorporate it within the right-of-way, the Commonwealth may then sell the uneconomic remnant.

When a small tract of land is left with no access and no reasonable expectation of demand for any purpose, the owners should not be faced with the possibility of paying taxes on that property as the remainder is of little or no utility or value to the owner.

The Review Appraiser, not the appraiser, makes the recommendation as to whether or not the remainder is an uneconomic remnant. The District Right-of-Way Administrator will decide whether or not to approve the remainder as an uneconomic remnant. There is no dollar limit on the amount or approval authority. See Chapter 3, Section 3.03.B for additional information.

The minimum offer for an uneconomic remnant is $100.
2.20 CLAIMS INVOLVING THE ACQUISITION OF A BUSINESS

A. Purpose and General Legal Requirement. Under Pennsylvania law, machinery, equipment and fixtures forming part of the real estate taken must be considered when determining fair market value (Section 707(2) of the Eminent Domain Code). Moreover, where a business or farm operation is dislocated by a taking, items that would otherwise be considered personal property may become part of the realty under the Assembled Economic Unit Doctrine (AEUD).

The AEUD is a legal principle whereby all machinery, equipment and fixtures in a property, whether loose or attached, that are vital to the economic unit and a permanent installation therein are considered to form part of the real estate taken for purposes of determining general damages. This principle is an adaptation of the assembled plant doctrine taken from mortgage foreclosure law, and basically requires that items that would otherwise be personal property subject to separate relocation assistance benefits must be treated as part of the real estate appraisal. The purpose of this section is to set forth procedures addressing the treatment of machinery, equipment and fixtures in claims involving the acquisition of businesses or farm operations located. See also Appendix A, Section A.10 for further discussion of the legal principles and appraisal requirements when business and farm properties are affected by an acquisition. Also reference Appendix D, Business Dislocation /flow Chart – Tasks & Responsibilities.

B. Applicability of Procedures.

1. Partial Acquisitions Where a Business or Farm Operation is Not Dislocated or Shut Down. The procedures set forth in this section do not apply to the partial acquisition of properties upon which businesses or farm operations are located when the business or farm operation is not dislocated by the acquisition. In those situations, traditional fixture law generally applies to the appraisal of the property. See Appendix A, Section A.10.E.

The fact that traditional fixture law must be applied to determine what machinery, equipment and fixtures form part of the realty and thus must be considered in the appraisal should be addressed in the APA. Whether an M&E evaluation is deemed required and, if so, who is responsible for obtaining the evaluation should also be addressed. In claims involving only a few items of machinery, equipment and fixtures of a relatively minor nature, the appraiser should be instructed to value the machinery, equipment and fixtures without the need of a separate report. See Sections 2.20D and 2.20E below.

2. Total or Partial Acquisitions Where Business or Farm Operation is Dislocated or Shut Down. The procedures set forth in this section apply to the acquisition of properties upon which businesses and farm operations are located that, due to the acquisition, will be dislocated or shut down. Although most of these circumstances involve the total taking of the property, a total taking is not required. The procedures apply even if the partial taking of the property has the effect of dislocating or shutting down the business or farm operation located on the property.

The procedures set forth in this section apply whether or not the AEUD is applicable to the acquisition. Further, the procedures apply whether the business or farm operation is owned by the landowner or tenant.

3. Impact of Temporary Construction Easements (TCE) on Highest and Best Use. It is possible for a temporary construction easement (TCE) to have an impact on the highest and best use of property outside the TCE during the period the TCE is in effect, with the recovery of the highest and best use when the TCE expires. The appraiser must document and support this impact with a detailed highest and best use analysis.

When present, the economic impact is in the nature of a temporary rental loss not only to the area of the TCE itself, but also to property outside the TCE. The loss in value can be determined by ascertaining the difference between the property's fair rental value before the taking and as unaffected thereby and the property's fair rental value during the TCE and as affected thereby. An estimated period of impact (the reasonable duration of the TCE) is then used to calculate the difference in fair rental value caused by the property's temporary change in highest and best use. The calculation must then be discounted to present value.

Damages calculated in this manner are not to be paid as a separate item of damage but, instead, are to be used as an adjustment to the property's value after the taking and as affected thereby, and in consideration of all other damages and benefits that may be present. Similar to any other impact, consideration must be given to
reasonable mitigation measures, in the nature of a cost of adjustment, during the period of the TCE that could be implemented in order to maintain the property's highest and best use during the TCE. If reasonable mitigation measures can be accomplished, then damages for the TCE need only be calculated as an occupancy (short-term rental) of the affected land for the duration of the TCE.

Finally, care must be taken to distinguish damages calculated in this manner due to a change in the property's highest and best use during the TCE from impacts due solely to temporary interference with access during construction. Temporary interference with access—where reasonable access to the public road system is maintained through the construction zone during construction—is generally not a compensable item of damage in Pennsylvania. This same rule of no compensability applies to circuity of access situations based on the total distance of additional travel due to the construction zone impacts.

If there is any question as to whether a temporary impact is compensable due to a temporary impact on highest and best use, the District should seek legal advice from the Office of Chief Counsel, Real Property Division, through the Utilities and Right-of-Way Section.

C. Preliminary Groundwork. Preliminary steps in the acquisition process provide much of the information necessary to implement the procedures set forth below. These preliminary steps are found in Chapter 3, Section 3.02.A regarding acquisition procedures.

Information on any business or farm operation conducted on a property and the owner's relocation plans are to be solicited at the pre-acquisition survey interview. Leases and ownership information, if applicable, are also to be solicited.

Soon after the interview and prior to completion of an APA, a preliminary inventory of improvements is to be completed. The inventory must include a general description of the real estate, fixed machinery and equipment, portable machinery and equipment, goods held for resale, and other personal property. Photographs and videotape of the entire property, including those items being inventoried, must be made.

Next, an analysis of available relocation sites and the ability of the business or farm to relocate is to be developed. Factors for consideration and documentation are found in Chapter 4, Section 4.05.B. This information is to be made part of the pre-acquisition survey report, and will be used to assist in making the determination on whether the AEUD applies and in providing relocation advisory assistance.

Last, the initial information obtained is verified during a pre-negotiations contact. Information on the owner's relocation plans will again be solicited at this time.

All the information obtained is to be placed in the hard-copy claim file.

D. Obtaining M&E Reports. An M&E report addressing non-moveable (fixed) and moveable items is required in all claims involving or potentially involving the dislocation or shutting down of a business or farm operation. Whether or not the AEUD applies is not relevant to this requirement. A report must be obtained in all such claims. Whether or not the AEUD applies becomes relevant only in how the report is used by the appraiser and the Department.

The method of obtaining the necessary report is a District decision. The District may require the appraiser to obtain and incorporate the M&E report in the appraisal or the District may obtain the report and provide a copy to the appraiser. If the appraiser obtains the M&E report, it must be delivered to the Department for its use separate from the appraisal itself. The method chosen by the District must be fully discussed in the APA.

Because some Districts will choose to require the appraiser to obtain the report and other Districts will choose to provide the report, there may be some confusion for those persons who operate in more than one District. This makes preparation of the APA extremely important.

The M&E report may be used for purposes other than support for the real estate appraisal. Where appropriate, the District will use the M&E report during the negotiation and relocation process to set retention values, to determine the amount of the tangible personal property loss payment, if elected, and to obtain moving cost estimates. However, under no circumstances may the M&E report be altered where amounts of value assessed are revised to settle the claim.
All previously gathered information, including any actual M&E reports, will be made available to the appraiser.

The format of the M&E report is addressed in Appendix A, Section A.10.E.

The real estate appraiser is responsible for ensuring that items valued in the M&E report are not duplicated in the appraisal.

Where items in the M&E report are to be incorporated into the real estate appraisal, the appraiser is responsible for reviewing the M&E report for the purpose of integrating the M&E items with the real estate to obtain a final estimate of value of the whole. See Appendix A, Section A.10.E on contributory value of machinery, equipment and fixtures.

E. Deciding Whether the Assembled Economic Unit Doctrine Applies.

1. Initial Determination. The initial decision on whether the AEUD is applicable to a claim must be made before the APA is developed and the property appraised. This determination will be made cooperatively by the District Chief Appraiser, District Chief Negotiator, Office of Chief Counsel, Central Office Review Appraiser, and signed by the District Right-Of-Way Administrator. The Office of Chief Counsel must be consulted and the consultation documented in the claim file. The role of the Office of Chief Counsel is to insure that the Districts understand the law and follow it.

The determination of whether the AEUD applies is a factual decision made within certain legal confines. The courts have ruled that it is a mixed question of law and fact that must be made by the jury rather than the judge in a jury trial. Although it has a large legal component, the determination is tied to the specific facts of the particular situation under review.

The AEUD applies in limited circumstances to prevent business owners from being forced to keep personal property when they cannot maintain their economic position by moving existing machinery, equipment and fixtures to a new location. Thus, the doctrine applies in two general situations: where the portion of the machinery, equipment and fixtures which are removable from the acquired property will not constitute a comparable economic unit in the new location; or where the nature of the business requires a unique building or site for its operation such that no other building within a reasonable distance is adaptable to the functioning of the business. See Appendix A, Section A.10.E for further discussion of when the AEUD applies.

The determination of whether the machinery, equipment and fixtures that can be moved would constitute a viable economic unit at a new location may require the expertise of an industrial engineer. If this is the case, the required expert should be hired under a service purchase contract. In most cases, the appropriate Department personnel will be able to make the initial determination without hiring a special expert. To confirm an initial determination, it may be appropriate to request that the appraiser assigned to the claim hire an industrial engineer.

When the AEUD applies, all items vital to the business and a permanent installation therein are deemed to be part of the realty. It does not matter whether they are loose or attached, or whether they would traditionally be considered personal property rather than part of the realty. Goods held for sale are not considered part of the realty under the AEUD. See Appendix A, Section A.10.E for further discussion on what items are included as part of the realty when the AEUD applies.

All available information will be used to make the determination on whether or not the AEUD applies. This will include the information previously developed through the pre-acquisition survey and pre-negotiation interviews, the preliminary inventory, and the analysis of available relocation sites. The claim file must be fully documented explaining the factors and rationale that dictated the final determination on application of the AEUD.

The persons making the determination should personally inspect the property in question if at all possible. If it is not possible to enter the property for a more thorough inspection, an outside viewing should be made by all those involved in the decision. In the event that a personal inspection is not possible, photographs and videos, along with written and oral descriptions, will need to suffice.

There are two summary documents included in this Manual that should be used in making the determination. One is the synopsis of the law on the AEUD, entitled "The Assembled Economic Unit Doctrine-In a Nutshell."
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See Appendix A, Section A.10.E for further discussion of the law on the AEUD. The other is a checklist (Form RW-276) to assist in making sure that all the necessary information has been obtained for making the decision, as well as an outline of the analysis to be made.

Attorneys in the regional offices that provide litigation services can be contacted directly to assist in making the determination on whether the AEUD applies, or the Assistant Chief Counsel for the Real Property Division can be contacted directly. A good way to facilitate the necessary coordination with legal personnel is to invite counsel to the monthly status meetings held on major projects. Most of the appropriate personnel already attend these meetings and can review the information in an effort to reach a consensus.

2. Appraiser Confirmation and Effect of Additional Information. The appraiser ultimately assigned to appraise the property in question may make an independent determination on whether the AEUD applies. The appraiser must notify the District Chief Appraiser immediately if that appraiser determines that the AEUD applies. If this is contrary to the initial determination made by the Department, the Department must consider the position of the appraiser and either confirm or change the approach to the claim. The comments of the appraiser and the Department's decision will be made part of the claim file.

There may also be situations where the circumstances change after the initial determination on whether the AEUD applies. These circumstances should also be documented in the claim file and a new review and determination on the issue made if necessary.

3. Litigation Determination. In the event that application of the AEUD is litigated and a court makes a determination contrary to that of the Department, the appraisal must be revised accordingly. Before the appraiser testifies on the altered approach, the appraisal must be reviewed and approved through the normal procedures.

4. Checklist for Application of Assembled Economic Unit Doctrine Form RW-276. The Checklist for Application of Assembled Economic Unit Doctrine Form RW-276 included in this Manual must be used by Department personnel to ensure that the necessary steps have been taken and information obtained to allow an informed decision on whether the AEUD applies. The pre-acquisition survey and the preliminary inventory must be complete and available to those individuals responsible to complete the Checklist, Form RW-276. The checklist will also be used by counsel to determine if the necessary information is available and to help in making the analysis. It is very important that all the required steps are taken, that the necessary information is obtained, and that the steps are adequately documented in the file in order to support an informed decision.

F. Developing the APA. The development of the APA in relation to machinery, equipment and fixtures must take into consideration all previously developed and available information. This APA will be developed by the District Chief Appraiser or consultant acting as the District Chief Appraiser. The Office of Chief Counsel should be consulted and asked to review the document as deemed appropriate.

The APA should state clearly whether or not the AEUD applies. It should also state clearly whether the Department will be supplying a machinery, equipment and fixtures report or whether the appraiser is responsible for obtaining such a report. The inventory of items to be valued should also be referenced. Where the AEUD does not apply, the initial determination of what items are part of the realty and thus must be incorporated into the appraisal should be specified.

Where it is deemed necessary for an industrial engineer or some other expert to be hired by the appraiser to confirm the determination that the AEUD does or does not apply, the need for an expert must be included in the APA. Also, if it is deemed necessary that the appraiser hire a business analyst to determine the economic contribution of the M&E to the property, this must be set forth in the APA. Such a business valuation may be an appropriate analytical refinement to aid the real estate and/or M&E appraiser in some situations.

The Review Appraiser will not sign the APA if all of the necessary information to develop the APA is not provided by the District Office.

If an appraiser assigned to the claim questions the initial determination on application of the AEUD or other circumstances arise that affect that initial determination, the APA should be revised as appropriate to reflect the changed circumstances and determination, if any.
G. **Appraisal Review Procedures.** Appraisal reports incorporating M&E evaluations, whether due to application of the AEUD or otherwise, are reviewed in the same manner as all other reports. The Review Appraiser is responsible for reviewing the M&E report to the extent that it is incorporated into the real estate appraisal report using the Form RW-278 Machinery & Equipment Review Report. The Review Appraiser is not responsible for reviewing the M&E report as it addresses the valuation of machinery, equipment and fixtures not deemed to be part of the realty either under the AEUD or otherwise. Such evaluations will be reviewed under relocation assistance procedures. See Chapter 4, Section 4.05.E.6.

Comparable sales used by the real estate appraiser must be checked to determine whether removable machinery, equipment and fixtures were included in the consideration of the comparable sale. If so, an adjustment to the comparable sale would be appropriate to the extent that machinery, equipment and fixtures are incorporated through a separate machinery, equipment and fixture report.

H. **Waiving Application of the AEUD.** A claimant may waive application of the AEUD if done knowingly and willingly. This may be appropriate and beneficial to a claimant, for instance, where the claimant plans to construct a new building to house a business or farm operation, even though the AEUD applies, if there are no existing buildings in the area appropriate for relocation. If the claimant elects to waive application of the AEUD, the waiver should be in writing. The decision and election may not occur without the claimant being made fully aware of the benefits and consequences of the two options insofar as payment from the Department is concerned—proceeding under the AEUD with limited relocation assistance benefits or proceeding without application of the AEUD with full relocation assistance benefits. See Appendix A, Section A.10.E explaining the benefits available under the two options.

I. **Federal Participation.** Federal participation in right-of-way acquisition expenditures is now permitted for all payments required by state law. No longer is there any requirement to separate payments for machinery, equipment and fixtures paid for as part of the realty under the AEUD based on the fact that they would otherwise be treated as personal property.

J. **Machinery, Equipment and Fixtures Outside the Take Area.** As to machinery, equipment and fixtures located outside the take area, it will be necessary for the owner to convey title to the Department by a bill of sale or similar instrument and grant a right of entry to remove same so that the Department can recover salvage value. Otherwise, the owner will be deemed to have elected to retain the items. In this case, the offer will be reduced by the fair market value of the items severed from the real estate.

### 2.21 APPRAISAL WITNESS FEE SCHEDULES

Witness fees to appraisers and other witnesses for litigation preparation and testimony will be paid on an hourly basis related to the nature of the claim. Expenses will be paid at cost in accordance with the terms outlined below. Location is not a factor in the fee schedule.

The following fees will be paid:

- **Residential Claims (single-family, non-income producing)** – $150.00/hour.
- **Commercial, Industrial, Agricultural or Residential Claims (land development or income producing purposes)** – $200.00/hour.
- **Special Purpose and Special Use Properties (such as landfills, quarries and special manufacturing facilities)** – $250.00/hour.

**Travel time fees:**

The witness will be paid one half of the hourly rate for each hour of travel after the first hour (or 50 miles).

Out-of-town expenses and miscellaneous expenses (including reproduction and telephone expenses) will be billed at cost in accordance with Management Directive 230.10 and the following:
• Travel expenses will be paid in the amount provided for in Management Directive 230.10 if traveling by car. If traveling by public carrier, only coach fare will be paid. Travel by other than car must be pre-approved in writing by the appropriate District Chief Appraiser or Right-of-Way Administrator.

• Overnight lodging will be reimbursed if pre-approved, in writing, by the appropriate District Chief Appraiser or Right-of-Way Administrator. This will be allowed when necessary to ensure that the appraiser is lodged close to the work site. It will be necessary for the appraiser to be available for consultation with Department counsel at all times during the legal proceedings. However, the appraiser is a private party and is not able to take advantage of the extremely favorable rates charged to Commonwealth employees by some hotels. The appraiser also may not be able to obtain essential lodging within reasonable proximity of the work site if restricted to hotels having regular rates that are at or below the Commonwealth rate. With the foregoing in mind, the appraiser will be reimbursed only for lodging at hotels charging the lowest reasonable rate available to them.

• Meals will be reimbursed in the amount provided for in Management Directive 230.10. Only those meals on overnight trips will be subject to reimbursement.

• An invoice must be submitted with a request for the payment of expenses, and must include all travel receipts, all lodging receipts and an itemization and description of all miscellaneous expenses.

2.22 DISCLOSURE OF VALUATION DOCUMENTS POLICY

It is the policy of the Department that valuation documents which may include appraisals, waiver valuation option materials, or parts thereof will be disclosed to property owners upon their request provided that the property owner provides a copy of their valuation documents to the Department in return.

The District will use Form RW-360 (Valuation Document Transmittal) for disclosure of valuation documents.

In order to be eligible for reimbursement of appraisal costs under Section 710, the property owner's valuation document must be prepared by a real estate appraiser holding a current, valid Certificate from the Pennsylvania State Board of Certified Real Estate Appraisers. It is within the discretion of the District Right-of-Way Administrator to accept valuation documents that are less than appraisals done by a certified appraiser in order to exchange valuation documents under this policy.

When requested, the District Chief Appraiser, or designee, will provide a copy of the appropriate document(s) to the negotiator for delivery or mailing to the owner. One copy of the document(s) will be provided per claim.

The claim file must be documented that a copy of valuation document has been disclosed to the property owner or their attorney. A copy of the valuation document disclosed should be maintained in the file with the cover letter (Form RW-360) showing to whom it was provided.

The District Chief Appraiser, or designee will provide advice and guidance to the District Chief Negotiator, or designee as necessary in order to enable the negotiator to answer the property owners' questions.

Refer to Chapter 3, Section 3.02.D for information on this policy as it relates to the negotiation process.

2.23 MACHINERY AND EQUIPMENT VALUATION

A. Qualifications for M&E Experts. The qualifications for an M&E valuation assignment depend on the level of complexity as outlined below.

1. Non-Complex M&E Report. A non-complex report valuing items of fixed or movable property in a general business context that does not focus on a unique or specific business entity. The individual who completes this type of report will be a designated Department employee or an individual qualified to perform this service.
Qualifications: the individual who is capable of using cost manuals and depreciating the value of the items due to age and wear and tear or whose business or expertise deals with the type of M&E to be valued (i.e. restaurant kitchen equipment, etc.).

2. M&E Specialty Report. A complex or very complex M&E report valuing items of fixed or movable property that focuses on a unique or specific economic or business entity. The District Office will seek a specialist who is qualified to value the types of machinery and equipment on the site of the affected property. The District Offices should maintain and share an informal list of M & E Specialists. The specialist who completes this type of report may, or may not be on the ITQ list.

Qualifications – The individual must possess the expertise consistent with the area of specialty and that degree of education and/or experience necessary to establish the individual as an expert in the specialized field.

3. Competency Rule (USPAP: Preamble and Standard Rule 8-2). M&E specialists are responsible for assuring competency in any M&E assignment.

B. Obtaining M&E Valuation Services. The District will make the decision, depending on the circumstances (fee or staff appraiser completing the Real Property Appraisal), as to who will prepare or who is responsible for obtaining the M&E appraisal. The fee appraiser if applicable, or staff appraiser or staff negotiator may value the items with documentation and sources of value estimates.

The above decisions are to be made by the District, after the preliminary inspections, and a determination as to whether the AEUD does or does not apply, but before the APA is completed. The APA must be specific regarding the M&E appraisal including information on who is responsible for obtaining the M&E appraisal and who is permitted to complete the M&E appraisal.

If the APA indicates a complex or very complex M&E valuation assignment, an M&E Specialty Report is justified. The District can use Form RW-215, as a condition of the fee appraisal contract or as a condition of an engineering contract.


D. APA.

1. Partial Takes Not Dislocating the Business. An M&E Report is not always required to value the M&E forming a part of the real estate. This decision will be made at the District level in conjunction with the Central Office Review Appraiser and stated in the APA.

2. Total or Partial Takes Dislocating the Business. Whether the AEUD applies or not, an M&E Report will always be required to value the M&E for a total or partial take dislocating a business. The Real Estate Appraiser(s) or the District Chief Appraiser must arrange for a Specialist in M&E valuation to estimate the value of all M&E. This decision will be made at the District level and stated in the APA. All M&E as defined in the glossary is to be included and appraised. Depending on the circumstances, the M&E appraised may or may not be integrated into the real estate value.

The scope of work to complete the assignment will be outlined in the APA.

See Section 2.15 for a complete discussion on the APA and Section 2.19.E and Appendix A, Section A.10.E for discussion on the AEUD.

3. Inventory of M&E. The inventory of M&E should be attached to the APA (See Chapter 4, Section 4.05.B.2(b) and Appendix D, Business Dislocation/Flow Chart – Tasks & Responsibilities). This inventory may be obtained from the owner or may be generated by the Department (see Chapter 5, Section 5.04.A and Form RW-663). Ultimately, it is the responsibility of the M&E appraiser to obtain a complete and accurate inventory.

4. Additional items to be considered for 'Section 1 – Description of parcel' on the APA Form and/or the Inventory of M&E include:
a. Inventory of goods held for sale and/or raw materials for manufacturing.

b. Offsite equipment.

c. Rented items.

d. Leased items.

e. The distinction of known ownership along with a separation of values between each owner and known tenant(s) or other individual.

E. M&E Valuation Procedures.

1. Machinery and Equipment appraisals will be prepared in conformance with the requirements of the Department using the M&E Valuation Report Form RW-277 and the USPAP Competency Rule (in effect on the effective date of value).

2. The person conducting the M&E valuation may utilize any generally accepted valuation approach capable of support through adequate data collection and verification.

3. A detailed listing of the appraised items is to be prepared by the M&E appraiser. Assistance and information gathered from the owner/tenant/user in possession or claimant is encouraged. Separation of the values between owner and tenant are required in the report.

F. Completing the Machinery and Equipment Valuation Report Form RW-277.

1. The M&E appraisal must be in the required format, listing the various costs and fair market values. The sources must be identified and the methods for valuing items must be explained. M&E Valuator are to understand that the APA is a starting point for the appraisal assignment and that it is the responsibility of the M&E appraiser to accurately identify the appraisal assignment and address fully all elements necessary to complete the assignment.

2. The USPAP Scope of Work Rule incorporates this Manual, as an assignment condition. The Department may invoke, where appropriate, the USPAP Jurisdictional Exception Rule. Form RW-277 is consistent with these requirements. The Department requires all appraisals to be completely reliable, credible, defendable and not misleading. The M&E appraiser's work file will contain all special notes required to support the M&E appraiser's estimated costs, values, and opinions.

3. A copy of the Letter of Transmittal is to be placed in the Addenda Section of the report with a loose copy on top of the transmitted reports. The reports will be either stapled, or prong fastened, not in a permanent or spiral binding. A loose, unbound letter of transmittal is required for M&E appraisers to convey reports to the Real Estate appraiser(s) involved with the subject assignment. A copy of the Letter of Transmittal must be included in the Addenda Section of the M&E Valuation Report.

4. Pagination In any section or page requiring additional space (pages) utilize pages as necessary and number by section in numerical sequence (A-1, 2, 3, 4, B-1, 2, 3, 4, etc.).

5. Form RW-277.

a. Report Front Cover Page. The report cover will include pertinent information including ROW Office project number, county, S.R., section, state project number, federal project number, parcel or plat number, claim number, owner/tenant/claimant name, location of property along with Date(s) of Inspection and Effective Date of Valuation (As of Date).

Purpose of the Report: The purpose of the report will be to estimate the four (4) required costs and values:

(1) Cost New (CN).

(2) Cost New in Place (CNIP).
(3) Fair Market value in Place (FMVIP).

(4) Fair Market Value Severed (FMVS).

Final M&E value conclusions will provide for the Total CNIP, FMVIP & FMVS along with the
responsible party signatures.

b. Summary of Values – Section A. This is a Summary of Values page and is required to be inserted
after the M&E Valuation Report front cover page. The summary of values will show the grand totals of
FMVIP & FMVS. It will then summarize the totals by Owner(s), (Claimants/Tenants) as necessary,
"moveable" and "non-moveable" (fixed) categories if applicable.

c. Intended Use and Property Facts – Section B.

(1) Intended User and Intended Use – As provided on the form.

(2) Use of the Subject Property on the Effective Date of Valuation – Identify the type of property
and provide a brief history and characteristics of the business conducted thereon.

(3) Brief Description of Property Appraised and Ownership – Identify and briefly describe the
individual items or groups of items appraised in narrative form. This should include type of
Machinery and Equipment, ownership, apparent age, condition, functional utility, etc.

The M&E appraiser must conduct a reasonable investigation to determine who has all right, title and
interest in each item or group of items appraised. Whether the owner of the real estate owns the
item or a tenant on the real estate owns the item must be indicated. It must also be indicated if a
claimant (either the owner of the real estate or a tenant) has possession of an item only, with
ultimate right, title and interest not capable of being determined from the available data.

d. Methodology – Section C. Summary of the Methodology (scope) used to develop the appraisal –
State the extent of the process of collecting, confirming and reporting data that describes the scope of
work performed to arrive at supportable opinions of the stated costs and values. Comment on feasibility
or recommendation as to the "cost of adjustment" if appropriate.

e. Item and Lot Description – Section D. This section will comprise the listing of assets appraised
along with five (5) columns representing estimates of Cost New, Cost New in Place, % Good, Fair
Market Value in Place and Fair Market Value Severed. Percent Good is the remaining value in the item
shown as a percentage (the reciprocal of accrued depreciation).

(1) The appraisal report must list and contain all machinery & equipment, furniture, fixtures,
licensed vehicles, rolling stock, signs, other personal property, and inventory according to the
requirements on the APA.

(2) Each item description should be:

• A single major item;

• A production or process line incorporating one or more major items; or

• A grouping or lot of similar minor items.

(3) Each item listing (single or group) should have an "Age Life Analysis" section completed.
The age life analysis is made up of 7 components including:

• Actual Age (physical/chronological).

• Condition (estimated by observation).

• Effective Age (opinion: considers age and condition).
• Remaining Life (estimated utilizing category of equipment).
• Attachment (ancillary equipment and or annexation to building).
• Power Supply/Type (voltage, gas, oil fired, etc.).
• Moveable or Non-Moveable (fixed).

Note: Pertaining to Cost New and Cost New in Place, the Department recognizes that in many cases there are no freight or installation costs applicable. These additional costs could be minor. Therefore, those cost columns may reflect the same amount. However, there are cases where there is a substantial and discernable additional cost of freight or installation. In these cases, these columns must reflect that difference and quite possibly additional discussion should be included in the Addenda Section.

g. Photographs – Section F.
   (1) This section is reserved for photos of the subject appraised M&E.
   (2) The photos or photo pages will be numbered and include a brief description of the assets, to coincide with the Appraisal Listing and Valuation Documentation sections, utilizing item number and short description.
   (3) It is not necessary to include a photo of every item. However, major items and representative photos of typical M&E, minor equipment, furniture and fixtures, machines, vehicles should be included.

h. Summary List of Moveable Items – Section G. List and describe all Moveable items, utilizing the item #, short description and two (2) value columns (FMVIP, FMVS) format.

The section will be further categorized and totaled by fee owner, claimant and/or tenant if applicable. Begin a new page for each different owner, claimant or tenant.

i. Summary List of Non-Moveable Items – Section H. List and describe all Non-Moveable items, utilizing the item #, short description and two (2) value columns (FMVIP, FMVS) format as Section G above.

The section will be further categorized and totaled by fee owner, claimant and/or tenant if applicable as Section G above. Begin a new page for each different owner, claimant or tenant.
j. Certification Page – Section I. The Certification is included per the Department and USPAP requirements. Included persons representing each claimant onsite at the time of inspection and what information they provided.

k. Addendum – Section. This section includes:

1. The Standard Assumptions and Limiting Conditions.

2. Extraordinary Assumptions and Limiting Conditions – standard statements are not necessary to include since Jurisdictional Exception has been invoked by the Department. However, state any extraordinary (exceptional) assumptions and limiting conditions.

3. A copy of the Letter of Transmittal.

4. A copy of the APA (Form RW-275P or RW-275T).

5. A copy of any Notices of Revision (Form RW-275A).

Note: The M&E Appraiser has already been approved for appraisal work with the Department; therefore, attaching Qualifications (such as a Curricula Vitae) to the addenda are not necessary. However, this information should be provided if the M&E appraiser is hired by the fee real estate appraiser and is not on the pre-approved list. This information will also be necessary when the Department no longer maintains a list of M&E appraisers on the Appraisal ITQ contract.

This section can also include:

1. Additional valuation documentation.

2. Additional certifications required by any appraisal organizations to which the appraiser belongs.

3. Additional exhibits.

4. A discussion of any deviations from Department requirements. Indicate and explain why the deviation. Reference the APA where applicable.


1. Situations where claimant's valuation differs.

   a. Discrepancies of items (additional items).

   b. Discrepancies between values.

2. ISSUE – Does not necessarily require re-doing an appraisal.
CHAPTER 3
ACQUISITIONS

3.01 GENERAL ACQUISITION PROCEDURES

A. Basic Acquisition Policies – Principles.

1. Objectives of the Acquisition Program. The acquisition program has been structured to: ensure that owners of real property to be acquired are treated fairly and consistently; encourage and expedite acquisition by agreements with such owners; minimize litigation and relieve congestion in the courts; promote public confidence in the acquisition program; and ensure that persons displaced (i.e., residential or non-residential) as a result of a project are treated fairly, consistently and equitably so that they will not suffer disproportionate injuries as a result of projects designed for the benefit of the public.

2. Expeditious Acquisition. The Department shall make every reasonable effort to acquire the real property expeditiously by negotiations.

3. Notice to Owner, Reference Form RW-370. As soon as feasible, the owner shall be notified of the Department's interest in acquiring the real property and of the basic protections provided to the owner by law, including the Department's obligation to secure an appraisal. This Notice is given with the delivery of the Form RW-370, Letter to Property Owner, Official Plan signed. See Section 3.02.E.4 or Form RW-371, Pre-negotiation Letter. See Section 3.02.C.6.a.

4. Appraisal, Waiver Valuation (WV) and Owner's Right to Accompany Appraiser. Before the initiation of negotiations, the real property to be acquired shall be appraised or a WV shall be prepared. Where an appraisal is done the owner or the owner's designated representative shall be given the opportunity to accompany the appraiser during the appraiser's inspection of the property. Where it is deemed an appraisal is not required, a WV shall be prepared in accordance with Chapter 2, Appraisals. See specifically Section 2.12. The appraisal and the WV process each result in a written offer to the owner to initiate negotiations.

5. Establishment and Offer of Just Compensation. Before the initiation of negotiations, the Department shall establish an amount that it believes is just compensation for the real property. The amount shall not be less than the recommended appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property, or less than the amount as determined through the WV process. Promptly thereafter, the Department shall make a written offer to the owner to acquire the property for the amount believed to be just compensation. The date that the written offer is delivered is the initiation of negotiations.

Refer to Chapter 2, Appraisals.

6. Summary Statement, Form RW-356A.

   a. Along with the initial written purchase offer, the owner shall be given a written summary statement of the basis for the offer of just compensation. In most cases, Form RW-356A is not necessary because the summary of just compensation is part of the offer letter.

   b. See Section 3.02.F.2.b. for a complete discussion of the summary statement.

7. Basic Offer and Negotiation Requirements. The Department shall make reasonable efforts to contact the owner or the owner's representative to meet face-to-face and discuss its offer to purchase the property, including the basis for the offer of just compensation, and explain its acquisition policies and procedures, including the payment of incidental expenses. The owner shall be given reasonable opportunity to consider the offer and present material that the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase. The Department shall consider the owner's presentation. Refer to Section 3.02.G for a discussion of the three-contact procedure.
8. **Updating the Offer of Just Compensation.** If the information presented by the owner merits consideration, if a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay (six months or more) has occurred since the time of the appraisal of the property, the Department will have the appraisal updated or obtain a new appraisal. If the latest appraisal information indicates that a change in the purchase offer is warranted, the Department will promptly reestablish just compensation and offer that amount to the owner in writing.

Refer to Chapter 2, *Appraisals* for further information.

9. **Coercive Action.** The Department will not advance the time of condemnation, or defer negotiations, condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

10. **Administrative Settlement.** The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement of that amount have failed and an authorized Department official approves such administrative settlement as being reasonable, prudent and in the public interest.

A complete discussion of administrative settlement procedures is found in Section 3.04.

11. **Payment Before Taking Possession.** Before requiring the owner to surrender possession of the real property, the Department will pay the agreed purchase price to the owner. In the case of a condemnation, the Department will either pay estimated just compensation to the owner or will directly deposit with the court for the benefit of the owner, an amount not less than the Department's recommended appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances and with the approval of the owner, the Department may obtain an Authorization to Enter for Construction Purposes before making payment available to an owner. See Section 3.03.F.

12. **Uneconomic Remnant.** If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Department will offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

A complete discussion of the uneconomic remnant procedure is found in Section 3.03.B.

13. **Inverse Condemnation - DeFacto Takings.** If the Department intends to acquire any interest in real property by exercising the power of eminent domain, it will institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

A complete discussion of DeFacto Taking procedures is found in Section 3.03.J.

14. **Fair Rental.** If the Department permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination on short notice, the rent shall not exceed the fair market rent for such occupancy.

A complete discussion of short-term rental procedures is found in Chapter 5, *Property Management*.

**B. Separation of Right-of-Way Functions - Conflict of Interest.** The reduction in size of District Right-of-Way Units may necessitate one staff member performing more than one right-of-way function. However, caution must be exercised in order to avoid possible conflicts of interest and to avoid the possibility of losing federal funds, if applicable.

The following actions are prohibited:

1. No appraiser, review appraiser, or preparer of a waiver valuation (WV) shall have any interest, direct or indirect, in the real property being valued for the Department.

2. Compensation for making an appraisal or a WV will not be based on the amount of the valuation estimate.
3. No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or WV preparer regarding any valuation or other aspect of an appraisal, review or WV.

4. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

5. No appraiser will act as a negotiator for real property if that person has appraised the property. See Chapter 3.02.F.1.a regarding the preparers of WVs negotiating claims

C. Type of Title Acquired - Fee, Easement, Other.

1. Required Right-of-Way in Fee Simple Title. All real property designated as "required right-of-way" on right-of-way plans shall be acquired in fee simple title, with some limited exceptions as discussed in Sections C.2 and C.3 below.

The reason for this policy is twofold. First, since the amount paid for real property is the same whether fee simple title or an easement for highway purposes is obtained, to acquire less than fee simple title lessens the value of the property obtained. Second, if an acquisition is subsequently determined unnecessary, disposition alternatives and money receipts are severely limited by acquiring an easement. Further discussion of this policy can be found in Appendix C, Section C.01.A.

2. Required Right-of-Way by Easement. The District Right-of-Way Administrator may authorize the acquisition of required right-of-way by easement, but care must be exercised when electing to acquire an easement rather than a fee, and this option should be the exception rather than the rule.

Some examples of exceptions to the policy are:

a. When the area to be acquired consists of a minor strip taking of unimproved land, such as an area abutting a previously acquired easement.

b. When the area to be acquired is being donated by the owner and the owner will only donate an easement.

c. When the highway is on a structure and crosses over a railroad, the Pennsylvania Turnpike or other property in which substantial savings can be realized by acquiring an easement, an aerial easement may be acquired.

d. When required right-of-way is being acquired from a railroad, the railroad may only be willing to sell an easement because railroads often own easements instead of fee simple interests.

e. When the land being acquired is being deep mined. See Section 3.03.K.

f. When the land to be acquired is contaminated (to limit liability to the Department).

g. When the claimant requests purchase of an easement rather than fee title.

When an easement rather than a fee is obtained, it is the District's responsibility to ensure that the right-of-way plan reflects this.

3. Areas, Other Easements. An area can be described as being located outside of the right-of-way and reserved for Department use during construction or after construction but remaining in the possession of the property owner. As such, these areas will be acquired in a lesser estate (easement) than either fee simple or highway easement. The agreements and deeds for both fee simple and highway easement in current use specifically describe only those portions of the property designated as required right-of-way. Hence, any other area designated on the recorded plan is conveyed in a lesser estate as designated.

4. Related topics concerning the power of condemnation and title in general and the types of interest acquired can be found in Appendix C, Section C.01.A.
D. **$500 Minimum Claim Amount.** The minimum offer and payment for the purchase of required right-of-way is $500.00.

See Chapter 2, Appraisals.

E. **Procurement of Right-of-Way Acquisition Services.** Right-of-Way Acquisition Services can be procured using the consultant engineering selection process as provided in Section 905 of the Commonwealth Procurement Code. As such, the Department operates a Right-of-Way Acquisition program in support of the maintenance and continuing upgrade to the transportation infrastructure of the Commonwealth. All Right-of-Way Acquisition Services must be completed by a firm pre-qualified by the Department to perform work in accordance with Publication 93, *Policy and Procedures for the Administration of Consultant Agreements.* In order for consultants to be eligible for assignments under the consultant engineering selection process, they must be registered as a Business Partner in ECMS and submit a Qualification Package to be pre-approved by the Department.

Note: In addition to providing Right-of-Way Acquisition Services in project-specific agreements, open-end agreements can be created specifically for Right-of-Way Acquisition Services. Right-of-Way Acquisition Services can also be included in other open-end agreements such as those for Final Design.

The consultant engineering selection process can be used to hire a Right-of-Way Acquisition Consultant as a prime consultant or as a sub-consultant to a design consultant. In either case, the procedures detailed in *Publication 93, Policy and Procedures for the Administration of Consultant Agreements,* must be followed. When the Right-of-Way Acquisition Services are to be performed by a sub-consultant, they can be included as part of a new agreement in ECMS.

1. **ECMS Registered Business Partner process.** Prior to applying for pre-qualification, a consultant must be a "Registered Business Partner" as recorded in the Engineering and Construction Management System (ECMS) via the internet. In order to become a Registered Business Partner, consultants must refer to [http://www.dot2.state.pa.us/](http://www.dot2.state.pa.us/); select "Business Partner"; and select "Registration". Complete all required fields; select "Submit"; download and complete the Business Partner Agreement. The signed form will be mailed to the address listed on page four of the Agreement. Questions concerning the Business Partner procedure should be directed to 717-772-0566.

2. **The Pre-Qualification Process.** The Central Office Right-of-Way Acquisition Unit Chief serves as the point-of-contact for the overall program. Interested parties may request an application, which upon receipt, will be coordinated by the Acquisition Unit for review by the committee selection process described in E.4.

3. **Criteria for Pre-Qualification.** The following documentation included in the application must be submitted for consideration by the committee:
   a. Right-of-Way Acquisition Consultant Pre-Qualification.
   b. One to three page summary of the company Right-of-Way Acquisition expertise regarding public highway projects completed in accordance with the provisions of the Uniform Act.
   c. One to three page resume for each staff member detailing applicable experience. Individual resumes should state approximate number of claims negotiated, relocated, etc., by that person.
   d. References must verify the experience claimed. Reference checks are performed by the Central Office Acquisition Unit.

4. **Selection Committee.** A selection committee consisting of three District Right-of-Way Administrators requested by the Central Office Acquisition Unit Chief will be formed to review, approve, or deny submitted Qualification Packages. The committee will evaluate the minimum qualifications specified in the seven areas listed below.
   a. **Relocation Assistance Plan / Problem Identification.** Must have provided these services for at least two public highway projects* involving a total of at least 10 residential and 3 business relocations.
   b. **Appraisal Planning / Services.** Must have at least one Pennsylvania generally certified appraiser approved to do "Category 2" assignments under the Department's Appraisal ITQ Contract 357101 on
staff.

c. Negotiation. Must have successfully negotiated a minimum of at least 100 amicable settlements and initiated condemnation proceedings on at least 5 parcels on public highway projects*.

d. Title and Settlement Services. Must have provided these services for a minimum of 100 parcels.

e. Relocation Assistance and Payments. Must have provided these services for at least two public highway projects* involving a total of at least 10 residential and 3 business relocations.

f. Property Management. Must demonstrate knowledge and expertise in property management or must have a licensed real estate broker (from any state) on staff.

g. Right-of-Way Project Management. Must have at least one staff person who has served as a right-of-way project manager on at least 5 public highway projects* acquiring a minimum total of 50 parcels. Right-of-Way Project Management is defined as the task of directly managing all of the services described in WBS Code 2.10.7 with a goal of obtaining a final right-of-way clearance on time and within budget. It also entails developing project status reports, holding periodic project status meetings, and keeping the meeting minutes.

* Acquisition services for public highway projects must have been completed on behalf of a governmental agency using federal funds and completed in accordance with Uniform Act requirements.

h. All experience must have been obtained within the last ten years and must be verifiable through references. Ensure that enough references are provided to verify experience in each of the tasks. The experience will not count if it cannot be verified through references or was not performed in an independent and competent manner.

5. Special Experience Identifier. Anyone who has held the PennDOT title of Right-of-Way Administrator 1, Right-of-Way Administrator 2, Right-of-Way Administrator 3, (or an equal position with another State or Federal Agency) for at least three years will be assumed to have met the experience requirements in the tasks above that they supervised as an employee of that governmental agency.

6. Approval Notification. Upon approval of the Selection Committee, each qualified contractor will receive notification via correspondence from the Acquisition Unit Chief and will be eligible to receive work procured through the consultant engineering selection process.

7. Denied Applications. If a consultant's application is denied, the consultant may address any deficiencies and resubmit for consideration any time after four (4) months from their receipt of the letter by which the Department notified them of the rejection of their application. If a consultant chooses not to address deficiencies but instead opts to protest the denial of its application, they must do so in writing to the following address:

Secretary of Transportation  
c/o Administrative Docket Clerk  
400 North Street, 9th Floor  
Harrisburg, PA 17120-0096  
Telephone: 717-772-8396

A protest of a denial must be received by the Department within seven (7) days from the date the consultant received the letter from the Department notifying the consultant of the rejection of its application. The protest letter must set forth in detail all grounds upon which the consultant asserts that the rejection of its application was improper. Because the rejection of a consultant's application is a determination that the consultant has failed to establish that it satisfies the criteria for being deemed a responsible proposer for contracts for the Right-of-Way Acquisition Program, protests will be governed by the procedures for addressing protests for the solicitation or award of a contract set forth in Section 1711.1 of the Commonwealth Procurement Code, 62 Pa.C.S.§ 1711.1.
8. Pre-qualified List. The official list of qualified acquisition consultants is maintained by the Acquisition Unit on the Department network at P:\penndot\shared\ROW Acquisition\Acquisition Consultants and will be updated periodically. At that time, previously approved consulting firms which have not completed Acquisition Services for the Department during the three previous years will be removed from the pre-qualified list.

9. Utilization. When using the consultant engineering selection process, Work Breakdown Structure (WBS) Code 2.10.7 must be selected for Right-of-Way Acquisition Services. The services under this code include seven primary tasks: Relocation Assistance Plan/Problem Identification, Appraisal Planning/Services, Negotiation, Title and Settlement Services, Relocation Assistance and Payments, Property Management, and Other Services. Although the language in the statement of work cannot be changed, it can be tailored to individual projects by entering comments under "Detail" in ECMS. Detailed descriptions of each area are contained in the ECMS Work Breakdown Structure Code 2.10.7.

10. The District Right-of-Way Administrator must be involved with development of the agreement to determine what activities are required and to offer project-specific details. While many details can be modified or added, certain details such as those involving the procurement or review of appraisals cannot be modified. See Chapter 2, Sections 2.09.E for further clarification regarding the interplay between acquisition and appraisal services.

11. Pre-qualification does not guarantee services will be utilized. It merely establishes a firm's eligibility to offer acquisition services to the Department.

12. The Department reserves the right to rescind eligibility status if key staff is lost. Pre-qualification is based on the experience of the current staff at the time the qualification is determined. If any staff members whose experience contributed toward the required experience on the pre-qualification worksheet leave a firm, the firm must provide written notification to PennDOT within 30 days. If that staff member's experience was necessary to meet the qualification criteria on the initial application, the firm must submit a revised application and qualification worksheet to demonstrate that the firm still meets the criteria. Upon receipt of the notice and revised application (if necessary), the Department will review the firm's qualifications to ensure that the firm still meets the minimum criteria. Failure to make timely notification of staff changes may result in immediate removal from the pre-qualified list.

3.02 THE NEGOTIATION PROCESS

A. Pre-Negotiation Activities.

1. Assignment of Claims to Negotiators—Negotiation Log. After all program approvals are obtained for a project, ROW Office assigns claim numbers and the District can proceed with acquisition. At this point, the District Right-of-Way Administrator and Chief Negotiator should make a determination regarding which negotiation procedure to use, standard or streamlined (i.e., negotiations by mail), and assign claims to individual negotiators.

Each District Chief Negotiator should maintain a negotiator's log. The log should be set up to reflect each claim assignment and activities on the claim that reflect the current status of the claim.

2. Establishment of Individual Claim Files. Upon receiving an assignment from the Chief Negotiator, the negotiator will establish a claim file in ROW Office for each claimant identified on the Project Damage Estimate.

Pertinent information such as a deed, plot plan or plan sheet, title and lease information must be included in the folder.

For claims involving relocation, complete the interview information on the appropriate ROW Office screens. Include information requested during the relocation interview. For residential claims, include income, rent and utilities, and mortgage information. For business claims, include tax, lease, license, mortgage and personal property information.

Information pertaining to tenant interests in the real property, such as tenant-owned improvements or coal
Chapter 3 - Acquisitions

In order to acquire land, a description or plan thereof shall be prepared, containing the names of the owners or reputed owners, an indication of the estate or interest to be acquired, and such other information as the Department deems necessary. Execution by the Secretary or Designee of such description or plan shall constitute authority for the filing of a declaration of taking in accordance with the Eminent Domain Code, 26 Pa.C.S. §101 et. seq. The description or plan shall be filed as a public record in the county courthouse.

Right-of-way plans, including property plots, are the basis for determining all property damages that may be incurred in the construction of a highway. They are also the legal record indicating the location, the extent and the character of any acquisition of right-of-way and shall be of accuracy commensurate with the construction plan data.

In order to acquire land, a description or plan thereof shall be prepared which must include the following:

1. Title/Real Property Interests: Information containing the names of the owners or reputed owners, an indication of the estate or interest to be acquired, and such other information as the Department deems necessary.

2. Design/Engineering Survey.

3. Legal Acquisition Requirements: Execution by the Secretary or Designee of such description or plan shall constitute authority for the filing of a declaration of taking in accordance with the Eminent Domain Code, 26 Pa.C.S. §101 et. seq. The description or plan shall be filed as a public record in the county courthouse.

For a complete discussion of right-of-way plans, refer to Publication 14M, Design Manual, Part 3, Plans Presentation. If utilities are present within the project's limits, also refer to Publication 16M, Design Manual, Part 5, Utility Relocation.

C. Negotiation Contacts, General.

1. Personal Contacts, Appointments. On a typical claim, all contacts must be made in person and all offer letters must be hand-delivered to the owner. The exceptions to this rule are those situations where the owner is represented by an attorney, lives out of the District or state, is otherwise unreachable, or where other negotiation-by-mail procedures apply. See Section 3.02.C.2-6.

It is accepted business practice for the negotiator to make an appointment for each visit with an owner, tenant or attorney since unannounced visits are often unwelcome and counter-productive.

Establishing the time and place for a visit should be left to the claimant's discretion, within reason, except in the most unusual circumstances.

All appointments must be kept promptly.

Whenever possible, appointments should be made to include all parties to the offer being presented. For example, both the husband and wife should be present if the property owners are married.

2. Owner Represented by an Attorney, Form RW-331. When the owner advises the District that an attorney has been retained, the District must request a letter of representation from the attorney. Once the District receives the letter of representation, an Attorney Acknowledgement Letter, Form RW-331 is to be sent to the
attorney. A copy of the letter of representation and Form RW-331 must be forwarded to the Central Office Administration Unit for inclusion in the file.

After an attorney is retained, all negotiations are conducted with the attorney except in those instances where the negotiator requests and receives permission from the attorney to discuss the claim with the owner. This exception is especially important in claims involving relocation assistance.

If there are two or more owners on a claim, not all of who are represented by an attorney, direct negotiations may be conducted with the unrepresented owners.

When an attorney represents an owner, original correspondence is sent to the attorney and copies are sent to the owner.

3. Contacts with Owners Living in Another District. When the owner resides in another District, a copy of the file should be forwarded to the District where the owner resides together with a request for that District to assign a negotiator to personally conduct the negotiations. The originating District will process any claims for payment and will handle the condemnation functions, if necessary.

This procedure does not apply when negotiations-by-mail procedures are in use.

This procedure does not apply when the owner lives in close proximity to the project (e.g., bridge job on the county line) or when the originating District authorizes employees to travel to the other District in order to save time.

4. Contacts with Owners Residing Out of State or Unreachable. When an owner resides out of state, all documents and other correspondence will be mailed to the owner via certified mail, return receipt requested.

Phone contact should also be maintained with the owner in order to ensure that the owner has a complete understanding of the mailings.

The Department may also use this procedure when an owner is otherwise unreachable; that is, refuses to permit personal contact.

Even though a mailing is used, the negotiator retains the responsibility of fully documenting the Claimant Contact Maintenance screen in ROW Office, processing payments, and for all other procedures associated with contacting the owner.

5. Unknown or Unlocatable Owners. Normal procedures cannot be used when the owner is unknown or unlocatable. Refer to Section 3.03.N.

6. Negotiation by Mail for Claims Under the Waiver Valuation (WV) Process or where an appraisal has been performed and damages are $10,000 or less. In an effort to streamline right-of-way procedures for claims of $10,000.00 and less, the following option is provided to permit the pre-negotiations contact and the first negotiations contact to be made by mail when there are no demolitions or relocations on the parcel.

a. Pre-Negotiations Contact. Form RW-371, Pre-Negotiations Letter, may be mailed in lieu of a personal pre-negotiation contact. The enclosures that must be sent with the letter are:

(1) A property plot that clearly shows (by color coding or other method) the right-of-way taking.

(2) Claim Portfolio (Form OS-10)

(3) Publication 83, When Your Land is Needed for Transportation Purposes

Note that Form RW-371, Pre-Negotiations Letter, also serves the function of the ten-day Notice of Entry - Appraisers, Form RW-299. Therefore, mailing by certified mail, return receipt requested serves as evidence of providing the required ten-day notice.

b. First Negotiations Contact. Upon approval of an offer amount, a Form RW-356 Series, Offer Letter, and Form RW-356A Series, Summary of Appraised Compensation, will be prepared in the usual manner.
The District Right-of-Way Administrator will have the option of having the offer letter delivered by personal contact or by mail.

Form **RW-371A, Offer Transmittal Letter**, shall be used to mail the offer to the claimant. The enclosures that must be sent with the letter are:

1. **Form RW-356 Series, Offer Letter**
2. **Form RW-356A** (if needed)

### c. Subsequent Negotiation Procedures

Within two weeks of mailing the offer, the negotiator shall telephone the claimant to discuss the claim and answer any questions. Where this occurs, an entry documenting the negotiations progress must be entered in the ROW Office Claimant Contact screen.

If the claimant requests a personal visit, an appointment must be made immediately. Even if the claimant does not request a personal visit, the negotiator should volunteer to visit if he or she feels it would be helpful. Remember that the paramount obligation of the Department is that all negotiations must be carried on in good faith and if good faith negotiations on a parcel require a personal contact, then a personal contact will be made.

If the claimant indicates a willingness to settle, an appointment will be made to have the appropriate agreement of sale and deed completed, along with the settlement statement. Also, arrangements should be made to view the property owner's deed and current tax receipts, if necessary, to complete the negotiator's title certification.

On the other hand, if it is not necessary to obtain title verification from the owner, and the owner has accepted the offer and is willing to complete the entire acquisition by mail, this may be done.

Aside from the optional negotiating procedure described above, all other negotiating requirements remain in effect, and must be entered into the Claimant Contact Maintenance screen in ROW Office to document negotiations progress.

### 7. Hostile Claimants.

It is the Department’s policy that all employees, agents and consultant staff, including those performing field work, have the right to work in an environment free from harassment, actual threats, unwanted physical contact and clear implications of violence. Explaining a public project to a landowner for which right of way is needed from their land normally presents tense and sometimes emotional moments. Common sense, however, dictates when these moments cross the line into hostility. The following is offered as guidance:

a. **Harassment.** Harassment is a course of conduct directed toward a specific person that denigrates or shows hostility. It can include, but not be limited to, words, gestures and actions which tend to annoy, alarm and abuse (verbally) a specific person.

b. **Actual threats.** Actual threats involve a course of conduct directed toward a specific person evidencing a clear intent of physical harm. It can also include, but not be limited to, words, gestures and actions threatening physical harm to a specific person.

c. **Unwanted physical contact.** Any unwanted, uninvited physical contact to the person or something closely attached thereto, including but not limited to, any motor vehicle being used by the person.

d. **Clear implications of violence.** Clear implications of violence involve a course of conduct, directed to either a specific person or generally, that threatens a specific act of violence by a specific means. It includes, but is not be limited to, words, gestures and actions referencing the use of firearms, explosives or any other type of specific device or weapon for violent purpose. The actual presence of firearms or any other type of weapon, standing alone, can be considered a clear implication of violence in the context of the totality of the circumstances.
A claimant engaging in harassment, actual threats or clear implications of violence can be considered a hostile claimant. Where this conduct is observed by or directed to Department employees, agents and consultant staff in the course of performing their required acquisition-related responsibilities, the contact is to cease and personnel may promptly remove themselves from the situation. The conduct is to be immediately reported to the District Right-of-Way Administrator and contemporaneously documented in the claim file.

At the discretion of the District Right-of-Way Administrator, a determination can be made to provide all further claimant contact for all purposes only through regular or certified mail based upon the necessary step in the acquisition process. This includes notice of the filing of a declaration of taking, if necessary.

Where a declaration of taking is filed, the District may elect Sheriff's service as the first option, as opposed to service by mail requiring signature. In no event should either personal service or posting and publication be used with a hostile claimant.

Depending upon the severity of the conduct, the matter may be reported to appropriate law enforcement authorities at the discretion of the District Right-of-Way Administrator. Note however that hostile conduct under this policy may fall short of actual criminal conduct in order for the District to direct that all further contacts be by mail only.

D. Disclosure of Valuation Documents.

1. General Policy. It is the policy of the Department that valuation documents may be disclosed to property owners upon their request provided that the property owner provides a copy of their valuation documents to the Department in return.

2. Method of Disclosure. The District will complete Form RW-360 and may attach thereto:
   
   a. The appraisal report or any part thereof, or
   
   b. The waiver valuation worksheet, RW-356WVW, or any other data deemed relevant (such as comparable sales sheets, cost estimates, etc) used to prepare a WV.
   
   c. The facts and data upon which the determination is based, if the determination of value (DOV) method is used on the claim.

3. Process. The property owner will be advised of the Department's disclosure policy at the time of the first negotiation contact, either the pre-negotiations contact or the initiation of negotiations, whichever applies.

   The property owner will be advised of his or her right, as indicated in Section 710 of the PA Eminent Domain Code, to receive up to $4,000.00 for Appraisal, Attorney or Engineering Fees. The property owner will be advised that he or she is entitled to this reimbursement whether they wish to exchange valuation documents or not.

   Once the property owner requests the valuation documents, they will be made available at the earliest possible date. The District Chief Appraiser, or designee, will provide a copy of the appropriate document(s) to the negotiator for delivery to the owner. If negotiations by mail procedures are being used on the claim, the documents may be mailed to the owner and the negotiator will offer to meet with the owner to review the documents.

   One copy of the document(s) will be provided per claim. In the case of multiple owners, the documents will be given to the owner (or owners designated representative) who made the request.

   The District Right-of-Way Administrator, at his discretion, may authorize the release of the documents prior to receipt of the owner's documents.

   The claim file must be documented that a copy of valuation document has been disclosed to the property owner or their attorney. A copy of the valuation document disclosed must be maintained in the file with the cover letter (Form RW-360) showing to whom it was provided.
The negotiator will provide answers to questions about the valuation documents during the course of negotiations. The negotiator will inform the property owner that all questions and inquiries must be directed to him/her after the initiation of negotiations.

Refer to Chapter 2, Section 2.22 for information on this policy as it relates to the Appraisal process.

4. Right to Know Law Requests. Any requestor may be entitled to copies of a valuation document through a formal request under the Right to Know Law. Disclosures under this law are separate and apart from the voluntary disclosure policy set forth above and disclosures made by counsel when a claim is in litigation.

Right-of-Way personnel must cooperate with the district right to know officer and those in the Office of Chief Counsel assigned to handle right to know requests. If you have questions, they will answer them. Those in the Office of Chief Counsel assigned to handle right to know requests are not the same as those who handle right-of-way litigation, but coordinate with the Real Property Division on right to know requests as appropriate.

Incomplete or preliminary valuation documents should not be forwarded to the Office of Chief Counsel for possible disclosure. Only the recommended valuation document which formed the basis of payment should be forwarded. If no payment has been made, the Office of Chief Counsel should be so informed.

If valuation documents are forwarded by the Right-of-Way Unit for possible disclosure under the Right to Know Law, the claim file must be documented to reflect what was forwarded. A copy of the valuation documents forwarded must also be maintained in the file with the cover letter showing to whom they were provided. If the Right-of-Way Unit obtains a copy of the right to know request and/or answer that is ultimately made to the request, those documents must also be maintained in the file.

E. Pre-Negotiations Contact.

1. General. On claims involving the acquisition and or relocation of a business, it is mandatory that the pre-negotiation contact be separate from the initiation of negotiations (first offer contact).

On all other claims, the pre-negotiation contact is optional.

Success or failure of the acquisition depends to a large extent upon the proper presentation of all the details relating to the property and the attitude and personality of the negotiator.

The primary reason for this initial contact is to establish a centralized (i.e., Right-of-Way specific) channel of communications with the owner and to build rapport for subsequent actual negotiation. The major thrust of this pre-negotiation contact is to establish a working relationship with the claimant.

The negotiator will attempt, whenever possible, to make the pre-negotiation contact with the property owner prior to making contact with the tenants in occupancy.

As an alternative for claims where the WV process has been used or an appraisal has been performed and damages are $10,000 or less, the pre-negotiation contact may be made by mail. See Section 3.02.C.6.

As another alternative, a staff appraiser may make the pre-negotiation contact at the same time he or she visits the owner to inspect the property. The appraiser gives the owner the right to accompany him or her on the inspection of the property and conducts the pre-negotiation contact. If the appraiser makes this contact, he or she must follow all the procedures set forth below. The appraiser should also document the Claimant Contact Maintenance screen in ROW Office to show that he or she gave the owner the opportunity to accompany him or her on the inspection of the property.

2. Preparation for the Pre-Negotiations Contact. As an integral part of the pre-negotiation study, the negotiator is required to analyze all pertinent engineering plans so that he or she will be in a position to thoroughly explain the effects of the taking on the property.

In reviewing the plans, the negotiator is actually preparing to answer the questions posed later by the owner. The negotiator must be familiar with details, such as the difference between the amount of set-back before the acquisition and the distance after the acquisition. The negotiator must determine from the profile the grade in front of the property, and would likewise be required to determine from the cross-section the elevation of an
improvement; the changes from existing pavement to new pavement; pavement pitch; the depth of ditches; and the height and slope of embankments. Will the highway be higher or lower, wider or narrower, closer or further from the improvements? Will access be impaired? The property owner is entitled to a full explanation of all differences in the property between the "before" and "after" situations.

The importance of being thoroughly familiar with each property and how it will be affected by the proposed improvement cannot be over-emphasized. If any engineering question should arise in any phase of negotiations and the negotiator does not know the answer, he or she must refer such questions to the District Right-Of-Way Administrator.

If the claimant is an owner or tenant-occupant of a residence or business being displaced by the project, the person conducting the pre-negotiation contact must also review the relocation information gathered during the pre-acquisition survey and be prepared to answer questions from the owner and/or occupants relative to the relocation assistance program.

3. Explanation of the Acquisition Procedures. It is essential in these preliminary discussions to outline to the owner the general procedure that is followed in the acquisition of property and the sequence of events.

The owner is to be made aware that an appraiser will be calling for an appointment in the near future. (Quite often, Form RW-299 has already been mailed advising that it will be necessary for appraisers to inspect the property to place a value on it).

Although the negotiator is absolutely precluded from making any specific reference to the possible appraised value of the property, it is acceptable to discuss the appraisal process and approaches used to determine the value of the property.

The owner will be advised of the Department's policy to make a copy of the valuation documents available. See Section 3.02.D above.

The owner is to be advised of the estimated date that actual negotiations will commence. The negotiator should explain the reason why an exact date cannot be set since the time required for title certification and appraisal completion varies.

Although the purpose and tenor of the pre-negotiations call is not directed towards substantive discussions or negotiations, the owner may raise certain questions. In some instances, the owner may ask about the advisability of retaining an attorney or an appraiser.

The negotiator is not to voice an opinion or comment on such a course of action, other than to advise the owner that the Eminent Domain Code (Section 710) provides for a limited reimbursement, not to exceed a total of $4,000.00, as a payment toward reasonable expenses actually incurred for appraisal, attorney and engineering fees for the acquired property. Refer to Chapter 4, Section 4.03.P or 4.05.I.

4. Delivery of Portfolio (Form OS-10). The Department provides a portfolio for each property owner and/or persons displaced (i.e., residential or non-residential) to help people who are affected by the taking understand the acquisition and/or relocation process.

The portfolio is delivered during the pre-negotiation contact and must contain:

a. A copy of the Publication 83, *When Your Land is Needed for Transportation Purposes*, to answer the most commonly asked acquisition questions.

b. For owners, copies of a plot plan or tear sheet for the property being taken. This exhibit shows the extent of the taking, and it is extremely important that it is properly explained. Whether the taking is total or partial, the presentation of this exhibit should be accompanied by a general description of the entire project and the resulting community benefits. If the taking is partial, the negotiator must explain: the "before and after" situation as it affects the property, including the proximity to the highway; access features; traffic patterns; the grade of the driveway; cuts and/or fills, ditches, pipes, etc; and the area of land and improvements to be acquired.

c. Form RW-370, Letter to Property Owner, Official Plan Signed. This letter accompanies the plot
plan and is the first official notice that right-of-way is required.
d. For persons displaced, a general information notice, Publication 47, Bulletin 47, A General Guide to the Relocation Assistance Program of the Pennsylvania Department of Transportation This booklet fully outlines the relocation assistance program and benefits. The negotiator should page through the booklet with the person and point out the specific sections that apply to their situation and suggest that they review the sections in preparation for future discussions. It is particularly important that the negotiator explain eligibility for relocation payments and that if the person moves too soon, he or she may forfeit relocation benefits.

5. Solicitation of Information. The pre-negotiation contact should be used as an opportunity to solicit specific information from the owner or tenant.
   a. Lease Information. If any part or all of the acquired property is leased, a copy of the lease must be obtained and given to the Chief Appraiser so that a legal review can be made and the appraiser can be advised of the effect of the lease, if any, on valuation.

   b. Tenant-Owned Improvement Information. If the property is tenant-occupied, particularly by a business with machinery and equipment, or is otherwise improved with structures or advertising devices, it is essential that the ownership of all improvements is clearly established and that tenant-owned improvements are identified. This information must be solicited, documented and passed on to the appraiser so that the appraisal can include all rights, title and interest to be acquired and that the offer will contain a proper allocation of damages between the property owner and tenant. It is advisable to obtain Disclaimers of Interest for Tenant Owned Improvements before the owner or tenant are informed of the damage amounts on these items. This information must be included in both the owner and tenant claim files.

This information is also solicited during the business pre-acquisition survey or residential pre-acquisition survey (Forms RW-593AR and RW-593AB).

6. Claimant Contact Maintenance Screens. These ROW Office functions are the formal record of all actions pertaining to each individual claim. The claim file must "speak for itself."

   a. The following requirements apply:
      (1) All entries in ROW Office must be complete and accurate.
      (2) All claim identification data must be fully entered.
      (3) All information called for on the reports must be provided.

   b. Every contact must be documented with the following information:
      (1) Manner of contact – telephone, personal visit, letter, and date.
      (2) Place of meeting (e.g., attorney's office, claim site).
      (3) Names of all persons attending the meeting.
      (4) Brief narrative of points discussed.
      (5) Any requests or demands made by the owner.
      (6) Any promises or obligations made by Department representatives.
      (7) Conclusions or agreements reached.

Every contact must be documented, as noted above, regardless of who made the contact–appraiser, negotiator, relocation advisor, property manager, District Right-of-Way Administrator, District Executive, Central Office representative, or other Department representative.
In addition to right-of-way acquisition activities, a report must be maintained for acquisition of other real property (e.g., maintenance stockpile sites) and for negotiations regarding uneconomic remnants and disposition activities.

**F. Initiation of Negotiations, First Offer Contact.**

1. **Preparation for the Initiation of Negotiations.**

   Where an offer is based upon an approved appraisal report or waiver valuation for the claim, it is critically important that the negotiator study and understand the document in order to properly negotiate the claim. Under no circumstances are negotiations to begin until this has been done. It is this familiarization and understanding that gives the negotiator the confidence in the valuation necessary to be successful. A negotiator will not be effective if he or she does not completely understand the offer.

   Initiation of negotiations is the first negotiation contact where the written offer of just compensation is delivered. For persons displaced, the date may be advanced by the issuance of a Notice of Intent to Acquire. See Chapter 4, Relocation Assistance.

   a. **Review of Waiver Valuations (WV).** The Department has an extensive and detailed policy for claims that it determines can be effectively and expeditiously negotiated without an appraisal. This policy is found in Chapter 2, Appraisals, specifically Section 2.12.

      Where an offer has been made pursuant to the WV process the Department has either determined that damages would be less than $10,000 (Type I) or has used the WV process where damages were anticipated to be at least $10,000.01 but not more than $25,000 (Type II) and the claimant has not specifically requested an appraisal. Use of the RW-356WV requires the waiver valuation worksheet (RW-356WVV) be included in the claim file. Where an offer has been made to the claimant, the RW-356WV will indicate that a waiver valuation was used to determine just compensation and refer the claimant to Publication 83, When Your Land is Needed for Transportation Purposes, which informs them of their right to an appraisal.

      Where correctly performed, the WV would have been arrived at through one of three acceptable methods: a Facts & Data Book; a Prior Approved Appraisal Report; or a General District Compilation. The negotiator must be aware of how the WV offer was prepared in order to properly communicate it to the claimant.

      At no time will the negotiator refer to the WV as an appraisal as that is not what it is. The WV is a summary damage estimate that does not contain any reference to the fair market value of the entire property. Instead various data sources are used to calculate payments for specific line-items of damage resulting from the taking. These most often include a calculation for direct damages; a calculation for temporary construction easements; and a calculation for costs of adjustment. See Form RW-356WV.

      Direct damages involve payment for acquisition of permanent interests in land. Examples are the areas taken if fee simple or permanent easement interests such as slope easements, drainage easements, etc. Direct damages can be paid based on a dollar value per unit (per square foot or per acre). Temporary construction easements are valued in a similar manner, with the difference being that they are intended to be temporary and dissolve following construction. Therefore their dollar value per unit may be lower than the taking of permanent interests. Finally, where certain improvements to real estate such as landscaping, sidewalks, driveway adjustments, or other improvements (such as mail boxes, lamp posts, etc.) are in the area of taking, Department policy permits these to be paid for in the WV process by reference to cost manuals or other data to approximate replacement costs as costs of adjustment.

      The Department's Disclosure of Valuation Documents policy, Section 3.02.D applies to WV claims in the same manner in which they apply to claims where an appraisal has been prepared.
SPECIAL RULE AS TO NEGOTIATIONS: A waiver preparer may prepare the WV and negotiate an acquisition for low-value, non-complex acquisitions where the value of the acquisition is $10,000 or less (i.e., Type I). This rule is adopted from the Uniform Act and made applicable to all acquisitions subject to Publication 378. 49 CFR Section 24.102(n)(3).

b. Review of Appraisals.

Before approaching the owner with an offer, the negotiator should, if possible, review the comparable sales described in the appraisal report. This is necessary for an interpretation and understanding of the value patterns on the route and is essential for proper comprehension and acceptance of the individual appraisal report by the negotiator.

The negotiator is not to contact the owners of these comparable sales properties for an inspection of the premises. In most situations, an external viewing of the properties is sufficient.

If the negotiator feels that the report is in error, he or she is to confer with the District Chief Negotiator and outline the questionable points. If the Chief Negotiator agrees that there is a problem that merits review, he or she should confer with the District Chief Appraiser. The transmittal form RW-372 may be used to document the request for review. Until this appraisal question has been resolved, the negotiator is not to make any negotiating contacts with the owner.

It should be emphasized that the negotiator, in the study of the appraisal, is not acting as another appraiser or in an appraisal review capacity. Rather, the negotiator is expressing concern that the appraisal report evidences a complete understanding of the particular appraisal problem involved. The negotiator's belief in the appraisal is based upon confidence that the appraiser handled the problem satisfactorily, and not whether or not the negotiator agrees with the final dollar amount established.

In order to effectively discuss and explain the offer to the owner, the negotiator must have a basic understanding of the real estate appraisal process, including the approaches to value. In addition, the negotiator should be familiar with the sections of the Eminent Domain Code that explain just compensation, measure of damages, and fair market value.

Refer to Chapter 2, Section 2.03.

c. Review of Form RW-663 or RW-663B for Businesses. In conjunction with reviewing the appraisal, the negotiator should carefully check the items on the Inventory of Improvements (Form RW-663 or RW-663B) to become familiar with those items listed as real property. Consequently, the negotiator should then be able to explain to the owner exactly what is being considered in the offer.

d. Review of Replacement Housing Supplement Offer Computation. If the negotiator must also act as the relocation advisor on a claim, a thorough review of the replacement housing supplement offer computation must be made. All aspects of the supplement must be reviewed so that the negotiator/relocation advisor is able to explain the computation to the person(s) displaced. This is especially important in those cases involving issues such as carve-outs or major exterior attributes.

Refer to Chapter 4, Relocation Assistance, for a discussion of relocation assistance payments and services and the duties of a relocation advisor.

2. Preparation of Offer Documents.

a. Preparation of Offer Letters/Revised Offers. Offer letters are normally prepared by the Appraisal Section. Once an offer amount is approved, the appraiser will select the appropriate offer letter, as discussed below, and have the approved amount typed in. The offer letter will not be dated at this time. The undated offer letter is forwarded to the District Right-of-Way Administrator who will sign and date it with a date stamp. Copies are then made and distributed as follows:

(1) The original is delivered to the claimant.

(2) One copy for the District file.
(3) One copy for the Central Office file.

b. Attachments to the Offer Letter. Along with the initial written purchase offer, the owner will be given a written statement of the basis for the offer of just compensation, which will include:

(1) A statement of the amount offered as just compensation, Form RW-356A. Normally, the offer letter will contain a summary of just compensation. If the offer letter does not contain a summary of just compensation, then it is necessary to attach Form RW-356A. In the case of a partial acquisition, the compensation for the real property to be acquired (direct damages) and the compensation for damages, if any, to the remaining real property (indirect damages) shall be separately stated.

(2) A plan of the property to be acquired. The plan must provide a description and location of the real property and the type of right-of-way to be acquired. This plan can be in the form of a plot plan, property plot or plan sheet if not previously provided.

(3) An identification of the buildings, structures and other improvement, Form RW-663, or RW-663B (including removable building and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Refer to Section 3.03.C when improvements are tenant-owned.

c. "Stale" Offers. It is extremely important to avoid delivering a "stale" offer letter, one with a date that is ten or more days old. Prior to the actual delivery of the offer, the negotiator must check to make sure that the offer letter is not stale. If it is stale, the negotiator must notify the Chief Negotiator, who will have the letter redated.

d. Advance Preparation of Settlement Documents. In order to encourage and expedite a settlement, the agreement of sale should be prepared prior to the first contact. At the discretion of the negotiator and depending upon the complexity of the claim, and if it is felt that a settlement is possible, the entire settlement package may be prepared prior to any negotiation contact, including the first contact.

e. Revised Offer Letters. Where a revised offer is warranted, the form RW-356RO is used to revise the offer. The RW-356RO is to be attached to the previous offer letter for the purpose of updating the offer.

Revised offers may be appropriate where:

(1) A change in the character or condition of the property being acquired occurs.

(2) Information presented by the owner indicates a need for a new appraisal or waiver valuation. If the latest appraisal or waiver valuation indicates that a change in the purchase offer is warranted, the District Right-of-Way Administrator shall offer that amount to the owner in writing. See §§24.102(d) and (g).

(3) A significant delay has occurred since the time of the original appraisal or waiver valuation.

3. First Offer Contact.

a. Preliminary Discussions with Owner. Negotiations are officially initiated by the personal delivery of the Offer Letter, Form RW-356 series, to the owner by the negotiator. In limited circumstances, as discussed in Section 3.02.C, the offer may be mailed.

This contact is the most critical of any that the negotiator will undertake. The particular sequence of the presentation is generally at the discretion of the negotiator. For example, the negotiator may sense that the preliminaries before the actual dollar offer are being wasted on the owner in their anxiety to hear the actual amount of the offer. In such a circumstance, it might be prudent to state the amount of the offer and then proceed with the requisite information data and negotiating points.

Experience has shown that many of the matters discussed by the negotiator with the owner on the pre-negotiations call will be brought up almost at the outset of the conversation. Again, it might become
necessary to review and explain items such as plot plans, the nature of the taking, or the effect of the taking on the remainder of the property, if a partial taking.

Negotiations must, in every instance, be conducted in an atmosphere of full disclosure. The assumption that an owner has full knowledge of their rights and those of the Department can never be made. Each owner is entitled to a full explanation of the entitlements provided by law.

b. The Right to Receive Estimated Just Compensation. Although the Department has an almost uncontestable right to purchase private property for highway purposes, this right is limited in the Constitution by a requirement for payment of "just compensation." The owner should be advised of this requirement.

The owner is to be advised that, even though the Department has the right to purchase the property necessary for the project, failure to reach an agreement does not in any way weaken the owner's legal right to compensation. If an agreement cannot be reached, the owner is still entitled to a payment of the offer as "estimated just compensation." This payment will not act to prejudice any future court action against the Department in case a settlement is not ultimately reached.

The owner is further to be advised that he or she is entitled to reimbursement for expenses that are incurred in connection with the transfer of the property to the Department.

The rights of the parties can be summarized as follows:

(1) The Department's right to purchase the property.
(2) The owner's right to receive just compensation for the land needed for highway purposes.
(3) The owner's right to receive payment of the offer as estimated just compensation without prejudice.
(4) The owner or tenant-occupant's right to receive, when eligible, the assistance and benefits provided by the relocation assistance program.
(5) The right of an owner or tenant to litigate and/or to accept the Department's offer of compensation at a later date.

c. The Formal Offer. Logically, and without marked transition, the negotiator leads to the formal offer. The delivery of the appropriate offer letter (Form RW-356 series) is not something to be hedged or presented in an apologetic tone, but must be accomplished in a confident, forthright manner. Anything less may raise doubts on the owner's part.

Many negotiators tend to underestimate the positive advantage they have in making the offer. To many owners, the knowing of what the actual offer is lessens their wariness toward the negotiations process.

If the owner had previously requested a copy of the valuation documents, they should be presented and explained at this time. See Section 3.02.D above.

The negotiator should proceed to a discussion of the actual valuation documents, starting first with a generalized description of the approaches to value. Although the approaches will be treated in a general manner, the presentation will logically emphasize and center on that particular approach given the most weight in the final computation of value.

If the owner had not yet been given the opportunity to request the valuation documents, the negotiator should advise the owner of the Department's policy with respect to disclosure of valuation documents. The negotiator will exchange valuation documents with the owner at the earliest possible date.

d. Offers of Relocation Assistance and Payments. Usually the negotiator must also act as the relocation advisor. The negotiator, therefore, must become thoroughly familiar with the duties and responsibilities explained in Chapter 4, Relocation Assistance.
Specific requirements for making supplemental offers to residential owners and tenant-occupants are found in Chapter 4, Section 4.03; business payments are discussed in Chapter 4, Section 4.05; and relocation advisory assistance is fully explained in Chapter 4, Section 4.06.

G. Number of Contacts. A minimum of three personal negotiating contacts should be made with each owner, each of which are documented in the ROW Office Claimant Contact screens. Generally, it will take at least three serious negotiating sessions to conclude whether or not an amicable settlement can be obtained. If the negotiator feels that an amicable settlement is possible, negotiation efforts should continue. When the differences between the Department's position and the owner's position appear irreconcilable, condemnation procedures should be initiated. See Section 3.08.

There may be circumstances when three negotiating contacts should not be made:

1. The owner settles amicably on the first or second contact.
2. The owner threatens bodily harm should the negotiator return to the property.
3. The owner says there is no use to return.
4. The owner's attorney refuses any further conferences and initiates legal proceedings.
5. The owner is ill and cannot cope with any further visits.
6. The owner is on an extended vacation or is hospitalized. In this case, the negotiator must file a Declaration of Taking to meet the letting schedule.
7. The claim is being negotiated by mail.

The reasons for not making three negotiation contacts must be fully and clearly stated on the Claimant Contact Maintenance Screens.

It is also important that there be no inordinate delays between contacts. As long as a claim is in active negotiation, the interval between contacts should be no longer than two weeks. This means that the required three personal negotiating contacts should all be made within approximately a 30-day period. Contacts after the third personal visit may be by telephone if the purpose is to check on the owner's progress in obtaining an appraisal. However, some kind of contact must be made within 2-week intervals in order to keep negotiations alive. Such contact must be recorded on the Claimant Contact Maintenance Screen.

The total number of contacts and the intervals between them will be governed also by the value and complexity of the acquisition. Obviously, a minor partial taking of unimproved rural land would warrant less time and effort than acquisition of an improved property. In every case, the owner must be given reasonable time, Federal regulations suggest 30 days, to consider the offer and to obtain professional advice, if desired, prior to condemnation.

H. Sequencing of Negotiations.

1. Before making the formal offer, the negotiator must discuss the mechanics and rationale of the valuation document used to establish the offer (See Section 3.02.F). The negotiator should also explain the documentation and support required for the Department's offer. This assures uniformity throughout the project; each owner is treated in the same manner and each claim settled on its merits rather than on the negotiating ability of the parties.

2. It is part of the negotiating process to discover any hidden or camouflaged problems that may be preventing agreement and, once discovered, to do whatever is possible to solve the problem. Money may not always be the problem. The negotiator must make a diligent effort to obtain an amicable settlement with the property owner at the approved value provided.

3. The negotiator must consider reasonable counter-offers presented by the owner. If a counter-offer is deemed to be unreasonable, a brief summary must be documented in the claimant contacts. When the owner makes a counter-offer, the negotiator should discuss the counter-offer and request the reasons or basis for the
Counter-offers presented by the owner may provide the basis for an administrative settlement. Best practice is that counter-offers should be in writing (or email). Where a dispute of value occurs, the administrative settlement tool may be used. See Section 3.04 for Administrative Settlement policy. Administrative settlements provide the flexibility to settle reasonable differences in opinion of value and enables further negotiation.

4. Negotiators are permitted to suggest a settlement amount and explain clearly to the owner that their authority only extends to recommending a settlement at the amount suggested to the District Right-of-Way Administrator who may or may not agree to settle the claim at that amount with the following conditions:

   a. The negotiator’s suggested settlement amount is communicated to the owner using the appropriate acquisition document(s) for the claim.

   b. the owner represents that they will settle at that amount if approved by the District Right-of-Way Administrator.

NOTE: Three contacts are not necessary if at any time during the above, the claim can be settled. See Section 3.02.G.

### 3.03 SPECIFIC OFFER/ACQUISITION SITUATIONS

A. Acquisition of Land Only.

   1. Offer Forms RW-356 and RW-356WV. For land-only claims appraised using the standard before-and-after technique, Form RW-356 will be used to convey the offer to the owner.

   A plan of the property being acquired should be attached to the offer letter.

   2. Acquisition in Fee Simple, Forms RW-317AF and RW-317F. Since it is Department policy to acquire all real property designated on right-of-way plans as required right-of-way in fee simple title, Forms RW-317AF and RW-317F will be used for most acquisitions. These forms allow the acquisition of the required right-of-way or other fee estates plus most other easements with only one sales agreement and deed. When acquiring required right-of-way, any easement approved in Publication 14M, Design Manual, Part 3, Plans Presentation with the exception of a highway easement, aerial easement, or substitute right-of-way for a utility can also be acquired on these forms.

   Normally, the lower check box should be checked to designate that the acquired areas are shown on an attached right-of-way plan. The upper check box should only be checked if the required right-of-way is described by metes and bounds.

   3. Acquisition of an Easement for Highway Purposes, Forms RW-317A and RW-317. An easement for highway purposes gives the Department exclusive possession and control over the required right-of-way for transportation purposes, subject to the right of reverter to the owner of the underlying fee in the event the right-of-way is formally vacated in the future.

   In those instances where required right-of-way is acquired by easement, Forms RW-317A and RW-317 will be used. Refer to Section 3.01.C.

   In addition to a highway easement, any other easement approved in Publication 14M, Design Manual, Part 3, Plans Presentation, except for an aerial easement or substitute right-of-way for a utility, can be acquired with these forms. When acquiring multiple easements using the same form, the highway easement should be the only interest designated on the form. On both the Forms RW-317 and RW-317A, in the second paragraph beginning with "WHEREAS", "highway easement unlimited in vertical dimension" should be selected from the drop down box. In the paragraph beginning with "NOW, THEREFORE", "easement for highway purposes" should be selected. The other easements are incorporated by the plot plan, but must also be listed along with their areas on the sales agreement and deed in the sentence beginning with "This Conveyance contains."
4. Acquisition of Other Easements, Forms RW-317A and RW-317. There are various types of easements acquired by the Department for purposes other than required right-of-way, such as drainage easements, channel easements, slope easements, occasional flowage easements, sound barrier easements, underground structure support easements, sidewalk easements, private access or driveway easements, sight distance easements, ITS conduit easements, traffic signal easements, sound barrier easements, or wetland, stream, and terrestrial mitigation easements. Ownership and use of these areas remains with the landowner subject to the specific rights obtained by the Department as owner of the easement, as set forth in the applicable general note on the plan describing the nature of the easement.

Note that only those interests defined in Publication 14M, Design Manual, Part 3, Plans Presentation, may be acquired unless otherwise approved by the Office of Chief Counsel, Real Property Division, who will coordinate with the Chief, Utilities and Right-of-Way Section and the Highway Quality Assurance Unit. See Publication 14M, Design Manual, Part 3, Plans Presentation, Chapter 3, Right-of-Way Plans.

When no fee interest is also being acquired, Forms RW-317A and RW-317 will be used to complete acquisition of the above easements. These forms accommodate the acquisition of any easement or combination of easements listed above and can also be used to acquire a temporary easement for construction purposes when acquired as an additional interest. When acquiring more than one easement, the same easement type should be selected from both drop down boxes on the Forms RW-317 and RW-317A. Any additional easements on the plan are acquired by the phrase "and such other estate(s), if any, as designated on the plot plan attached and made a part hereof and set forth below." Note that it is still necessary to list all easement types being acquired with these forms and their areas after "This conveyance contains" in the paragraph that begins with "BEING."

5. Acquisition of a Temporary Easement for Construction Purposes, Form RW-341. This type of easement is purchased when land is temporarily required for a traffic run-around, a temporary bridge, demolition of a part of a building that is outside the required right-of-way line, or other project requirement. This form may be used to acquire any temporary easement for construction purposes, whether or not other interests are being acquired.

When acquired amicably, Form RW-341 will be used to complete the acquisition. A TCE may not be included as being acquired in any Form RW-317 series form. Form RW-341 is not intended to be recorded as the interest acquired is temporary and therefore should not appear as a recorded interest against land in the county recorder of deeds office. Since it is not a recorded interest, the Department is at risk of a subsequent claim where a property owner sells or transfers land subject to a TCE before completion of construction. To minimize this risk Form RW-341 contains a specific indemnification for claims made by successors in interest. A precise expiration date for the temporary easement is not to be entered. Doing so is contrary to the standard plan note for a TCE and may cause the easement to expire prior to construction in the event that the project is delayed. Simply use the drop-down box to select the estimated term of the easement, then enter the required area in square feet or acres. In accordance with the standard plan note, the easement does not begin until construction starts and remains in place until construction is completed or the Department relinquishes the easement in writing. The consideration for the temporary easement is included in the amount of total damages stated on the offer letter and shown on Form RW-356 or RW-356WV.

6. Acquisition of Aerial Easements, Forms RW-352 and RW-352A. Forms RW-352A and RW-352 must be used to acquire aerial easements, which include title for piers and other necessary appurtenances.

The agreement of sale and deed include instructions that are imposed upon the use of the land beneath the aerial easements that run with the land.

7. Acquisition of Substitute Right-of-Way for a Utility, Forms RW-330, RW-330A (Easement), RW-330F, RW-330AF (Fee) and RW-377. In those instances where substitute right-of-way for a utility is required in easement, the Forms RW-330 and the RW-330A must be used.

In those instances where substitute right-of-way is required in fee simple, the Form RW-330F and the Form RW-330AF must be used.

The Form RW-377 is used to subsequently convey the substitute right-of-way to the utility.
B. Acquisition of Uneconomic Remnants.

1. General. When the partial taking of right-of-way leaves the property owner with a remainder that is considered to be an uneconomic remnant, the Department must make an offer to acquire the uneconomic remnant along with the portion of the property needed for the project. Unlike required right-of-way, real estate taxes are payable on uneconomic remnants not incorporated into the legal right-of-way. Therefore, it is prudent to dispose of uneconomic remnants in a timely manner.

2. Identification of Uneconomic Remnants. The Appraisal Unit has the responsibility of identifying uneconomic remnants. Refer to Chapter 2, Appraisals.

If there are questions regarding a particular remainder, a request for a determination should be submitted to the Chief, Utilities and Right-of-Way Section.

A remainder may be considered an uneconomic remnant by certain characteristics, such as if it has little or no utility or value to the owner.

Depending on the size of a parcel and alignment of the required right-of-way, an owner may be left with one or more uneconomic remnants in addition to an economic remainder.

3. Contaminated Uneconomic Remnants. If a partial taking leaves an uneconomic remnant that is contaminated, an offer must be made to acquire the remnant. However, the offer must be contingent upon the property owner cleaning the property. If the owner elects not to sell the uneconomic remnant or if the owner elects not to clean up the uneconomic remnant prior to selling it to the Department, the Department will have met its obligation under the Uniform Act.

4. Setting Up an Uneconomic Remnant File. All negotiation activities shall be recorded in ROW Office by selecting "Fee Simple" as the Interest Type, "Uneconomic Remnant" as the Area Description, and number of acres or square feet on the Parcel Take Maintenance screen. "Uneconomic Remnant" should also be selected for the "Claim Desc" field on the Claim Description Maintenance screen.

5. Uneconomic Remnant Offers, Form RW-356UR. When an uneconomic remnant has been identified and an offer amount pre-approved, Form RW-356UR shall be completed in the same manner as other offer letters (Form RW-356 series).

Form RW-356UR will be delivered to the owner along with the offer letter for the required right-of-way.

The owner must be given a statement indicating that the offer is made as a courtesy to relieve the burden of maintaining the uneconomic remnant.

The offer is made separately and distinctly from the offer for the required right-of-way and should be accepted or rejected separately and distinctly on its own merits.

The acceptance or rejection of the offer in no way affects the negotiations for the required right-of-way.

If the offer is accepted, fee simple title must be conveyed.

If the offer is not accepted, Department policy is not to condemn the uneconomic remnant. They may be condemned only in exceptional circumstances meeting the criteria of Act 1979-100 discussed below and with the specific written approval of the Chief, Utilities and Right-of-Way Section.

Act 1979-100 authorizes the Department to acquire, by condemnation if necessary, landlocked parcels and other remainders even if not needed for transportation purposes. Although similar to the uneconomic remnant concept under federal law, different criteria apply to this procedure under state law.

Landlocked parcels and other remainders may only be condemned if the Department's appraisals indicate that no substantial savings can be effected by acquiring only the land required for right-of-way purposes. Prior to
condemning a remainder other than a landlocked parcel, the Department must offer to review with the landowners its decision to acquire the remainder and the appraisal or appraisals on which the decision was based. Landowners are specifically allowed to file a preliminary objection protesting the condemnation of a remainder, whether landlocked or not. If the court, after hearing, determines that substantial savings can be effected by acquisition of only the land required for right-of-way purposes, the taking is to be voided and title to the remainder revested in the landowner.

6. Acceptance of the Uneconomic Remnant Offer. The following forms will be used to complete the sale:

   a. Form RW-317AUR.
   b. Form RW-317DUR.

Normally, a plot plan will be attached to the above forms to identify the uneconomic remnant. If the uneconomic remnant is not labeled on a right-of-way plan, the negotiator should cross-hatch the area of the remnant and note on the plan sheet that cross-hatching designates an uneconomic remnant. These forms will be completed, executed and processed separately from the payment for the required right-of-way claim.

7. Federal Participation. Federal funds may be used in the acquisition costs of uneconomic remnants whether or not the remnants are incorporated in the required right-of-way.

C. Acquisition of Land and Improvements.

1. General. In a broad sense, improvements are buildings, structures, fixtures, and fixed machinery and equipment, located upon and attached to land. The determination of what constitutes an improvement is governed by standard appraisal practices.

2. Offer Form RW-356D. This offer letter is used when the land being acquired contains a structure or structures that must be demolished and/or:

   a. The structure is a building that is owned by the landlord and is vacant.
   b. The structure is an outbuilding, such as a shed or garage, which is owned by the landowner.
   c. The structure is occupied by a business or residential tenant who does not own any of the improvements.
   d. The structure is a home owned by the landowner.
   e. The structure is non-commercial, is owned by a tenant-occupant, and the landowner has disclaimed ownership to the improvements.

3. Attachments to the Offer Letter. Attached to the offer letter are Forms RW-356A, RW-663 and a plan of the property to be acquired.

D. Acquisition of Properties with Owner-Occupied Businesses Forms RW-356BOO and RW-356BOO/AEUD.

1. General. These forms are used in the situation where the Department is acquiring land upon which there is a business that is owned and operated by the landowner.

The Form RW-356BOO is to be used when the Assembled Economic Unit Doctrine DOES NOT apply to the acquisition. Form RW-356BOO/AEUD is to be used when the doctrine applies to the acquisition.

The use of these forms will allow the Department representative to present a packaged offer to the displaced business. This package will state the monetary offer for the purchase of the property, will outline the items included in the offer, will identify the area to be taken, and will give the retention values for machinery, equipment and fixtures included in the offer. This package will give a clear picture to the displaced owner of what is and what is not included in the offer and give the owner information upon which to base the decision to
retain items of realty. This, in turn, may help the owner in his or her decision to reestablish or terminate the business.

Refer to Chapter 2, Section 2.20, and Appendix A, Section A.10 for a discussion of the Assembled Economic Unit Doctrine and the valuation of Machinery, Equipment and Fixtures.

Refer to Chapter 4, Section 4.05, for a discussion of the effect of the Assembled Economic Unit Doctrine on the Relocation of a Business and a discussion of the process for the acquisition of a business.

2. Discussion of the Contents of the Forms. The first paragraphs of the Forms RW-356BOO and RW-356BOO/AEUD give the amount of the offer and describe the various elements that are included.

The third paragraph of both forms discusses the retention of buildings and structures. The District notifies the owner that, upon acquisition, buildings and structures will be demolished unless they notify the District within 30 days that they wish to retain. Note that the District is not required to allow the retention of buildings and structures. However, if an owner notifies the District that they want to retain a building or structure and the District agrees to the retention (in writing), the District will then determine a retention value.

The fourth paragraph of both forms discusses the retention of items other than structures. Both forms discuss the retention of fixed machinery, equipment, and fixtures, while the Form RW-356BOO/AEUD also addresses portable machinery and equipment. Department policy does permit the retention of these items under the doctrine.

3. Attachments to Business Owner-Occupant Offer Letter. The following information must be included with the letter:

   a. Form RW-356A summarizes the areas taken, shows the breakdown of damages and indicates what is excluded from the fair market value offer.

   b. Form RW-663B summarizes the structures and the machinery, equipment and fixtures that are included in the offer. The machinery, equipment and fixtures will be shown by attaching a copy of the M&E report including the retention value (fair market value severed) for each item.

   c. Plan of the property being acquired if not previously given to the owner. This can be in the form of a plot plan, property plot or plan sheet.

E. Acquisition of Land and Tenant-Owned Improvements.

1. General. In a broad sense, improvements are buildings, fixtures, and fixed machinery and equipment located upon and attached to land. The determination of what constitutes an improvement will be governed by standard appraisal practices.

A tenant-owned improvement is any improvement that would be considered as real property if owned by the owner of the real property on which it is located. Tenant-owned improvements may be considered real property due to the terms of a lease or other agreement between the property owner and tenant, or by physical and functional merger with the real estate.

Portable machinery and equipment can become an improvement and therefore can be considered to be real property if the Assembled Economic Unit Doctrine applies to the claim.

2. Identification of Tenant-Owned Improvements and Solicitation of Disclaimer of Ownership. In order to properly identify tenant-owned improvements, it is essential that there is communication between the Negotiation and Appraisal Units.

The negotiator making preliminary and subsequent pre-negotiation contacts with the owner and tenant must solicit lease information and ownership information regarding improvements, including advertising devices and fixed machinery and equipment. Copies of leases, installment contracts, receipts and other records should be solicited.
If there is agreement between the parties as to the tenant-ownership of the improvement, this agreement must be documented by a written statement (disclaimer) in which the owner disclaims ownership of the improvement. The statement must identify the improvements and must be signed and dated by the owner. Copies of the statement must be included in both the owner and tenant files.

All information obtained must be made part of the files and made available to the appraiser.

Any changes or conflicting information regarding the ownership of improvements obtained by the negotiator must be brought to the attention of the Appraisal Unit and reconciled prior to making an offer.

The appraiser must review disclaimers, leases, installment contracts, receipts and other records and make them a part of the appraisal. If it is found that no records or documents are available, the appraiser must note that fact in the appraisal. The appraiser is to ensure that all improvements have been identified and considered in the appraisal, and to properly apportion damages between the owner and tenant.

If the appraiser obtains information from the owner or tenant that differs from previous information regarding the ownership of improvements, the appraiser must notify the Negotiation Unit of the conflict. The conflicting information must be reconciled prior to making an offer to either the owner or tenant.

3. Valuation of Tenant-Owned Improvements. Just compensation is defined as the difference between the fair market value of the entire property immediately prior to condemnation and as unaffected thereby, and the fair market value of the entire property remaining immediately after condemnation and as affected thereby.

This rule applies even if there are separate owners of the real estate, improvements, and fixed machinery and equipment. Portable machinery and equipment can become a tenant-owned improvement if the Assembled Economic Unit Doctrine applies.

Therefore, in the case of a tenant-owned improvement, the appraiser will determine a single fair market value and make an allocation of damages between the owner of the real estate and the tenant who owns the improvements. Under no circumstances shall the sum of the amount of the fair market value allocated to the tenant exceed the total fair market value of the whole parcel (including improvements).

However, payment to a tenant for a tenant-owned improvement must be based upon the greater of the amount of the fair market value allocated for the improvement or the salvage value. Therefore, in addition to the fair market value allocation, the District must also determine the salvage value of any tenant-owned improvement.

4. Offer and Settlement Procedures When the Owner and Tenant Agree Upon Tenant-Ownership of Some or All of the Improvements. A written disclaimer must document when the owner and tenant agree on the ownership of the improvements.

See Section 3.03.E.4 above.

In this situation, separate offers will be made to the owner and the tenant. The offers will be made independently of one another and the separate offers will reflect the allocation of damages made by the appraiser or the salvage value of the tenant-owned improvement, if applicable.

Settlement may be pursued with the owner and tenant independently if it is determined to be in the best interest of the Department. If one party wants to settle and the other does not, a settlement may be reached with one if the District Right-of-Way Administrator determines that there is little likelihood that the Department will be exposed to paying duplicate damages as a result of condemnation proceedings with the other.

Note that offers and settlements can be made under this section only when all the owners agree with all tenants and execute a disclaimer on all tenant-owned improvements on the property.
5. **Offer and Settlement Procedures When the Owner and Tenant Disagree Upon the Ownership of Improvements.** The Department is under no obligation to resolve any conflict between the owner of the real estate and a tenant regarding the ownership of an improvement. If the owner and tenant disagree on the ownership of an improvement and the owner will not provide a disclaimer, a combined offer will be made to all persons, owners and tenants, who appear to have an interest in the property.

The negotiator presenting the offer must explain to the owner and tenant that because they cannot agree, the Department must file a Declaration of Taking and deposit the full amount of the estimated just compensation in court. The court will then determine the allocation of the damages.

If, after making a combined offer, the owner and tenant reach an agreement upon the ownership of improvements and a disclaimer is signed, the combined offer may be rescinded and separate offers made as discussed in **Section 3.03.E.4 above.**

6. **Retention Procedures.**

   a. **Buildings and Structures.** The Department is under no obligation to permit the owner of an improvement to retain it. Therefore, the District Right-of-Way Administrator may make the decision to not permit the retention of an improvement if it is determined to be in the best interest of the Department. Otherwise, if the District permits retention, the negotiator will explain the option to the owner of the structure and explain that if the owner exercises the option, a retention value will be determined and the fair market value reduced accordingly.

   b. **Machinery, Equipment and Fixtures Forming Part of the Real Estate.** The Department must give the owner of machinery, equipment and fixtures forming part of the real estate the opportunity to retain them. The owner of the machinery, equipment and fixtures must notify the Department within 30 days of the fair market value offer of the decision to retain and give the Department a list of the items to be retained. Upon receipt of the list, the District will use the fair market value severed as the retention value for the items and notify the owner that the amount of the offer will be reduced by that amount.

   If the owner and tenant disagree upon ownership, neither will be given the opportunity to retain until an agreement is reached or a court determines ownership.

   Note: When the Assembled Economic Unit Doctrine applies, portable machinery and equipment are considered to form part of the real estate and, in that situation, may be retained in accordance with this paragraph.

   If the Assembled Economic Unit Doctrine does not apply, portable machinery and equipment must be moved or paid for as personal property losses in accordance with the procedures found in **Chapter 4, Section 4.05.**

7. **Transfer of Ownership to the Department.** In order to receive payment for an improvement, the owner of the improvement must assign, transfer and release to the Department all of his or her rights, title and interest in the improvement.

Both the land owner and any or all tenant-owners must be advised that the improvement to be acquired must be in place and in the same condition as when the appraisal was made when the Department takes possession of the property and makes payment for it. The Department will not pay for any improvement if that improvement is destroyed, damaged or has disappeared.

8. **Offer Letters.** If the landowner is absentee, owns ONLY the land, the tenant owns ALL the improvements and there is a written disclaimer of ownership, the owner is given offer letter Form RW-356AO1.

If the tenant is a business-occupant, he or she would receive letter Form RW-356TO/AEUD if the doctrine applies, or letter Form RW-356TO if the doctrine does not apply.

If the tenant is not a business-occupant, he or she would receive letter Form RW-356TO.
If the landowner is absentee, owns SOME of the improvements, the tenant owns SOME of the improvements and there is a written disclaimer of ownership, the owner is given offer letter Form RW-356AO2.

If the landowner is absentee, there is a business tenant and the doctrine applies, and there is NO AGREEMENT on the ownership of improvements, both the owner and tenant would receive offer letter Form RW-356AO/TO/AEUD.

If the landowner is absentee, there is a business tenant and the doctrine DOES NOT apply, and there is NO AGREEMENT on the ownership of improvements, both the owner and the tenant would receive Form RW-356AO/TO.

Attachments to Offer Letters:

a. Form RW-356A. The owner and tenant will each be given Form RW-356A, which states the basis for their individual offers.

Form RW-356A will include:

1. A statement of the amount offered as just compensation including a separation of direct and indirect damages.

2. A description and identification of the real property and the interest in the real property to be acquired. The tenant summary will indicate that no land was to be acquired as part of the offer.

3. An identification of the buildings, structures, fixed machinery and equipment and other improvements forming part of the real estate for which the offer of just compensation is made.

4. When the owner and tenant agree upon the ownership of improvements, the owner's summary shall identify the tenant-owned improvements and indicate that such interest is not covered by the offer. The tenant's summary shall identify the owner's improvements and indicate that such interest is not covered by the offer.

5. When the owner and tenant disagree upon the ownership of the improvements, both the owner and tenant summaries must indicate that the offer is a combined offer.

b. Form RW-663 or RW-663B.

c. Plan of the property being acquired.

F. Authorizations to Enter and Rights of Entry.

1. Rights of Entry, Forms RW-374 and RW-374U. When there is a recorded right-of-way acquisition plan and the amount of compensation due the property owner or utility has not been agreed upon, these forms are used to avoid delaying the project. These forms are contracts that must be forwarded for approval as to form and legality. See Chapter 1, Section 1.07 on approval of documents as to form and legality.

Rights of entry for construction purposes before making payment may be obtained for the purpose of clearing right-of-way only in exceptional circumstances, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process. A situation where the right-of-way process is incomplete and the construction letting date has arrived does not constitute an emergency. Rights of entry can also be appropriate where railroads or corporations are involved to avoid an excessively long acquisition process.

2. Authorization to Enter, Forms RW-397 (Non-waiver of claim) and RW-397A (Waiver of claim). These forms can be used whether there is a recorded right-of-way plan or not.

Form RW-397 is typically used where there is no right-of-way plan yet, but one will be developed. The owners are allowing entry onto their land to perform work, but not waiving their compensation claim when the plan is developed and normal acquisition procedures applied.
Form RW-397A is typically used where there is no intent to develop a right-of-way plan showing an acquisition of the area. The owners are allowing entry onto their land to perform work, understanding that no compensation will be forthcoming. This form is often used for driveway adjustments and drainage work.

Authorizations to enter for construction purposes before making payment may be obtained for the purpose of clearing right-of-way only in exceptional circumstances, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

These forms are not contracts that must be forwarded for approval as to form and legality if they are properly filled out and not modified. However, if they are modified to make promises to the property owner or to be executed by the Department, the documents become contracts that must be forwarded for approval as to form and legality. See RPDD No. 02-07-05.

The following instructions should be followed in using Form RW-397 or RW-397A:

a. If not already identified on a right-of-way plan, enter the address of the property or other reliable identification such as a county tax parcel number.

b. Enter a general description of the work to be done on the property.

c. If the owner/occupant insists that permission to enter be limited to a specified time period, indicate the time limitation in the blank space provided.

d. The executed authorization to enter should be retained in the file of the party securing it.

3. Exception Allowing Use of Authorizations to Enter on 100% State Design Build Bridge Projects

a. For all projects except design build bridge projects with 100% State funding in all phases, refer to Section 3.03.F.1-2 for guidelines on using Authorizations to Enter.

b. Using Authorizations to Enter (ATE) for low risk design build bridge projects with 100% State funding in all phases is permissible. Although State law does not limit the use of authorizations to enter to exceptional cases, federal law does. The purpose of that limitation is to protect the rights of property owners. Before federal law was changed to limit their use to exceptional cases, ATEs were commonly used to obtain right-of-way clearances. As a result, significant backlogs of claims developed nationwide where ATEs were signed and projects were built, but there was no follow-up to actually purchase the land. When formal acquisition is not pursued in a timely manner, we risk a de facto claim (with the payment of attorney fees). Whether or not acquisition is pursued in a timely manner, we also risk a landowner seeking to terminate the ATE before or during construction. For the above reasons, use of ATEs inconsistent with the Uniform Act is strongly discouraged.

c. Low risk projects meet the criteria in either part (1) or (2) below:

(1) The only required areas consist of temporary construction easements and the project consists of 10 claims or less.

(2) The required areas consist of land only with minimal impacts to the parcels, and damages can be estimated using a Strip Appraisal, Form RW-270, or the Department’s waiver valuation (WV) procedures. See Ch. 2, Appraisals, specifically Section 2.12. Projects consist of 10 claims or less.

d. A final right-of-way plan must be produced within the timeframes listed below:

(1) For bridges that require foundation construction, the final right-of-way plan must be produced within six months of receiving foundation approval. This foundation approval is for a Foundation Guidance Report or Geotechnical Report.

(2) For bridges that do not require foundation construction (such as superstructure replacements) and require right-of-way (such as temporary construction easements), the final right-of-way plan must be produced within six months of Type, Size, and Location approval.
e. Final clearance on the project must be obtained within nine months after the final right-of-way plan is received by the district.

f. High risk projects are defined in Publication 448, The Innovative Bidding Toolkit. ATEs should not be used on high risk projects because the resulting significant delay between execution of the ATE and final payment to the property owner is inconsistent with the spirit of the law. In extraordinary circumstances and with prior approval, ATEs may be used on high risk design build bridge projects with 100% State funding. Written approval must be granted from the Chief of the Utilities and Right-of-Way Section. At a minimum, requests for approval to use ATEs on high risk projects must include the following: the reasons why the district believes that ATEs are appropriate, the total number of parcels, the number of high risk parcels, the characteristics which make those parcels a high risk, and the estimated time required to clear each high risk parcel.

g. Monitoring Guidelines. Districts choosing to use ATEs on design build bridge projects with 100% State funding shall submit a quarterly report to the Chief of the Utilities and Right-of-Way Section listing all outstanding ATEs. The report will be in a standard format and is anticipated to include the following: the project number, parcel numbers, claim numbers, claimant names, date of the foundation (or Type, Size and Location) approval, date that a final right-of-way plan was received by the District, and the parcel clearance dates. After a project is shown on the report to have received a final right-of-way clearance, it can be dropped from the next report. A district's authority to use ATEs may be rescinded by the Chief of the Utilities and Right-of-Way Section if any of the following occur:

(1) The timeframe for production of a final right-of-way plan is exceeded by over 25% of projects where ATEs were used.

(2) Over 25% of the outstanding ATEs have not been cleared within nine months after the final right-of-way plan was received.

(3) Any outstanding ATE has not been cleared within two years of execution.

(4) A district fails to submit the required report.

G. Consequential Damage Claims.

1. Definition. Consequential damage is damage to property abutting the area of an improvement, resulting from the change of grade of a highway, permanent interference with access to a highway or injury to surface support, whether or not any property is taken.

The courts have also determined that a claim for damages under the Ditch and Drainage Act, Section 417 of the State Highway Law, 36 P.S. §670-417, is also in the nature of a consequential damage claim. The Department is liable under this law only if it is establishing a new drainage facility where one did not exist before or where the maintenance of an existing facility substantially alters the natural flow of water. That is, the Department is not liable if it is merely restoring the natural flow of water as established by the Department's pre-existing drainage rights.

There are many situations in which injury to a property results as a consequence of the actions of the Department or the Department's employees. However, unless one of the four conditions listed above applies, a consequential damage claim cannot be paid using funds allocated for the purchase of right-of-way.

2. Establishment of a Consequential Damage Claim. To establish a claim (other than those claims that are identified as part of normal project development), send a letter to the Chief, Utilities and Right-of-Way Section that outlines the basis for the claim. Attach all pertinent information to substantiate the claim along with detailed reasoning and analysis why the District believes a claim is warranted.

Upon approval by Central Office, the District is authorized to establish a claim.

3. ROW Office procedures. As consequential damage claims are not identified on the right-of-way plan, they do not have a pre-determined parcel number but must be entered into ROW Office as part of the official record.
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a. A consequential claim is established by the creation of a CD parcel in the ROW Office Parcel Maintenance screen. When establishing a parcel for a consequential damage claim, use the CD designator followed by its numbered occurrence. For example, parcel number CD01, CD02, CD03, etc.

b. CD parcel numbers are created consecutively for each project. The CD designation distinguishes the parcel as a consequential damage-related claim for proper documentation and reporting purposes.

c. To properly identify the type of take in the ROW Office Parcel Maintenance screen, select "Consequential Damage".

d. The claim description code "Consequential Damage or Section 309 claim" must also be selected from the ROW Office Claim Description Code Maintenance screen to further describe the claim for clearance review purposes.

4. **Settlement Procedures.** Form RW-338 will be used as the settlement instrument when a payment is made to settle a claim for consequential damages.

Form RW-320 will be used as the settlement instrument when settlement is reached without the payment of money but, rather, in consideration of benefits accruing to the owner.

These agreements are executed and recorded in the same manner as a deed.

**H. Procedures and Damage Claims Arising from Pre-Condemnation Entry.**

1. **General.** Section 309 of the Eminent Domain Code grants a condemnor (such as the Department) or its employees or agents the right to enter upon any land or improvement prior to filing a declaration of taking in order to make studies, surveys, tests, soundings and appraisals. There is no need to obtain an authorization to enter from the landowner when the entry is for one of these purposes.

The land entered need not be land the Department has the power to condemn; for example, farm land can be entered before approval of condemnation, if necessary, is obtained from the Agricultural Lands Condemnation Approval Board. Exercise of this right of entry is neither a condemnation nor notice of intent to acquire the property.

This topic is also discussed in the Publication 10C, Design Manual, Part 1C, *Transportation Engineering Procedures*, Chapter 3, Preliminary Engineering Procedures.

2. **Notice Requirement.** The owner of the land or the party in whose name the property is assessed must be notified ten days prior to entry on the property. Form RW-983 is to be used for this purpose.

The following instructions apply to all persons (including consultants and appraisers) whose work for the Department necessitates their entry upon private property prior to condemnation:

a. No changes to the Notice of Intent (Form RW-983) are allowed without the approval of the Chief of Utilities and Right-of-Way Section at the Bureau of Project Delivery. The Chief of the Utilities and Right-of-Way Section will coordinate any requested changes with the Office of Chief Counsel.

b. The Notice of Intent to Enter (Form RW-983) will be mailed by certified mail, return receipt requested, to the property owner in sufficient time to be received by him/her at least ten days in advance of the anticipated date of entry.

c. The format for a normal business letter should be followed. This notice will be sent in a regular business envelope with the return address of the Design Agency sending the notice.

d. One notice may cover entry by any number of persons.

e. The notice is to be sent to the property owner, not to a tenant or other person who may be occupying the property.

f. As per the Notice of Intent to Enter (Form RW-983), the Department will notify the owner...
personally, if possible, prior to any entry. Personal notice should also be given to the tenant or other person in possession at the property, if possible, prior to the entry.

g. If entry into buildings is required, it is required to telephone for an appointment to do so, in addition to sending the required notice.

h. A repeat notice should be sent to the property owner if an extended period of time (six months) has elapsed since entry was made on the initial notice. Any Notice of Intent to Enter, after the first notice, will be sent by regular first class mail. It will still be incumbent upon the Design Agency to keep records of the mailing (i.e., a dated photocopy of the notice). In addition, before entry, the entrant should make an effort to contact the property owner personally.

i. PennDOT will send notices relating to entries in which PennDOT personnel will participate, and in such case the return receipts will be kept in the appropriate file.

j. If the entry will be made solely by a consultant engineer, appraiser or other non-PennDOT person or entity, the notice will be sent by them on Form RW-983s to be supplied by the District. Return receipts will be kept in the consultant's files. Please note that retention of these receipts is for the protection of such non-PennDOT personnel as well as of PennDOT.

k. Copies of the Notice of Intent to Enter (Form RW-983) should be reproduced locally as needed.

3. Establishment of a Claim. The condemnor must pay for any actual damages sustained by the owner of a property interest in the property entered upon. Damages shall be assessed by the county court, or the court may refer the matter to viewers to ascertain and assess the damages sustained. When such a claim is made to the Department and an amicable agreement on the amount of damages reached, Form RW-379 is to be used to make the payment.

These claims usually arise at the inception of a project and are in the form of out-of-pocket items, such as crop damages. It is intended that the condemnor should make payment where such a claim is made before and separate from any eventual condemnation from the property.

To establish a claim, the District must send a letter to the Chief, Utilities and Right-of-Way Section outlining the basis of the claim. Attach all pertinent information, including photographs, to substantiate the claim. Include an estimate of the damage and detail the basis for the estimate.

Upon approval by Central Office, the District will be notified to proceed and can establish a claim number in ROW Office.

4. Settlement Procedures. RW-379, Settlement Agreement Section 309 (of the Eminent Domain Code) Claims, will be used as the settlement instrument. This agreement is executed in the same manner as a deed.

5. Exceptions to Normal Pre-Condemnation Entry Procedures.

a. Use of Authorization Enter. An Authorization to Enter, Non-Waiver of Claim (Form RW-397) or Authorization to Enter, Waiver of Claim (Form RW-397A) may be used in emergency situations wherein sufficient time is not available to notify a property owner ten days in advance of entry upon private property. See Section 3.03.F. If an authorization to enter cannot be obtained, entry must be delayed until a ten day notice can be given.

b. Railroad Property. If a consultant is to enter property owned by a railroad, Department policy is to require the consultant to follow standard railroad entry requirements. This requirement is to be included in the consultant agreement. Entry by Department personnel can be by Notice of Intent to Enter if the railroad does not object. If the railroad objects and requests that standard railroad entry requirements be met, the Chief, Utilities and Right-of-Way Section should be contacted, who will coordinate with the Office of Chief Counsel. Department personnel should not sign the standard railroad right of entry forms.
I. Loss of Rent Due to the Imminence of Condemnation.

1. General. The purpose of this payment is to compensate property owners for rental income which is lost prior to the date of taking due to the general knowledge of the imminence of condemnation. It is only applicable to losses of rental income that occur 60 days after the property owner provides written notice to the Department that losses of rental income are occurring. The property owner must establish that rental losses are substantially due to the general knowledge of the imminence of condemnation. Lost rental income resulting from physical deterioration of the property, normal vacancy rates for that property or other factors within the reasonable control of the property owner are not compensable. Claims for this payment can only be made by a property owner scheduled for condemnation; it is not necessary that an actual condemnation subsequently occurs.

A property is considered to be scheduled for condemnation if either one, or both, of the following criteria have been met:

a. The Secretary of Transportation has signed a right-of-way plan authorizing acquisition of the parcel.

or

b. The property owner has received form RW-370, RW-371, or RW-299 regarding notice of the Department's intention to acquire the property.

2. Eligibility. All of the following requirements must be met to establish eligibility for the rent loss payment:

a. The property owner must have given the Department written notice that rental income has been lost due to the general knowledge of the imminence of condemnation. This letter/notice must be date-stamped upon receipt in the District Office. One notice of lost rent per parcel is considered adequate. Individual notices for each vacant unit are not necessary.

b. The property must be scheduled for condemnation as established by the occurrence of at least one of the two events in 1.a. and 1.b., above (it is possible for both to occur).

c. The property owner must establish that rental income was lost substantially due to the imminence of condemnation. Rental units that are vacant due to the normal vacancy rate, physical deterioration, or other factors within the owner's control do not meet this test. The property owner must establish lost rental income to the satisfaction of the District by providing rent rolls, expired leases, tax returns, and other documentation deemed necessary.

3. Limitations. The total amount paid for lost rent on all units combined cannot exceed $30,000 for any one parcel.

a. The payment is normally made to compensate a claimant for losses of rent actually sustained on the acquired property. However, in extraordinary circumstances, requests to make this payment in advance will be considered. Contact the Central Office Acquisitions Unit for pre-approval of any advance payments.

b. The property owner has the legal obligation to establish that rental losses are substantially due to the general knowledge of the imminence of condemnation and must produce evidence of rental history at the request of the Department.

c. Units that are vacant due to the normal vacancy rate, physical deterioration, or other factors within the owner's control do not qualify for this payment.

4. Period of Payment for Loss of Rental Income.

a. Period Begins. If the notice of lost rent from the property owner was received after condemnation was scheduled, then the period for which compensation is payable begins after 60 days have passed since the receipt of the written notice. If a notice of lost rent is received prior to the parcel being scheduled for condemnation, the District must return the letter using form RW-337. This form explains that the notice...
cannot be accepted until the property is scheduled for condemnation (as evidenced by a plan signed by
the Secretary or their receipt of RW-370, RW-371, or RW-299).

b. Period Ends. For an amicable settlement, the period for which compensation is payable ends on the
date that the parcel owner signs the sales agreement and deed.

When a property is condemned, the period for which compensation is payable ends on the date the
declaration of taking is filed.

5. Establishing the Amount of Lost Rent. The amount of lost rent is equal to the periodic gross rent shown
on the most recent expired lease for the unit. It is the responsibility of the property owner to provide full
documentation to substantiate the loss, including leases, rent rolls, and/or tax returns determined necessary by
the Department. If an owner refuses to provide this information, the payment will be denied.

For those periods of lost rent under one month, payment will made for a full month if the loss was sustained for
more than 15 days. For periods of 15 days or less, payment will be made for one-half of a month.

6. Payment Packages to Central Office. Final payment applications for loss of rental income due to the
imminence of condemnation should be completed at the time of settlement for amicable acquisitions and after
the declaration of taking is filed for claims that go to condemnation. However, interim payments may be made
before acquisition if requested by the claimant. Because the eligibility period and rent amount can vary for
each unit, a separate payment package must be submitted for each unit that has lost rent due to the imminence
of condemnation. Payment packages must include the following:

a. Claim information transmittal letter RW-943 (Internal Order Number 81115).

b. ROW Office Claim Payment Invoice printout (1 copy).

c. Original and two copies of RW-336.

J. DeFacto Taking Claims.

1. General. The concept of de facto taking is grounded in the constitutional provision that just compensation
shall be paid for the taking of private property for public use. The Pennsylvania Legislature recognized the
concept when it enacted the Eminent Domain Code in 1964, which provides that a condemnee can petition for
the appointment of a board of viewers "if there has been a compensable injury suffered and no declaration of
taking thereof has been filed."

A de facto taking occurs when an agency possessing the power of eminent domain substantially deprives an
owner of the use and enjoyment of his property. Where a de facto taking is alleged, the property owner bears a
heavy burden of proof. He must show that exceptional circumstances exist which substantially deprive him of
the use of his property, and that the deprivation is the direct immediate, unavoidable and necessary
consequence of the actions of the agency having the power of eminent domain.

When a de facto-taking suit is filed against the Department in court, it is the responsibility of the District to
provide support and assistance to the attorney in charge of the case.

When the court upholds a de facto taking, a judgment awarding compensation to the claimant for the taking
shall include unlimited reasonable appraisal, attorney and engineering fees. The amount of these fees is not
subject to the $4,000.00 limit found in Section 710 of the Eminent Domain Code.

2. Procedures on Projects that are Delayed. To minimize the risk of de facto takings, the following
procedures are recommended for projects experiencing prolonged delay. These procedures should be
implemented as soon as notice of the delay is received.

Personal and written notice should be given to every prospective condemnee on the route. The notice should
include specific information concerning the project status and the property owner's rights to continued use of
the property during the delay.
Written notice should be given to local governments regarding the status of the project and the lack of restrictions by the Department on the property owner's continued use of property.

It is important to remember that there are no Department restrictions against the continued use of property by prospective condemnees. The owner may develop the property or do with it as they please. Compensation for the property is payable on the basis of the condition of the property at the date of acquisition.

K. Acquisition of Mineral Interests.

1. General. Although this section will deal primarily with the acquisition of coal rights, it also applies to the acquisition of rights for other minerals, such as oil and gas. Coal can be categorized into three types, defined as follows:


   b. Support coal – coal that must remain in place to support the surface rights acquired by the Department for the project.

   c. Isolated coal – coal (other than construction and support coal) that is rendered unmineable by the project (usually by physical inaccessibility), whether located inside or outside the highway right-of-way. Coal located inside highway right-of-way is isolated if the Department will not allow it to be removed by the owner.

2. Title to be Acquired. It is Department policy to acquire fee simple title when purchasing required right-of-way. See Section 3.01.C. and Appendix C, Section C.01.A.

Compensation for construction and isolated coal is always litigated before a board of viewers if an amicable agreement cannot be obtained. Construction coal is actually taken; while compensation for isolated coal is an indirect damage to the coal owner's remaining property interests. Compensation for support coal can be litigated before a board of viewers or a State Mining Commission, depending on whether the absolute right of support is acquired or not.

Where fee simple title is acquired, the Department obtains the absolute right of support and ownership of all minerals to an unlimited depth, unless the acquisition document reserves the right to deep mine minerals. Where the absolute right of support and ownership is acquired, the claims of all owners are litigated before a board of viewers. Where an easement for highway purposes only is taken or where the reservation is included in the fee simple acquisition, then the support coal claim of a coal owner is litigated before a Mining Commission.

When the highway facility is to be located on land which is being or is likely to be deep-mined, including the removal of gas and oil by means of wells located off the right-of-way, an easement for highway purposes only (with the depth of support needed shown on the plan) may be acquired.

Department acquisition documents (including the fee simple deed, the highway easement deed and declarations of taking) automatically reserve the right to deep mine minerals. If the absolute right of support is to be acquired, the reservation must be deleted from the applicable document. Deletion of the reservation must be specifically requested when filing a declaration of taking if so desired. The amicable highway easement documents would not only need to have the reservation deleted, but an affirmative statement would need to be added indicating that the absolute right of support is being acquired.

Where a project is located on coal bearing lands upon which active mining operations are in progress, a determination should be made in the design stage of the project as to whether to purchase the absolute right of support or support coal only, or to waive support in certain areas.

3. Separate Surface and Mineral Owners. When the surface and mineral rights are owned by separate entities, a tenant claim must be established for the owner of the mineral rights.

4. Valuation, Offer and Settlement. Where coal is acquired as part of the right-of-way claim (i.e. it is construction coal, isolated coal or the absolute right of support is being acquired), the claim will be valued as a whole, including the value of the minerals. The appraiser will apportion the damages between the surface
owners and mineral owners and separate offers will be made. Form RW-356 Series will be amended to reflect that the Department is acquiring the mineral rights when the offer is made to the owner of the mineral rights. Forms RW-317AF and RW-317F, properly adjusted to reflect what is being acquired, will be used when a settlement is reached. If the settlement includes only the absolute right of support coal, Form RW-392 (Agreement of Sale, Coal Support) shall be used rather than a modified RW-317AF.

Where the right of support only is being acquired (as opposed to the absolute right of support), the following procedures should be used, depending on whether an amicable agreement has been reached or not.

If the district reaches an amicable agreement on the amount of support coal to be left in place and the amount of compensation, a memorandum must be forwarded to the Utilities and Right-of-Way Section requesting review of the settlement. The memorandum must include all pertinent claim information as well as a completed (but not executed) Form RW-392S (Stipulation, Mining Commission). In addition to the plan referenced in the RW-392S, cross-sections should be supplied showing the angle of the draw used to determine the support area and where the angles are taken from. A determination will be made whether the settlement should be approved by a Mining Commission. If not taken before a Mining Commission, the settlement will be made contingent upon the claimant's agreement that the support requirements of Section 419 of the State Highway Law remain in effect following settlement.

If the district does not reach an amicable agreement on the amount of support coal to be left in place and the amount of compensation, a memorandum must be forwarded to the Utilities and Right-of-Way Section requesting that a Mining Commission be convened. The memorandum must include all pertinent claim information as well as a completed (but not executed, of course) Form RW-392S. This is the most efficient means of insuring that all necessary information is supplied even though a stipulated settlement is not envisioned. In addition to the plan referenced in the RW-392S, cross-sections should be supplied showing the angle of the draw used to determine the support area and where the angles are taken from.

Where a Mining Commission is to be convened, the Utilities and Right-of-Way Section will forward the District's request to the Real Property Division, Office of Chief Counsel, which will assign the matter to the appropriate regional legal office. The regional attorney assigned will move to have a Mining Commission convened and will coordinate execution of the Form RW-392S or litigation of the case with the District office after a Commission is convened.

It must be remembered that the owner of coal is not automatically entitled to damages. If the coal cannot be removed at a profit to its owner or if it is not of such quality or quantity to warrant commercial exploitation, there can be no value to the coal other than speculative remainder value which arises from the possibility that future economical or technological changes might eventually make it financially feasible to remove the coal.

Also note it takes substantial time to convene a Mining Commission and have a stipulation approved. The Commission is not a permanent tribunal, but rather an ad hoc tribunal convened for each individual case. Each commission consists of the president judge of the county in which the land is located, who shall be the chairman; one member of the Public Utility Commission or an engineer appointed by it; the Secretary of Mines (now part of the Department of Environmental Protection) or his designated representative; the head of the government entity owning the lands or his designated representative; and an engineer designated by the owner of the coal. Having the PUC and DEP appoint its representatives takes time, as does obtaining a hearing date.

L. Donations of Real Property by a Property Owner.

1. General. An owner whose real property is being acquired may, after being fully informed by the Department of the right to receive just compensation for the property, donate all or any part of the property, any interest in the property or any compensation paid for the property to the Department.

Department policy is to acquire fee title to real estate and that policy generally applies to donation situations. However, if the donor requests that an easement be donated, the Department may honor that request.

Guidance in this section is to be distinguished from the donation credit process.
2. Procedures for Accepting Donations.

Appraisal Procedures. The Department is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Department from this obligation in writing. In every case where the fair market value is over $10,000, an appraisal is required in order to ensure the Department's ability to receive federal credit toward our matching share for the project and/or to fulfill our responsibility to inform the owner of our estimate of just compensation. The Department may determine that an appraisal is unnecessary if the valuation is uncomplicated and the fair market value is estimated at $10,000 or less, based on a review of available data.

a. An appraisal is not required when:

   (1) No federal funds are involved in the right-of-way phase.

   (2) The property owner has waived their right to be notified of the amount of just compensation and the right to receive just compensation.

The Department's waiver valuation (WV) process may be used. See Chapter 2, Appraisals, Section 2.12.

The fair market value of donated land shall be established as of the date the donation becomes effective or when equitable title to the land vests in the Department, whichever is earlier.

The fair market value should not include increases and decreases in the value of the donated property caused by the project.

b. Notification and Waiver of Rights. When an owner indicates a willingness to donate right-of-way, the District will deliver a Form RW-356W that advises the owner of his or her right to be notified of the amount of just compensation and the right to receive just compensation.

In addition to delivering the RW-356W, the negotiator must verbally explain the owner's rights and inform the owner that reimbursement of up to $4,000.00 is available for appraisal, attorney and engineering fees.

The owner's signature is required in order to document the waiver of rights. Of course, if the owner changes his or her mind, then the District should proceed with regular acquisition procedures.

The appropriate settlement documents, RW-365F or RW-365, must be delivered to the property owner.

Two copies of the RW-356W with settlement documents must be delivered to the owner. The forms may be mailed if the District Right-of-Way Administrator chooses to do so. If mailed, a stamped, addressed return envelope must be included and the RW-356W must be followed-up with a phone call from the negotiator.

3. Processing Procedures. The District will submit the following documents to the Central Office:

a. Deed, RW-365 or RW-365F

b. Acknowledgement/Waiver of Rights, RW-356W

c. Appraisal or Form RW-356WVW as may be applicable.

d. Title Search (RW-918) or, if $25,000 or less, the Parcel Title Certificate Maintenance Screen must be completed in ROW Office.

The Central Office Administration Unit will process the documents to the Office of Chief Counsel and return the finalized Deed to the District for recordation.
M. Dedications of Real Property by a Governmental Body.

1. General. The following outlines the Department's policy on accepting title to land that is being given to the Department by a local governmental body. Usually this land comes into the local government's possession from developers who give them the land during the normal subdivision process.

Real property obtained by a local government in this manner is not subject to normal acquisition procedures since they are obtained through an exercise of police power.

A detailed discussion about dedications and ordinances can be found in Appendix C, Section C.01.J.

2. Policy. Districts are encouraged to accept the dedication of right-of-way through the local land development process when it is in the best interest of the Department.

3. Guidelines. Acceptance of dedications is at the option of the District, and if accepted, the District will determine the width of the dedication.

Prior to acceptance, all environmental issues such as hazardous materials or wetlands should be thoroughly investigated and evaluated.

A plan, including a title page and an index map sufficient to identify the area to be dedicated, must be completed by the dedicating agency. Refer to Publication 14M, Design Manual, Part 3, Plans Presentation for further discussion.

Special consideration should be given to accepting dedications on highways included on the National Highway System and projects on the twelve-year plan.

The acceptance of dedications does not commit the Department to future improvements.

Districts may accept dedications along existing state-owned right-of-way without prior approval. Other dedications may only be accepted by the District with the prior approval by a Deputy Secretary or designee.

4. Processing Procedures. Following the decision to accept, a plan is completed by the dedicating agency. The plan is reviewed and approved by the Department and placed on file in the District Office.

A deed of dedication, including title certification, is prepared and executed by the dedicating agency.

The deed is submitted to the Office of Chief Counsel for approval. The plan should accompany the deed.

After approval, the deed is returned to the District for recording at the county courthouse.

N. Unknown and Unlocatable Owners. If the name of the owner of an affected parcel cannot be determined after a careful and diligent search of all available public records (register of deeds, Prothonotary's office, or county and municipal tax offices) the parcel is considered to be owned by an "unknown owner."

An owner who has been identified through a check of the public records but whose whereabouts are unknown is an "unlocatable owner."

In either case, the District must file a Declaration of Taking, provide proper notice of the Declaration of Taking and deposit estimated just compensation into court, regardless of the amount, at the earliest possible date.

O. Special Terms of Settlement. In addition to the fair market value of acquired real property, special settlement terms are sometimes negotiated with a property owner. Examples could include a property owner wanting to keep wood from a tree that is moved from the right-of-way, to leave existing shrubbery in place or to remove existing shrubbery or special fencing requirements. Special terms of this kind are an acceptable part of a settlement with a property owner as long as they do not interfere with the construction of a project.

When a special settlement term of this kind is agreed upon with a property owner, it is extremely important that the District Right-of-Way Unit notify the District Construction and/or Utility Units of the special item. Therefore, when a special settlement term is negotiated with a property owner, the District Right-of-Way Unit will send written
notification to the District Construction and/or Utility Unit so that they can instruct the highway contractor and utility companies of the special term and can properly follow through with it.

P. Outdoor Advertising Devices.

1. General. The following outlines the Department's policies that apply to all Outdoor Advertising Devices (OADs) which are in the required right-of-way or other areas to be acquired as a part of a highway project. It explains that there are three categories for the acquisition of OADs with different policies applying to each. The three classifications are listed below.
   
   a. On-premise OADs physically annexed to the land or building will be acquired as real property.
   
   b. Off-premise OADs will be acquired as personal property and will be eligible for business relocation benefits and payments.
   
   c. Portable OADs - On-premise OADs not physically annexed to the land or building will be acquired like any other business-owned personal property.

It gives the exceptions to this policy, and explains what to do in those cases.

2. Classification as Real or Personal Property. The three classifications for OADs and a summary of the acquisition policies that apply to each are listed below.
   
   a. On-Premise OADs. All OADs that advertise a business conducted on the site (on-premise OADs) and are physically annexed to the land or building are considered fixtures and will be acquired as real property.

   When acquired as real property, the fair market value of the OAD will be estimated on Form RW-260OAD and included in the fair market value offer. If the OAD is owned by a tenant on the land, it will be considered to be a tenant-owned improvement and those procedures will apply. The owner of an on-premise OAD (which is a fixture) must be given 30 days from the date of the offer to decide if they wish to retain and move their OAD. Refer to Section 3.03.E regarding offer letters and Chapter 5, Section 5.04 for retention procedures and the use of Form RW-621.

   Whether or not the on-premise OAD is being retained by the owner, "OAD" (Outdoor Advertising Device) and "D" (Demolition) must be selected as claim description codes on the Claim Description Maintenance screen of ROW Office. The "OAD Moving Costs" or "OAD Personal Property Loss" Claim Description Codes should never be selected for an on-premise OAD acquired as real property. If the on-premise OAD is owned by a tenant, then direct damages attributable to the OAD should be entered on the "Appraisal Direct Damage Allocation Maintenance" screen.

   In addition, the owner of an OAD on land that is leased may be entitled to a leasehold interest payment. See Section 3.03.Q.4 below.

   b. Off-Premise OADs. All OADs advertising third-party matters not conducted on the site (off-premise OADs) are presumed to be personal property and are included in the definition of a business. Traditional billboards are the most common example of an off-premise OAD.

   Off-premise OADs are eligible for most of the relocation assistance and payments available to a displaced business. Generally, owners will be given the opportunity to move the off-premise OAD and be paid a moving cost payment or to abandon the device in place and be paid a tangible personal property loss payment. An off-premise OAD owner may also receive a searching cost payment, and an appraisal, engineering and attorney fee payment. If the device is leased but is not owned by a company engaged in the business of erecting and maintaining off-premise OADs, the owner may also qualify for the business dislocation damage. No off-premise OAD owners are eligible for the business reestablishment expense payment.

   In addition to relocation benefits, the owner of an off-premise OAD on land that is leased may be entitled to a leasehold interest payment. See Section 3.03.Q.4 below.
Relocation benefits and payments as they pertain to off-premise OADs are outlined in Chapter 4, Section 4.05.K.

c. Portable OADs. On-premise OADs that are not physically annexed to the land or building will be acquired as personal property. Owners of these OADs meet the definition of a "displaced person", but they do not qualify as a business. Therefore, the procedures for relocation of off-premise OADs in Chapter 4, Section 4.05.K do not apply. Portable OADs will be purchased or moved like any other personal property as prescribed in Chapter 4, Section 4.05.E.

3. Exceptions to Classification as Real or Personal Property. The criteria established in Part 3.03.P.2 above will normally be used to determine an OAD's classification. If a District wants to acquire an OAD differently than the established classification criteria would indicate, they must first obtain a written legal opinion from the Office of Chief Counsel. The District must follow the procedures for obtaining a legal opinion as outlined in Chapter 1, Section 1.04.

4. Exceptions; The Highway Beautification Program and Illegal OADs. The provisions of this Section do not apply to nonconforming OADs acquired under the Highway Beautification Program using the Outdoor Advertising Control Act 160 of 1971 (OAC Act). See the Publication 581, Highway Beautification Manual.

The provisions of this Section also do not apply to OADs that are considered to be illegal because the owner of the OAD has no legal relationship with the property owner or because the owner is required to have a permit from the Department but does not. See Chapter 2, Section 2.15.E.

Q. Acquisition of Off-Premise OADs.

1. General. The following outlines general acquisition procedures to be used when acquiring off-premise OADs. It covers the topics of valuation, the offer letter, leasehold interests, condemnation and possession. Relocation benefits and required notices for off-premise OADs are covered in Chapter 4, Section 4.05.K. This section does not apply to portable, on-premise OADs acquired as personal property, which will be purchased or moved like any other business-owned personal property as prescribed in Chapter 4, Section 4.05.E.

2. Offer Letter for Off Premise Outdoor Advertising Devices. Form RW-356OAD should be used to offer the personal property loss or moving cost payment to an off-premise OAD owner. If the owner indicates his intention to move or abandon the device, it is only necessary to list the corresponding move cost or value in place on the form.

3. Valuation of Off-Premise OADs. Form RW-260OAD must be used to estimate the primary relocation assistance payment associated with the purchase or relocation of an off-premise OAD as personal property. This form must be used for all off-premise OAD valuations and may also be used in place of a moving cost finding memorandum where the moving cost estimate is $5,000 or less and a relocation advisor approves the moving cost finding consistent with Chapter 4, Section 4.05.D.10 by signing the form. Because the form is not an appraisal, no "Appraisal Problem Analysis" or "Appraiser Certification" is needed, nor is it within the scope of the appraisal review process. Off-premise OADs can be valued by a machinery and equipment appraiser, real estate appraiser, a qualified District staff member other than the relocation advisor assigned to the claim, or sign company with no financial interest in the OAD being affected. As an estimate of a relocation assistance payment, the form will be reviewed for reasonableness in the Central Office Acquisitions Unit.

4. Leasehold Interest Payment. It is important to note that a tenant who owns an off-premise OAD or an on-premise OAD may be entitled to compensation for the taking of the leasehold based on bonus value. This is a real property interest to be dealt with as part of the real estate claim like any other leasehold interest. That is, the property is to be valued as if owned by one owner, and then the value of the leasehold interest allocated to the tenant and the remainder of the damages allocated to the landlord. The offer and payment to the OAD owner for its leasehold interest would be a real estate (fair market value) damage payment separate and apart from relocation payments for an off-premise OAD as discussed in Chapter 4, Section 4.05.K.

If the OAD is owned by a tenant, and their leasehold interest has a bonus value, then Form RW-356LHI could be used to acquire the leasehold interest. If Form RW-356LHI is provided to the tenant, Form RW-356 should be provided to the fee owner with the last sentence of the first paragraph modified as follows: "This offer is intended to provide just compensation for all of your property interests." As an alternative to using Form RW-
356LHI, both the fee owner and the tenant can be listed as co-claimants along with their separate claim numbers on Form RW-356. Under this option, the "total damages offered" would include the bonus value. However, the amount of the bonus value payable to the tenant should be stated in the section titled, "The areas required are as follows:"

5. Declarations of Taking. Declarations of taking will still be necessary if an amicable acquisition cannot be achieved, even though off-premise OADs themselves are treated as personalty. The declaration will be required to take the leasehold or other property interest of the OAD owner. The off-premise OAD owner should be designated on the declaration of taking as "tenant" if that is their property interest, just like any other leasehold owner whose interest is being taken. The OAD owner may also own the land in fee or have an easement.

6. Extent of Taking. A condemnor is given discretion to determine the amount of land required for public projects. However, that discretion can be reviewed through the filing of preliminary objections to a taking to determine whether fraud, bad faith, or an abuse of discretion exits. In this regard, a condemnor may not appropriate a greater amount of property than is reasonably required for the contemplated public purpose.

The Department must be careful not to take more land than necessary in all projects. In fact, special care must be taken in this regard when off-premise OADs are being displaced. Off-premise OAD owners have not hesitated to file preliminary objections challenging takings as excessive. The Department must have a legitimate engineering reason for the location of right-of-way lines in all cases, especially those displacing off-premise OADs. In no event should there even be an appearance that a right-of-way line was located for the purpose of eliminating an off-premise OAD.

7. Removal of Off-Premise OADs by the Department. Before removing an off-premise OAD, the Department must first acquire the OAD owner's interest in the land, whether in fee, easement or leasehold. This can be done by amicable settlement or through condemnation. Amicable settlements for leaseholds should be documented with Form RW-364 whether or not a payment is being made. If the tenant's interest is not amicably acquired, the leasehold or other interest must be condemned even where the landlord's interest is amicably acquired and/or no payment is due for the leasehold.

After acquiring the land and conducting diligent negotiations with the off-premise OAD owner, if it appears that an amicable settlement may not be reached to acquire the OAD, then Form RW-591OAD should be sent to the claimant. This form can be sent after a deed is signed or after the declaration of taking is filed. It is not necessary to wait for the period for preliminary objections to expire. Form RW-591OAD informs the claimant that if they do not select a payment option or move their OAD by a specified date, the Department will assume that the device is abandoned in place and that they have chosen the personal property loss payment option. If the claimant fails to respond by the specified date, then we are deeming the OAD to be abandoned in place. If the claimant responds to the Form RW-591OAD letter, but is indecisive, the District should send a second letter stating that we are assuming that they are abandoning the OAD in place and choosing the personal property loss option.

This procedure applies to off-premise OADs owned by both tenants and landowners.

Before authorizing a contractor to remove an off-premise OAD, the owner must have been given an Offer Letter Form RW-356OAD, a Form RW-590OAD, and a Form RW-591OAD, including a reasonable amount of time to select the option to either move or abandon the device.

8. Retention Credit Not Applicable to Off-Premise OADs. Because off-premise OADs are considered to be personal property, Form RW-621 is not applicable. That is, the off-premise OAD owner cannot elect to remove the sign in return for a retention credit. Off-premise OAD owners must select the moving cost payment option if they want to keep their signs. Moving costs are to be reimbursed only after verifying that the OAD has been moved. If the OAD owner does not wish to remove the sign, then the Department will take possession of the device and may pay the personal property loss payment.
R. Acquisitions from Railroads.

1. In General. Railroads are given special status under Pennsylvania law:
   
a. The Public Utility Commission (PUC) has jurisdiction over all public highway-railroad crossings and must approve projects that involve them. The PUC also has the authority to appropriate railroad property necessary for these projects.

b. Other types of railroad acquisitions are subject to consent from the railroad company. Refer to 3.03.R.3. below.

In view of these factors and the nature of railroads as another mode of transportation, cooperation with railroads in the right-of-way acquisition process is especially important.

A process flow chart has been created to illustrate the options regarding railroad acquisitions. The flow chart is located at P:\penndot\shared\C-O ROW File Sharing\Railroad Acquisitions and is available via the ROW Office Homepage.

2. Highway-railroad Crossings. A highway-railroad crossing is a special type of intersection involving joint use of right-of-way for both railroad and highway operations. A highway-railroad crossing is the intersection of a highway right-of-way with a railroad's right-of-way upon which railroad tracks lie and is subject to the jurisdiction of the PUC. The highway can be at, above or below the grade of the railroad tracks.

Railroad property for projects which include highway-railroad crossings may be acquired amicably or when the PUC appropriates the property. Under either scenario, a metes and bounds description of the property to be acquired/appropriated must be prepared. The metes and bounds description must refer to a railroad marker. See Publication 14M, Plans Presentation (Dual Unit), Design Manual Part 3, Chapter 3; Publication 371, Grade Crossing Manual, Chapter 2 discussing PUC acquisitions at highway-railroad crossings.

PUC appropriated acquisitions are affected by entry of an order of the PUC appropriating the required right-of-way. The appropriation order has the same effect as, and is essentially equivalent to, a declaration of taking. It refers to the right-of-way acquisition plan, but includes metes and bounds descriptions of all areas appropriated. The order must be filed in the appropriate recorder of deeds office and indexed for title notice purposes. See Publication 371, Grade Crossing Manual, Chapter 2 discussing PUC acquisitions at highway-railroad crossings.

The PUC can exercise jurisdiction over private property within a crossing project; however, Department procedure is to request that the PUC only take jurisdiction over acquisitions from the railroad.

Acquisitions from private property owners (i.e., those not under PUC jurisdiction) are to be addressed under standard acquisition procedures.

a. Submission of Request to Appropriate to the PUC. Note: This process can take up to 90 days from the time the information is submitted to the PUC. The PUC appropriation of railroad property needs to be accomplished as early in the project development as possible to avoid delaying the letting. In order to not delay an order from the PUC, the District must have concurrence of the railroad regarding the plan and metes and bounds descriptions prior to submission to the PUC. The prior concurrence of the railroad will minimize the potential for an appeal from the PUC order appropriating the property.

The PUC can appropriate property with a final signed right-of-way plan that includes a detailed metes and bounds and recitations as required by the PUC. If not available, a right-of-way plan limited to the sheets which only include the railroad property and a detailed metes and bounds can be submitted to the PUC as long as the cover sheet is signed by the District Executive.

An electronic copy of the metes and bounds with recitations in Microsoft Word format should also be sent to the PUC Rail Safety Engineering Section for inclusion in the required order. This process can take up to 90 days from the time the information is submitted to the PUC.

The timing will dictate whether to acquire amicably or to pursue PUC appropriation. Considering the limited time to meet a project letting schedule, it is recommended that the District pursue PUC
appropriation upon the initiation of negotiations. This may be accomplished through a concurrent effort; i.e., conduct an amicable settlement and PUC appropriation at the same time. Once the path for acquisition is determined, divert from either the amicable acquisition or the PUC appropriation process, as may be appropriate.

b. Amicable Acquisition. If acquired amicably from a railroad, a PUC appropriation (and referral for payment of damages when needed) is not necessary. Regardless, close coordination between the Right-of-Way Unit and the District Grade Crossing Unit is required. See Publication 371, Grade Crossing Manual, Chapter 2. See also Publication 10, Design Manual Part 1, Transportation Program Development and Project Delivery Process, Chapter 3. As with PUC appropriations, attention to amicable acquisitions from railroads as early as possible will help to avoid delaying the letting.

Time-consuming and unsuccessful attempts at amicable acquisition, in lieu of concurrently pursuing formal PUC appropriation, can result in project delay and place the District at a negotiating disadvantage. Railroads frequently demand a quit claim deed, not a warranty deed, requiring modification to PennDOT’s pre-approved acquisition documents. Substantive changes to pre-approved documents, as well as any unique agreements demanded by the railroad, are then subject to further form and legality review by the Offices of General Counsel and Attorney General. See Chapter 1, Section 1.07 and RPDD 02-07-05 discussing the modification of forms and review and approval as to form and legality. These additional approvals will extend the time period necessary for approval of the quit claim deed.

Since these standard documents generally refer only to a plan, the railroad will most likely demand a metes and bounds description anyway for each required area. Finally, right-of-way clearance is frequently only one part of the overall railroad coordination process. Railroads often seek to mix issues related to the construction reimbursement agreement (and construction matters such as on-site flagging) with the right-of-way acquisition process further complicating the transaction and leading to more delay. It is for all these reasons that it is Department policy to pursue a concurrent approach.

In the event of an amicable acquisition where PUC proceedings have been initiated but a PUC order appropriating the property has not been issued, the District R/W Administrator will forward a RW-348 (PUC Notification of Amicable Settlement) upon execution of all applicable settlement documents for the right-of-way claim. This will terminate the need for the PUC appropriation.

c. Recordation of Order Excerpt, and payment/deposit of estimated just compensation. Normal right-of-way clearance procedures apply where land is appropriated by PUC order. That is, mere entry of the order by the PUC does not grant the Department a right to possess the land acquired. An excerpt of the appropriation order must be recorded in the county recorder of deeds office (similar to the recording a notice of condemnation) and payment must be made (directly or into court) to satisfy the Uniform Act procedures in the absence of an authorization to enter or a statement in the PUC order that no payment is due for the appropriation. See generally RPDD No. 7-9-93. The PUC order excerpt recordation process is as follows:

1. The PUC sends a certified excerpt of the order for recording, along with the entire order to the Assistant Counsel in-Charge, Utilities, Real Property Division, who will forward it to the District Right-of-Way Administrator with a copy to the District Grade Crossing Engineer/Administrator.

2. The District Right-of-Way Unit will record the original certified (i.e., sealed) order excerpt with the recorder of deeds office and provide proof of recording to the District Grade Crossing Engineer/Administrator. The District should not record the certified order excerpt until the 30 day appeal period has expired and the District is certain no appeal has been filed. Payment for the recording must be processed by the District in a timely manner.

3. The District Grade Crossing Engineer/Administrator then provides the Notification of Recording to the PUC. See Pub 371, Chapter 2.04.

The PUC has jurisdiction to determine damages for land it has appropriated but seldom exercises that power. If there is not an agreement regarding damages, the District must request that the Office of Chief Counsel file a petition with the PUC requesting that it refer the determination of damages (referral) to the appropriate court of common pleas (this is also known as a transfer of jurisdiction).
The acquisition of right-of-way from the railroad can be settled amicably at any time during the PUC appropriation and/or PUC referral process. After PUC appropriation, an attempt should be made to settle the claim using form RW-349 (this is similar to a post condemnation settlement upon the filing of a declaration of taking). If the railroad is unwilling to settle for the appraised amount, they can accept estimated just compensation by completing form RW-448RR.

When it is necessary to deposit estimated just compensation into court, the District must wait until the PUC enters the order granting the petition for the referral of damages prior to following the normal deposit procedures. See Section 3.09.B discussing this special procedure, and RPDD No. 5-7-89, also discussing the same. This process adds approximately 90 days to the deposit process.

Procedures used to document the deposit of estimated just compensation for a PUC Appropriation must not be confused with the declaration of taking entries made under normal acquisition procedures. Unlike the preliminary objection (PO) period, the railroad has two opportunities to object to the appropriation of its property.

1. If the railroad has objections to the request for the PUC to appropriate its property, it must object within 20 days in lieu of the PO period used for normal transactions.

2. After the PUC order appropriating the property is entered, the railroad has 30 days to appeal the PUC order appropriating the property.

After the order of referral has been forwarded to the District by the Office of Chief Counsel, the District may request that the estimated just compensation be deposited. The Department may obtain possession after payment of an amicable settlement or when the EJC is filed with the court.

d. ROW Office Procedures for PUC Appropriations.

1. Claim Maintenance screen. Where a railroad claim is appropriated, the date the PUC Order is issued must be entered into the field entitled "PUC Order or MOU Date" in the ROW Office Claim Maintenance screen.

2. Declaration of Taking Maintenance screen. Since ROW Office does not have specific fields applicable to the unique circumstances of a PUC appropriation, special notations can be made instead of the available Declaration of Taking Claim Maintenance screen (even though no Declaration of Taking was filed). In order to incorporate the six-year statute of limitations, the Declaration of Taking Claim Maintenance screen data must be entered into ROW Office. Where this is the case, a Declaration of Taking record must be created in ROW Office with comments referring to the PUC appropriation. The establishment of this screen will enable the creation of a Declaration of Taking Maintenance record to capture the appropriate estimated just compensation data.

In the reason for filing, enter "PUC Order transfer of jurisdiction". Other than entering the name of the Preparer, no other data will be entered on this screen; the Declaration of Taking Claim Maintenance screen will include sufficient information relative to the claim.

3. ROW Office Declaration of Taking Claim Maintenance Screen. This screen is broken down into three distinct sections to capture data. Due to the nature of a PUC appropriation, entering the Notice of Condemnation 475 date into the ROW Office Declaration of Taking Claim Maintenance screen to establish the preliminary objection period is inappropriate. Only data called for under the Estimated Just Compensation section and Board of View sections will be completed for a railroad claim under PUC jurisdiction. Preliminary objection period information does not apply.

4. Claim Description Codes. To enable the assessment of the claim for clearance purposes, the following claim description codes shall be used:

RRA (Railroad Appropriated). Used to identify all Railroad appropriated claims in ROW Office.
RRS (Railroad Settled). Used with the RRA Claim Description Code to identify Railroad appropriated claims that have settled.

(5) ROW Claim Payments. FMV costs associated with claims identified with the RRA Claim Description code will be paid using internal order (cost function) 81102.

FMV costs associated with claims identified with the RRS Claim Description codes will be paid using internal orders (cost function) 81100.

3. Other Types of Railroad Acquisitions. Where the railroad-owned land is not at a public highway-railroad crossing, the PUC does not have jurisdiction. Normal acquisition procedures apply subject to the restrictions discussed herein. Examples of such situations would be the widening of a highway onto adjacent railroad right-of-way or the overtaking of an abandoned railroad spur.

There are two Pennsylvania statutes limiting the acquisition of railroad land in non-grade crossing situations. The Administrative Code provision authorizing the Department to acquire land for all transportation purposes specifically provides that real property belonging to a railroad cannot be acquired for purposes other than operating highway right-of-way unless there is clear and convincing evidence that the activity cannot be conducted economically at an alternate location. Examples of acquisitions covered by this statute are maintenance sites and construction facilities (such as a concrete batch-plant). Next, Section 412 of the State Highway Law addressing the acquisition of substitute right-of-way for utilities overtaken by a highway project provides that the right-of-way of a railroad company shall not be acquired or occupied without the consent of the company owning or operating, or in possession of, the railroad (the consent provision).

Note that there are no appellate cases interpreting the consent provision of Section 412. Similar language under the County Code has been interpreted as not being limited to operating railroad right-of-way. However, the County Code provision is not part of a statute addressing substitute right-of-way. Reading it in context, the provision only applies to the acquisition of substitute right-of-way for a utility other than the railroad itself (water, sewer, gas, electric, etc.).

Under these two statutes, the important factor is the reason for the Department's acquisition. If the acquisition is for operating highway right-of-way, no limitation exists. If it is for some other non-operating highway right-of-way purpose, such as a maintenance site, there must be clear and convincing evidence that the activity for which the acquisition is being affected cannot economically be conducted at an alternate location. And if it is for a substitute right-of-way for another utility, the acquisition requires the consent of the railroad company.

Also, the Federal Commerce Commission Termination Act (49 U.S.C. §10501) regulates railroads engaged in interstate commerce. Railroads engaged in interstate commerce could raise a preemption defense under this Act to a state condemnation if the highway use would prevent or unreasonably interfere with rail operations or pose undue safety risks.

Given these legal restrictions, all efforts should be made to amicably acquire railroad right-of-way when the acquisition does not involve a grade crossing within the jurisdiction of the PUC. If an amicable agreement cannot be reached, and a declaration of taking must be filed, the Utilities and Right-of-Way Section and the Office of Chief Counsel, Real Property Division, may be consulted to insure compliance with acquisition policy. Refer to Section 3.08.B.3.k. In no event should railroad right-of-way be designated as required for a substitute right-of-way for another public utility without the consent of the railroad. Obtaining this consent may be difficult and delay delivery of the project.

A quit claim deed can be accepted from a railroad. The Central Office Acquisitions Unit maintains examples of standard modified forms that can be used for this purpose. In view of the modifications, the deed is subject to approval of the Office of General Counsel and the Office of the Attorney General. See Chapter 1, Section 1.07 and RPDD 02-07-05 discussing the modification of forms and review and approval as to form and legality. These additional approvals will extend the time period necessary for approval of the quit claim deed.

4. Conclusion. The following is a summary of railroad property acquisition scenarios discussed herein:

a. Grade Crossing: Accomplished by PUC appropriation unless an amicable acquisition is possible. Always pursue PUC appropriation concurrently with amicable negotiations.
b. Non-Grade Crossing (i.e. no PUC jurisdiction).

(1) For Highway Purposes.

- Operating Highway Right-of-Way: Apply normal acquisition/condemnation procedures.
- Non-operating Highway Operations: A certification that the transportation activity cannot be conducted economically at any other location is required. After certification, apply normal acquisition/condemnation procedures.
- Recognize that railroads engaged in interstate commerce have a federal preemption defense to a state condemnation, especially if the highway use would prevent or unreasonably interfere with rail operations or pose undue safety risks.

(2) As Substitute Right-of-Way for Utilities: Accomplished only with the consent of the railroad.

Where a declaration of taking is required, see Section 3.08.B.3.k discussing completion of the Form RW-400DTR.

Finally, note that a railroad is also a "utility" itself. Thus it is possible for a PennDOT project to impact an operating railroad in such a manner as to give rise to an obligation to provide substitute right-of-way to the railroad. In such a case the procedures for acquiring substitute right-of-way for utility apply. See Section 3.08.B.3.j.

S. Acquisitions from PennDOT Employees. The Adverse Interest Act precludes the Department from entering into a contract (sales agreement) with a PennDOT employee. There are two options when an acquisition is required from a PennDOT employee.

1. Condemn and pay estimated just compensation based on an application, which is not a contract. The employee can petition for viewers to obtain additional compensation or just allow the statute of limitations to expire if they are satisfied with the compensation.

2. Condemn and enter into a post condemnation settlement agreement which is not contrary to the Adverse Interest Act because there is an adversarial relationship between the parties. Although an administrative settlement may be used to obtain a post condemnation settlement, great care should be exercised to avoid the appearance of a conflict of interest or special treatment. The file should thoroughly document any administrative settlement with a Department employee.

3. The above applies only for acquisitions by PennDOT from PennDOT employees or those performing as a contractor of any type on behalf of the Department. It does not apply to any other Commonwealth employee, nor does it apply if the acquiring agency is a local public agency.

3.04 ADMINISTRATIVE SETTLEMENTS

A. General Policy. It is the policy of the Department that every reasonable effort should be made to acquire real property expeditiously by negotiation. This includes the use of administrative settlements as long as they are reasonable, prudent and in the public interest.

B. Authority to Approve Settlements. The District Right-of-Way Administrator possesses the authority to approve an administrative increase up to $50,000 over approved fair market value damages. The District Right-of-Way Administrator and the District Executive together may approve an administrative increase up to $100,000 over approved damages. On claims where the amount of the administrative increase is more than $100,000, the written concurrence of the Deputy Secretary for Highway Administration, in addition to the signatures of the District Right-of-Way Administrator and District Executive, is necessary. (Refer to 3.04.D). Other than the District Right-of-Way Administrator, no right-of-way staff, whether employed by the Department or contracted to perform acquisition work on behalf of the Department, possesses administrative settlement authority of any amount. At the discretion of the District Right-of-Way Administrator, the District Chief Negotiator may be delegated the role of approving Administrative Settlements.
The Central Office Acquisition Unit will review administrative settlements made by the Districts. This review will be conducted as a part of their quality assurance function and will be after the fact. The Central Office Acquisition Unit Chief will be available to provide before the fact functional advice and guidance on proposed settlements as requested by the Districts.

If the Chief, Utilities and Right-of-Way Section, determines that a District has developed a pattern of approving settlements that are not, in his opinion, reasonable, prudent or in the public interest, he may inform the District that further administrative settlements are subject to his review and approval before they are made. This restriction on the District approval of settlements will remain in effect until lifted by the Chief, Utilities and Right-of-Way Section.

C. Settlement Procedures - Administrative Settlement Increases. An administrative settlement should only be considered after a persistent, diligent negotiation effort has failed and it is apparent to the negotiator that the owner's counter-offer has merit and is not excessive. When this situation occurs, the negotiator must bring the particulars of the claim to the attention of his or her supervisor and the District Right-of-Way Administrator.

If, during the first negotiation contact, the owner makes a counter-offer, the negotiator should discuss it with the owner and request the reasons for the counter-offer. Solicitation of a counter-offer may be appropriate during negotiations if, in the opinion of the negotiator, progress toward a settlement is not being made.

Where the owner makes a counter-offer, the negotiator must consider if it is reasonable, taking into account the information presented by the owner. The negotiator should also consider the actual time savings gained by considering the settlement, compared to the time required for eminent domain proceedings and actual monetary savings that would result, such as appraisal and witness fees, legal fees, and cost of viewers plans.

If the negotiator considers a counter-offer to be reasonable, the negotiator should cross out the pre-approved amount which is shown on the agreement of sale, enter the new amount obtain the initials and date the changes by all parties. As an alternative, the negotiator may create new documents reflecting the counter-offer if time permits. The negotiator should have the owner sign the settlement documents and explain to the owner that the approval of the District Right-of-Way Administrator is necessary for the agreement to be fully executed. If, after considering all aspects of the claim, the District Right-of-Way Administrator feels that an administrative settlement is in the best interest of the Commonwealth, the Administrator must sign the forms and ensure the settlement information is documented in ROW Office. Concurrence by the District Right-of-Way Administrator may be accomplished by electronic communications to expedite the process.

Where an administrative settlement is negotiated, an Administrative Settlement Memo stating the reasons for granting or denying an Administrative Settlement must be prepared for the file. The administrative settlement memo must contain the following information:

1. A statement explaining that a diligent negotiation effort was made. The statement may be by hardcopy justification or by information entered in the Claimant Contact Maintenance screens in ROW Office.

2. A statement that the valuation document was reviewed and all elements of damages were considered. Note that an overlooked element of damages is not a reason for granting an administrative settlement. It is the negotiator's obligation to review the plans and the valuation documents closely with the owner. If it appears that an element of damages has been overlooked (or not given sufficient consideration), the negotiator, after consultation with the District Chief Negotiator, may use Form RW-372 to request a review of the claim file for the reasons indicated. Where the RW-372 contains comments relating to the valuation document used to establish the offer (either waiver valuation or appraisal) the District Chief Appraiser must be copied.

3. Information concerning valuation and any other relevant data obtained from the owner.

4. The written counter-offer (or email) provided by the owner(s), if required by the District R/W Administrator, confirming the claim has been settled for a specific amount.

5. Where the administrative settlement exceeds $100,000.00, in addition to 1 through 4 above, the following must also be included in the Administrative Settlement Memo:

   a. An estimate of the actual timesaving to the project, including the stage of negotiations for the project as a whole as compared to the required time for eminent domain proceedings.
b. An estimate of the types of savings that would result such as: legal fees; witness fees; court stenographer fees; appraiser costs; the cost of viewers plans; the estimated percentage of jury awards above pre-approval based on actual past experience in the particular county on similar claims; and other costs applicable to the claim.

Once the memo is approved by the appropriate people, the negotiator will ensure the necessary forms are complete, obtain the owner's signature and process the payment to Central Office. The memo must accompany the claim payment package. See Section 3.07 for payment processing procedures.

A copy of the approved settlement form must be delivered to the owner, either personally or by mail. If the settlement is disapproved, the owner must be notified and the settlement forms voided.

D. **ROW Office entries.** The following settlement information must be documented in ROW Office:

1. **Claimant Contact Maintenance screen:**

   "Memo to File" is selected as the Contact Method, the "Counter Offer" amount is entered, and the negotiator identifies him/herself as the "person making contact." Since, in this situation, the Right-of-Way Administrator's review is subsequent to the signed Agreement of Sale, the approval date may be later than the date on the Agreement of Sale. Therefore, specific reference should be made to the Agreement of Sale date, and the specific reasons for approval or disapproval entered on the text lines. A staff member or contracted consultant may enter the approval memo into ROW Office on behalf of the District Right-of-Way Administrator. The hardcopy justification memo or a screen print of the approval memo entered on the Claimant Contact Maintenance screen must be included in the payment package. However, because this memo requires substantial information, a paper memo to the file may be used, in which case, a Claimant Contact Maintenance screen memo to file, indicating the counter offer should be entered along with a statement to refer to the file for the complete approval memo. Payment packages involving administrative settlements will not be processed without the appropriate justification memorandum.

2. **Claim Maintenance screen:**

   a. The amount of the administrative settlement (above approved damages)

   b. The Settlement date.

   c. Select "Administrative" as the Settlement Type.

   After the settlement type, the administrative settlement amount, and settlement date are entered on the Claim Maintenance screen, the District Right-of-Way Administrator should enter his approval date on the Administrative Settlement Claim Maintenance screen.

3. **Administrative Settlement Claim Maintenance screen:**

   Due to business rules within ROW Office, payment can only be made when the District Right-of-Way Administrator or District Chief Negotiator enters the approval in the ROW Office Administrative Settlement Claim Maintenance screen. Only the District Right-of-Way Administrator, or District Chief Negotiator acting on his/her behalf, may enter the Administrative Settlement approval in ROW Office. This action locks the approved administrative settlement amount and allows payment.

   Note: For administrative increases over $100,000, approval of the Deputy Secretary for Highway Administration is required in addition to the signatures of the District Right-of-Way Administrator and District Executive. A paper file memo is required to document the approval signatures and dates. After obtaining written approval from the District Executive, the District Right-of-Way Administrator should enter approval dates for himself and the District Executive on the Administrative Settlement Claim Maintenance screen. The settlement memo, along with all pertinent backup information, should be sent to the Central Office, Utilities and Right-of-Way Section, under cover letter requesting concurrence with the settlement. In ROW Office, the District should enter the "Submitted to C.O." date on the Administrative Settlement Claim Maintenance Screen. Central Office will seek the concurrence of the Deputy Secretary and advise the District as appropriate. Upon approval by the Deputy Secretary, Central Office will enter the approval date on his behalf,
thereby locking the administrative approval amount and allowing payment. Otherwise, documentation and entries to ROW Office are the same as above. The signed approval memo will be returned to the District.

4. If an administrative settlement is not approved, enter the counter offer amount on a ROW Office Claimant Contact Maintenance screen, select "Memo to File" as the contact method, and briefly enter the reason(s) for disapproval.

5. Settlement Date and Payment Package. Note that the date on the Agreement of Sale for an administrative settlement shall not be earlier than the last approval date on the administrative settlement approval memo. Therefore, after approval, the necessary settlement documents will be prepared and signed. The "settlement date" and "settlement to CO" date must be entered on the ROW Office Administrative Settlement Claim Maintenance screen as appropriate after all approval dates are entered.

The administrative settlement “Memo to File” must be included in the payment package for the Central Office Right-of-Way file.

E. Prohibition on Administratively Settling Relocation Assistance Payments. Administrative settlements cannot be granted on any item of special damages for displacement (Relocation Assistance Payments) found in Chapter 9 of the Eminent Domain Code except for personal property loss payments. In exceptional circumstances, administrative settlements for personal property loss resulting in a maximum increase of 15% may be processed with the prior written approval of the District Right-of-Way Administrator. The administrative settlement memo must include the same information listed in Section 3.04.C.1-5. If approved by the Chief of the Central Office Utilities and Right-of-Way Section, a comment referencing the personal property administrative settlement amount must be added to the ROW Office Residential Relocation Claim Maintenance screen or Business Relocation Claim Maintenance screen (whichever applies). Example, "$1,500 PP Admin Settlement approved by Chief URWS 5/24/13." Use internal order 81195 to pay Administrative Settlemen ts for Personal Property Loss payments in ROW Office to comply with 4.01.E, related to relocation payments not considered as income. If a person displaced does not agree with the amount of any other relocation assistance payment, the appeal procedure found in Chapter 4, Relocation Assistance must be used.

Additionally, District Right-of-Way Administrators have the authority to administratively settle a claim involving an off-premise Outdoor Advertising Device (OAD) treated as personal property. For off-premise OADs valued at $30,000 or less, the District Right-of-Way Administrator may approve an increase of up to $10,000. For off-premise OADs valued above $30,000, the District Right-of-Way Administrator may approve an increase up to 30% of the value in place. The ability to administratively settle an off-premise OAD claim applies to payments for personal property loss and not to moving costs.

F. Administrative Settlements on Claims Involving Replacement Housing Supplements. Since an increase in the amount of the fair market value generally results in a decrease in the amount of the replacement housing supplement, it is very difficult to justify an administrative settlement of the fair market value on this type of claim. If, however, an administrative settlement is approved before the payment of the replacement housing supplement, the supplemental offer must be revised in accordance with Chapter 4, Section 4.03.G. If the revision results in a change in the amount of the replacement housing supplement offer, a new offer may have to be made to the person displaced. Refer to Chapter 4, Section 4.03.G of for instructions on making revised offers.

An administrative settlement of the fair market value should not be approved after the replacement housing supplement has been paid.

3.05 TITLE SEARCHES

A. General. Title searches are conducted in order to identify every person who has an interest in the property being acquired and the extent of the interest. The search also identifies the adequacy of title to the property and identifies all mortgages, judgments, liens and other encumbrances affecting the title, such as delinquent taxes and unpaid municipal claims.

B. Standard Title Search, Form RW-918.

1. Search Period. The minimum period of search (the length of time that the searcher must go back in the chain of title) shall be to the most recent arms-length conveyance (e.g., between non-family members) where a
mortgage was given by a private lending institution (e.g., bank, savings and loan). In the situation where there is no mortgage, the period of the title search should be 21 years.

In those areas where mineral rights (including gas and oil) may become an element of damages, the search must go back to the date the mineral rights were conveyed away from the surface ownership.

2. Completing Form RW-918. List all deeds in the chain of title, with the present title-holder at the top of the grantee column.

In the column headed "Fee Simple," place a check mark if the deed was a conveyance in fee simple. If it was less than a fee simple deed, explain or list as an exception under "Remarks."

In the column headed "Description," place a check mark if the description is the same or inclusive of the present description.

In the column headed "Restrictions," make a check mark to indicate that the restrictions, if any, were analyzed. Any restrictions that might affect the value of the property—for example, a restriction against commercial usage—must be noted under "Remarks."

In the column headed "Spouse," make a check mark to indicate that the spouse has executed the deed, that the property was held in the name of a husband or wife alone, or that the grantor was single. In the case of mortgages and judgments, a check mark indicates that the mortgage or judgment is against both the husband and wife, or that the mortgagor or judgment creditor is single. A mortgage or judgment against husband or wife alone should not be listed in the case of a property owned by both husband and wife.

Title searchers need to diligently determine if a mortgage or judgment of record has been satisfied. This is usually clear in the case of a mortgage because lending institutions typically file a satisfaction piece when loans are paid; mortgages, however, are frequently sold and the holder of the mortgage may not have re-recorded their interest as successor. The status of other liens, particularly judgments, may be difficult to determine. However, the Code requires notice of a declaration of taking if the lien is "of record." Therefore, if there is no formal notation that an identified lien has been satisfied, it is still deemed "of record." Evidence of satisfaction is the key inquiry.

Title searchers must note on the Form RW-918 if a mortgage or judgment has been satisfied. If satisfied, rather than listing the address of the mortgagee or lienholder, the word "satisfied" may simply be written along with the date, deed book and page of the recorded satisfaction piece.

3. Attachments to the Form. A photocopy of the deed must be attached to Form RW-918.

4. Distribution of the Form. Prepare one copy of the title search with deed attached for the District Office and send a photocopy to the Central Office as soon as the title search is completed.

C. Alternative to Standard Title Search - Claims of $25,000 or Less.

1. A standard title search will not be required on right-of-way claims that meet all of the following conditions:

   a. Total damages are $25,000.00 or less. This includes all damages including direct, indirect, cost of adjustment, temporary easements and administrative settlements.

   b. The acquisition is a partial taking and is minor when compared to the remaining value of the subject parcel after the taking.

   c. The acquisition is amicable.

Provided that the above conditions apply, the negotiator must certify to the following on the Parcel Title Certificate Maintenance screen in ROW Office.

Title Certification:
I certify that I am satisfied that the above listed Grantee, is/are the current owner(s) of the subject parcel, having personally reviewed the referenced deed or will, and current real estate tax statements. Further, I am satisfied that the subject right-of-way taking is sufficiently minor that it will not materially affect the ability of the remainder to provide security for liens and judgments.

2. The District Right-of-Way Administrator's signature on Form RW-943 indicates concurrence in the application of this alternative procedure.

3. Note that this is an optional procedure. If the District Right-of-Way Administrator feels that a standard title search is warranted, one may be provided.

4. A standard title search should be provided for all claims that do not meet the three conditions stated above.

5. The title certification should be dated within 30 days of the payment package submission.

D. **Bring-Down Title Search, Form RW-918B.** A bring-down title search is a re-examination of the title, as documented on the Title Search Form, RW-918, to ensure that there have been no changes to the title that would materially affect the claim.

On claims of $25,000 or less where the alternative to the standard title search procedure is used, a bring-down title search is not required.

On claims that are settled amicably, bring-down title searches must be made immediately prior to placing the claim in line for payment and immediately prior to recording the deed. "Immediately prior" will generally be interpreted as within 30 days.

On claims involving condemnation, bring-down title searches must be made: immediately prior to requesting a declaration of taking; immediately prior to filing a declaration of taking; within ten days of the filing of a petition for viewers by the claimant; immediately prior to a District request to petition for viewers; and immediately prior to a request for a petition to withdraw estimated just compensation.

### 3.06 SETTLEMENT DOCUMENTS

A. **General Rules for Completing Settlement Documents.** Settlement instruments must be executed by the property owner or through their proxy under a power of attorney; unless there is a separate instrument assigning damages, in which case, the instruments should be signed by the assignee.

Signatures must correspond with the names in the body of the instrument. The signatures of all deeds and other instruments must correspond exactly with the names as they appear in the body of the deed or other instrument.

Signatures must be in ink.

Signatures are required on original documents only. Copies of the signed original documents should be made and distributed as necessary. It is unnecessary to make the claimant sign their copy of documents.

The individual signature block should be used when the property owner is one or more living persons. This is true regardless of whether the owners are husband and wife, tenants in common or have different interests (i.e., life estate, purchaser under installment sales agreement). The name or names of the claimants must be typed under the signature lines:
INDIVIDUALS

The entity signature block should be used if the claimant is a corporation, partnership, LLC or other business entity, trust, estate, school district, government entity, church or other religious institution, condominium association, club, unincorporated association or if an agent is signing on behalf of the claimant. The name of the property owner must be typed in the line under the word "Grantor:"

ENTITIES*

GRANTOR:

(Name of Entity)

BY: __________________________

BY: __________________________

* Use this block for a corporation, partnership, LLC, government entity, school district, church, trust, club, association, POA, attorney-in-fact, executor, administrator or any other entity. See R/W Manual Section 3.06.

The name and title of the person authorized to sign on behalf of the entity must be typed under the signature line:

BY: __________________________
   Mark Doe, Executor

B. Preparation of Deeds.

1. Naming of Grantors in Deeds. General Rule—When preparing the new deed, use the name of the Grantor as it is listed in the prior deed. If the Grantor is married but his or her spouse is not a record owner, the spouse should not be included as a grantor. There are certain instances, however, where you will need to list a different name for the Grantor in the new deed. The following are examples of such instances. Please note that this is not an exhaustive list. If you are uncertain as to how to name the Grantor in the new deed, please contact the Office of Chief Counsel, Real Property Division.

   a. Single Unmarried Grantor. When naming a male grantor alone, state that he is single or a widower. When naming a female grantor alone, state whether she is single or a widow. A divorcee is single.

   b. Deceased Owners. Note: If the owner or one of the owners of record is deceased, you must submit
proof of death before damages can be paid. The transmittal letter must specifically state the source from which you obtained the proof of death. Such sources include the Bureau of Vital Statistics, death certificate, register of wills, or a short certificate from church or cemetery records.

(1) Tenancy by the Entireties—When a property is held in the name of husband and wife, it is known as a "tenancy by the entireties." Upon the death of one, the title immediately and automatically vests in the surviving spouse. No court proceedings are necessary. The surviving spouse alone should be named grantor, and should be designated as widower or widow.

(2) Joint Ownership—Two or more persons may own property as joint tenants with right of survivorship. If a joint tenant with a right of survivorship dies, that person's interest in the property automatically vests in the remaining owner(s). Only the remaining owner(s) should be listed as Grantor(s).

(3) Others—When the record property owner is deceased (regardless of whether there is a will), the claimant should be listed as "The Estate of (record property owner)." Do not refer to the claimant as "(Property owner), deceased," or "the Heirs of (Property Owner)."

However, if the deceased person had a will and specifically devised the subject property to another, both the estate of the deceased, represented by the executor, and the specific devisee(s) should be named as grantors.

If the record owner is deceased, the Commonwealth must negotiate with an administrator (if decedent had no will) or executor (if decedent had a will). Documentation from the court authorizing the administrator or executor to act must be attached to the papers sent to Central Office.

c. Acknowledgement of Deeds. All deeds must be acknowledged before either a notary public or a justice of the peace.

Please refer to Appendix F, Signature Authority Guide, to determine who should sign PennDOT's acquisition documents.

C. Preparation of Agreements of Sale with Corresponding Deed.

1. General. The agreement of sale is a contractual document between the owner and the Department concerning the sale of real property. These forms were designed to be used in conjunction with a specific deed, depending upon what is acquired.

2. Forms RW-317AF, Agreement of Sale - Fee Simple and RW-317F, Deed Fee Simple. Since it is Department policy to acquire in fee simple title all real property designated on right-of-way plans as required right-of-way, with a few exceptions explained in Section 3.01, this pair of forms will be used for most acquisitions.

The agreement of sale and deed fee simple differentiate between the title acquired by the Department for required right-of-way and the title acquired for areas outside of the required right-of-way. Forms RW-317AF and RW-317F indicate that the SELLER/GRANTOR will sell and convey the required right-of-way in fee simple, "and those areas, if any, designated as required for easement purposes as identified by the plot plan..." For example, an area designated as "required channel easement" is acquired by easement for that purpose.

In the first line under "Witnesseth," the phrase "recorded" or "intends to record" must be inserted, depending on whether or not the official right-of-way plan has been signed by the governor or secretary and recorded.

The agreement of sale includes a 90-day assurance clause in which the seller is assured that the Department will not require vacation for at least 90 days from the date of execution. As the project circumstances require, a notice to vacate, RW-591, may be sent to the claimant any time after 60 days from the date of execution.

The 90-day clause must be deleted if the owner was previously given a Form RW-590. Refer to Chapter 4, Section 4.07.
The specific written date of continued rent-free possession shall be 90 days from the date of execution, a period fixed by Department policy to allow sufficient time for the payment to be processed and the payment received by the claimant. The rental amount shall be 6% of the payment amount (general damages), and the rental period will commence upon expiration of the above 90 days. These controlling dates must be handwritten when the agreement is executed by the claimant and dated. These dates should be fully explained to the claimant.

If the claimant elects to retain the improvements and have the retention value credited against his right-of-way damage claim, the agreement of sale must show the gross amount of the consideration. A notation is then made at the bottom of the agreement regarding the improvements to be retained. The invoice must be made out for the net amount to be paid and a note should explain that the (net) amount to be paid is the difference between the damage settlement (gross) amount and the value of the retained building(s). Also, Form RW-621, Removal Agreement, Owner - Retained Building(s), must be completed in cases of owner-retention.

D. Settlement Documents When the Department Acquires Property for a Local Project Sponsor (LPS).
When a District enters into an agreement with an LPS wherein the District is to acquire right-of-way for the LPS project, the changes discussed below must be incorporated on the Form RW-317AF, and Form RW-317.

At the end of the first paragraph, after the word "COMMONWEALTH," the following phrase should be added and completed: "pursuant to Agreement No. – – – – –, acting solely as agent for <specific name of the local public agency>,".

At the beginning of the second paragraph, after the word "COMMONWEALTH," if the Commonwealth is acting as agent in filing the plan, add "as agent;" however, if the LPS has filed the plan, add the name of the LPS and delete "the COMMONWEALTH." At the end of the second paragraph, add "under authorization of Agreement No. – – – – –." If preferred, the authorizing statute may be used. The authorizing statute may be obtained from the LPS or the attorney representing the LPS.

The identical policies and procedures apply when acquiring right-of-way as agent for the Commonwealth as with an LPS. Right-of-way should be acquired with title as requested by the LPS and authorized by the agreement.

Further discussion relating to acquisitions for LPS projects can be found in Appendix C, Section C.01.G.

3.07 CLAIM PAYMENTS

A. Preliminary Bring-Down Title Search. The first step in processing a damage claim payment is to make a preliminary bring-down title search to date, using Form RW-918B.

This search is done to ensure the adequacy of the title that is being acquired and to find any changes in ownership, liens, mortgages, judgments, and any and all encumbrances affecting the title.

A search must also be made to determine current and delinquent taxes and other municipal claims against the property.

Note that in some cases, usually involving low value claims, a complete title search is not necessary.

A complete discussion of title search policy is found in Section 3.05.

B. Property Plots, Plan Sheets.

1. Preparation. Property plots or plan sheets must meet all the requirements as outlined in Publication 14M, Design Manual, Part 3, Plans Presentation, Chapter 3, Right-of-Way Plans and must be prepared as follows:

   a. Legal and required right-of-way, areas of slope, channel change, aerial easement, temporary area for construction, drainage that will affect property damages including inlets and outlets showing drainage off of and on to the property, underground drainage and a "north" arrow must all be clearly shown.

   b. Required right-of-way and substitute right-of-way for utilities must be hatched. Normal right-of-way and limited access right-of-way should be hatched differently from one another. A key to the
hatching must be included. Slope, channel change, etc., should not be hatched.

c. Complete claim information should be supplied in the title block of a property plot. A plan sheet is required only to show the name of the property owner, the parcel number, and deed book reference.

d. Whenever possible, property lines should be shown to indicate the entire "before area" of the property.

e. It is particularly important to clearly designate the limited access line on partial takes for limited access highways.

2. Alternative to Property Plot, Plan Sheet. On total takings, the metes and bounds description of the property, photocopied from the prior deed and/or title certificate, may be used.

3. Use of the Plots or Plan Sheets in the Payment Package. The property plot or plan sheet must be signed by the owner on the front side and attached to the original deed.


1. General Rule and Exception. Damages payable to an owner are subject to assessed taxes and municipal claims and liens of record unless released by the lien holder. On the Form RW-313 these items are listed as "charges" which are deducted from the total amount available for distribution.

The exception to this general rule is partial takings where total damages are $25,000 or less and there is an amicable settlement. The $25,000.00 limit applies to the sum of all damages, including direct, indirect, cost of adjustment, temporary easements, and administrative settlements. To qualify for the exception to standard procedures, the District Right-of-Way Administrator must certify that the right-of-way taking is sufficiently minor that it does not materially affect the ability of the remainder of the property to provide security for liens and judgments. (See Section 3.05.C). In these cases, no release of lien or directive to pay is required and the entire amount can be paid to the owner. Where the Department pays a claimant without paying an equitable pro-rata share to a lienholder or judgment holder of record, the Eminent Domain Code does not provide that a double payment must be made. Instead, the law provides lienholders and judgment holders of record with legal and equitable remedies against the claimant. Districts are advised that the Department often times will be necessary parties in such actions.

Special rule for Declarations of Taking. Regardless of the amount of EJC, title searches are mandatory on all claims that go to a declaration of taking. The Eminent Domain Code requires notice of the filing of declaration of taking be provided to all lienholders and judgment holders of record. See RW-432ML.

2. Release of Lien, Form RW-307. This form is used to indicate the release of a lienor to any amicable settlement. The blank space after the phrase "hereby releases from the operation and effect of said lien the premises" should be filled out according to the instructions on the reverse side of the form. The nature of the instrument which is the basis of the lien (i.e., whether mortgage or judgment) and the date and place of recording of same are to be inserted.

a. No release of lien is required for a lien that will be paid in full. In such case, the District should ensure that the lien is satisfied of record after payment is made to the lien holder.

b. If a lienor objects to executing the release of lien in advance of receiving payment, the following procedure may be used:

Adding the following sentence above the "IN WITNESS WHEREOF" clause may amend the release of lien. "The release is conditioned upon receipt by the lienor of $________ of the monies owed to the above claimant(s) by the Department of Transportation by reason of the acquisition of the above premises, in accordance with the attached directive to pay."

c. Every lien that will be paid, whether in full or in part, must be listed in the Settlement Statement (Form RW-313) under "Charges Against Claimant(s)." In addition, the place of record of lien, the record amount of the lien, and the amount to be paid (as set forth in the Directive to Pay) must be shown.
d. Releases of lien are to be recorded in partial takings that are amicably acquired. In condemnations of partial takings, lien releases need not be recorded since the title acquired through the Declaration of Taking is good against lienors.

e. A copy of the release of lien is to be included in the claim payment submitted to the Central Office Utilities and Right-of-Way Section (original is temporarily retained in the District Office). Upon receipt of the deed from the Office of Chief Counsel (marked "approved as to form"), the deed and the originals of all releases of lien are to be recorded and subsequently returned to the Central Office.

3. Directive to Pay, Form RW-380. If the owner can obtain a release from a judgment or lien holder only with the promise to pay all or part of the damages, Form RW-380 can be properly executed by all equitable owners.

This form is executed to protect the lien holder once he has signed Form RW-307. The directive to pay can be made out for any amount the parties concerned have agreed to. This form may also be used to pay a leasehold interest in the claim.

Four copies of each directive to pay are prepared and distributed as follows:

a. The original and one copy are submitted to the Central Office with a copy of the release of lien.

b. One copy is given to the claimant.

c. One copy is retained by the District.

D. Proration of Taxes, Form RW-313T.

1. Standard Proration Computation. It is the responsibility of the Department to pay its pro rata share of real estate taxes and other municipal claims for the current calendar or fiscal year, or quarter of the year in the case of most municipal claims.

The negotiator should determine the status of real estate taxes and other municipal claims on the acquired property for the past four years. On total take claims or claims where a building of a substantial nature is being acquired, the file must contain copies of receipted tax bills for the last four years or a statement from the tax collector that gives the status of taxes for the last four years.

The negotiator should contact the tax collector or proper municipal officer to determine the amount levied for current taxes and/or municipal claims for which bills have not been sent. If current taxes and/or municipal claims have not yet been levied, the owner's statement from the previous calendar or fiscal year should be examined and copies made. Current taxes should then be prorated and paid as soon as they are levied.

If the claim is for a partial taking, the Department is liable only for taxes and municipal claims on the portion of the property acquired.

All right-of-way and easements acquired by the Department, except temporary construction easements, must have the taxes paid by the Department. Taxes are prorated on direct damages and severance, but not on administrative settlements, temporary construction easements, or payments for cost of adjustment.

Taxes and municipal claims for the current year must be prorated as of the date the Department acquires title or possession, whichever is earlier.

A copy of the Factor Tables for the computation of the Department's share of taxes is included as Exhibit No. 1 at the end of this Chapter.

The amount of the Department's share is based upon a self-explanatory formula that is reproduced on Form RW-313T. Procedures specific to the RW-313T are as follows:

All fields marked with the red triangle must be filled-in for the formulas embedded in the form to work properly. Fields not identified with a red triangle must not be changed.
a. The earliest date of either the "Date of Deed/Declaration of Taking" or "Date of Possession" is automatically selected to calculate the pro rata share.

b. Note that "damages" and "before value" come from the approved appraisal and should never reflect the amount of an administrative settlement.

2. **Alternative to Standard Proration.** The alternative proration procedure may be used on claims that meet the following conditions:

   a. The acquisition is a partial taking and is minor when compared to the remaining value of the subject parcel after the taking; and,

   b. There is no severance or depreciation to the remainder of the property.

When these conditions apply, the payment is determined by multiplying the amount of general damages by 1.5%. Note: only the general damages amount from the approved appraisal may be used. The amount should never reflect the amount of an administrative settlement, temporary easement, cost of adjustment or any other item of compensation. The resulting amount will be entered on line 2 of Form RW-313, along with the word "estimated."

There is no other alternative method of computation. The Department has no authority to request an owner to waive this payment; therefore, a payment will be made in all cases.

3. **Property Tax Exemption.** Real property purchased by the Department becomes tax exempt at the beginning of the year (calendar or fiscal) following the year in which it was acquired.

For example, a property taxed on a calendar year basis and acquired by the Department in January 2002 would become tax exempt in January 2003.

4. **Proration of Taxes When Authorizations to Enter or Rights-of-Entry Were Granted.** The Eminent Domain Code requires the acquiring agency to pay prorata taxes to the date of vesting title or the effective date of possession, whichever is earlier. Therefore, where entry for construction purposes was granted prior to formal acquisition (for a design-build project, for example), the Department must pay prorata real estate taxes back to the date that the Authorization to Enter (Non-Waiver of Claim) or Right-of-Entry was signed.

E. **Settlement Statement, Form RW-313.** This form outlines the amount of the settlement with the owner and details the total amount of the claim and the proper distribution of the funds.

All settlement statements must include the signature of a District representative certifying the accuracy of the information. This certification, located at the bottom of page 2 of the form, must be accompanied by the title of the signer and the date.

All settlement statements must be identified, at the top of page 1, as either a Final Settlement, Estimated Just Compensation, or Estimated – Final Distribution by Title Company.

All settlement statements identified as Final Settlement or Estimated Just Compensation must be signed by the claimant and all signatures must be witnessed.

The claimant and a Department representative must initial and date all strikeouts or changes to the information on the form.

Third party payments and payments to multiple payees must be accompanied by a Directive to Pay (Form RW-380) and supporting documentation. The settlement statement can be used to direct payment for mortgages, judgments, taxes, and other encumbrances provided that the payee and payment amount are clearly shown in the space provided. Retention credits must be shown on the settlement statement.

It is the responsibility of the Department to ensure that current and delinquent taxes and other municipal claims that have been assessed are paid out of damages, even if the taxes or claims have not been entered as liens. Accordingly, it is necessary to list the total amount of unpaid taxes and other municipal claims assessed against the property as a charge against the claimants.
Mortgages and judgments must also be listed and paid out of the damages unless released. See Section 3.07.C.

The Department's prorata share of real estate taxes and other municipal claims for the current year must be listed regardless of the amount of such share. See Section 3.07.D.

Space has also been provided on the form to reimburse the claimant for other necessary expenses incidental to the transfer of the property to the Department. Expenses defined by Section 708 of the Eminent Domain Code, such as recording fees and fees for the satisfaction and release of mortgages and judgments fall within this category. The Department is not required to pay any fee, no matter what the amount or nature of the fee. Fees must be reasonable, based upon the particular facts involved and the adequacy of the claimant's justification for the amount of the fee. Questions concerning reasonableness should be directed to the Central Office Acquisition Unit.

F. Right-of-Way Invoices. Separate invoices shall be made for each check required to pay the owner and each lienor and/or taxing authority in whose favor a directive to pay has been executed by the owner.

Payment processing instructions are found in Chapter 6, Administration.

G. Disbursement of Payments.

1. Disbursement by Check. Most payments will be made by check. In most cases, checks will be mailed directly to the claimant, lien holder, if any, or any other person to whom the claimant directs payments. If an attorney represents a claimant, the invoice should show that the check is to be made payable to the claimant and mailed in care of the claimant's attorney.

In exceptional circumstances, the invoice may show that the check will be made payable to the claimant but sent in care of the District Right-Of-Way Administrator. See Section 3.07.G.2 below.

2. Delivery in Person. Where circumstances require that a payment be delivered in person, the utmost care must be exercised to ensure that any conflict of interest is avoided. As a general rule, those that negotiated, appraised or acted as a reviewing appraiser for the property may not deliver a check.

H. Claim Information Transmittal Letter, Form RW-943. The transmittal letter is to be used by the District Office to summarize and transfer in standard form the information included in the submission of claim fees and costs to the Central Office Utilities and Right-of-Way Section.

I. Documents to be Included in Damage Claim Payment Packages.

1. Amicable and Administrative Settlements. The payment package must include:
   a. A Claim Information Transmittal Letter, Form RW-943;
   b. Settlement documents, including a deed (original only, executed and notarized) with property plot or plan sheet attached, agreement of sale (original and one copy) or other settlement document as applicable;
   c. Release of Lien, Form RW-307 (copy only), if applicable;
   d. Directive to Pay, Form RW-380 (original and one copy), if applicable for each payment;
   e. Proration of Taxes, Form RW-313T (original only), unless taxes are estimated;
   f. Settlement Statement, Form RW-313 (original and one copy);
   g. Title Search, Form RW-918 and Bring-Down Title Search, RW-918B. The Certification Statement required on low value claims is documented in ROW Office and does not need to be included.

For multiple checks in addition to the above, the package must contain one agreements of sale and one settlement statements for each additional check to be cut.
2. Amicable Settlement after Declaration of Taking. The alternative to standard title search procedures in Section 3.05.C cannot be used for parcels that have been condemned. After condemnation, no payment can be made to a claimant unless liens are satisfied or releases of liens are executed.

The payment package must contain the same information as required in Section 3.07.I.1 above, except the Form RW-334, (original and two copies) should be used instead of a deed.

However, if the deed was mailed or given to the owner prior to filing the declaration of taking and was executed and returned to the District, the deed may be used to process the payment.

3. Pro-Tanto Payments. The payment package must contain the same information as required in Section 3.07.I.1 above, except the Application for Payment of Estimated Just Compensation, either Form RW-448 or Form RW-448D (original and two copies) should be used rather than a deed and agreement of sale. Neither property plots nor plan sheets are necessary.

4. Payments through Title Companies. The payment package must contain the same information as required in Section 3.07.I.1 above.

For total takes, the payment package must include approximate payoff figures demonstrating that the liens do not exceed the total payment amount.

When the payment package is submitted for payment, one invoice for the full amount to be paid to all payees should be made payable to the title company as the escrow agent. Example: "T A Title Co., Escrow Agent for John Smith." The check will be deposited in the title company's escrow account and, at a settlement conference, separate checks will be drawn by the title company for each payee listed on the settlement sheet.

The payment package must contain three Claim Information Transmittal Letters, RW-943. The transmittal letters and right-of-way invoice must have a statement in the remarks section noting that the check is to be made payable to the Department's title attorney.

A copy of the complete payment package is to be sent to the title company to alert them that the claim has been placed in line for payment.

All title searches must be on Form RW-918.

Title companies can only be used when a District enters into a formal agreement with the title company to provide title services.

5. Processing Deeds. The deed will be returned to the District Office for recording at the same time the invoices are processed for payment. Deeds are to be recorded immediately upon their receipt. Make certain that the original release with the signed prints is used for recording purposes.

A final bring-down title search must be made immediately prior to the recording of the deed.

The recording fee is to be paid out of the District Office's cash advancement account.

The return address on the deed is that of the District Office. In those counties where the recorder of deeds refuses to mail recorded deeds, the District Office must pick up the recorded deeds.

After the recording data has been noted in ROW Office files, the original deed must be returned to the Central Office for its files.

3.08 CONDEMNATION PROCEDURES

A. Pre-Condemnation Negotiation Procedures.

1. Pre-Condemnation Visit. At some point during the negotiating process, it may become apparent that there are irreconcilable differences that prevent agreement and an amicable settlement. Whether this point arrives early in the negotiating process or after numerous meetings will depend on many variables including
the complexity of the claim, the personalities involved or title problems. Pre-condemnation negotiations shall occur only after good faith negotiations have been exhausted by the Department.

Condemnation can be approached in a straightforward and non-apologetic manner as simply the next required step in a sequence of events—regardless of the specific reasons that prevented an amicable settlement.

After explaining to the owner that it is now necessary to file a declaration of taking, the negotiator will once again review the acquisition procedures and explain that:

a. The filing of the declaration of taking passes legal title to the property from the present owner to the Department.

b. The owner will be paid the full amount of the offer of estimated just compensation, without prejudice to the right to contest that amount in court.

c. The payment of estimated just compensation (either directly to the claimant or deposited into court) provides the Department with the legal right to possession of the property.

Payment of the estimated just compensation terminates the accrual of interest on that money and starts the running of the statute of limitations. The statute provides that if the owner or the Department does not petition for a board of view within six years from the date of payment, the amount so paid will be considered payment in full and in complete satisfaction of the claim. It should also be noted that the Eminent Domain Code does not require the Department to petition for viewers.

During this negotiation visit, the negotiator may deliver a copy of Form RW-446, Notice of Intent to File a Declaration of Taking and a copy of Form RW-475M, Memorandum of Law, Your Rights as a Condemnee Under the Eminent Domain Code. It would then be unnecessary to mail Form RW-446 and RW-475M as is otherwise required (see Section 3.08A.2 below).

The negotiation contact prior to requesting a declaration of taking must, of course, be recorded in ROW Office on the Claimant Contact Maintenance screen. On the Declaration of Taking Maintenance screen in ROW Office, also record the reason why a settlement could not be reached. All negotiations and condemnation information must be recorded in ROW Office in order for Central Office to process a declaration of taking request.

2. Notice of Intent to File a Declaration of Taking, RW-446, and Memorandum of Law, RW-475M. Form RW-446 is a letter informing the property owner and/or a tenant with a compensable property interest of the Department's intention to proceed with condemnation unless the owner or tenant immediately advises of a willingness to settle amicably. Form RW-446 is sent by first class mail on or about the date that the District submits to Central Office the request to file the declaration of taking. One copy is retained in the District claim file.

Form RW-475M, Memorandum of Law, is to be attached to Form RW-446 in order to inform the person of their rights under the Eminent Domain Code.

Note that Form RW-446 is not used when signs are condemned under the Outdoor Advertising Control Act, No. 160, but is used when signs are located within the required right-of-way on a highway project.

B. Declaration of Taking Preparation.

1. Declaration of Taking Request. Requests for declaration of taking must be submitted to the Chief, Utilities and Right-of-Way Section, using the Form RW-400DTR. The form must be signed by the District Executive or designated representative and must have the required attachments.

Requests should not be made on an individual-claim basis when grouping is possible. Each individual request is limited to a maximum of six claims. The six-claim limit may only be exceeded upon the consent of Central Office Acquisition Unit Chief. It is best practice to logically group several claims on a request but claims should not be held an inordinate period of time simply to submit them as a group. Certain types of claims (notably unknown owners, known but unlocatable owners and claims in bankruptcy) should routinely be requested individually as early as possible in the clearance process.
Immediately prior to filing a declaration of taking, a final attempt must be made to settle the claim. This contact must be documented in ROW Office on the Claimant Contact Maintenance screen. The reason why settlement cannot be reached must be indicated on the Declaration of Taking Maintenance screen.

2. Sequencing of Certain Condemnations Impacting Access. When a taking contemplates an impact to access that can be mitigated or cured with a replacement access, care must be taken to acquire or provide for the replacement access before the taking impacting access to the subject property. To do this requires a careful "sequencing" or ordering of the acquisitions. If this is not done, Pennsylvania courts have held that evidence of the replacement access is inadmissible in an action for just compensation if the access was not in existence as of the date of the taking.

Example: A taking in a lineal strip along Parcel "A" will impact access rendering Parcel "A" legally landlocked. This impact can be mitigated by providing a private access easement over Parcel "B" connecting Parcel "A" to a public road.

There are two request options available to provide for proper mitigation:

Option 1—provide for both the taking from Parcel "A" and the private access easement over Parcel "B" simultaneously in the same declaration of taking.

Option 2—acquire the private access easement over Parcel "B" first, either amicably or by declaration of taking, then provide for the taking from Parcel "A."

Providing for access mitigation either simultaneously with or in advance of the impact to access will ensure that the access mitigation can be considered in the event of subsequent legal proceedings for just compensation.

3. Completing Form RW-400DTR, Declaration of Taking Request.

   a. Heading. Enter the ROW Office project ID number and the ROW Office DT number. Enter the county, the federal project number or "100% state" if there are no federal funds in any project phase, the state route and section, and the municipality or municipalities as shown on the title sheet.

   b. Part 1, Project Information. Enter the common name of the project (e.g.: River Relief Route, Lewistown Bypass) and the type of project (i.e., urban, rural, interstate). For federal participation, enter the percentage of participation in the right-of-way phase (or none, if 100% state).

   c. Part 2, Claim Information. For each claim to be condemned complete the following information:

      (1) Claim number
      (2) Parcel number
      (3) Name of the claimant
      (4) Whether this is a partial take (P) or total take (T) – demolition (D) or vacant land (VL)
      (5) A description of the taking
      (6) The type of take – either an easement or fee simple

Claims that involve more than one type of take must include a description and type for each. The form provides space for up to five types of take for each claim.

The electronic version of this form includes drop-down lists for the description of the taking as well as other key information. The types of take include:

   (1) Required right-of-way
   (2) Required right-of-way for limited access
(3) Required right-of-way for township road
(4) Required right-of-way for city street
(5) Required right-of-way for borough street
(6) Required slope
(7) Required area for substitute right-of-way
(8) Temporary construction
(9) Required channel
(10) Required drainage
(11) Required occasional flowage
(12) Required sidewalk
(13) Required aerial
(14) Required private access
(15) Required wetland mitigation
(16) Required parkland replacement
(17) Required stream mitigation
(18) Required terrestrial mitigation
(19) Required sight distance
(20) Required ITS conduit
(21) Required underground structure support

Obtain this information from the plan sheets rather than the property plots or exhibits

**d.** Part 3, Plan Information. Enter the description (i.e., authorization, revision), and the date the Secretary of Transportation or designee signed the plan authorizing or revising the condemnation. Enter the date the plan was recorded and the place where the plan was recorded (i.e. deed book and page number, highway plan book, or drawer number).

Enter the same information for all plan revisions applicable to the properties being condemned.

Enter the date of all re-authorizations. Condemnation can ONLY occur within one year of authorization or re-authorization by the signature of the Secretary of Transportation or their designee.

If two or more counties are involved, enter the recording information for only the county where the condemnation occurs.

<table>
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<th>DATE RECORDED</th>
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<td>Revision</td>
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<td>04-23-96</td>
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Chapter 3 - Acquisitions

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<td>03-4-98</td>
<td>03-22-98</td>
<td>Map Book 19 Page 33</td>
</tr>
</tbody>
</table>

**e.** Part 4, Environmental Statement. For Federal Action Projects, check one item under Federal Finding in Part A) 1) and one item under State Finding in Part A) 2).

For 100% State Projects, check one item under Part B).

**f.** Part 5, Agricultural Statement. Section 306 of the Administrative Code, 71 P.S. §106, enacted as part of Act 1979-100, created the Agricultural Lands Condemnation Approval Board (ALCAB) to determine whether certain condemnations of agricultural lands (farmland) should be allowed when there is no reasonable and prudent alternative to the utilization of such lands for the project. Section 913 of the Agricultural Area Security Law, 3 P.S. §913, enacted as part of Act 1981-43, further provides for ALCAB review of farmlands that are a part of an Agricultural Security Area (ASA). In both types of actions, ALCAB has jurisdiction over all condemnations for highway purposes, but not including activities relating to existing highways such as, but not limited to, widening roadways, the elimination of curves or reconstruction (known as the existing highway exemption). Timber is also excluded from ALCAB jurisdiction. Where farmland is subject to ALCAB jurisdiction and the project is not exempt, PennDOT is without the legal right and power to condemn unless ALCAB approval is first obtained.

When condemning farmland, two issues require resolution—first, is the farmland ALCAB jurisdictional land; and second, if so, is the project exempt from ALCAB review. The inquiries in Part 5 go to answering these issues.

PennDOT Publication 324, *Agricultural Resources Evaluation Handbook*, contains PennDOT guidance and policy regarding ALCAB jurisdictional farmland, the types of projects subject to ALCAB jurisdiction, and the time for filing an application for condemnation approval in the project development process. As a general rule, it may take up to six months for PennDOT to prepare and present an application for condemnation approval to ALCAB and receive a favorable decision.

The responsibility to provide the information to complete Part 5 rests with the District Environmental Unit, in coordination with the Bureau of Project Delivery and the Office of Chief Counsel. Publication 324, *Agricultural Resources Evaluation Handbook*, provides that, when required, PennDOT policy is to proceed to ALCAB upon receipt of environmental clearance or sooner at the discretion of the District. Note that this policy can result in an ALCAB proceeding that may be uncomfortably close to the right of way clearance schedule.

Although not specifically required by the statute, it is Department policy to have the request for approval for all applicable properties on the project made at an early stage when alternative routes are still available.

The Form RW-400DTR cannot be processed unless the agricultural inquiries under Part 5 have been properly completed. One or more of the statements should be checked.

**g.** Part 6, Claimants' Permission to Condemn. On claims involving cemetery property or property owned, leased or occupied by the U.S. government, include a statement of this fact and attach a copy of the written consent in which the condemnee agrees to the condemnation. See Appendix C, Section C.01.E.

**h.** Part 7, Unity of Title/Unity of Use. Completion of Part 7 requires a careful review of the right of way plan and all documents of title submitted for the several claims involved in the request. The concepts of unity of title and unity of use are part of Pennsylvania law contained in Section 705 of the Eminent Domain Code, 26 Pa.C.S. §705. Applying these concepts will determine the larger parcel as shown on the plan. The larger parcel can be a combination of land contained in several deeds. These deeds can be comprised of separate tracts of land that are in contact with each other (contiguous) or
separate tracts of land that are not (noncontiguous). Determination of the larger parcel for contiguous or noncontiguous land impacts both the way the claim is presented on the right of way plan and the appraisal. It is advisable to resolve the issues required under Part 7 as early as possible.

Contiguous tracts of land having unity of title must be combined into the larger parcel. This is so even though there is no unity of use between the separately-deeded tracts. Unity of title occurs where the separately-deeded contiguous tracts are owned by the exact same owner or a combination of owners that are substantially identical. A common example of substantially identical ownership would be separately-deeded contiguous tracts, one owned by a husband and wife and the other by one spouse only. Another common example of substantially identical ownership would be separately-deeded contiguous tracts owned by two separate business entities that share common corporate owners/officers. If there is doubt as to the issue of substantially identical ownership of contiguous tracts a legal opinion must be requested from the Office of Chief Counsel. See Appendix A, Section A.10.C.

For noncontiguous tracts to be combined into the larger parcel there must be both unity of title and unity of use. Unity of use occurs when the noncontiguous tracts are used together for a unified purpose; that is, they must be so interconnected in their use that injury to one will permanently damage the other. Questions regarding unity of use of noncontiguous tracts must be addressed to the Office of Chief Counsel for a legal opinion. Once obtained, a copy of the legal opinion must be attached to the request. A legal opinion is not required where one of the following administrative exceptions applies (the form has a drop-down box for these):

1. All of the noncontiguous tracts are being used as part of a single farm operation, in which case unity of use is present. Morris v. Commonwealth, 367 Pa. 410, 80 A.2d 762 (1951).

2. The one tract is being used as a residence and all other noncontiguous tracts are being used for recreational or other purposes in connection therewith, in which case unity of use is present. Moore v. Montgomery County, 22 Pa. Commonwealth Ct. 262, 348 A.2d 762 (1975).

3. The noncontiguous tracts are all vacant land not being put to any present use, in which case unity of use is not present. Pennsylvania Co. for Insurance v. Schuylkill Valley R.R. Co., 151 Pa. 334, 25 A. 107 (1892).

4. One tract is being used for some purpose and all other noncontiguous tracts are vacant land not being put to any present use, in which case unity of use is not present. Kossler v. Railway Co., 208 Pa. 50, 57 A. 66 (1904).

5. One tract is used for some purpose, be it commercial, industrial or residential, and the noncontiguous tract(s) having substantially the same owner are used for a related purpose (e.g. parking) in connection with the first tract, in which case the noncontiguous tracts may be included as part of the larger parcel.

6. One tract is used for some purpose, be it commercial, industrial or residential, and the noncontiguous tract(s) having substantially the same owner are not used for a related purpose in connection with the first tract, the noncontiguous tracts are not to be included as part of the larger parcel.

7. With the approval of the Office of Chief Counsel, noncontiguous tracts with takings from all tracts that are not used together for a unified purpose but are owned by substantially the same owner may be combined administratively into one claim. For example, this can be used in order to have one appraisal and negotiation, especially on smaller takings.

If none of the above applies, the date and result of the legal opinion must be stated, with the parcel indicated. A legal opinion should be sought from the Real Property Division as early in the appraisal process as possible.

i. Part 8, Utilities. In the event that there are utilities or utility rights-of-way within areas of required right-of-way, Department policy is to except and reserve their interests from the condemnation. Utilities are accommodated through the utility relocation process. This section of the form simply asks if any
utilities or utility rights-of-way exist within the required right-of-way. If it appears to the Utilities and Right-of-Way Section that presentation of utility issues is not properly addressed on the right-of-way plan, a memo will be sent to the District advising them that a plan change may be necessary.

An example of a properly completed Section 8 of the Form RW-400DTR follows:

"8. ACCOMMODATION OF EXISTING UTILITIES IN AREA OF REQUIRED RIGHT-OF-WAY."

A) Do any of the claims on this request include any existing utilities or utility rights-of-way in the area of required right-of-way? ☑ Yes ☐ No

B) If yes, a memo will be sent to the District advising them that a plan change may be necessary if it appears that the presentation of utilities is not properly addressed on the right-of-way plan.

j. Part 9, Required Substitute Right-of-Way for a Utility. There are two types of title acquired as substitute right-of-way for a utility: fee or easement.

Before condemning an easement for required substitute right-of-way for a utility, a description of the rights to be acquired must be approved by the District and Central Office Utility Relocation Units. If the description of utility easement rights is noted on the right-of-way plan, then a copy of the appropriate plan sheet must be included with the declaration of taking package. If the description is not included on the plan, then a copy of the approved description must be included with the declaration of taking package.

(Note: In this section, railroads are considered a utility).

In condemning a fee for required substitute right-of-way for a utility, a description of the rights to be acquired is not necessary.

k. Part 10, Acquisitions of Railroad Property. See Section 3.03.R for a complete discussion of this issue.

Subsection A) of the form asks if any claims on that request involve railroads. If the answer is "yes", then proceed to part B); otherwise, the inquiry is complete (meaning that you do not check "no" on any of the other subsections).

Subsection B) - Railroad Acquisitions Involving Highway-Railroad Crossings: Complete this section if any of the claims involve a highway railroad crossing. Note that a highway-railroad crossing can be at grade, above grade or below grade. These procedures are fully outlined within Publication 10, Design Manual, Part 1A, Pre-TIP and TIP Program Development Procedures, Chapter 7, Step 5: Project Identification in TIP/STIP, Section 7.6. Since the Public Utility Commission has exclusive jurisdiction over acquisitions involving a highway-railroad crossing, PennDOT may not file a declaration of taking but, instead, a PUC appropriation order is required. For guidance regarding the payment of estimated just compensation under such a circumstance, see Section 3.09.B.2 relating to PUC Referrals.

Subsection C) - Railroad Acquisitions Not Involving Highway-Railroad Crossings. Complete this section indicating the purpose for the acquisition. PennDOT may file a declaration of taking without restriction acquiring railroad property for PennDOT operating right-of-way, only. Where the PennDOT acquisition is for other than PennDOT operating right-of-way, such as maintenance buildings and construction facilities, PennDOT must certify that the activity cannot be conducted economically at an alternate location. This certification (similar to a cost-benefit analysis) must be provided to the District Right-of-Way Unit by others, e.g. the project manager/design consultant or the Facilities Management Division, and attached to the Form RW-400DTR.

Subsection D) - Railroad Acquisitions Involving Substitute Right-of-Way for Utilities. Complete this section if the claim involves the acquisition of railroad property (not including a highway-railroad crossing) for the purpose of providing a utility with substitute right-of-way pursuant to Section 412 of the State Highway Law. Information is included in this section, rather than in Part 9 of the Form RW-400DTR, Substitute Right-of-Way for Utilities, because the consent of the railroad is required in order to file the declaration of taking.
Subsection E) - Railroad Acquisitions from a Railroad in Interstate Commerce. Complete this section if the claim involves the acquisition of railroad property (not including a highway-railroad crossing) from a railroad that operates in interstate commerce. These types of railroads may not be subject to state powers of eminent domain unless it can be shown that the highway use does not prevent or unreasonably interfere with rail operation or safety. This information must be provided to the District Right-of-Way Unit by others, e.g., the District Utilities Coordinator, and attached to the Form RW-400DTR.

1. Part 11 Channel Change. Answer the questions, which are self-explanatory.

m. Part 12 Bankruptcy. If the condemnee has filed a petition in bankruptcy under Chapter 7, (liquidation), Chapter 11 (corporate reorganization) or Chapter 13 (personal reorganization) of the Bankruptcy Code, the petition must be identified on Form RW-437. The filing of a bankruptcy petition gives rise to an automatic stay that prohibits a declaration of taking from being filed. The automatic stay remains in effect (sometimes for years) until the bankruptcy is resolved by withdrawal, dismissal or discharge. To file a declaration of taking in state court, a petition must first be filed in federal court requesting relief from the automatic stay for the purposes of eminent domain. It can take up to six months just to obtain permission from the bankruptcy court to file a declaration of taking. As a result, claims in bankruptcy must be processed under this section immediately.

The District is to process a claim that is in bankruptcy on a separate request. Complete the request with the Form RW-400DTR and forward all supporting documentation to Central Office Right-of-Way as soon as practicable. Upon receipt, the declaration of taking and all supporting documents, including the Form RW-437, will be prepared and approved as to form and legality. Notice will then be forwarded to the appropriate OCC Regional Office so that a motion for relief from the automatic stay can be prepared and presented in federal court. Central Office Right-of-Way will hold the original declaration of taking until a court order is received. Thereafter, the declaration of taking will be finally approved and forwarded to the District for filing. From that point forward, the claim proceeds the same manner as in a non-bankruptcy claim with payment or deposit of estimated just compensation through normal procedures.

n. Part 13 Corporations / Partnerships. If any of the claimants are corporations or partnerships, the second and third question of this part must be completed and back up documentation attached (see Section 3.08.B.4.f).

o. Limited Liability Company and Limited Liability Partnership. There are four business entities that are included in this category:

(1) Domestic Limited Liability Company

(2) Foreign Limited Liability Company

(3) Domestic Limited Liability Partnership

(4) Foreign Limited Liability Partnership

If there is a Limited Liability Company (LLC) or Limited Liability Partnership (LLP) involved, the Department may obtain copies of the following documents from the Department of State in order to determine the proper names, addresses and titles of individuals to be listed on the Form RW-437.

A corporate search from the Pennsylvania Department of State will be needed on all domestic or foreign LLCs/LLPs condemned and, if the LLC/LLP has filed the appropriate registration, the Department of State will be able to provide the search.

Domestic Limited Liability Company – A "Certificate of Organization – Domestic Limited Liability Company" (DSCB 15-8913) will be filed with the Department of State. The Certificate of Organization will indicate on line five (5) if management of the company is vested in a manager or managers. If it is vested, list the General or Managing Partner(s) name(s), title(s) and address(es) on the Form RW-437. If a corporation or business is vested as the manager, list the name, title of officer(s) and address of the corporation or business on the Form RW-437. If the management of the company is not vested in a
manager or managers, it shall be treated as a general partnership and all members must be listed with names and addresses.

Foreign Limited Liability Company – An "Application for Registration as a Foreign Limited Liability Company" (DSCB 15-8981) will be filed with the Department of State. The Application for Registration will provide the address, state or county of incorporation/organization, and name(s) of the Chief Executive Officer of the Foreign LLC.

Domestic Limited Liability Partnership – A "Statement of Registration – Domestic Registered Limited Liability Partnership" (DSCB 15-8201A) will be filed with the Department of State. This form stipulates that the partnership is either a general partnership or a limited partnership. It also records the name and address of the partnership.

Foreign Limited Liability Partnership – An "Application for Registration Foreign Registered Limited Liability Partnership" (DSCB 15-8211) will be filed with the Department of State. This form will provide the name, address, jurisdiction of registration of the partnership, and also the names and addresses of the general partners.

For a Limited Partnership only, a "Certificate of Limited Partnership" (DSCB 15-8511) will be filed with the Department of State. It will indicate who the General Partner(s) is/are and his/her/their name(s) and addresses will need to be listed on the Form RW-437. Limited partners do not have to be listed on the Form RW-437.

4. Attachments to the Declaration of Taking Request Form.
   a. Legible copy of the title sheet. A half-size copy is preferred.
   b. A half-size copy of the location map and general notes.
   c. The property plot and a half-size copy of the plan sheets covering all claims involved, with right-of-way takings outlined as follows:
      (1) Required right-of-way and aerial easements in red. Right-of-way for limited access, township roads, city streets, borough, streets, service roads, slope areas, and substitute right-of-way must be outlined separately.
      (2) Temporary construction easements in yellow.
      (3) Required channel, required drainage, required occasional flowage and required underground pipe drain easements in blue.
      (4) All others in brown.
   d. A copy of the title search and the bring-down title search for each claim. The bring-down title search must be updated to within 30 days of the date of request. A copy of the deed(s) of property(s) condemned.
   e. Form RW-432ML.
   f. ROW Office Claimant Contact and Declaration of Taking Maintenance screens must be completed for each claim.
   g. If a corporation, partnership, LLC or LLP is involved, the claimant must provide written documentation showing the officers or partners and their names and addresses. A copy of the partnership agreement is also required. See Section 3.08.B.4.g, Form RW-437, for detailed information regarding partnership requirements.

If, for some reason, this documentation cannot be acquired by the negotiator, a corporate search must be obtained. Often times corporate search information may be inaccurate or outdated. Nonetheless, every attempt must be made to locate an address of record where mail is being accepted and to identify
someone who is acting in some capacity for and on behalf of the business entity listed as the grantee on the base deed from which the land is being acquired. Acceptable alternate sources of data for completion of the Form RW-437 include the grantee's certification of address on the base deed, recorded mortgage, judgment or UCC filing instruments, business advertising and website information from the internet. Where an individual indicates they will accept mail for the business entity, but refuses to admit that they are an officer or member, it is permissible to list their name and address on the Form RW-437 with the "care of" notation (c/o)."

Application must be made to the Department of State, Corporate Search Bureau, P.O. Box 8722, Harrisburg, PA 17105-8721 on forms available from that office.

The Pennsylvania Department of State has established a website for public access which can be used to perform corporate searches. The Bureau of Project Delivery in conjunction with the Office of Chief Counsel has approved this website access for providing corporate searches when needed for Declaration of Taking or other property acquisition functions. As this is a more expeditious method of securing necessary information, the Bureau of Project Delivery recommends its use. The website is at www.dos.state.pa.us.

For Declarations of Taking, all pages should be printed out and included in the D/T package submitted to the Central Office Acquisition Unit.

h. Schedule of Property Condemned, Form RW-437.

(1) The schedule will be made an exhibit to the actual declaration of taking prepared by the Central Office Right-of-Way Acquisition Unit. The Form RW-437 is a legal document used to identify the properties condemned, the ownership of those properties and other information required by law. The Form RW-437 demands proper attention and preparation from the Right-of-Way Administrator.

Note that claimant's counsel, even where a completed Form RW-331 or RW-331A is in the claim file, is not to be listed on the Form RW-437. Claimant's counsel is not a record owner of the property being condemned. The only exception to this is when the claimant is in bankruptcy due to the impact of the automatic stay (see example). Otherwise, claimant's counsel may only be listed with the approval of the Chief, Utilities and Right-of-Way Section. When counsel is listed on the Schedule, care must be taken when providing notice of the DT as discussed below in Section 3.08.B.9.

(2) The Form RW-437 must include the following:

- The parcel, claim number, and the names of the condemnees.
- The location of the property, as referenced by the deed book and page of the parcel(s) effected by the take, or any other citations, as maintained by the County Recorder of Deeds Office. For "Unknown Owner" parcels use station numbers for approximate locations taken from the right-of-way plan.
- A PO Box address may be used as the address of a claimant on the RW-437 only where the District has established, from prior contacts, that the claimant is picking up registered/certified mailings at the PO Box and a signed receipt (green card or its equivalent) is being returned. Where this is not the case, alternate forms of service of the DT (sheriff service; post & publish) must be used.

**EXAMPLE**

| 110 Carlisle Ave. | Deed Book 70, Page 25 |
| Pittsburgh, PA 15000 | (This is preferred since it is the most accurate) |
Chapter 3 - Acquisitions

OR
R.D. 1 OR R.D. 3
Warren, PA 16365 Butler, PA 16001
S.R. 1000-002 NE. Corner of Intersection
Sta. 84+20 to Sta. 87+40 Rt.
of York Ave. and Columbia Rd.

- In only those counties that require the tax parcel identification number, conform to the request. However, the deed book and page of the parcel must also be listed.

- In the column headed "Type of Take" enter the appropriate letters that apply;
  PT—Partial Take
  TT—Total Take

- In the column headed "Type of Description" enter the appropriate letter that applies;
  D—Deed Description
  P—Plan logged for recording with Notice of Condemnation
  R—Plan now recorded in Recorder's Office

To determine which sheets are sufficient to depict the area(s) of take from the parcel. If the plan uses detail sheets and tabulation sheets, cite all sheets that depict the area(s) of take from the parcel. If the plan uses detail sheets and a property plot, cite only the property plot (exceptions might occur if a detail sheet is required to clarify an ambiguity in the property plot). If the property plot comprises more than one sheet, cite all such sheets.

Using the approval blocks that summarize the revisions of the plan on the title sheet, determine which authorizations of the plan to cite for each of the above sheets. Cite the most recent revision that specifically involves that parcel and that sheet. If a sheet depicting the parcel is revised but the parcel itself is not revised, do not cite that revision for the sheet. If the parcel has never been revised, cite the original authorization.

Under the column heading "Plan (if any) Recorded in," enter the appropriate Highway/Plan/Map Book or Instrument Number, Cabinet, Drawer, etc., and Page numbers, and then enter the sheets from that recording according to the procedure described above.

List the names, mailing addresses and property interests of all condemnees, including: record owners; purchasers under agreements of sale; owners of an option to purchase; lessees with a compensable property interest and/or entitlement to relocation assistance benefits (including third-party outdoor advertising device owners); and owners and/or lessees of all mineral operations, including the removal of gas and oil, where the physical plant or their activities are being affected as a result of the condemnation, but not including the owners of coal within the required right-of-way lines that must be left as support for the highway to be constructed.

If a change of ownership occurs after the authorization to condemn plan was recorded, or if other parties have acquired an interest in the property since that time, the present owners or parties who have an interest in the property at the time of filing the declaration must be listed with asterisks and notes under their names, explaining why they are not the same as shown on the plan as originally recorded. This would not be relevant if an exhibit is used.

Examples of various forms of ownership:

Example: H/W, tenants by the entireties, in fee simple.

James and Mary Smith
Husband and Wife
One Mailing address needed.
**Example:** H/W, divorced.  
James Smith and Mary Smith, tenants in common.  
Two addresses needed.

**Example:** H or W has sole title interest.  
James Smith, as his separate estate in fee simple, and Mary Smith, his wife, as her interest may appear. One mailing address needed.

**Example:** Deceased spouse, previous interest was tenants by the entireties.  
Mary Smith, a widow interest was tenants by the entireties.

**Example:** Deceased spouse or owner, or owner, previous interest was not T/E, descendent intestate, no probate filed.  
Generally, owner's spouse and all children, children's estates, etc. must be listed, together with individual addresses for each. See 20 Pa. C.S.A. §§2102, 2103.

**Example:** Spouse or owner deceased, previous interest not T/E, descendent intestate, probate filed.  
Mary Smith, personal representative of the estate of James Smith deceased.

**Example:** Spouse or owner deceased, previous interest not T/E, and descendent testate, probate filed.  
Jane Smith-Lewis, and the Pittsburgh Bank and Trust Co., Inc., Co-executors for the estate of Mary Smith, deceased.

**Example:** Attorney-in-Fact  
Robert Smith  
(Attorney-in-Fact for Mary Smith)  
15 Cedar Street  
Bird-in Hand, PA  17505

**Example:** Corporate Ownership.  
Smith Corp., Inc. (an Ohio Corporation) James Smith, Pres.  
OR

Mary Smith, Sec.  
123 Presidents Way  
Akron, OH  44309

**Example:** Sole Proprietorship  
Smith Photo Company.  
James Smith, Owner  
(Home address or Business address).

**Example:** General Partnership.  
Smith and Smith Venture Co.  
(a Pa. General Partnership,)  
James Smith, General Partner (Home address or Business address).

*If the partnership agreement designates certain general partners as managing partners, then the remaining partners do not have to be shown.

AND  
Mary Smith, General Partner (Home address or Business address).
*Need names and addresses of all General Partners.

**Example:** Limited Partnership.

Smith Joint Venture (a Pa. Limited Partnership) James Smith, General Partner (Home address or Business address). Need names and addresses of all General Partners.

**Example:** Unincorporated Association.

Blue Mountain Association James Smith, Sec. Must list each individual owner and address thereof.

**Example:** Governmental Unit.

City of Pittsburgh County of Dauphin, Potter County Industrial Devel. Authority. Utilize address of appropriate headquarters. Name the appropriate official; i.e.: Mayor, Secretary, Solicitor, etc.

**Example:** Bankrupt Condemnee.

Victor R. Cousins
Chapter 7, 11 or 13

RR 1 Box 165 B
Templeton, PA 16259-9720

**Location of Property**

**Condemned**

Record Book 1785, Page 88
Pt. County Tax Map No. 108.00-06-05

Bankruptcy Court Case Number
Case No. 05-23097-TPA, RETO#71

US Bankruptcy Court
5414 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

US Bankruptcy Trustee:
Norma Hildenbrand, Esquire
Office of the United States Trustee
Suite 960, Liberty Center
1001 Liberty Avenue
Pittsburgh, PA 15222

Debtor's Attorney
Jennifer R. Lin
PO Box 1551
228 South Main Street
Butler, PA 16001

U.S. Bankruptcy Court in Erie, for the Western District of Pennsylvania
c/o Clerk of the Bankruptcy Court
314 U.S. Court House
P.O. Box 1755
Chapter 3 - Acquisitions

Example: Unknown Owner.
Publish Notice. See Section 11 below.

Example: Owner Known, address unknown.
James Smith, owner, address unknown and undeterminable after diligent search.

Note: Multiple interests such as owner of record, substantially similar owners of record, purchaser under agreement of sale, tenant, franchisee, or others must include the following statement: "AS THEIR INTERESTS MAY APPEAR"

East Lampeter Township Industrial Development Authority (Record Owner)
Candy Kreider, Secretary
2205 Old Philadelphia Pike Lancaster, PA 17602

Location of Property
2425 Lincoln Highway East Lancaster, PA 17602

Glass Kitchens of Lancaster, Inc.
Joseph H. Schreder, President
2425 Lincoln Highway East Lancaster, PA 17602
(Equitable Owner)

AS THEIR INTERESTS MAY APPEAR

i. Attach other documentation required in Part 3. sections g, h, i and j above.

j. Use of Exhibits. Using exhibits to condemn is an extraordinary procedure that should not be used unless absolutely necessary. Condemning on exhibits should not be used simply as a way to correct items such as condemnee name, claim number, parcel number or deed and/or tax parcel identification data. If an otherwise correct plan is authorized and recorded, an * on the Form RW-437 is a more efficient method for updating the accuracy of those types of items. Exhibits may be used where no plan is recorded as long as the plan is authorized (i.e. signed by the Secretary of Transportation and filed with the Department). Exhibits may be used to reduce or alter the area of the take or correct plan errors or deficiencies from an engineering standpoint as long as the changes do not result in a taking that exceeds the original authorization. A legal opinion from the Office of Chief Counsel, Real Property Division, must be sought if there is any question in this regard. In no event may an exhibit be used as a substitute for a plan signed by the Secretary.

Two copies of the exhibits used to describe the property are required, if an exhibit is being used.

(1) Exhibits can be in the form of a deed description (total takes only), a property plot or a plan sheet with a claim information block similar to that on a property plot.

(2) All exhibits shall be on 8½" x 11" paper. No other size is acceptable and only one property may be shown on a sheet.

(3) All exhibits must contain the claim number, parcel number and names of all condemnees as shown on the schedule of property condemned. They must also contain the route and section; the county; city, borough or township in which the property is located; the name of grantor; date of execution; and the date and place of recording of the deed conveying the property to the current owner.

(4) Deed descriptions, property plots or plan sheets should be numbered as exhibits beginning with Exhibit 1. If a parcel requires more than one property plot or plan sheet, or if the deed description requires more than one sheet of paper, they should be designated as 1-A, 1-B, 1-C, etc.
(5) If a deed description is used (total takes only):

- The deed description must be typed only on 8.5" x 11" paper, beginning at least 1" down from the top.
- The customary words, "the grantor herein," must be omitted from the recital in the deed conveying the property to the present owners.
- It must contain the words "total take."
- If the property is located in more than one county, copies must be supplied for recording in each county.

Following is an example showing the format and information required on a deed description.

DESCRIPTION

ALL THAT CERTAIN tract or parcel of land situate, lying and being in Middle Paxton Township, Dauphin County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point on the northerly legal right-of-way line of U.S. Route 322/22, which said point of beginning is more particularly located at the intersection of the northerly right-of-way line of U.S. Route 322/22 and the easterly line of land now or formerly of Robert D. Kerlin; THENCE, from said point of beginning along the easterly line of lands now or formerly of Robert D. Kerlin, North 08 degrees 33 minutes 23 seconds West, a distance of 553.88 feet to a point; THENCE, from said point, South 80 degrees 48 minutes 39 seconds East, a distance of 496.38 feet to an iron pin; THENCE, from said iron pin, South 11 degrees 51 minutes 21 seconds West, a distance of 543.98 feet to an iron pin on the northerly right-of-way line of U.S. Route 322/22; THENCE, from said point along the northerly right-of-way line of U.S. Route 322/22, 48 minutes 27 seconds West, a distance of 302.66 feet to a point, the point and place of BEGINNING.


BEING Lots No. 1A, 1B, 2A and 2B on the preliminary/final subdivision plan for Hyles Hagy, Jr., approved by the Board of Supervisors of Middle Paxton Township and recorded in the Office of the Recorder of Deeds of Dauphin County, Pennsylvania in Plan Book G, Volume 4, Page 79.

"TOTAL TAKE"

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<td>Scale</td>
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</tr>
</tbody>
</table>

EXHIBIT 1

(6) If a property plot is used:

Copies for each property must be submitted on 8.5" x 11" paper. If the property lies in more than one county, copies must be submitted for recording in each county in which the property is located.

If a property will not fit on one sheet, two or more sheets may be used, with appropriate match lines.
On all property plots, the legal and required right-of-way shall be clearly indicated, as well as slope and channel area, and be hatched (not colored). Items such as right-of-way, limited access right-of-way, and temporary construction easement should be hatched differently. A legend to indicate the meaning of the different types of hatching must be shown.

Property lines should be closed to indicate entire before taking area.

An appropriate "north" arrow must be shown.

(7) If description is by reference to a plan already recorded with the authorization to condemn plan, the book and page number wherein the specific plan sheet is recorded must be shown on the Form RW-437.

k. A copy of the property plot unless the property plot is used as an exhibit.

l. A copy of the tabulation of areas unless the areas of taking are shown on another attachment, such as an exhibit or property plot.

m. A copy of Form RW-432ML must be completed by the District and forwarded to Central Office for review as part of the declaration of taking request. The Central Office Acquisition Unit and the Office of Chief Counsel will cross-reference it with the Form RW-918 to ensure that the mortgagees and lienholders of record have been identified by name and address for notice purposes.

5. Processing the Request. Upon receipt of the request, the Right-of-Way Acquisition Unit will review the submission for compliance with the foregoing requirements and prepare the declaration of taking for approval as to form and legality by Office of Chief Counsel. After it is signed by the Chief of the Utilities and Right-of-Way Section, the package will be returned to the District for filing.

6. Filing the Declaration of Taking. The Right-of-Way Acquisition Unit will send the District Office the following material:

a. The original and copies of the complete, although unconfirmed, declaration of taking. The District shall:

(1) File the original in the Prothonotary's office, with exhibits if any.

(2) Retain one copy for the District file.

(3) Use the remaining copies in serving the condemnees as set forth in Section 3.08.B.8 below.

b. Two copies of the first page of the declaration with Form RW-437 attached. The District will conform both copies as to court term and number, note the date of filing, and immediately return one conformed copy to the Office of Chief Counsel. One copy will be retained in the District file.

c. The original, with property plots and/or deed descriptions attached, and copies of the notice of condemnation. The District will:

(1) Fill in the court term and number of the declaration of taking on the original and all copies of the notice of condemnation.

(2) Fill in the date that the declaration of taking was filed on the original and all copies of the notice of condemnation.

(3) Sign the original notice of condemnation and have this signature notarized by an official in the Prothonotary's office of the county in which the declaration of taking is filed. The original notice of condemnation, with property plots and/or deed descriptions attached, must be filed in the recorder's office on the same day the declaration of taking is filed.

(4) Remind the recorder that pursuant to Section 304 of the Eminent Domain Code, 26 Pa.C.S. §304, when a plan is to be recorded as part of the notice that a notation as to the condemnation book
and page number, file number, or microfilm number of any property plot filed or microfilmed separately from the notice of condemnation must be made on the margin of the notice by the recorder. The easiest way to accomplish this task is for the recorder to note the required information in the column headed "Plan Recorded In" on Form RW-437.

(5) Conform all copies to show the same information that appears on the original notice of condemnation filed in the recorder's office and note the date of recording on all copies.

(6) Immediately return one conformed copy of the notice of condemnation with Form RW-437 attached to the Office of Chief Counsel, Real Property Division, and retain one copy for the District file.

7. Filing and Recording Fees. The Prothonotary's fee for filing the declaration of taking and deed descriptions, if any, and the recorder's fee for recording the notice of condemnation and filing or recording the property plots and/or deed descriptions shall be paid from the District's cash advancement account. Sections 302 and 304 of the Eminent Domain Code, 26 Pa.C.S. §302 and 304, specifically provide authorization for the filing and recording of the above documents.

Section 302(c) of the Eminent Domain Code provides that the Prothonotary shall charge one fee for filing each declaration of taking, which shall be the same regardless of the number of properties or condemnees included therein. As a matter of policy, however, a District may not include more than six (6) parcels in any one declaration of taking. Although the Code is silent as to the amount of the filing fee to the Prothonotary, the standard for the filing of a complaint in a civil action is acceptable.

Because the Code does not provide for individual indexing of the condemnees' names on the docket in the Prothonotary's office, no fee may be charged for that if the Prothonotary takes that action.

Districts are advised to pay the applicable fee to the Prothonotary and County Recorder of Deeds as directed by County personnel. Questions regarding fees must not delay the filing and recording of the declaration of taking. After the fact, these concerns may be addressed to the Central Office Acquisition Unit.

8. Memorandum to Prothonotary, Form RW-432M. Section 304 of the Eminent Domain Code provides that when the notice of condemnation has been assigned a book and page number by the recorder of deeds, the condemnor shall file with the Prothonotary, under the caption of the declaration of taking, a memorandum of the book and page number in which the notice is recorded. Therefore, the District shall prepare and file Form RW-432M as follows:

a. As soon as possible after filing the declaration of taking and the notice of condemnation, obtain from the recorder's office the book and page number wherein the notice is recorded. Also, obtain the condemnation book and page number, file number or microfilm wherein any property plot filed or microfilmed separately from the notice of condemnation is filed or recorded.

b. Fill in an original and two copies of Form RW-432M, showing the caption of the declaration, the court and term number, the date the declaration was filed, and the book and page number wherein the notice of condemnation is recorded. The District Right-of-Way Administrator shall sign the original and conform both copies.

c. Attach to the original and both copies of the memorandum a copy of Form RW-437, Schedule of Property Condemned, which was filed with the declaration. This attachment is to be marked "Completed Schedule of Property Condemned," and the recording or filing data for each of the property plots filed or microfilmed separately from the notice is to be indicated by inserting the information in the column marked "Plans Recorded In."

d. The original of this memorandum, with attachment, must be filed in the Prothonotary's office as soon as possible after the recorder has assigned a book and page number to the notice of condemnation and to any property plots filed or microfilmed separately from the said notice.

e. Immediately upon filing the original memorandum with the attachment in the Prothonotary's office, note the date of filing on the conformed copies and forward one conformed copy of the memorandum,
with attachment, to the Office of Chief Counsel, Real Property Division. Retain the other copy for the District file.

9. Notice to Condemnee and Mortgagees and Lienholders of Record.

a. General. Section 305(a) of the Eminent Domain Code, 26 Pa.C.S. §305(a), requires that within 30 days after the filing of the declaration of taking, the condemnor shall give written notice of the filing to the condemnee, to any mortgagee of record and to any lienholder of record. A mortgagee and lienholder are interested parties in the taking due solely to their security interests in the real estate; they are not condemnees having a right to file preliminary objections to the declaration of taking.

Notice to mortgagees or lienholders of record is documented by a sending a copy of the Form RW-475 with attachments as described below. As a practical matter, one notice sent in good faith to a valid address is sufficient to meet the requirement. If it is subsequently returned unclaimed with no forwarding address, simply place it in the file for documentation. Return receipt for a mortgagee or lienholder is not a part of the 30-day period for preliminary objections. That time is based solely upon notice to the condemnee, which is why the Form RW-432 carries the date that the last condemnee received notice, not the last mortgagee or lienholder of record. In the case of an unlocatable condemnee whose property is encumbered by a locatable mortgagee or lienholder, attempted notice must be provided to them by certified mail; it is not sufficient to post and publish notice to mortgagees or lienholders whose addresses are known simply because the Department must post and publish in order to provide notice to an unlocatable condemnee.

Section 305(d) of the Code, 26 Pa.C.S. §305(d), provides a minimum set of notice requirements that must be met for both the condemnee and any mortgagee and lienholder of record.

These requirements are:

1. A copy of the declaration of taking showing the court term and docket number and the filing date;

2. If a partial taking, a copy of the plot showing the condemnee's entire property and the area taken; and

3. Notice that if the condemnee wishes to challenge the power and right to condemn, the sufficiency of security, the procedure followed by the condemnor or the declaration of taking, the condemnee must file preliminary objections within 30 days of being served with the notice of condemnation.

The following forms and documents are used to provide notice of condemnation; they are to be addressed to the condemnee with a copy (cc) to any mortgagee and lienholder of record in the manner equivalent to that of the condemnee:

1. Form RW-475, Notice to Condemnee - Declaration of Taking Filed, is used under most circumstances. It advises the condemnee of the right to receive payment of estimated just compensation without jeopardizing the right to litigate the amount of damages. The number of days given to the condemnee to apply for estimated just compensation should not exceed 60 days from the date of condemnation in order to meet the requirements of Section 307 of the Eminent Domain Code. The form also states that a right-of-way representative will visit the condemnee to help in the application for estimated just compensation.

2. From RW-475A, Notice to Condemnee (Advance Payment Agreement) is used when the Department has entered into an advance payment agreement for hardship acquisition or protective buying.

3. Form RW-475T, Notice to Tenant - Declaration of Taking Filed, is used to notify a tenant with no "bonus value" or interest in the improvements when the rented property has been condemned. However, if a tenant who was listed on the RW-437 is entitled to receive payment, they should be listed on the RW-475 along with the fee owner.
(4) Form RW-475M, Memorandum of Law - Your Rights as a Condemnee under the Eminent Domain Code, is attached to all of the above notices (except Form RW-475S). Note that this memorandum is also attached to Form RW-446, Notice of Intent to File a Declaration of Taking. This does not negate the need to include it with the notice to the condemnee.

(5) Form RW-475S, Notice to Sign Owner is used when a DT is necessary to terminate the real property interest an OAD owner may have in the areas of required right-of-way. It is served along with the DT.

The RW-475S contains the required legal notice of preliminary objections and viewers proceedings and takes the place of the RW-475M.

It also serves as a revocation of the OAD permit where applicable, that, in itself may be appealed under the Highway Beautification Act.

Where an off-premise OAD is condemned, the order of notices that must be sent is as follows:

- RW-356OAD. This is the offer letter regarding the personal property aspect of an OAD. The OAD owner is notified they may move the sign and recover reasonable relocation costs or abandon the sign in-place and receive a personal property loss payment. This is required in order to proceed to a DT.

- RW-356LHI. This is the offer letter regarding the real property (just compensation) aspect of the lease for the OAD. This is also required in order to process the DT if applicable. Districts may place the entire apportionment (fee owner and OAD owner) on a single RW-356 sent to both. The amount stated on the RW-356LHI is lease bonus value as calculated by an appraiser.

Lease bonus value is determined as follows:

\[
(\text{Fair Market Rent} - \text{Rent Reserved}) \times \text{Unexpired Term of the Lease}, \text{Discounted to Present Value} = \text{Lease Bonus Value (Leasehold Interest)}
\]

Where the rent reserved is equal to or more than fair market rent, there can be no lease bonus value.

- RW-475S Notice to Sign Owner. The statement of just compensation is the amount offered on the RW-356LHI for lease bonus value only. Just compensation may be (and most often is) $0- as the only compensable interest would be upon a finding of lease bonus value.

- RW-590OAD. 90-day notice to vacate.

- RW-591OAD. 30-day notice to vacate with deemed abandoned notice.

A conformed copy of the declaration of taking along with the Form RW-437, Schedule of Property Condemned, and any other exhibits to the declaration of taking such as: property plots, plan sheets, or deed descriptions.

A copy of the property plot or plan sheet(s) showing the property condemned if not included as an exhibit to the declaration of taking. The appropriate plot or plan sheet(s) should be included with the notice to the condemnee even when provided to the condemnee previously.

Note: In cases of a total take where an exhibit was used, the property plot attached to the Notice to Condemnee (Form RW-475-series) will be the same as the exhibit recorded with the notice of condemnation.

However, in cases of a partial take where an exhibit was used, the property plot or plan sheet served on the condemnee must show the entire property owned by the condemnee, even through the exhibit recorded with the notice of condemnation showed only a portion of the property.
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b. Notice When Claimant's Counsel is Listed on the Form RW-437. Counsel for the claimant should only be on the Form RW-437 in the case of bankruptcy or otherwise with the permission of the Chief, Utilities and Right-of-Way Section. In either case, a completed Form RW-331 or RW-331A must be in the claim file. Under such circumstances the District shall still serve the claimant in a manner consistent with this section. Under Pennsylvania law, service of original process in a civil action cannot be accomplished by certified mail upon anyone other than a party to the action, including an attorney. An attorney, however, can accept service of original process in a civil action but must complete an Acceptance of Service substantially in a form as provided by the Rules of Court. PennDOT has created the Form RW-475AS for this purpose, which is to be completed when personal service is made upon an attorney for the claimant who is listed on the Form RW-437. Only where the Form RW-475AS is used can a DT be considered as being served when provided to an attorney for a claimant. In all other cases, the claimant must be served as provided by this section.

c. Notice by mail. The District will prepare the Notice to Condemnee (Form RW-475 series) in sufficient quantity that there will be a copy for each condemnee listed on the Form RW-437 a copy for all mortgagees and lienholders of record, plus one copy for the District file and one copy for the Office of Chief Counsel which will be submitted along with the proof of service in step 12.c.(3) below.

(1) Indicate on the notice to condemnee any other condemnees, mortgagees, and lienholders of record being sent a copy of the notice package. Example: George C. Jones and Herman X. Jones, owners (1 copy each); John A. Smith and Mary B. Smith, his wife, tenants (1 copy).

(2) Attach Form RW-475M, Memorandum of Law.

(3) Attach a copy of the declaration of taking, conformed as to court term and number, along with the property plots, plan sheets or deed descriptions affecting the property (see the note above regarding exhibit).

(4) Send the notice to condemnee (Form RW-475 series) with attachments to each condemnee (including tenants) and to each mortgagee and lienholder of record by certified mail return receipt requested within 30 days of the filing of the declaration of taking.

(5) One copy sent jointly to husband and wife will suffice.

(6) For any other type of joint ownership, each part-owner must be sent a copy of the notice package.

10. Notice for Condominium Takings. Condominium property may be held in a variety of ways and often at the same time by separate entities. All of these entities may be deemed "condemnees" under the Eminent Domain Code. The following guidance covers (A) background information that must be researched, (B) the impact of the background findings on service of the declaration of taking, and (C) a note on payment of just compensation relating to condominium takings.

A. The first task is to ascertain the status of the lands in the condominium and identify the record owners of these lands. Care must be taken to examine deeds—including the deeds of the individual unit owners—as well as the declaration of condominium, by-laws of the homeowners' (condominium) association and accompanying plans in order to determine ownership.

(1) Non-Declared Areas.

Not all lands of the fee owner may be "declared" as a part of the condominium as of the date of the taking. Identify areas that are not a part of the condominium. For example, these may be shown on a plan as "areas to be declared."

(2) Declared Areas That Have Yet To Be Transferred.

These are areas that have been formally declared as part of the condominium but where ownership is retained exclusively by the fee owner/developer (sometimes known as the declarant).

(3) Common Areas.
Most condominiums will set aside common areas (sometimes called "common elements appurtenant"). Identify these common areas and their owner(s). Note that ownership of common areas can be transferred exclusively to a condominium association or in shared ownership with individual unit owners. The declarant may, as well, retain ownership of fee title underlying common areas.

(4) Individual Condominium Units.

These are areas transferred to an individual by deed. These deeds will specify covenants and restrictions including, but not limited to, mandatory assessments and fees, required membership in the condominium association, and use restrictions and use rights in and to the common areas. Note that sometimes these deeds only convey property rights to the unit itself (the improvement) with the declarant retaining title to the underlying fee. Furthermore, note that deeds to individual unit owners may sometimes convey real property rights in and to the common areas of the condominium.

B. The second task is to identify the impacts of the project upon the several interests and their respective owners. The dates that rights were established must be identified. Once this is done, the following general rules apply as to notice:

(1) Non-Declared Areas.

Send a notice package to the record owner(s) of these lands, only.

(2) Declared Areas That Have Yet To Be Transferred.

Send a notice package to the declarant. Care must be taken to ensure that no other persons or entities have deeded rights in un-transferred, declared areas. For example, a declared area may contain improvements such as roads, trails, bike paths, etc. Control of these areas may be transferred to the condominium association and individual unit owners even though other declared lands may be un-transferred or even undeveloped as to the date of the taking.

(3) Common Areas.

A notice package must be sent to the condominium association in every case where an association has been formed, as well as to all owners of record of the common areas. Record owners could include the declarant if he has retained any underlying fee interest in the common areas. It may also be individual unit owners if the deeds to their individual units grant to them a real property interest in and to the common areas; this rule would apply even if no property from the individual unit owners is otherwise affected.

(4) Individual Condominium Units.

A notice package must be sent to the unit owner(s) actually impacted by the taking, as well as to the declarant if fee simple title was retained.

C. Payment of Just Compensation and Condemnation Clauses.

The issue of what entity is entitled to the payment of just compensation where land of a condominium has been acquired is addressed in RPPD 5-11-90, entitled "Acquisition of Condominiums." In general, compensation for the taking of individual units is paid to the unit owner and compensation for common areas is paid to the condominium association. Compensation for undeclared areas and declared areas that have not been transferred from the declarant would be payable to the record owner(s) and declarant, respectively.

Sometimes the declaration of condominium, deeds and/or by-laws of the condominium association may contain a condemnation clause specifying the party or parties entitled to an award or apportioned share of just compensation. The language of these clauses supercedes the general rules of the Condominium Act. Similar to condemnation clauses in leases, therefore, the District should request a legal review if there is any question relating to who should be paid for a taking impacting any aspect of a condominium.
Care must be taken to distinguish an agreement relating to an award or apportionment of just compensation from the notice requirements of the Eminent Domain Code. Regardless of who is ultimately entitled to payment, notice of the declaration must be afforded to all condemnees as set forth in (B) above. If there is any question on who should be afforded service of the declaration of taking, the District should request advice from the Office of Chief Counsel, Real Property Division.

11. Service

a. Service by Mail Requiring Signature. Section 305(b)(1) of the Eminent Domain Code provides that a declaration of taking can be served by mail. The terms “registered” and “certified” mail have been used interchangeably for various purposes, however for the purpose of service by mail it is any mail that requires a signature for delivery.

(1) United States Postal Service (USPS) mail certification. Service by certified mail is preferred and should always be attempted if a valid address is known. The USPS Return receipt service provides evidence of delivery to condemnees and associated parties (if applicable) via the PS Form 3811 (green card).

(2) Alternative courier services. Alternatives to the USPS certified mail (e.g., FedEx or UPS) may be used. If used, attention must be given to ensure when such delivery services are available (such as whether delivery occurs during a weekend) to prevent tracking confusion. Record of delivery must be similar to that of the receipt of registered mail for proof of service purposes and claim filing documentation. Proof of delivery with signature is acceptable if obtained via electronic means, such as the tracking of the mail on the internet.

b. Sheriff's Service Section 305(b)(1) of the Eminent Domain Code provides that a declaration of taking can be served in the same manner as original service in a civil action. In Pennsylvania, original process in civil actions may be served by and under the authority of the County Sheriff. Note that service by Sheriff does not guarantee personal service in the event the condemnee is evasive or unlocatable. Thus, Sheriff service should only be pursued where the identity and location of the condemnee is known but the extraordinary circumstances prevent or discourage service by certified mail or personal delivery by District personnel. In the event the claim file indicates the condemnee is a hostile claimant, see 3.02.C.7, the Sheriff shall be so notified in advance.

The entire package that would be otherwise served by certified mail must be provided to the Sheriff. Fees for Sheriff services shall be paid by the District in the same manner as filing and recording fees or as miscellaneous costs related to right-of-way claims (maximum $5,000.00). Use internal order 81161 and GL Account 641205. Refer to Chapter 6, Section 6.07, for the proper procedures to pay for such services.

The Sheriff will provide the District written notice that a “Return of Service” was filed with the Prothonotary if service is complete. In the event service could not be made, a “Return of No Service” will be filed.

After filing the Return of Service/Return of No Service with the Prothonotary, written notice will be provided by the Sheriff to the District and must be kept with the claim file.

c. Personal Service.

Service by registered mail is preferred and should always be attempted if a valid address is known. There are circumstances, however, where amicable service to a willing claimant can be made. Pennsylvania law provides that a party to a civil action may accept service amicably and provide a proof of receipt. This would also apply for a mortgagee or lienholder of record. Personal service upon a condemnee may not be made in the case of a hostile claimant. See 3.02.C.7.

(1) Amicable Service on a Willing Claimant. Personal service will be made using the Claimant Acceptance of Service form (RW-475CAS).

(2) Claimant Represented by an Attorney, or Upon a Mortgagee or Lienholder of Record. Personal service will be made using the Acceptance of Service of Declaration of Taking by Attorney, Mortgagee, or Lienholder of Record form (RW-475AS).
Similar to proof of service by any means, these forms must also be kept with the claim file.

d. Notice by posting and publication. If any condemnee cannot be served by mail, Sheriff service or personal service, a copy of the notice to condemnee (Form RW-475 series) with all attachments must be posted upon the most public part of the property. The most public part of the property can include, but not be limited to, an area at or near a residence or other structure, next to a mailbox, or any other open area in plain view.

In addition, Notice of Condemnation and Deposit of Estimated Just Compensation (Form RW-406) must be published one time each in a newspaper of general circulation and the legal journal, if any, published in the county. Proof of each publication will be retained in the District file.

Form RW-406 reduces the time normally required to file a petition to deposit estimated just compensation. When the Form RW-406 is used, a District can petition to deposit estimated just compensation, immediately after the posting and publishing period is completed. Because the Form RW-406 provides notice for both the condemnation and the petition to deposit, the 30 day preliminary objection period runs concurrently with the 20 day notice that estimated just compensation will be deposited.

12. Proof of Service, Form RW-432. After all condemnees and any mortgagee(s) or lienholder(s) of record have received notice of condemnation (whether by mail, posting and publication, personal or Sheriff service), Form RW-432, Proof of Service, must be prepared in triplicate using the same heading as the declaration of taking. The date to be entered on line three after "on or before" is the date that the last condemnee received notice, whether by mail, posting and publication or by personal service. The date that mortgagees or lienholders or record received notice is not reported and has no bearing on the 30 day period for preliminary objections. A schedule of the condemnees (Form RW-437), and, if applicable, a schedule of mortgagees and lienholders of record notified (Form RW-432ML), is attached to the proof of service.

The Form RW-432ML is not to be filed with the declaration of taking or recorded with the Recorder of Deeds. It is not to be attached to the Form RW-437 Schedule of Property Condemned for any purpose. When applicable, the Form RW-432ML is only to be attached to the Form RW-432 and filed with the Prothonotary after receipt of the final proof of service upon the condemnee(s) included in the declaration of taking. Again, at no time does the Form RW-432ML have to be recorded.

a. The original Form RW-432 is signed by the District Right-of-Way Administrator, notarized and filed in the Prothonotary's office.

b. The two copies of Form RW-432 are conformed to show the date of filing in the Prothonotary's office. One copy is retained in the District file along with the post office mailing receipts (white slips), return (pink) cards, and proofs of publication and Affidavit(s) of Service, Form RW-475AS, Form RW-443, if any.

c. The second conformed copy of Form RW-432 is sent to the Office of Chief Counsel, Real Property Division, along with a copy of each notice to condemnee (Form RW-475 series). See step a.(1). Indicate on each copy of the notice to condemnee the date when that particular party received notice, since preliminary objections to the declaration of taking can be filed by any condemnee within 30 days of receipt of notice of condemnation.

C. Stipulation to Amend Declaration of Taking.

1. Content of the Request. If it is necessary to amend a declaration of taking to correct an error or omission, or to revise the taking, and if all parties involved in the claim in question are willing to stipulate to such correction or revision, the District Office will submit a request to the Chief, Utilities and Right-of-Way Section to have the Office of Chief Counsel, Real Property Division, prepare a stipulation to amend the declaration of taking.

A request must be for one claim only, even if several claims were included in a single declaration of taking.

If all parties involved in the claim in question, even parties wrongly included in the first instance, are not agreeable to the correction or revision, a petition for leave to amend must be filed rather than a stipulation.
The District's letter must explain in detail the errors or omissions, and the necessary corrections, the specific revision in the area condemned, the reason why the area is being revised, and the specific exhibit numbers, claim numbers and parcel numbers involved.

The District must also include a statement as to whether any of the condemnees are represented by counsel, the names and addresses of such attorneys, whether the claim is in litigation, and whether the condemnation from this particular property has previously been amended by stipulation or petition.

If names were in error, the request must include full names as improperly listed and as corrected, together with an explanation why the names differ (e.g., the persons shown on the declaration of taking had conveyed property to another person prior to filing the declaration of taking, or the corporation had merged with another before condemnation).

Corrected or revised property plots are required in all cases and should be marked, "Revised Exhibit No.___" (the number of the exhibit as originally filed should be inserted here). If exhibits were not used on the declaration of taking, the revised property plot should be labeled "Revised Exhibit No. 1" or No. 1A, No. 1B, etc. if more than one sheet is required. The District must forward four copies, plus one for each party who will execute the stipulation (husband and wife to be counted as one party), plus copies for the attorneys for the condemnees and additional copies for counties requiring extra copies. If the claim is in litigation, an additional copy must be attached for the assistant regional attorney. Sufficient copies must also be available for any mortgagee or lienholder of record since, although they are not a party to the stipulation, they will need to be served eventually with the stipulation, order, amended declaration of taking and other relevant attachments.

A "Revised Schedule of Property Condemned", Form RW-437, is also required. This form must show only one claim, even if the original shows several claims. Of course, the exhibit numbers shown on this form must be the same as those on the revised exhibits.

The District must also forward conformed copies of the: declaration of taking; notice of condemnation; schedule of condemned property; all exhibits pertaining to the claim in question as they were originally filed; memorandum to the Prothonotary with completed schedule of condemned property attached; and any stipulations or petitions by which the condemnation of this particular property was previously amended.

2. Procedures after preparation. The Office of Chief Counsel will prepare the stipulation, and if the claim is not in litigation, will have the original and one copy signed and acknowledged on behalf of the Department. The Office also will send to the District the original, the executed copy, and sufficient conformed copies to provide one for each condemnee, the owner's attorney if represented by counsel, and the District file.

Upon receipt of these documents, the District will:

a. Have both the original and the copy which has been executed on behalf of the Department signed by the condemnees and their attorneys (if they are represented by counsel), and will have both the original and the copy acknowledged by the condemnees.

b. Conform all copies.

c. File the original in the Prothonotary's office.

d. Record the signed copy, with original acknowledgment, in the recorder's office.

e. Provide a conformed copy of the fully-executed stipulation to each party signatory (husband and wife to be counted as one party) and will return a conformed copy to the Office of Chief Counsel, Real Property Division, with a notation as to when it was filed in the Prothonotary's office and when it was recorded in the recorder's office.

f. Provide a conformed copy of the fully-executed stipulation to each mortgagee of record and lienholder of record.

g. Pay all costs from the District's cash advancement account.
When the claim is in litigation, the Office of Chief Counsel will have the original and one copy executed and acknowledged on behalf of the Department by the regional attorney and will then forward it to the assistant attorney for trials.

Upon receipt, the trial attorney will:

a. Sign the original and one copy of the stipulation, have them presented to the other parties, and, upon the execution and acknowledgement of the original and one copy by the condemnees, have the original filed with the Prothonotary and the copy, with original acknowledgements, recorded in the recorder's office.

b. Conform all copies, provide a conformed copy to each party signatory, and forward to the District and to the condemnation attorney conformed copies of the fully-executed stipulation, with a notation thereon as to when it was filed in the Prothonotary's office and when it was recorded in the recorder's office.

c. Provide service upon each mortgagee of record and lienholder of record.

d. The attorney will arrange for the payment of the Prothonotary's and recorder's bill in one of the following ways:

(1) Arrange to meet a negotiator at the courthouse and pay the bills at the time of filing and recording.

(2) Forward them to the District for payment from its cash advancement account.

(3) Pay them from the Regional Office of Chief Counsel's advancement account.

D. Updating Valuation Documents. There is no requirement that either an appraisal or wavier valuation be updated once a declaration of taking is filed. However, this may be done at the discretion of the Right-of-Way Administrator as it could assist in the post condemnation negotiation process outlined in Section E. Where an update is designated, the District Chief Negotiator will immediately request the District Chief Appraiser to order the appraisal updated to the date of condemnation.

E. Post-Condemnation Negotiation Procedures.

1. Post-Condemnation Visit. Within 60 days of the date of condemnation, the negotiator will make the personal post-condemnation visit promised by Form RW-475. If the valuation has not been updated, the negotiator will have to work with the previously approved offer amount.

This post-condemnation negotiations contact should be approached as a new opportunity to settle the claim. The acquisition that was previously a possibility has now become a reality. As such, some psychological resistance on the part of the owner may now be reduced. If so, a positive attitude toward settlement might be developed.

2. Delivery of the Updated Offer. Where an updated valuation indicates no value change, the negotiator will deliver Form RW-447, informing the owner that the Department reviewed the valuation and concluded that the previous offer represents just compensation. Even though there is no change in the amount of the offer, the fact that a second valuation was completed should be emphasized in order to reinforce the offer. Form RW-447, Appraisal Update - No Value Change, is handled in the same manner as the Form RW-356 series offer letters.

If the updated appraisal resulted in an increase of damages, the negotiator will deliver the appropriate offer letter, Form RW-356 series, showing the revised offer amount and the notation, "This offer supersedes our offer to you dated _____________ in the amount of $_______________."

This increase in the amount of damages based on the actual date of acquisition enables the negotiator to bring something new and positive to the discussion table.
If the claim involves a replacement housing supplement, any revision to the amount of the supplement brought about by a revision in the amount of the fair market value must also be offered at this time. See Chapter 4, *Relocation Assistance* for a discussion of revisions to replacement housing supplement offers.

3. Post-Condemnation Administrative Settlements. An updated offer may be sufficient for the negotiator to obtain an amicable settlement. It is the negotiator's obligation to make a conscientious effort to convince the owner that the offer is based on a sound and fair valuation.

However, it is recognized that there are honest differences of opinion and room to negotiate between such differences. Therefore, please note that the administrative settlement is a viable option during the post-condemnation negotiations up to the time that a petition for viewers is filed. Administrative settlements are discussed more fully in Section 3.04.

4. Settlement Agreement (Post-Condemnation), Form RW-334. When the negotiator has amicably settled the claim, Form RW-334 will be completed and executed.

F. Declaration of Relinquishment.

1. General. It is important to note that a declaration of relinquishment is used only to relinquish property condemned by the filing of a declaration of taking.

Under Section 308 of the Eminent Domain Code, 26 Pa.C.S. §308, a declaration of relinquishment may be filed only within two (2) years of the filing of the declaration of taking and only if:

   a. The Department has not entered onto the property to be relinquished and

   b. The claimant has not tendered possession of the property to the Department and

   c. The Department's estimate of just compensation has not been paid to the claimant.

2. Contents of the Request to File. In making its request to the Chief, Utilities and Right-of-Way Section, for the filing of a declaration of relinquishment, the District will provide the following information and documents:

   a. Information.

      (1) Route, section, and county.

      (2) Court term number and date of filing of declaration of taking.

      (3) Name and address of claimant, and attorney if represented by counsel.

      (4) Exhibit number of deed description, property plot or plan sheet filed with notice of condemnation and parcel number of property.

      (5) Claim number.

      (6) Date of recording, book and page number where notice of condemnation was recorded and the condemnation book and page number, file number, or microfilm number of the exhibit if it is filed or microfilmed separately from the notice of condemnation.

      (7) The reason relinquishment is being requested.

      (8) A statement that the Department has not entered into the property to be relinquished; a statement that the claimant has not tendered possession of the property to the Department; and a statement that the Department's estimate of just compensation has not been paid to the claimant.

      (9) A statement as to whether the relinquishment being requested is to relinquish the entire area condemned from that particular claimant or only a portion thereof.

   b. Documents
(1) Conformed copy of declaration of taking, notice of condemnation, Form RW-437, and Form RW-432M, with completed schedule of condemned property attached.

(2) Copy of exhibit as originally filed, if exhibit was used.

(3) If only a portion of the area condemned is being relinquished, four copies of the property plot or plan sheet must be submitted, on which the portion being relinquished is hatched and designated "area relinquished."

(4) The portion remaining condemned should be hatched differently and appropriately designated (as required right-of-way or however the take was designated originally) and a legend must be shown, explaining the meaning of the different types of hatching. Additional copies must be supplied for the counties in which they are required. No property plot or plan sheet is required if the entire area condemned is being relinquished.

The property plots must be marked Exhibit No. 1, 2, etc., regardless of what the number of the exhibit was when it was recorded with the notice of condemnation.

(5) A schedule of property relinquished (this should be prepared in the same format as Form RW-437).

3. Processing the Relinquishment. A declaration of relinquishment package will be prepared by the Office of Chief Counsel and sent to the District along with appropriate instructions. The following items will be included to be processed by the District:

a. Declaration of Relinquishment. File the original in the Prothonotary's office along with a copy of the property plot or plan sheet.

Conform all copies as to the date of filing.

b. Notice of Relinquishment. Fill in the date that the declaration of relinquishment was filed on the original and all copies.

Sign the original and have the signature notarized by an official in the Prothonotary's office.

On the same day that the declaration of relinquishment is filed, record the original notice of relinquishment (with a copy of the property plot or plan sheet) in the recorder's office. The Commonwealth of Pennsylvania, Department of Transportation is the grantor, and the claimants are the grantees.

Conform all copies.

c. Memorandum to Prothonotary, RW-432M. As soon as possible after filing the declaration of relinquishment and the notice of relinquishment, the memorandum to Prothonotary should be processed in the same manner as a declaration of taking (see Section 3.08.B.8).

d. Notice to Relinquish. In order to provide notice to the property owners, the notice to relinquish is completed and signed by the District Right-of-Way Administrator. Serve the notice to relinquish, with a copy of the declaration of relinquishment attached, on the property owners and their attorneys, if any, by certified mail, return receipt requested. Retain copies and receipts for District records. Provide similar service to any mortgagee or lienholder of record.

If the entire area condemned is being relinquished, no property plot or plan sheet is attached to the notice. However, if the area being relinquished is only a portion of the area condemned, a copy of the property plot or plan sheet must be attached to the notice and include a statement to the effect that "a property plot showing the right-of-way relinquished as it pertains to the property owned and/or occupied by you is also attached."

e. Notice to Relinquishment by Publication. If it is not possible to serve notice to the relinquished by certified mail, return receipt requested, or by personal service, notice may be made by publication in a
newspaper of general circulation and the legal journal, if any, published in the county. The following format should be used:

NOTICE IS HEREBY GIVEN that on ____________, the following Declaration of Relinquishment was filed in the Court of Common Pleas of ______ County:

(insert declaration of relinquishment)

Because the identity or whereabouts of the condemnee(s) listed below is unknown or for other reasons service cannot be made, this Notice is hereby published in accordance with Sections 305(b) and 308 of the Eminent Domain Code, 26 Pa.C.S. §305(b) and 305:

(Insert names of condemnee(s))

f. Proof of Service. Form RW-469, must be filed in the Prothonotary's office. The proof of service is signed by the District Right-of-Way Administrator and the date entered in the text is the date that the last claimant on the declaration was notified, whether by certified mail, personal service or publication.

Complete a schedule of parties notified which lists the names and addresses of all claimants and attorneys, if any notified, as well as that of any mortgagee and lienholder or record, and the date and manner of service. Attach the schedule of parties notified to Form RW-469.

g. Sufficient copies of the documents described above will be furnished in the package. Note the date of filing on all copies of the declaration of relinquishment. Conform all copies of the notice of relinquishment, memorandum to Prothonotary and proof of service. Retain a copy for the District's records and return one copy of each to the Office of Chief Counsel.

G. Stipulation to Relinquish.

1. Claim in Litigation.

a. A condemnation may be relinquished by stipulation of the parties if the claim is in litigation and all parties are willing to stipulate that:

   (1) Two (2) years has passed since the declaration of taking was filed, or

   (2) Estimated just compensation has been paid, or

   (3) The claimant has tendered possession of the property to the Commonwealth, or

   (4) The Commonwealth has taken possession of the property.

The following procedures shall apply:

The District will submit a request to relinquish to the Chief, Utilities and Right-of-Way Section, indicating which of the events above have taken place. In addition, all the applicable information and documents listed in Section 3.08.G.2 will be included.

Where only a portion of the property condemned is to be relinquished, the District must prepare property plots as set forth in Section 3.08.G.2, and submit with its request four copies of the property plots plus enough additional copies for each claimant the attorneys representing any of the claimants, the assistant regional attorney and the recorder in counties where such extra copies are requested.

b. Upon receipt of the above information and documents and forwarding by the Chief, Utilities and Right-of-Way Section, the Office of Chief Counsel will prepare the stipulation to relinquish. The Office of Chief Counsel will have the original and one copy of the stipulation executed and acknowledged on behalf of the Department by the regional attorney and will then forward it to the assistant regional attorney for trials.
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The attorney will sign the original and one copy of the stipulation, have them presented to the other parties and, upon the execution and acknowledgement of the original and one copy by the claimants and the signing of the same by the attorneys representing the claimants, will have the original filed with the Prothonotary and the copy, with original acknowledgements, recorded in the recorder's office.

The attorney will arrange for the payment of the Prothonotary's and recorder's bill in one of the following ways:

1. Conform all copies, provide a conformed copy to each party signatory, and forward to the District and to the condemnation attorney conformed copies of the fully-executed stipulation, with a notation thereon as to when it was filed in the Prothonotary's office and when it was recorded in the recorder's office.

2. Provide service upon each mortgagee and lienholder of record.

3. The attorney will arrange for the payment of the Prothonotary's and recorder's bill in one of the following ways:

4. Arrange to meet a negotiator at the courthouse and pay the bills at the time of filing and recording.

5. Forward them to the District for payment from its cash advancement account.

6. Pay them from the Regional Office of Chief Counsel's advancement account.

2. Claim Not in Litigation. Stipulations to relinquish will not be used if more than two years have passed since the declaration of taking was filed; or estimated just compensation has been paid; or the claimants have tendered possession of the property to the Commonwealth; or the Commonwealth has taken possession of the property, and the claim is not in litigation. Rather, if a determination has been made that the property is not needed for present or future transportation purposes, disposition of the excess land shall be accomplished in accordance with Chapter 7, Excess Land.

3.09 ESTIMATED JUST COMPENSATION PROCEDURES

A. Payment of Estimated Just Compensation. If the negotiator is unable to secure an amicable settlement after a diligent effort, the direct payment of estimated just compensation will be offered to the owner. Even though the owner and the Department have not been able to agree on the amount of damages, the negotiator should be able to convince the owner that it is in the owner's best interest to accept payment of estimated just compensation. The direct payment is advantageous to the owner (the claimant has the money in hand but can still litigate) and to the Department, which benefits by saving the time and expense of depositing (and perhaps later withdrawing) the payment.

Form RW-448 is used for the condemnation of vacant land. The form states that the owner remains in physical possession until the start of construction (or if needed sooner, the receipt of a written notice that possession is required). Therefore, no rent will be charged and the Department is not obligated to pay detention damages until physical possession is taken. The owner can continue to use the vacant land in any manner that will not result in physical or other change to the contour or nature of the property, but cannot erect or install any improvements.

Form RW-448D is used (as the title indicates) when the condemnation is of improved land and demolition is required. The date that the owner will deliver possession in paragraph 2 will be 90 days from the date of the application. See Chapter 4, Section 4.08.B, for exceptions to this rule. The same date will be indicated in paragraph 3.a. for the commencement of rent payments when the acquired property has a value and usefulness that justify the collection of rent from the owner who continues in occupancy.

Form RW-448RR, Application for Payment of Estimated Just Compensation, (P.U.C. Appropriation), is used when the land has been appropriated by the Public Utility Commission and the railroad is unwilling to sign a settlement agreement (Form RW-349).
Form **RW-448A** is used to pay revised Estimated Just Compensation whether the condemnation is of vacant or improved land with demolition.

The original Form **RW-448, RW-448D, RW-448RR, or RW-448A** is signed by the owner, and the original and two copies are sent to Central Office along with all necessary attachments that normally accompany an amicable settlement. See Section 3.07.1.2. One copy of the RW-448 is given to the owner and one copy is retained for the District file.

**NOTE:** The Department has a policy waiving the title search requirement in amicable settlements where damages do not exceed $25,000. This is not the case when a declaration of taking is filed.

**B. Petition to Deposit Estimated Just Compensation Into Court.**

1. **Circumstances for the Deposit of Estimated Just Compensation.** Estimated just compensation will be deposited into court under the following circumstances:

   **Owner Refuses Estimated Just Compensation** The owner, or any one of the owners in a multiple ownership situation, refuses settlement and refuses to make application for the direct payment of estimated just compensation.

   **Unlocatable Owner** When the owner has been identified through a search of the public records, but his current location cannot be established, such person will be considered an "unlocatable owner." Once a declaration of taking has been filed and notice has been made by posting and publication, estimated just compensation—regardless of the amount—will be deposited into court for each unlocatable owner.

   **Unknown Owner** An "unknown owner of record" is a legal entity even though the identity of the person cannot be ascertained by a careful and diligent search of all public records. After a declaration of taking has been filed and notice has been made by posting and publication, estimated just compensation—regardless of the amount—will be deposited into court for each unknown owner in order to initiate the statute of limitations.

   **Title** The title to the condemned property is defective.

   **Liens** The liens against the acquired property exceed the amount of estimated just compensation or the owner has not been able to obtain a release of lien from the holder of the lien.

   **Possession** When possession of the property for demolition (or for other reasons) is required in the shortest possible time after the filing of a declaration of taking, it is absolutely necessary to deposit estimated just compensation into court as this is a prerequisite to the issuance of a writ of possession by the court.

   **Heirs Unknown** The owner of the property is deceased, no administration of the estate has been raised, and the names and locations of the heirs are unknown.

   **Other** There may be other circumstances peculiar to a specific acquisition that may warrant the deposit of estimated just compensation. If unsure, request a legal opinion via the Chief, Utilities and Right-of-Way Section.

2. **Timing of Request for Petition to Deposit Estimated Just Compensation.** Normally, the process to deposit estimated just compensation will begin after the 30 day period for filing preliminary objections has expired and it has been verified that no preliminary objections were filed. If the project schedule requires possession in the shortest possible time, the deposit process may begin after all condemnees have been notified of the condemnation (See Sections 3.08.B.9 – 11 for notice requirements). While the process to deposit estimated just compensation can begin as soon as the condemnees have been notified of the declaration of taking, the actual deposit cannot be made during the 30 day period for filing preliminary objections nor while preliminary objections to the declaration of taking are pending.

A request for a petition to deposit must be submitted to Central Office within 120 days after the date of the declaration of taking or, if preliminary objections are filed, within 120 days of the resolution of the objections.

It is essential that the deposit of estimated just compensation into court be made in a timely manner for two reasons: The deposit initiates the six-year statute of limitations (42 Pa.C.S. §5527(a)), and detention damages
(delay compensation) are not payable on funds deposited after the date of such deposit (Section 713 of the Code).

The payment of the agreed purchase price or deposit of estimated just compensation into court must be done prior to the owner being required to surrender possession of the property. No distinction is made between improved and unimproved property; therefore, these procedures apply equally to improved and unimproved property.

3. **Letter of Request for Petition to Deposit Estimated Just Compensation (RW-460).** The District Right-of-Way Administrator will send Form RW-460 to the Chief, Utilities and Right-of-Way Section requesting the Office of Chief Counsel to prepare and file a petition to deposit estimated just compensation in court. Because of the practicalities of preparing a petition that properly states the factual situation, including administrative and clerical time, requests for multiple deposits on one form will not be accepted.

The Department complies with Section 307(b) of the Eminent Domain Code by issuing Form RW-475 in which the amount of estimated just compensation is offered, and through the follow-up post-condemnation negotiation visit. In a case when the owner demands the payment of estimated just compensation, but direct payment cannot be made (e.g., there are unreleased liens of record), the deposit of estimated just compensation into court shall be made as expeditiously as possible.

Much of the Letter of Request for Petition to Deposit Estimated Just Compensation (RW-460) is self-explanatory. However, additional information is offered below to explain the policy behind select questions on the form.

**Question 6:** Indicate whether or not the claim is in litigation (i.e., petition for viewers has been filed by the owner or the District has requested same to be filed).

**Questions 7 and 8:** Caution: Estimated just compensation cannot be deposited during the 30-day period for filing preliminary objections, nor while preliminary objections to the declaration of taking are pending. The owner has 30 days to file preliminary objections after receipt of the notice to condemnee - declaration of taking filed. After this period has passed, the District will verify with the Prothonotary's office that no preliminary objections have been filed, or if filed, have not been sustained.

**Question 10:** A search of the taxes must be made through the year that the declaration of taking was filed. All taxes must have been paid or the unpaid taxes and unliened municipal claims, if any, must be shown on the Form RW-467A.

**Question 13:** If the owner is unknown or unlocatable, the dates and places of publication of the intent to deposit estimated just compensation must be entered. Specifically, provide the dates the notice was posted, the dates the notice was published, the places of posting, and the name of the publication utilized.

**Question 14:** PUC Referrals

If the property was appropriated by the Public Utility Commission, the District must request the Office of Chief Counsel, Real Property Division, to request the PUC to transfer the payment of damages over to the Court of Common Pleas for the purpose of depositing estimated just compensation. This must normally be done prior to the District's submission of their request letter for deposit of estimated just compensation. The PUC will not accept simultaneous requests for appropriation and transfers of jurisdiction over the damage part of the acquisition. Note: This process will take a minimum of 90 days; appropriate planning is encouraged.

Therefore, the request for referral need not be extensive. It must identify the claim involved and the reason for the referral, and have attached thereto the PUC order appropriating the property. Identify the page number of the PUC order on which the appropriation is located. Any information not included in the PUC order that may be necessary to refer damages should also be included with the request.

After the order of referral has been forwarded to the District by the Office of Chief Counsel, the District may request that the estimated just compensation be deposited. With the prior approval of the Utilities and Right-of-Way Section, the request for referral and the request for deposit can be submitted at the same time.
The District should indicate in the request letter not only the information listed above, in relation to regular requests to deposit, but also:

a. The PUC application docket number.

b. The date of the order of referral and a copy of the order.

c. The damage claim number referred to in the order of referral.

4. Documents to Be Submitted with the Letter of Request for a Petition to Deposit (Form RW-460). The District will submit a conformed copy of the declaration of taking and a conformed copy of the notice of condemnation. It must be logged in the office of the recorder of deeds on the same day that the declaration of taking is filed in the Prothonotary's office.

If the property was appropriated by the Public Utility Commission, attach a copy of the PUC order of referral and a copy of the regional staff attorney's petition to the Commission requesting that the claim be certified over to the Court of Common Pleas, if there is a copy of same in the District files.

If the declaration of taking has been amended to affect the claim for which estimated just compensation is to be deposited, a conformed copy of the stipulation or order of court allowing the amendment, with date and place of recording noted thereon, shall be included.

If any portion of the area condemned has been relinquished, a copy of the stipulation with date of filing and date and place of recording noted thereon, or declaration of relinquishment, notice of relinquishment, and memorandum to Prothonotary indicating the deed book and page number where the notice of relinquishment was recorded must be included.

A copy of the Title Search (Form RW-918) and Bring-Down (Form RW-918B) of the property, including a list of all valid liens and encumbrances existing at the date when the declaration of taking was filed and which are still owed at the date when the deposit of estimated just compensation, is requested, along with Form RW-432ML. Also include a listing of all unpaid taxes and municipal claims assessed against the property through the year of condemnation, regardless of whether the taxes or claims have been entered as liens and regardless of whether liens which may have been entered for any of the said taxes and claims have been revived. Do not submit copies of deeds, leases, or agreements of sale that were submitted with the declaration of taking request.

An original and one copy of Form RW-467A must be submitted. Information for Form RW-467A shall be obtained from the Title Search (Form RW-918) as "brought down" (Form RW-918B) to the date that the declaration of taking was filed.

Form RW-467A should be prepared as follows:

a. The county, state route and section are inserted in the top right-hand corner.

b. In the left-hand column, list the name, and address of the claimants including the names and current addresses of tenants who have a compensable interest in the general damages. Names and all additional information must appear exactly as were shown on Form RW-437, filed with the declaration of taking; if not, explain the reason for any changes in the request letter.

c. List the total amount to be deposited for the claim in the "estimated just compensation" column.

d. In the appropriate column, list all the names and current addresses of the lienors, mortgagees, and holders of unpaid taxes and municipal claims. State the type of lien. For mortgages, list the mortgage book, page number and date of recording. For judgments, show the court term and number where entered and the date entered. The "record amount due" should be shown. The "actual amount due" and the "net due to condemnee" columns will be completed when, and if, the Department petitions to release the deposit of estimated just compensation and the court requires the Department to make the actual distribution of monies. After listing all lienors, type the statement, "subject to possible unliened, unpaid municipal claims and taxes" on the bottom of the form.

e. It must be remembered that when depositing estimated just compensation into court, all valid liens
and encumbrances must be shown in the proposed schedule of distribution. The fact that there may be sufficient equity remaining in the property to take care of such items does not relieve the Department of the responsibility of showing them in order to assure their payment or release before the money is withdrawn.

f. One of the most important things to keep in mind while preparing Form RW-467A is that Section 522 of the Eminent Domain Code requires the condemnor to give each party in interest (being the claimant and all mortgage holders and lienholders of record who have not provided a release of lien) a 20-day notice of the intention to deposit estimated just compensation into court. The Office of Chief Counsel will meet this requirement by sending the appropriate notice by certified mail, return receipt requested. However, in order to avoid waste of effort, time and expenses, it is imperative that the District provide the current correct address of all the parties shown on Form RW-467A.

ROW Office Claim Payment Maintenance for the amount of the estimated just compensation must be included. This invoice will be made payable to the claimants or to the Prothonotary of the county in which the estimated just compensation will be deposited, e.g., John Smith and Mary Smith or the Prothonotary of Adams County.

In addition, if there is a proration of the current year's taxes, include the Department's share of the prorated taxes (using cost function 1103) so that the total amount deposited will be the estimated just compensation plus the Department's share of the prorated taxes.

If the alternative to standard tax proration was not used, include a copy of Form RW-313T.

5. Central Office Processing of Letter of Request for Petition to Deposit Estimated Just Compensation (Form RW-460). Upon receipt, the request package will be reviewed for compliance with policy and procedure. When reviewed and approved, the request package will be forwarded to the Office of Chief Counsel, Real Property Division.

The Office of Chief Counsel will prepare the petition to deposit estimated just compensation and the order of court. They will prepare a notice of intention to deposit estimated just compensation for each party whose name and address is shown on the submitted Proposed Schedule of Distribution (Form RW-467A), and will send it, along with a copy of the petition to deposit and proposed schedule of distribution, by certified mail, return receipt requested, to each party in interest. An information copy of the petition and all notices will be sent to the District Right-of-Way Administrator.

Section 522 of the Eminent Domain Code requires a 20-day notice to all interested parties prior to PennDOT presenting its petition to the court. The Office of Chief Counsel adds 20 days to the latest date of receipt by a party in interest before moving forward with the deposit to ensure compliance with the Code.

During the 20-day notice period, should the District's desire for the Office of Chief Counsel to present the petition of deposit to the court change for any reason, refer to Section 3.08.B.6.

The Central Office Acquisition and Relocation Unit will present the invoice for the preparation of the check in the amount of estimated just compensation.

Meanwhile, the request package will remain on file in the Office of Chief Counsel. Should the District require any information concerning the request, it may be obtained by communicating directly with the Office of Chief Counsel, Real Property Division.

After the statutory period of the notice of intention to deposit has passed, the Office of Chief Counsel will telephone or e-mail the District to ask whether or not there has been any response to the notice of intention to deposit estimated just compensation.

The Office of Chief Counsel will assemble the deposit packet for transmittal to the appropriate regional office if the District replies that there has been no response to the notice. The deposit packet will include:

a. A cover letter to the trial attorney containing instructions

b. Petition to deposit estimated just compensation
c. Order of court

d. Sworn Statement of Interested Parties Notified

e. Proposed schedule of distribution

f. Check in the amount of estimated just compensation

The regional attorney will present the petition to deposit, the order of court, and the sworn statement of interested parties notified to the court. After the judge has signed the order, the original documents will be filed with the Prothonotary and the check will be delivered to the Prothonotary. Instructions regarding the payment of the filing fees are contained in the cover letter.

The trial attorney will conform all copies of the petition to deposit and order of court, and send a copy of each along with the proposed schedule of distribution to the District Right-of-Way Administrator and the Office of Chief Counsel.

6. Form RW-467. The conformed copy of the petition to deposit and order of court advises the District Right-of-Way Administrator of the date that the estimated just compensation was deposited. If the property that was condemned has a value and usefulness that justify the collection of rent from an owner who continues in occupancy, Form RW-467, Notice of Deposit and Rent Obligation, will be completed and sent to the owner. This notice advises the former property owner of the date of deposit of estimated just compensation, the rental obligation and the amount of rent being charged. A copy of Form RW-467 is provided for both the District and Central Office Property Manager. The mailed notice of deposit and rent obligation is to be followed by a personal visit to have Form RW-670, Lease Agreement, completed.

7. Procedure to Stop the Process of Deposit. Under certain circumstances, it is possible to stop the deposit process and have the check sent directly to the District for distribution to the claimant.

The need to stop a deposit may occur when a claimant decides to accept estimated just compensation or signs a post condemnation settlement agreement. The process to stop a deposit is described below:

a. The District Right-of-Way Administrator or District Chief Negotiator should email the Office of Chief Counsel, Real Property Division, the Chief of Acquisitions, and the Chief of Administration if the deposit process must be stopped. The email should identify the payment to be stopped and state the reason why it must be stopped. This email will stop the deposit process and no further work will be done on the deposit request.

b. As soon as practical, the initial email should be resent to the same parties as above along with all documents needed to process the payment. Attach scanned copies of either the Post Condemnation Settlement Agreement plus attachments (see Section 3.07.I.2) or the Application for Payment of Estimated Just Compensation plus attachments (see Section 3.07.I.3). Place hardcopies in the mail to the Chief, Central Office Right-of-Way Administration Unit.

If the parcel has liens, releases of liens or proof of satisfaction must be included for every lien.

c. Upon satisfactory review of the original documents by the Central Office Right-of-Way Administration Unit, the original package and corresponding email will be sent to the Office of Chief Counsel requesting the check be released to the District.

If lien releases or satisfactions are contingent upon payment of proceeds from the fair market value payment, the deposit check must be voided and cannot be sent to the District. A new check must be requested to direct payment of funds to the lienholders or a title company. See Section 3.07.C regarding Releases of Liens and Directives to Pay and Section 3.07.I.4 for payments to title companies.

If the attorney handling the deposit has the check and already made arrangements with the court to deposit the check, it is too late to stop the process. The check will be deposited. After estimated just compensation is deposited, the funds must be withdrawn from the court under the proceedings of a petition to release deposit of estimated just compensation.
C. Petition to Release Deposit of Estimated Just Compensation.

1. Introduction. Through the various written notices and personal visits as described in this Chapter, the owner is given ample opportunity to accept estimated just compensation prior to deposit of same by the Department. Through the same notices and visits, the owner is clearly informed that once estimated just compensation is deposited, the owner must then bear the expense of withdrawing it from court.

There is one exception, however. Should the owner decide to settle amicably and in full after estimated just compensation has been deposited in court, the District Right-of-Way Administrator is authorized to offer the owner the services of the Office of Chief Counsel to prepare and present to the court the petition to release deposit of estimated just compensation and other required documents.

**CAUTION:** THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, WILL NOT PREPARE OR JOIN IN ANY PETITION TO RELEASE ESTIMATED JUST COMPENSATION UNLESS AND UNTIL THE OWNER AGREES TO SETTLE AMICABLY AND IN FULL. THESE SERVICES ARE NOT TO BE OFFERED BY THE DISTRICT UNTIL THE OWNER HAS SO AGREED.

The District will be responsible for the proper execution by the owner of Form RW-334 and Form RW-313 if the owner agrees to settle amicably in full after the deposit of estimated just compensation. The District Right-of-Way Administrator may then submit a letter to the Chief, Utilities and Right-of-Way Section, requesting the Office of Chief Counsel to petition for the release of deposited estimated just compensation.

Of course, if the owner wishes his or her attorney to handle this matter of withdrawal, the Department will not object.

2. Letter of Request for Petition to Release Deposit of Estimated Just Compensation. The subject heading of the request letter shall include:

   a. "Request for Petition to Release Deposit of Estimated Just Compensation"

   b. County

   c. State route and section

   d. Claim number

   e. Owner's name

   f. Court term and number of Declaration of Taking

   g. Amount to be withdrawn

The letter should include the name and address of the owner and the name and address of the attorney (if any).

**Note:** If the name of the owner varies in any way from that under which the property was condemned or estimated just compensation was deposited, the reason for the difference in name must be fully explained.

State whichever of the following applies:

   a. The court and term number and the date of the filing of the declaration of taking; the date of the order of referral and the date of the deposit, if the premises were acquired by appropriation by the PUC.

   b. If the declaration of taking was amended by order of the court, show the date; if by stipulation, show the date it was filed and recorded.

   c. State that the records in the Prothonotary's office have been checked within two weeks of the date of request and that the estimated just compensation has not been withdrawn.

   d. State further that all liens, as of the date of condemnation, and all taxes and municipal claims assessed through the year of condemnation (whether or not they are deliquent) are shown on the Proposed
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Schedule of Distribution (Form RW-467A) and are either satisfied or released, or are to be paid as part of the settlement as shown on the Settlement Statement (Form RW-313).

e. State the disposition of all tenants' interests and include supporting documents, if any.

3. Documents to Accompany the Letter of Request for Petition to Release Deposit of Estimated Just Compensation.

   a. A conformed copy of the declaration of taking, notice of condemnation, and Schedule of Condemned Property (Form RW-437), including index to exhibits, if necessary.

   b. A conformed copy of the petition to deposit estimated just compensation and a conformed copy of the order of court including a copy of the original Proposed Schedule of Distribution (Form RW-467A).

   c. A newly typed Proposed Schedule of Distribution (Form RW-467A), plus one copy. The "Actual Amount Due" and the "Net Due to Condemnee" columns should be left blank; they will be completed only if the court requires the Department to make the actual distribution of monies. If paid, the date of satisfaction must be shown. If it is to be paid directly from the deposited funds utilizing a Directive to Pay (Form RW-380), this fact must be shown. If the lien is to be paid in cash at settlement, this must be shown on Form RW-467A, and the Settlement Statement (Form RW-313) must show the exact amount to be paid. The Proposed Schedule of Distribution (Form RW-467A) will become an attachment to the petition to release deposit of estimated just compensation and will be presented to the court. In this way, the court will know that the claims of all parties who have an interest in the funds will be paid from the funds at the time of distribution.

   d. The original Settlement Agreement (Form RW-334), with plot plans attached, plus three additional copies. The settlement agreement must be signed by all parties having a compensable interest in this claim.

   e. If there are any tenants involved, submit the original and one copy with plot plans attached, of Form RW-346 whereby the tenant's interest in the condemned property has been released.

   f. An original and one copy of Form RW-307 for each lien which will not be paid in full at settlement.

Note: Every lien must be released using Form RW-307 or must be paid out of the settlement amount regardless of the amount of the lien or the amount of the claim.

The original plus one copy of Form RW-380 if any are required, plus sufficient copies to provide one copy to each person to whom any part of the settlement is to be paid.

The original and one copy of Form RW-313 which must be executed by all persons who have an interest in this claim. Submit sufficient copies so that one may be provided to each owner and each lienor to whom some part of the settlement is to be paid (husband and wife are considered one party).

   a. The court will direct payment of deposited funds to the parties exactly as shown on the declaration of taking and the petition to deposit estimated just compensation unless given sufficient reason to do otherwise. For example, when one of the owners has died, proof of death is required:

   b. The declaration of taking and the deposit were made in the names of both husband and wife. Since that time, one has died and the surviving spouse becomes the sole owner as the surviving tenant of a tenancy by the entirety. This situation will be explained to the court in the petition to release deposit of estimated just compensation prepared by the Office of Chief Counsel. A formal death certificate or a letter from the undertaker will provide the necessary documentation.

   c. A man who was the sole owner of the condemned property died testate (with a will). Records of the register of wills office indicate that the will has been probated and the deceased owner's son has been appointed executor. The District Right-of-Way Administrator need not be concerned with the provision of the will nor whether the estate taxes were paid since title passed when the declaration of taking was filed and the owner was then alive. The petition to release deposit of estimated just compensation would be prepared in the name of the son, executor of the estate of the father. The rest would be a matter of the
proper administration of the estate by the executor. In this case, a copy of the will and a short certificate must be obtained from the register of wills office and be included with the letter of request as documentation.

The above examples, or any other situation involving a name change, would be explained in the District's letter of request.

4. Preparation of the Petition to Release Deposit of Estimated Just Compensation and Filing Procedures. The Chief, Utilities and Right-of-Way Section, will forward the District's request for petition to release deposit of estimated just compensation, together with all attachments, to the Office of Chief Counsel, Real Property Division. The Office of Chief Counsel will prepare the requested petition and order of court to release the deposit of estimated just compensation and will forward same to the appropriate regional office. The release packet will include a memorandum of instructions; the petition and proposed order of court; Form RW-467A; Form RW-307, if appropriate; and any other documents as required.

The regional attorney will:

a. Present the petition to the court and have the court sign the order. The attorney will then file the original petition and order in the Prothonotary's office and conform all copies.

b. Arrange for the District to pay the Prothonotary's bill from the cash advancement account.

c. Receive from the Prothonotary's office the check or checks for the amount of estimated just compensation that was deposited into court.

d. Send to the District a conformed copy of the order of court with Proposed Schedule of Distribution (Form RW-467A) attached, and the Prothonotary's bill for the filing fee.

e. Send to the Office of Chief Counsel a conformed copy of the order of court with proposed schedule of distribution attached and the aforesaid check(s).

The Office of Chief Counsel, Real Property Division, will forward the check(s) to the District. A right-of-way representative who did not participate in the appraisal or the negotiations of the claim will deliver the appropriate checks to the attorneys of all parties (or directly, if not represented by counsel) who are being paid in whole or in part out of this settlement (e.g., condemnees, lienholders, taxing bodies, or municipalities). A copy of the Settlement Statement (Form RW-313) and copies of all Release of Lien (Form RW-307) and Directive to Pay (Form RW-380) will be delivered to the condemnees. A copy of the settlement statement and a copy of the pertinent release of lien and directive to pay must be attached to the check delivered to all other parties.

On the reverse side of three copies of the Settlement Statement (Form RW-313), the right-of-way representative will: write and sign a statement certifying that the distribution of funds was made as shown; send one copy to the trial attorney and one copy to the Office of Chief Counsel; and retain one copy for the District's file.

5. Procedures when the Settlement Amount Exceeds the Amount of Deposited Estimated Just Compensation. If an amicable settlement is accomplished after the deposit of estimated just compensation, but prior to a board of view, it generally results in the payment of more money. The additional money could be the result of a revised appraisal or the result of an administrative settlement. In either case, the amount of money which will be needed for distribution at settlement will be greater than the amount of money which had been deposited as estimated just compensation. To obtain the total amount of money required for settlement, the District must submit two separate requests to the Central Office:

A letter of request for petition to release deposit of estimated just compensation, and a request for the additional funds, as approved, in the form of a supplemental check.

A separate request package must be submitted to the Chief, Utilities and Right-of-Way Section, to obtain the supplemental check for the difference between the approved settlement amount and the amount of deposited estimated just compensation.
The District is responsible for proper distribution of the funds. The District should receive the checks issued by the Prothonotary and the check from the Commonwealth for the supplemental amount at a close enough interval to be able to hold one settlement.

D. Petition to Pay Deposited Estimated Just Compensation to the Commonwealth of Pennsylvania, Department of Transportation.

1. Introduction. After estimated just compensation has been deposited into court, there are four circumstances when it may be withdrawn: (1) If the owner settles amicably after deposit, the Department will petition the court on behalf of the owner for release of the funds; (2) If the owner, during the period between deposit and actual litigation, decides that he or she wants the estimated just compensation, he or she may petition the court; (3) After the amount of damages is determined by litigation and the estimated just compensation has not yet been withdrawn, the court will direct the Prothonotary to release the deposited monies upon proper petition by the owner; (4) Finally, if none of these situations occur within six years, the Department may petition the court for repayment of the deposited monies.

When no petition for distribution has been presented within six years from the date of payment of estimated just compensation into court, Section 522 of the Eminent Domain Code places a mandatory duty upon the court to order the funds still deposited to be paid to the Commonwealth without escheat.

Even though the owner cannot contest the amount of just compensation after six years, this amount may still be paid to the owner. Therefore, these funds, upon release by the court, will be redeposited in the Motor License Fund, where the funds will remain available upon request. This procedure ensures that the owner is not denied their constitutional right to just compensation for property taken.

Checks drawn by the Prothonotary are to be made payable to the Commonwealth of Pennsylvania, Department of Transportation. They are to be returned to the Office of Chief Counsel, who in turn will forward the funds to the Utilities and Right-of-Way Section. The Utilities and Right-of-Way Section will credit the check back into the Motor License Fund via Right-of-Way Office.

2. Responsibility of the District. The Act of August 9, 1971, P.L. 287, 72 P.S. 1301.1 et. seq. requires that all funds deposited in the Registry of the Court and unclaimed for a period of seven years shall be returned to the Secretary of Revenue of the Commonwealth for payment into the General Fund. Therefore, it is incumbent upon the Department to ensure that Motor License funds, which were deposited into court as estimated just compensation and which have not been withdrawn by the claimant, are not diverted to the general fund.

The District will maintain a record of claims that involved the deposit of estimated just compensation into court. Periodically, the District will check with the Prothonotary's office to perform a review of those claims in order to determine whether or not the deposited amount has been withdrawn. This review may be conducted as often as the District deems practical, but should be done at least quarterly.

If a deposit into court has not been withdrawn within six years from the date of deposit, the District will initiate a Request to Petition to Pay Estimated Just Compensation to the Commonwealth of Pennsylvania, Department of Transportation.

This procedure is essential to prevent the inadvertent loss of Motor License funds.

3. Request for Petition to Pay Deposited Estimated Just Compensation to the Commonwealth of Pennsylvania, Department of Transportation. The District will submit to the Utilities and Right-of-Way Section a request for petition to pay deposited estimated just compensation to the Commonwealth of Pennsylvania, Department of Transportation. This letter will request the Office of Chief Counsel to petition the court of the appropriate county to enter an order upon the Prothonotary to issue a check payable to the Commonwealth of Pennsylvania, Department of Transportation, for funds previously deposited under the applicable claim number.

The following information shall be given in the letter:

a. County
b. State route and section

c. Claim number

d. Claimants name

e. Court term and number of the declaration of taking

f. The date of the filing of the declaration of taking; or

the date the governor signed the plan if condemnation was affected prior to the enactment of the Eminent Domain Code; or

the date of the order of referral if the premises were acquired by appropriation by the PUC.

g. Date of the deposit

h. Amount to be withdrawn

All of the above are facts must be stated in the body of the petition, and hence, must be supplied in the District's letter.

In addition, the District will state that the records in the Prothonotary's office have been checked within two weeks of the date of the request, and that the deposited funds have not been withdrawn.

There shall be only one claim number, one claimant, and one deposit on each request.

4. Documents to be Submitted as Attachments to the Request for Petition

   a. A conformed copy of the declaration of taking

   b. Notice of condemnation

   c. Schedule of Condemned Property (Form RW-437)

   d. Order of referral, if PUC appropriation

   e. A copy of the index of exhibits, if applicable

   f. A conformed copy of the petition to deposit estimated just compensation

   g. A conformed copy of the order of court ordering the deposit to be made

   h. A copy of the Proposed Schedule of Distribution (Form RW-467A)

5. The Responsibility of the Office of Chief Counsel. The Utilities and Right-of-Way Section will forward the District's letter of request, including all of the attachments, to the Office of Chief Counsel.

The Office of Chief Counsel will prepare an original of the petition to pay to the Commonwealth of Pennsylvania, Department of Transportation, the undistributed estimated just compensation which has been deposited into court. The Office of Chief Counsel will also prepare conformed copies of the petition and several copies of the order of court. These documents will be sent directly to the trial attorney for the District. An information copy will be sent to the District.

The trial attorney will be instructed to check the Prothonotary's office to see if the money is still deposited. If it is, the attorney will present the original petition and order of court to the judge for signature. The trial attorney will then present the signed order of court to the Prothonotary, and will also conform the other copies of the order of court. After the trial attorney receives the check payable to the Commonwealth of Pennsylvania, Department of Transportation, he or she will send it and a conformed copy of the order of court to the Office of Chief Counsel. The other conformed copy of the order will be forwarded to the District.
The Office of Chief Counsel will be responsible for forwarding the check to the Utilities and Right-of-Way Section. The Utilities and Right-of-Way Section will credit the check back into the Motor License Fund via Right-of-Way Office.

3.10 LITIGATION PROCEDURES

A. Petitions for Viewers.

1. When Viewers are Requested. If a district or the Right of Way Section of the Office of Chief Counsel is served with a petition for the appointment of viewers (or any other real property-related legal document, e.g. preliminary objections to a declaration of taking), the petition must be immediately forwarded to the Deputy Chief Counsel, Real Property Division or designee. The Deputy Chief will assign the case to the appropriate regional office or section. The Assistant Chief Counsel of the regional office or section will assign trial counsel to handle the case.

If a regional office is served with a petition for the appointment of viewers (or any other real property-related legal document, e.g. preliminary objections to a declaration of taking), the petition must also be immediately forwarded to the Deputy Chief Counsel, Real Property Division or designee. The Assistant Chief Counsel of the regional office will assign trial counsel and forward a copy of the petition or other legal document to the District. The Deputy Chief will provide a copy of the petition or other legal document to the Right of Way and Utilities Section.

2. Preparation of Viewers Plans. Upon notification that an owner has filed a petition for viewers or prior to requesting a petition for viewers, the District shall prepare a viewers plan or have one prepared.

The viewers plan must be checked against the authorization to condemn or the right-of-way plan.

If there is any variance between the viewers plan and the right-of-way plan, or with any of the data on which the appraisals were based, the discrepancy must be resolved and appropriate changes made.

If the owner has filed the petition for viewers, forward a copy of the viewers plan to Central Office as soon as it is in final form, and send five copies to the attorney assigned the claim and a copy to each appraiser. (If the Commonwealth is to file the petition, the copies of the viewers plan should be forwarded to Central Office.)

3. Request to File Petition for Viewers Package. The District may submit a request to the Chief, Utilities and Right-of-Way Section, that a petition for the appointment of viewers be filed.

Accompanying the request for the filing of a petition for viewers, the District will forward the following:

a. A cover letter stating the date the owner was served with the notice of condemnation. (Since preliminary objection may be filed within 30 days after the claimant is served with notice of condemnation, the Office of Chief Counsel will not petition for viewers until after expiration of this 30-day period.)

The phase "Request for Petition for Viewers" should be added to the usual county, route, section and claim number in the caption.

Indicate whether estimated just compensation has been paid to the owner or into court, and the amount.

Indicate whether eviction proceedings have commenced (or have been requested) and status of same.

Indicate the date of condemnation.

Indicate the court term and number of the filing of the declaration of taking.

Include print outs of up-to-date ROW Office negotiations screens with comments by the Chief Negotiator on the Claimant Contact Maintenance screen as to the reasons for recommending the claim go into litigation.
b. Five copies of the viewers plan. These shall be distributed as follows:

(1) One copy for the Central Office file.

(2) Four copies for the attorney assigned the claim to be distributed as follows:

- one copy for the trial attorney's opposing counsel.
- three copies for Board of Viewers.

If approved, the Utilities and Right of Way Section will forward the request with a cover letter to the Deputy Chief Counsel, Real Property Division. The Deputy Chief will assign the case to the appropriate regional office or section. The Assistant Chief Counsel of the regional office or section will assign trial counsel to handle the case.

4. Documents to be forwarded to the Trial Attorney Assigned a Claim. As soon as the District receives its copy of the assignment letter indicating which trial attorney will represent the Department, the District will:

a. Forward the claim file to the trial attorney.

b. Forward to the trial attorney:

(1) Cover letter enumerating enclosures.

(2) Five copies of the viewers plan.

(3) Letter regarding adverse conveyances.

(4) Any correspondence between or from property owner or property owner's attorney.

(5) Any disclosures made under the Right-to-Know Law.

(6) Any other items which have not already been forwarded for the Central Office file.

NOTE: If viewers plans are not ready, send the other items listed above and indicate in the cover letter when the viewers plan can be expected.

c. Forward at least four copies of the property plot or plan sheet which were filed with the declaration of taking, attached to the viewers petition, as follows:

(1) One for Central Office.

(2) One to file in court.

(3) One to serve on each owner (if there is more than one owner, additional copies are required. A husband and wife are regarded as one owner).

B. Litigation Holds.

1. Duties of the District. When a petition for the appointment of a board of viewers, preliminary objections to a declaration of taking, a writ of possession or some other real property litigation is filed, the Department may not destroy, delete or otherwise eliminate paper and electronic documents and records relating to the claim. This duty will be reinforced by the trial attorney sending litigation hold memorandum using Form RW-333LH. The litigation hold memorandum will instruct the persons subject to the hold to hold all relevant documents and information until the hold is released or until they receive further instruction on production of the information from the trial attorney.

When a litigation hold memorandum (Form RW-333LH) is received from the trial attorney, the District Right of Way Administrator and the Chief, Utilities and Right of Way Section, must communicate the hold information to all of their subordinates who would have hard copy and electronic records and documents potentially related in any way to the litigation.
Additionally, the initial notice of litigation memorandum sent by the trial attorney will ask the District Right-of-Way Administrator to identify other persons or parties who may have information relevant to the litigation and provide those names (and addresses) to the trial attorney. The persons or parties to be identified by the District Right of Way Administrator are:

a. Assistant District Executive-Design;

b. District Plans Engineer;

c. Any outside consultants used in the right of way acquisition process of the project;

d. All other individuals likely to have relevant information relating to the claim.

These procedures should not cause major logistical or technical problems because the majority of the information is held by the Department in the normal course of business in compliance with applicable records retention schedules. There is no need to produce the held information unless requested by the trial attorney.

2. Duties of the Trial Attorney. When assigned a real property case (petition for board of viewers, preliminary objections to a declaration of taking, writ of possession or some other real property litigation), the trial attorney will send a litigation hold memorandum (Form RW-333LH) to the Chief, Utilities and Right of Way Section, and the District Right-of-Way Administrator informing them not to destroy, delete or otherwise eliminate paper and electronic documents and records relating to the claim. The trial attorney will also include a request in their initial notice of litigation memorandum to the District Right of Way Administrator that any other persons or parties who may have information relevant to the litigation be identified to the trial attorney. If an initial notice of litigation memorandum is not sent, the trial attorney is otherwise responsible to ascertain to whom litigation hold memoranda should be issued. The trial attorney must issue litigation hold memoranda on Form RW-333LH to the persons or parties identified by the District Right of Way Administrator as well as all other individuals likely to have relevant information as determined by the attorney or suggested by other recipients.

The trial attorney should periodically (annually or as otherwise necessary) reissue memoranda to remind personnel of the existence of the holds. A memorandum releasing the hold must be issued when the case is closed.

C. Claims in Litigation.

1. General. After an owner has filed a petition requesting the appointment of viewers, or the Chief, Utilities and Right-of-Way Section, has requested the Office of Chief Counsel to petition for viewers, the claim has entered the litigation process. The responsibility for legal action then lies with the Assistant Chief Counsel of the Regional Office, who will assign an attorney to try the case. The attorney will contact the District to ascertain all the necessary information concerning the file, including the names of the District personnel with whom to coordinate all legal matters.

All offers, whether fair market value or supplemental, must be made through the attorney. The offer letter must be sent to the attorney who must make the offer in writing. Once a claim is in litigation by the filing of a petition for the appointment of viewers, settlement authority lies with the Office of Chief Counsel in coordination with the District.

In each District, at least one member of the right-of-way staff will have the authority to concur or to refuse proposed appeals, stipulations or other legal actions presented by counsel in the absence of the District Right-of-Way Administrator. All decisions involving legal theories concerning matters pending before a Board of View or the court are the responsibility of the Office of Chief Counsel. The decision to accept or appeal an award is to be made by counsel after consultation with the proper right-of-way personnel.

Requests for legal opinions by District Offices shall be submitted in accordance with the procedures in Chapter 1, Organization, Section 1.04. Real Property Division Directives addressing a variety of common issues can be found at P:\Real Property Division Guidance.

   a. Review of the File. Upon notification that the claim has entered the litigation phase, the file must be reviewed to ensure that it contains the following:

      (1) An appraisal updated to the date of the taking. The District Chief Negotiator must inform the District Chief Appraiser when the claim is in litigation. It is the responsibility of the Chief Appraiser to make certain that the file contains a pre-approved appraisal as of the date of the taking and that an expert witness is available.

      Note: The Office of Chief Counsel has a process to procure the services of valuation experts and in most cases, provide the District with a detailed memo.

      (2) A title search updated to the declaration of taking. Form RW-918B is used for this purpose. To ensure that easements, adverse conveyances and other exceptions are not overlooked, a memo explaining any exceptions to the title report must be included in the file.

      (3) Offer letters, as applicable.

      (4) Relocation assistance information, if applicable. The District Chief Negotiator must review the file to ensure that all relocation benefits, residential and/or business, have been properly paid or updated and offered.

      (5) Property management information, if applicable.

      (6) Claimant Contact Maintenance in ROW Office.

      (7) Application for payment of estimated just compensation and, if applicable, a petition to deposit estimated just compensation.

      (8) Copies of invoices for all payments made.

      (9) The amount of the pro rata share of taxes.

   b. Transmittal of the File to the Attorney. Upon notification that the claim has entered the litigation phase, the District shall prepare a duplicate of the file and forward it to the attorney assigned to the case.

   Once the duplicate has been given to the attorney, all subsequent information must be duplicated in sufficient quantity for the attorney, the District and Central Office files.

   c. Responsibility of the Negotiator. The negotiator assigned to a claim at the time it goes into litigation is to remain responsible for the claim until it is closed.

   The negotiator will attend the site view, viewers hearing and court trial, if any, and will record relevant observations and activities on the appropriate Claimant Contact Maintenance screens and Declaration of Taking Claim Maintenance screen in ROW Office. In addition, the negotiator will attend and report the time, place and date of the previewers or pretrial conferences on the Claimant Contact Maintenance screens.

   Subsequent to each hearing and trial, the negotiator will also prepare in writing three copies each of Form RW-331L. See Section 3.10.C.4 below.

   The negotiator must also be prepared to testify, if required by the attorney assigned the case, as to the nature of the taking as shown on the plan and to relate his or her efforts in attempting to settle the claim.

   d. Responsibilities of District Chief Negotiator. The District Chief Negotiator shall coordinate all litigation matters and ensure that the attorney is informed of any changes material to the claim.

3. Responsibilities of the Attorney Assigned the Claim.

   a. Review of File by Attorney and Use of Forms RW-332LFR and RW-331L. Immediately upon
being assigned a claim, the attorney will review the file and note on Form RW-332LFR, Legal File Review or Previewers/Trial Conference Summary, exactly what is required to prepare for litigation. Form RW-332LFR can be used to notify the District that additional supporting documentation or witnesses are necessary.

So that the District can assist and advise counsel in preparation of cases for hearing and trial, counsel will notify the District in writing of the time, place and date of the pretrial conferences, hearings and trial, as far in advance as possible.

Subsequent to each hearing and trial, the attorney will prepare in writing three copies each of Form RW-331L, Report of Legal Proceedings. One copy of each will be sent to the attention of the District Chief Negotiator, the Deputy Chief Counsel, Real Property Division or designee and the Chief, Utilities and Right-of-Way Section. One copy will be retained for the litigation file.

b. Re-inspection of Premises by Appraiser. It is the responsibility of the attorney assigned to the claim to see that all witnesses reinspect the premises prior to testifying. Although the witness made an inspection of the premises when the appraisal was made, much may have happened since that time. Generally, construction will have been completed, in which case the witness would review his or her previous estimate in light of the highway improvement to see if the original estimates of before-and-after value are proper and correct. The cut may be deeper (or shallower) than expected, the fill higher (or not as high), the drainage worse (or better), the driveway steeper (or not as steep) or the premises may simply look worse (or look better) in a general way.

Any such change between the anticipated condition of the property after construction, on which the appraiser's estimate of damages was based, and the actual post construction conditions as they are found to exist at the time of the reinspection of the premises would be a valid basis for reevaluation of an appraisal and a raising (or lowering) of the after value of the premises, with a corresponding change in the damage figure.

It is Department policy that an appraiser may not testify in a litigated claim unless his or her appraisal has been pre-approved by a Central Office review appraiser, and that he or she may not testify to damages higher than the pre-approved amount. In instances when time does not permit a revised figure to be submitted for pre-approval through proper channels, the attorney may clear for testimony by obtaining verbal approval from a Central Office review appraiser. The file must immediately be documented to this fact by the review appraiser.

It is not intended to imply that on reinspection of the premises prior to a viewer's hearing or trial that every appraiser will discover that the before- and-after values should be revised. On the contrary, it is to be hoped that experienced appraisers will generally have anticipated conditions with substantial accuracy. However, it is intended to point out that there will be cases where changes in before-and-after value are called for, and only by making the changes can such cases be properly handled.

c. Updated and Revised Appraisals. When a claim is in litigation, the Central Office review appraiser will use Form RW-256, Review of Updated Appraisal-Claim in Litigation, to inform the attorney of the results of an updated-approved appraisal (i.e., damages either unchanged or reviewed). The original will be sent to the trial attorney, with copies sent to the District, the Deputy Chief Counsel, Real Property Division or designee, and Central Office for the file. The District's copy of Form RW-256 will be tickled for action 45 days from the date of issue.

If the approval has been revised, or if the amount of any supplemental payment and/or special damages has changed, the attorney is required to transmit the revised offer in writing to the claimant and/or their counsel, within two weeks of receipt of the revision. When a revised approval results in additional monies being due the claimant, the attorney will offer in writing the claimant and/or their counsel the alternatives of either settling the claim or receiving the additional monies due them. The written revised offer will be placed in the file and a copy immediately sent to Central Office and the Deputy Chief Counsel, Real Property Division or designee.

After expiration of the 45-day period mentioned above, the District shall contact the trial attorney to determine the claim's status. If the claimant has refused the additional payment, or if settlement has not
been made within the 45-day period, the additional amount shall be immediately processed for payment by the District.

It is essential that the negotiator record all negotiation efforts on the Claimant Contact Maintenance screens in ROW Office.

When time is of the essence and there is no possible way for the trial attorney to communicate a revised pre-approval offer to the claimant or claimant's counsel by formal letter, the attorney may make the offer by telephone or otherwise. A written communication confirming the offer and indicating the amounts of the various payments will be forwarded to counsel for the claimant, and a copy of the letter making the revised offer will be sent to Central Office.

d. Pretrial Conferences. To ensure that witnesses re-inspect the premises prior to a hearing or trial, the attorney will hold a conference on the premises with the witnesses, including the negotiator assigned the claim, and any other personnel the attorney determines are proper for a complete presentation of the case. The conference will be held at least two weeks in advance of the hearing, thus assuring time for any changes in appraisals (and pre-approval thereof) and for compilation of additional evidence (e.g., comparable sales). In counties where the formal view is held sufficiently far in advance of the hearing, the re-inspection conference can be held on the same day, either before or after the formal view. In this way, the witnesses are also afforded the opportunity to hear some of the owner's side of the case in advance, and can prepare themselves accordingly.

The re-inspection of the premises discussed above will be in addition to, and not in lieu of, an office conference prior to the hearing or trial. An office conference shall be held subsequent to the re-inspection conference, at which time the attorney and witnesses will go over all aspects of the case, in particular the comparable sales used by the Commonwealth's witnesses and those expected to be used by the owner's witnesses. The attorney must be sure that the witnesses are personally acquainted with the comparable properties about which they will testify and with any properties expected to be used by the owner's witnesses so that the Department's witnesses can adequately explain their reasons for not using them.

It is the responsibility of the District chief appraiser to acquaint the appraiser-witness with the Summary of Just Compensation, which lists a breakdown of damages, and to alert the appraiser-witness of the breakdown of the fair market value at the initiation of negotiations. The form lists a breakdown of damages from the approved appraisal and is attached to offer letters on partial takings. If questions based on the Summary of Just Compensation are asked by opposing counsel, the expert witness can state that any breakdown of damages was made by the Department and continue to testify on a before-and-after basis.

e. Claims Involving Special Damages. All claims that contain supplemental payments and/or special damages and are contested at a board of views or trial must be carefully coordinated with the Deputy Chief Counsel, Real Property Division or designee. The Deputy Chief Counsel Real Property Division or designee, will coordinate with the Chief, Acquisition Unit as necessary to ensure that amounts to be offered for all special damages, including replacement housing payments, rental supplements, downpayment supplements, payments for business dislocation damages, moving expenses, searching costs and loss of tangible personal property, meet established legal and administrative requirements.

The trial attorney is responsible to secure documentation relating to relocation assistance payments (i.e., copies of deeds, settlement statements on replacement housing, copies of income tax statements for business dislocation damage payments, moving cost documentation) if the payment is to be made as part of a legal settlement.

The Acquisition Chief will be provided the pay letter and settlement memorandum on claims involving special damages. If during review, a mistake or inconsistency is found, the Central Office Acquisition Unit will contact the Deputy Chief Counsel, Real Property Division or designee, to determine whether corrective action is necessary.

f. Testimony on Replacement Housing Supplement. The testimony relating to replacement housing will be similar to the testimony relating to the fair market value, in that it will be properly documented and should be based upon comparable dwellings whenever possible. It is Department policy that
testimony concerning supplemental payments that are in litigation be presented by relocation staff personnel. In the event that a staff employee is not available, or upon request of the Office of Chief Counsel, authorization may be obtained from the Chief, Acquisition Unit, to have a fee appraiser present testimony, provided that the fee appraiser is not the one who prepared the fair market value appraisal.

The witness will testify to the value of the Department's determined cost of the comparable replacement dwelling which is decent, safe and sanitary on the date the property owner was required to move or on the date the property owner entered into an agreement to purchase the replacement property, whichever date is earlier.

It is Department policy that at all hearings involving supplemental payments, such as business benefits, housing supplements and moving costs, evidence be offered as to the amount arrived at by the Department or, in the alternative, that said amounts be officially stipulated to.

If there is a dispute about these amounts, the attorney will request that the Board of View, jury or court specifically indicate what testimonies they will rely upon to determine their findings and to specifically indicate the fair market value of the residence acquired and the fair market value of the comparable replacement property, so that a proper housing supplement may be computed. This type of finding is of special importance in cases where the residence does not constitute the entire area affected by the acquisition and is to be made in addition to the overall verdict for the fair market value of the property. If necessary, written requests for findings of fact and/or conclusions of law will be submitted to the Board of View by the attorney whenever a dispute arises.

g. Recommendation to Appeal or Not Appeal the Award. In every case in which there is a litigation award, the trial attorney must promptly notify the District Right-of-Way Administrator or Chief Negotiator. The District Right-of-Way Administrator or their designee will submit to the Chief, Utilities and Right-of-Way Section Form RW-490, Recommendation RE: Litigation Award, with a copy to the trial attorney and the Deputy Chief Counsel, Real Property Division or designee within five working days of the issuance of the award, with a recommendation whether or not to appeal the award. Prompt action is especially required if the Right-of-Way Administrator or appointed representative believes the result of the Board of View is incorrect.

The trial attorney will submit a memorandum to the Deputy Chief Counsel, Real Property Division or designee, recommending whether or not to appeal the award. The recommendation must include support for the recommendation and a statement whether the District Right-of-Way Administrator has approved the action recommended.

h. Withdrawal of the Appeal. Either party may withdraw an appeal from the award of a Board of View at any time prior to the beginning of testimony without the consent of the other parties. To avoid the possibility of an appeal being withdrawn by a claimant in a matter which the Department would have appealed had it not been for the claimant's prior actions, it is essential in every case that trial counsel consider a protective appeal or a cross-appeal, as applicable, when the claimant appeals or there is some concern a claimant will appeal. The final decision to appeal shall be made by the Deputy Chief Counsel, Real Property Division, or designee.

i. Jury Trial. The policy of the Office of Chief Counsel is to request a jury trial in all appeals to the trial court. Bench trials before a judge are not recommended and are only allowed with the approval of the Deputy Chief Counsel, Real Property Division or designee.

4. Reports of Legal Proceedings.

a. Reports by District Real Estate Specialist and by Trial Counsel. To assist the Office of Chief Counsel in determining and pursuing the proper course of action after a viewers' hearing or trial, the District Office is required to submit a complete report thereof on Form RW-331L, within a week of the conclusion of each hearing or trial to the Chief, Utilities and Right-of-Way Section, and to the Deputy Chief Counsel, Real Property Division or designee.

The District Right-of-Way Administrator, whose negotiators must attend all viewers proceedings and trials, as well as conferences on and off the premises prior to the hearings and trials, is in the best position
to know if the foregoing procedures are being followed. Accordingly, the negotiator must note in the Report of Legal Proceedings (Form RW-331L), submitted after each hearing or trial, the date, beginning and ending time and place of every conference relating to the hearing or trial.

The Office of Chief Counsel relies on these reports to determine whether a case has been properly tried and evaluated and whether the award should be accepted and if a trial is free from error. Therefore, it is vital that a complete and accurate report in every litigated matter be submitted. The negotiator submitting the report should follow the instructions noted on Form RW-331L. In particular, the negotiator should outline the testimony of each witness and compare each witness to their counterpart, note the date of each appraisal, and comment on the major issues involved in the case and the treatment thereof by each side of the matter. A similar report on the same form is also required of the attorney; any overlap of information submitted should be regarded as corroborative rather than merely repetitious.

With respect to primarily legal matters, such as the action headed "Questions of Law Raised…," the attorney's report shall be made from the notes taken at the hearing or trial; however, the negotiator's observations and comments in this section should nevertheless be recorded and will be reviewed by the attorney.

In other areas of the report, particularly the part dealing with "Comparable Sales..." the negotiator, who is not burdened with the task of trying the case, can take more extensive notes and file a more detailed report than the attorney.

When the attorney argues a matter before the appellate court, the opinion of the court is sent to the attorney who has appeared. A copy is not sent to Central Office. Immediately upon receipt of the appellate court opinion, a copy of the opinion will be forwarded by the attorney to the Deputy Chief Counsel, Real Property Division.

b. Final Entries on the Claimant Contact Maintenance screens in ROW Office. Upon notification of final payment, the negotiator shall make entries on the Claim Maintenance screen in ROW Office.

5. Legal Settlements and Payment of Claims in Litigation.

a. Settlement Approval. All legal settlements by trial attorneys must be approved by the Assistant Chief Counsel of the regional office. Any legal settlement greater than $25,000.00 and less than $100,000.00 over the approved estimated just compensation must be approved by the Assistant Chief Counsel of the regional office and by the Deputy Chief Counsel, Real Property Division or designee. Settlements involving a payment for net right-of-way damages of $100,000.00 or more than the approved estimated just compensation must also be approved by the Chief Counsel and the Office of General Counsel. Settlements should all receive the concurrence of the District Right-Of-Way Administrator or his/her authorized representative.

b. Payment for Property Damages and the Approval. Under no circumstances will a claimant receive as total property damages any amount less than the approved fair market value estimate of damages. The computation for net right-of-way damages on the payment letter will show not less than the net amount payable for fair market value equal to the approval.

c. Payment Packages and Prompt Submission by the Trial Attorney. When a case is resolved, a payment package must be submitted to the Deputy Chief Counsel, Real Property Division or designee. The package consists of a pay letter; a settlement memorandum; a stipulation of settlement, viewers' award or jury verdict, depending on the nature of the resolution; a completed W-9 (Request for Taxpayer Identification Number and Certification) for purposes of income tax reporting; a delay damages calculations if detention damages for delay in payment is part of the payment; and justification for the payment of appraisal, attorney and engineering fees if applicable.

The Office of Chief Counsel requires that matters in litigation terminated as a result of a Board of View award, a settlement stipulation or a final verdict as a result of a trial, be processed promptly. The trial attorney will thus submit the completed payment package to Central Office no less than fourteen days of the effective date of receipt of the final documents which effectuated the termination. These times and
dates are essential to avoid long-term delays that result in increased payments in the form of detention damages.

Completed payment packages must be submitted at least six weeks prior to the anticipated date of final payment. The trial attorney must submit the pay letter and settlement memorandum to the Deputy Chief Counsel, Real Property Division or designee, electronically as word documents as soon as possible after resolution of the case. The delay compensation spreadsheet must be submitted electronically at the same time. This electronic submission should not be sent to the District. The completed W-9, executed settlement stipulation or other document resolving the case, and justification for fees must be sent subsequently by mail in time to meet the six week time period.

Upon finalization of the pay letter and settlement memorandum and submission of the remaining parts of the package, the Deputy Chief Counsel, Real Property Division or designee, will submit the payment package to the Utilities and Right of Way Section, Administration Unit. A copy of the pay letter, settlement memorandum and settlement stipulation or other document resolving the case will be forwarded to the District at this time.

d. The Payment Letter. The pay letter must be prepared for the signature of the Deputy Chief Counsel, Real Property Division or designee, and addressed to the Utilities and Right of Way Section, Administrative Unit. It must designate that it is a pay letter and include a subject showing the county, state route and section, claimant's name, and claim number. Before listing the payments involved, the pay letter must designate the type of settlement and the document underlying the payment, e.g. settled in accordance with the enclosed stipulation of settlement or resolved in accordance with the enclosed board of viewers' award.

The pay letter will show the gross and net damages and the amount due the claimant. Where applicable, it will show detention damages, residential or business relocation payments, appraisal, attorney and engineering fees and any unpaid rents incurred which are deducted from the final payment. If the gross settlement shows any such payments or deductions, the items must be specified and allocated in the pay letter. The pay letter must include the anticipated date of final payment and a designation as to whom the check or checks should be made.

Although not encouraged, the attorney for the claimant may be added as a payee on the pay letter without a directive to pay if included with the claimant as a payee, not as an alternative payee, i.e. the claimant and the attorney. The attorney can be the sole payee or an alternative payee only with a directive to pay from the claimant. Parties other than an attorney can be a payee only with a directive to pay.

The check should be made payable to all the claimants. If multiple checks are requested, directives to pay must be part of the payment package to support the payments. The District must assist the trial attorney in developing directives to pay if necessary.

Only one W-9 should be submitted for each check that will be issued. The IRS will be notified of the payment in the name of the person on this W-9. See generally Real Property Division Directive 01-12-94 entitled Reporting of Right of Way Settlement Information to the Internal Revenue Service.

e. Settlement Memorandum. The settlement memorandum must be from the trial attorney to the Deputy Chief Counsel, Real Property Division or designee. It must designate that it is a settlement memorandum and include a subject showing the county, state route and section, claimant's name, and claim number.

The settlement memorandum that will review the history of the claim and provide a full justification for the resolution reach. It must be a standalone document that will give the reader a complete understanding of the case.

The memorandum will provide the date of taking, the name of the condemnees, and the location, size and nature of the property. It must state the nature of the taking and any significant impacts of the taking on the property.

The settlement memorandum will document all the approvals, revised pre-approvals, and payments made
so that the exact amounts involved may be determined from the memorandum. It must also state the date from which detention damages will be paid and how it was determined, as well as any reimbursements made for appraisal, attorney and engineering fees.

The memorandum will state the amount of the claimant's appraisal and/or demands, and if a hearing or trial held, the amount of the testimony presented by the claimant. The Department's damage testimony at a hearing or trial must also be indicated along with any other salient testimony presented by the parties at the hearing or trial. The board of view award, if any and whether the parties appealed the same must be included. Likewise, the verdict, if any and whether the parties appeal the same must be stated. If the case was appealed to the appellate courts, that history must also be noted.

The memorandum will state the name and title of the person in the District who was consulted if the case was settled. The attorney will also indicate that he or she consulted with and obtained the approval of the Deputy Chief Counsel, Real Property Division or designee, in resolving the case.

The memorandum will indicate the items and the amounts that affect the gross settlement. Thus, if a gross settlement includes any items of special damages, such as relocation payments, business relocation benefits, moving costs, or unpaid rents deducted from the gross settlement, or if any other such items are included in or deducted from the gross settlement, they will be specified in the settlement memorandum. The memorandum must also state the net amount of the settlement and any amount payable as detention damages. If applicable, a statement that detention damages are being paid under Section 713 of the Eminent Domain Code on the difference between the net settlement and the prior payments from the date of possession to the date of anticipated payment, with inclusion of the appropriate dates and amounts, must be included. The delay damages calculations from the delay damages workbook must be attached and a reference to it made. If the limited reimbursement for professional fees is being paid, that amount must be noted and a reference made to the enclosed supporting documentation.

The memorandum must include a complete justification as to why the resolution was reasonable and in the best interests of the Department. The points supporting the resolution must be separated in numbered paragraphs. If payment is being made at the approved net damages figure or on the basis of a jury trial during which there was no trial error, no further justification must be provided.

f. Detention Damages. Section 713 of the Eminent Domain Code states that compensation for delay in payment shall be paid from the date of relinquishment of the condemned property by the owner, or if the condemnation is such that possession is not required to effectuate it, then delay compensation shall be paid from the day of condemnation, provided however that no compensation for delay shall be payable with respect to funds paid on account or by deposit in court after the date of such payment or deposit. The claimant shall not be entitled to compensation for delay in payment during the period he or she remains in possession after condemnation, nor during such period shall the Department be entitled to rent or other charges for use and occupancy of the condemned property by the claimant. Compensation for delay in payment shall not be included by the viewers or court or jury on appeal as part of the award or verdict, but shall, at the time of payment of the award or judgment be calculated as indicated above and added to the total. There will be no further or additional payment of interest on the award or verdict.

In claims involving either partial or total acquisition of vacant land, no detention damages will be given to the claimants until there has been actual possession. In view of the difficulty in determining when actual possession is obtained, the date on which notice to proceed was given to the highway contractor can be used as the date of actual possession.

On properties where possession of occupied properties is involved, detention damages begin from the time the Department takes actual possession of the occupied improvements or from the time after which the Department takes constructive possession of the premises by commencing the collection of rentals for the property acquired. Detention damages will not be paid to any person where possession of improvements is involved when the claimant remains in control of the property either through occupancy or through the collecting of rents and/or profits there from.

In cases arising from a consequential damage case under Section 714 of the Eminent Domain Code, the date used to calculate detention damages is the date that construction commenced adjacent to or in front of the property involved.
In those matters involving a de facto taking, the date to be used is the date determined by the court or the date upon which the parties agree the taking has been effectuated.

Detention damages are not normally paid on special damages for displacement.

These rules regarding the calculation of detention damages will be applied not only in matters that are actually tried, but also in all settlements.

The Department sometimes receives letters from claimants or their attorneys relinquishing possession of condemned land before it requires possession. The Office of Chief Counsel recommends that the Department normally return such letters tendering possession. However, the Department must be vigilant to make payment of estimated just compensation within 60 days of filing a declaration of taking. If this is done then the tender of possession procedures under the Eminent Domain Code do not apply.

See generally Real Property Division Directives 01-12-09, entitled "Delay Compensation – Rate of Payment; 02-12-09, entitled "Delay Compensation – Date from which Payment is Due and Exclusion of Time Periods Based on Fault"; and 03-12-09, entitled "Delay Compensation – Special Damages."

The trial attorney must stipulate with counsel for the claimant on the date for detention damages in all settled cases. A stipulation must also be attempted in all litigated cases. If a stipulation cannot be achieved, the trial attorney should request findings of fact and conclusions of law on the issue to the board of view and trial court after trial.

g. Appraisal, Attorney and Engineering Fees. Section 710 of the Eminent Domain Code entitles a claimant to request reimbursement for up to $4,000.00 in appraisal, attorney and/or engineering fees. Such payments are a separate and distinct item of damage and should be stated separately in all viewers' awards, stipulations of settlement, verdicts and payment letters. Such an item should not be included as part of the total settlement.

Payment packages including the payment of Section 710 fees must include documentation justifying the payment. This will normally consist of appraisal invoices and time records with amount payable for the attorney representing the claimant.

In cases where a claimant institutes proceedings claiming a de facto condemnation and the court finds in the claimant's favor and awards compensation for a taking, Section 709 of the Code provides for the reimbursement of reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred. The reimbursement of the reasonable appraisal, attorney and engineering fees under Section 709 may exceed the $4,000.00 limit.

Payment packages including the payment of Section 709 fees must not only include documentation justifying the payment, but also an order of court confirming that the amount payable is reasonable.

h. Unpaid Rents. The District shall keep the Office of Chief Counsel informed about the status of rents on litigated claims.

The District shall request the Office of Chief Counsel to deduct rents owed the Department from the final settlement. In cases where a declaration of taking was filed but no general damages have been paid to the claimant or into court and the owner remains in possession, detention damages will not begin.

On litigated claims where estimated just compensation has been paid to the claimant or into court, past due rents shall be deducted from any increase in general damages and/or detention damages.

i. Distribution of Funds. The payment letter, settlement memorandum and other parts of the payment package are forwarded by the Office of Chief Counsel to the Utilities and Right-of-Way Section, where the documents are reviewed and placed in line for final payment.

When the check is received by the Utilities and Right-of-Way Section, it is forwarded to the Deputy Chief Counsel, Real Property Division or designee, for distribution.
The check representing the balance due the claimants will be sent to the Right-of-Way Administrator who will then assign a person, who had no contact whatever with the claimants during the negotiation, appraisal, trial or settlement of the case, to deliver the check to the claimant's attorney. This is the method for distribution of all funds due a claimant for a legal settlement, unless the funds are forwarded to a title company. When the check is sent to the District Right-of-Way Administrator by the Office of Chief Counsel for distribution, the District must check the file to insure there are no liens, encumbrances or other title problems as of the date of the condemnation that have not been appropriately resolved. It is imperative that trial counsel be advised of the time and place of delivery of the check to the claimant's attorney. In this way, trial counsel can be sure that arrangements have been made to meet counsel for the claimant at the courthouse so counsel can satisfy the record when the check is tendered or that any title objections are cleared and the record satisfied.

The claim file must contain documentation to show that the record is satisfied. This documentation may be either a copy of a praecipe to discontinue and satisfy the case, or a certified statement by the negotiator who delivers the check that they have examined the docket and that the record was satisfied and discontinued as of "date."

A copy of the praecipe of discontinuance or statement of the negotiator and the name and title of the individual to whom the check was delivered, as well as the place of delivery, must be forwarded to the Deputy Chief Counsel, Real Property Division, or designee, with a copy to trial counsel. This information must also be entered into ROW Office on the Claim Maintenance screen.


a. Six-Year Period for Claims under a Declaration of Taking. For all declarations of taking filed on or after September 1, 2006, the statute of limitations commences as of the date of payment of estimated just compensation to the claimant or the date of deposit of estimated just compensation into court, and expires six years after such date of payment or deposit. Therefore, a petition for the appointment of viewers for the determination of damages must be filed within the six-year period where a declaration of taking is filed (42 Pa.C.S. §5527(a)). The limitation period for causes of action arising before September 1, 2006, are five years from payment if a declaration of taking was filed (42 Pa.C.S. §5526(4), now repealed).

b. Revised Appraisal. When a payment of estimated just compensation has been made and, subsequently, a revised appraisal of the original taking results in the additional payment of estimated just compensation, commencement of the six-year limitation period remains the date of the original payment. Mere revision of an appraisal and a payment based thereon will not extend the statute of limitations regarding the claim.

When such a payment, based upon a revised appraisal, is offered, the following statement should be added to the Offer Letter, Form RW-356 series, "This offer supersedes our offer to you dated ______________ in the amount of $________. The offer and payment of this additional estimated just compensation does not extend the statute of limitations which commenced upon the date of original payment."

c. Revised Plan. Where a payment of estimated just compensation has been made and a revised plan results in an additional take from the same parcel, a new claim must be established unless a stipulation to amend the declaration of taking is negotiated. In this situation, the statute of limitations, for the additional take only, will commence upon the date of the payment under the new claim. The original claim and payment continue to be subject to the six-year limitation period initiated by the original payment.

d. Expired Statute of Limitations. When estimated just compensation was deposited into court and, after six years, withdrawn from court by the Department for redeposit into the Motor License Fund and the claimant subsequently requests payment, the Department will pay the estimated just compensation to the claimant. However, the claimant will be given written notice that the willingness to pay the amount due or actual payment does not constitute a waiver by the Department of the defense of the statute of limitations.

e. De Facto (Inverse) Condemnations. De facto, or inverse, condemnation actions (i.e. those where no
declaration of taking as been filed) arising on or after September 1, 2006, must be commenced within six years from the date on which the asserted taking, injury or destruction of the property occurred or could reasonably have been discovered by the condemnee (42 Pa.C.S. §5527(a)). The limitation period for inverse causes of action arising before September 1, 2006, is five years if property was injured but no part thereof taken (i.e. consequential damages only) and 21 years if there was a taking. (42 Pa.C.S. §§5526(4) and 5530(a)(3), now repealed).

7. Rules of Civil Procedure Governing Depositions and Discovery. The Pennsylvania Rules of Civil Procedure Governing Depositions and Discovery, Rules 4001, et seq., apply to actions pursuant to the Eminent Domain Code. It should be kept in mind, though, that no file material is to be voluntarily provided to the opposing counsel without the express authorization of the Office of Chief Counsel.

The following general conclusions apply to discovery proceedings:

a. The identity of an expert retained or specially employed in anticipation of litigation or in preparation for trial may be discovered if he or she is to be called as a witness. The actual report is not discoverable without a court order although the basis of the report and opinions as to value and the effect of the condemnation may be discovered. The expert is required to submit a written summary of the facts and opinions at which he or she has arrived. These reports are required only upon formal request and there should be no voluntary disclosure of the expert's written reports. The actual report may be released within the discretion of a trial counsel.

b. The identity, written report and opinions of, as well as facts known by, an expert retained or specially employed in anticipation of litigation or in preparation for trial, but not expected to be called at trial, are not discoverable except under court order when exceptional circumstances are proved.

c. All information held by or produced by an employee of the Commonwealth who is not an attorney, including facts collected, reports prepared, and opinions rendered, are discoverable, except mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics. This provision includes memoranda or notes made by an employee who is not an attorney.

It is important to have properly documented reports with factually correct information and logical reasoning and conclusions in the file. This is especially true with reports or other writings prepared by employees of the Department.

D. Petition for Writ of Possession.

1. Payment of Just Compensation. Before any claimant may be evicted, he or she must be paid just compensation. Thus, the first step in the possession procedure is to see that the owners and any tenants who are entitled to the payment of general damages have received the payment prior to removal from the premises by:

a. Processing and payment of an amicable settlement agreement, or

b. Processing Form RW-448D and the direct payment of estimated just compensation, or

c. Depositing into court the payment of estimated just compensation.

Note: The Uniform Act provides that payment must be made before requiring the owner to surrender possession. 49 CFR §24.102(j). It is Department policy that a writ of possession can only be requested where an amount not less than the Department's approved offer of just compensation has been either paid or deposited into court. 49 CFR §24.102(j). Although waiver valuations pursuant to Chapter 2, Section 2.12.A.3 are not appraisals, the waiver valuation process is authorized by the Uniform Act as a proper method to establish just compensation, 49 CFR §24.102(c), and the Department considers them sufficient upon which to base an action for a writ of possession.

A writ of possession is a legal proceeding initiated in the common pleas court. Not all issues concerning a writ of possession have to do with the offer of just compensation; in fact, most concern the timely, physical relocation out of the acquired areas. Where the issue however is the amount established by the Department as
the estimated just compensation (EJC) Pennsylvania law provides that the estimate must be made in good faith. There is no legal requirement that an appraisal is required in order to consider an EJC to have been made in good faith. Furthermore, good faith has been found even where the condemning agency acknowledged that all issues regarding the ultimate determination of just compensation are not known at the time of the writ (that is what the petition for viewers is for). Consequently it is the trial attorney assigned to the case in conjunction with the District Right-of-Way Administrator who will decide whether to update an appraisal, or obtain an appraisal where the waiver valuation process was used, when the claim requires a writ of possession.

2. Notice Order to Vacate. After the actual payment or deposit in court of general damages, the claimants will be sent by certified mail, return receipt requested, the appropriate notice to vacate, either Form RW-591, Impending Construction or Form RW-691, Nonpayment of Rent

CAUTION: The Notice Order to Vacate (Form RW-591, RW-591OAD, or RW-691) must have been preceded (by a minimum of 60 days) by an Advance Notice of Move Date (Form RW-590 or RW-590OAD) as stated in the amicable agreement, or Form RW-448D, Application for Payment of Estimated Just Compensation.

CAUTION: Forms RW-591, RW-591OAD, and RW-691, Notice Order to Vacate, Impending Construction and Nonpayment of Rent, respectively, must never be issued to a subsequent tenant of the Department.

It is important in all acquisitions of occupied improvements, especially when Forms RW-591 and RW-691 are used, for the District to provide an active, resourceful, politely aggressive and firmly persistent Relocation Assistance Program.

3. The Request to Petition for Writ of Possession. If the claimant does not vacate the premises within the time specified—or, in a rush situation, has not begun to take positive steps to vacate by one week prior to the time specified—the District Right-of-Way Administrator will prepare a request to petition for writ of possession, to be submitted to the Chief, Utilities and Right-of-Way Section. The District Executive will sign the request. Only one claimant/occupant can be included in each request.

   a. The request should contain the following information, as applicable:

   (1) Sufficient information to identify the claims, e.g. county, state route and section, and claim number.

   (2) A statement as to the necessity of obtaining possession because of impending construction or nonpayment of rent.

   (3) The location of the property (as complete as possible).

   (4) The occupants of the property.

   (5) The date that the property was acquired and whether amicably or by declaration of taking.

   (6) The date that the claimant received payment of general damages, the amount, and whether final or pro tanto.

   (7) The date that the claimant received the advance notice of move date as stated in the Amicable Agreement, Form RW-448D, or of the Advance Notice of Move Date, Form RW-590 or RW-591OAD.

   (8) The date that the claimant received the Notice Order to Vacate, Form RW-591, Impending Construction, or Form RW-691, Nonpayment of Rent.

   (9) The anticipated date of construction.

   (10) A brief summary of the efforts made to persuade the claimants to relinquish possession amicably.
If the request to petition for writ of possession is for nonpayment of rent, additional information should include:

1. The amount of rent per month
2. The date that the rent obligation began
3. The current total amount of unpaid rent

b. The below listed documents should be submitted as applicable with the request:

1. If an amicable acquisition, a copy of the agreement with property plots or plan sheets.
2. Copy of the Notice to Condemnee – Declaration of Taking Filed (Form RW-475 series) containing the court term and number and the date that the declaration of taking was filed.
3. If an amicable acquisition, a confirmed copy of the deed.
4. A copy of Form RW-448D.
5. A copy of Form RW-590 or RW-590OAD, if issued.
6. A copy of the Notice to Vacate, Form RW-591 or RW-591OAD, Impending Construction, or Form RW-691, Nonpayment of Rent.

If the request is for nonpayment of rent, include:

1. A copy of the executed Lease Agreement, Form RW-670A, if any.
2. A copy of Form RW-467, Notice of Rent Obligation, if issued.
3. A copy of Form RW-671, Notice of Overdue Rent and Form RW-672, Notice of Legal Action - Overdue Rent, if issued.

4. Processing the Request to Petition for Writ of Possession. Upon review and approval by the Chief, Utilities and Right-of-Way Section, the request package will be forwarded to the Deputy Chief Counsel, Real Property Division or designee. The Deputy Chief will assign the case to the appropriate regional office or section. The Assistant Chief Counsel of the regional office or section will assign trial counsel to handle the case.

It is especially important in a possession case for the District to work closely with the attorney. Each must keep the other informed of all developments. There must be consultation in making arrangements for moving, storing and/or disposing of personal property to be removed from the premises.

Upon the court issuing its final order, copies should be sent to the Deputy Chief Counsel, Real Property Division or designee, District Right-of-Way Administrator and the Chief, Utilities and Right-of-Way Section.

In the event that the claimant owes the Department rent, every effort must be made to collect the delinquent rent.

5. Subsequent Tenants. When a subsequent tenant (i.e., a tenant of the Department who is not a claimant and not entitled to general damages nor any relocation benefits) refuses to make rent payments or refuses to vacate following a written 30-day lease termination notice, the District may submit a request to the Chief, Utilities and Right-of-Way Section, to initiate legal proceedings for the removal of the subsequent tenant. Such request should include:

a. A copy of the executed Lease Agreement, Form RW-670A.

b. A copy of Form RW-671 and Form RW-672, if issued to the subsequent tenant.

c. A copy of the 30-day lease termination notice.
Upon review and approval by the Chief, Utilities and Right-of-Way Section, the request package will be forwarded to the Deputy Chief Counsel, Real Property Division or designee. The Deputy Chief will assign the case to the appropriate regional office or section. The Assistant Chief Counsel of the regional office or section will assign trial counsel to handle the case.

3.11 ADVANCED ACQUISITION PROCEDURES

A. General.

1. Definition. An advanced acquisition is one that is done prior to the completion of the standard environmental process.

2. Types of Advance Acquisitions. Situations are occasionally encountered where it is in the best interest of the property owner and the Department to acquire a parcel earlier than usual. These situations may be precipitated by a delay in the normal project development process by any variety of problems (e.g., funding, environmental, legal challenges) or may be people related situations which one would expect to occasionally encounter in highway acquisition work.

Two such situations where an advance acquisition may be requested follow:

Hardship - The inability of a property owner to sell his or her property because of a disruption to the real estate market by an impending highway project coupled with a need to do so to alleviate some particular medical or financial hardship.

Protective Buying - The early acquisition of a parcel necessary for an upcoming project to preclude its imminent development. If the proposed development is allowed to proceed, the projected cost of ultimately acquiring this parcel might possibly limit the choice of highway alternatives or at the very least substantially increase the acquisition costs of the project.

3. Federal Projects. On federally funded projects, care must be taken to assure that any advance acquisitions are done in accordance with federal regulations.

In extraordinary cases or emergency situations, the Federal Highway Administration may approve federal participation in the hardship acquisition or protective buy of a particular parcel or a limited number of parcels within the limits of a proposed highway corridor prior to the completion of processing a final environmental document for the project, but only after (1) the Department has given official notice to the public that a particular location has been selected to be the preferred or recommended alignment for the proposed highway, or (2) a public hearing has been held or an opportunity for such a hearing has been afforded.

Note that the "extraordinary" and "emergency" standards are intended to emphasize that only truly unique situations will be considered for federal-aid funding, i.e., the hardship must be unique to the individual seeking relief as opposed to, say, inconvenience shared by others on the project.

Hardship acquisition and protective buying procedures shall not apply to properties subject to the provisions of 49 U.S.C. 1653(f) (commonly known as Section 4(f)) or 16 U.S.C. 470(f) (historic properties) until the required Section 4(f) determinations or the procedures of the Advisory Council on Historic Preservation are completed.

Acquisition of property under these procedures 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.

Ultimate federal participation in the cost of property acquired is dependent upon the incorporation of such property in the final highway right-of-way. Where a parcel is partially incorporated, federal participation will be the pro rata proportion of the incorporated land area.

4. 100% State Projects. The Department may employ advanced acquisition using 100% state funding, but must comply with federal law and requirements if federal financial aid is to be requested on any phase of any
subsequent construction project involving the parcel(s). Indeed, the Pennsylvania courts have determined that even a 100% state funded taking for protective buying purposes is premature and thus not allowed if it is not consistent with the standard set forth in the federal regulation. That is, a preferred alignment must have been chosen and development on the property to be taken must be imminent. These requirements could be waived by the property owner if the Department wished to proceed prior to a preferred alignment and/or imminence of development.

B. Hardship Acquisitions

1. General. Advance acquisition due to hardship primarily applies to owner-occupied residential properties.

In order to qualify, the property owner must demonstrate an inability to sell the property (See Section 3.11.C.2 below) and demonstrate a particular medical or financial hardship (see Sections 3.11.B.2 and 3.11.B.3 below).

In rare instances, an owner of an income producing or vacant property may also be eligible for advance acquisition due to hardship. These hardships usually fall under the financial category (See Section 3.11B.3.f-g below).

Hardship acquisition requests may not be approved if they are based on situations which, though unfortunate or inconvenient to the owner, are not genuine hardships generally characterized as being beyond the control of the property owner or his immediate family and significantly different than other properties on the project.

2. Hardships Due to Health.

a. Advanced age, debilitating illness or injury, or ambulatory or other major disability or handicap of a long-term nature where present housing facilities are inadequate or cannot be maintained by owner. Such condition within the property owner's family must be aggravated by the owner's inability to effect a market sale, or undue economic hardship must be present in meeting financial obligations brought on by the health condition.

Examples:

(1) Protracted illness prevents normal maintenance of property or causes property to be vacated for an undeterminable period of time.

(2) Illness necessitates the relocation of the property owner to an institution, nursing home, or specialist treating property owner.

(3) A property owner is genuinely unable to provide for the safety and maintenance of his property because of advanced age.

(4) A property owner, because of advanced age, must relocate to a special living arrangement and is required to sell his residential property for reasons directly related to these circumstances.

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

Examples:

(1) An increase in family size (e.g., births, acceptance of relatives) that clearly renders the property owner's living quarters significantly inadequate.

(2) Property owner's living quarters are made inadequate by family makeup or special needs such as health, or safety for mobility requirements for disabled individuals.

(3) Structural damage caused by calamity that renders the dwelling unfit for habitation or constitutes an imminent threat to life, health or safety.

Temporary illness and situations where the health conditions within the owner's family will not be materially affected or improved through advance acquisition will not be judged hardships for these purposes.
3. Financial.
   
a. Substantial change in employment location of the property owner or breadwinner of the property owner's household which necessitates a significant and unusual increase in commuting distance and expense which may be mitigated if the owner were able to effect a timely sale at market value.

b. Job loss, or early retirement due to employment reduction or for medical reasons, that cause the property owner or breadwinner to be unable to continue to meet the obligations of ownership, and where relief is blocked by an inability to effect a timely sale at market value.

c. A significant loss of rental income or the inability to rent as a result of knowledge of the proposed highway project which adversely affects a property owner's ability to maintain his residence. Generally, hardship consideration is not contemplated for absentee owners or entrepreneurial landlords whose ownership is a business risk similar to other business risks in the community. This distinction does not, however, preclude the owner-occupant of a two, three, or four unit dwelling from consideration for advance acquisition.

Self-induced hardship, such as an owner deliberately buying a second home and complaining he cannot afford to pay a mortgage and taxes on both homes, is not a valid basis for providing relief under this procedure.

d. Probate litigation of non-commercial properties. The individual conditions of each of the estate hardships need to be evaluated to assure that it is an emergency situation.

e. Pending mortgage foreclosure or tax sales of non-commercial properties. These pending actions must be caused by the Department's action surrounding the project in question and cannot be self-induced.

f. The inability to sell undeveloped land, or the possibility of incurring a loss in the sale due to potential buyer's expectation that highway acquisition is probable or very likely is a business risk. In general, this is considered entrepreneurial risk and should not be treated under the hardship rules. However, where the inability to sell undeveloped land or to finance construction on the land prohibits the owner from generating sufficient income to support operating costs, and especially where this exposes the owner to the risk of losing the property through a tax or sheriff's sale prior to any actual condemnation, a de facto taking may be found to exist by the courts. The cases do not require an owner to attempt selling or developing the property if the government activity surrounding the project has made such efforts futile. It may be better in these circumstances to negotiate an advanced acquisition rather than risk defeat in the courts and the payment of reasonable, unlimited attorney and other fees. Full documentation and justification will be necessary for a submission on this basis.

g. Improved commercial, industrial and agricultural properties will also not generally be considered for hardship acquisition. However, where the actual use and enjoyment of a property is substantially deprived by government action surrounding a project, a de facto taking may be found to exist by the courts. Again, however, the adverse impact must cause operating costs to exceed income, or some other substantial deprivation of use and enjoyment must be shown. A showing that the property is subject to a possible tax or sheriff's sale due to the adverse interim consequences of a project will usually constitute a substantial hardship warranting a finding of a de facto taking. Again, it may be better in these circumstances to negotiate an advanced acquisition rather than risk defeat in the courts and the payment of unlimited, reasonable attorney and other fees. Full documentation and justification will be necessary for a submission on this basis.

C. Documentation of Hardships. Qualification for a hardship acquisition must be fully documented. Examples of acceptable documentation would include the following, where applicable:

1. A written request from the property owner for hardship acquisition setting forth the nature of the hardship. Requests not initiated by the owner or his authorized agent may not be approved. More specifically, requests initiated by tenants, relatives, friends, or associates will not be considered for approval unless it is clearly ascertained that the applicant is acting in concert with the desires and authorization of the owner. Requests for advance acquisition initiated by a tenant alone cannot be approved.
2. Documentation of inability to effect a timely sale at market value as indicated by a real estate broker's certification that the subject property is not marketable and, therefore, listing same would be futile. The broker's certification must contain a complete, detailed explanation. It is the property owner's responsibility to obtain such documentation.

3. All applications for hardship acquisition relative to illness, disability or chronic medical conditions must be supported by a written authoritative medical finding and recommendation by a physician or other medical authority.

4. A letter from the employer certifying that the affected owner is to be (or has been) transferred to a specific location would be recognized when applicable. A similar certification regarding loss of employment would likewise constitute adequate documentation where such is the rationale for advance acquisition.

5. Copies of financial statements or income tax returns where financial difficulties constitute the reasons for acquisition. A reliable, accurate and complete discussion of the financial hardship must be included with the documentation. Portions of financial statements or income tax returns may be used if they show sufficient detail to prove the hardship.

6. Court records – copies of documents relating to any legal actions that provide support for the indicated hardship.

The documentation noted above is not an all-inclusive list since it is not possible to describe every conceivable source that could constitute appropriate documentation for a given situation. There will be times when the above documentation, even though logical for the case involved, cannot be secured. Where this situation is encountered, it is acceptable to provide alternative data that accomplishes the same objective.

D. Protective Buying. In the situation where a parcel which may be necessary for an upcoming project is about to be further developed (e.g., housing subdivision, shopping center, major structural enlargement) and it is recognized that the projected cost of ultimately acquiring the parcel after such development might unduly restrict the consideration of highway location alternatives, protective buying may be indicated. Protective buying requests must demonstrate that there are no other reasonable alternative locations for the highway and therefore that an acquisition of the parcel prior to improvement is in the best interest of the Department. Accordingly a coordinated review and analysis by the various district design elements is necessary.

Protective buying is limited by the federal regulation to situations where a preferred or recommended alignment has been chosen and development on the property to be acquired is imminent. Under federal law the Department can acquire property through protective buying, but only after the Department has given official notice of the preferred or recommended alignment or a public hearing has been held or an opportunity for such a hearing has been afforded. Because of case law, however, a condemnation cannot be effected under Pennsylvania law without the preferred or recommended alignment having been selected, even if no federal funds are involved. If, however, the Department would wish to proceed with a 100% State funded acquisition prior to a preferred alignment and/or imminence of development, a property owner could waive these requirements if he or she voluntarily chose to do so.

E. Requests for Approval of Advance Acquisitions. There are three separate approval processes that must be completed in order to finalize an advance acquisition. They are:

1. Advance acquisition request for approval, done by the District Right-of-Way Unit;

2. Environmental request for approval, usually in the form of a categorical exclusion, done by the District Environmental Unit; and

3. Fiscal request for approval, in the form of a 4232, done by the District Right-of-Way and Fiscal Units (100% state fiscal documents are different).

The Central Office Acquisition Unit will review the advance acquisition request and, upon approval, will seek the further approval of the Deputy Secretary for Highway Administration and the Federal Highway Administration, as required. Once tentative approval is obtained, the District will be notified. No negotiation or acquisition actions may be taken until the environmental and fiscal requests are approved by the appropriate units.

The District Right-of-Way Unit must monitor all three approval processes and be aware of the status of each in order
to ensure that final approval of the advance acquisition request is not delayed.

Advance acquisition requests must be made to the Chief, Utilities and Right-of-Way Section of the Bureau of Project Delivery. The District's letter must include a complete discussion of why the hardship or protective buy meets the established criteria and be in sufficient detail to show the reason(s) why approval is in the best interest of the Department. For hardship requests, make an affirmative statement that the property is in the preferred alignment and include the Federal Project Number (FPN) when applicable. Include a projection of the date when normal acquisition activities are to begin and, in the case of protective buys, a projection of cost savings, if any, which would accrue to the Department with advance acquisition approval.

In order that these requests may be processed without delay, two complete sets of the requests and its attachments are necessary. This includes plan sheets. One set should be retained in the District Office, one set will be retained for Central Office files and where such requests are approved by the Deputy Secretary for Highway Administration, three sets will be forwarded to the Federal Highway Administration. A copy of the approval will be transmitted to the Highway Quality Assurance Division of the Bureau of Project Delivery.

No commitments shall be made to the property owner prior to a decision from either the Deputy Secretary or the Federal Highway Administration.

The decision of the Federal Highway Administration will be transmitted by the Utilities and Right-of-Way Section to the District Right-of-Way Administrator for appropriate action, i.e., notify the property owner of the final decision and acquire the property if authorized by the Federal Highway Administration.

F. Acquisition. Every reasonable effort shall be made to effect an amicable fee simple acquisition. If such efforts are unsuccessful, assistance and guidance should be requested in writing from Central Office. The request should include a record of the negotiation efforts and the reasons an amicable settlement could not be reached.

3.12 EARLY ACQUISITION

A. General.

1. Definition. An early acquisition is one done prior to environmental clearance to ensure corridor preservation, access management or other critical purposes.

2. Uses of Early Acquisitions and Precautions.

   a. Uses. Early acquisition prior to environmental clearance is a technique which may be considered to protect properties in a potential corridor from impending development or other future purchase costs to the Department. Early acquisition provides flexibility for the Department to manage its project development process, but with that flexibility comes the necessity to use discretion and recognize any restrictions on its use imposed by other laws and regulations.

   b. Precautions. Although use of early acquisition prior to environmental clearance may in some instances be appropriate, it is urged that consideration of some early environmental analysis (sufficient to conclude that commencing with early acquisition is without significant environmental impact) may be appropriate.

The Department may, use early acquisition for corridor preservation, access management or other purposes. However, the use of early acquisition should be judicious and caution is urged against wholesale use of the process as opposed to the standard acquisition procedures.

In addition, the Department must consider the decision as to the need of the project, consideration of alternatives, and the risk taken in that the project may not be built or may not be built in the location where property has been obtained as a result of early acquisition. Projects with extremely expensive right-of-way or sensitive natural or socio-environmental issues would not be good candidates for early acquisition.

In general, the Department must make the decision to use early acquisition after a careful analysis of the legality of the process, the fiscal costs/savings to the Department, probability of the property being in the
preferred alignment and the environmental/social impacts of the early acquisition.

B. Early Acquisition Requirements and Procedures.

1. Real Property Acquisition. The Department may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The Department may undertake early acquisition for corridor preservation, access management or other critical purposes.

2. Eligible Costs. Acquisition costs incurred by the Department prior to executing a project agreement with the FHWA are not eligible for federal aid reimbursement. In fact, in order for federal aid funds to participate in any project costs, the project must be carried out in conformity with all applicable federal and state laws and regulations. While early acquisitions themselves do not require FHWA and NEPA review at the time of acquisition, they will require FHWA oversight to ensure that the acquisitions do not influence the federal environmental review of the project. This is true regardless whether the Department seeks subsequent credit or reimbursement. Costs expended for the early acquisition may become eligible for use as a credit towards the state's share of a federal aid project if the following conditions are met:

   a. The property was lawfully obtained by the Department.

   b. The property was not land described in 23 U.S.C. 138 (parkland) (4f).

   c. The property was acquired in accordance with the provisions of 49 CFR part 24.

   d. The Department complied with the requirements of Title VI of the Civil Rights Act of 1964.

   e. The Department determined and the FHWA concurs that the action taken did not influence the environmental assessment for the project including:

      (1) The decision on the need to construct the project

      (2) The consideration of alternatives

      (3) The selection of the design or location

      (4) That the property will be incorporated into a federal aid project, and

      (5) The original project agreement covering the project was executed on or after June 9, 1998.

3. Procedures for early acquisition requests. The District Right-of-Way Administrator will be required to provide a memo to Central Office Right-of-Way that provides the following:

   a. An explanation why early acquisition is preferred for acquiring real property as approved to standard acquisition procedures. It should also include a statement on when normal acquisition would occur.

   b. A declaratory statement avowing to the requirements in Section 3.12.B.2.a - e.

If the Department anticipates receiving federal aid for any phase of the project, they need to ensure that the early acquisition does not taint the NEPA process and the selection of an alternative alignment. For projects that may involve federal aid, Central Office will seek advanced FHWA approval.
## EXHIBIT NO. 1
**FACTOR TABLE FOR COMPUTATION OF STATE’S SHARE OF TAXES**
(County, Township, Borough, etc.)

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CHAPTER 4
RELOCATION ASSISTANCE

4.01 GENERAL

A. Purpose. The purpose of this Chapter is to assure, to the maximum extent possible, the prompt and equitable relocation of persons, businesses, farms and nonprofit organizations displaced as a result of highway construction. The policies and procedures contained in this Chapter are the means of providing relocation services and payments so that a few individuals do not suffer disproportionate injuries as a result of a program designed for the benefit of the public as a whole.

B. Authority. Authority for PennDOT’s Relocation Assistance Program is provided by Chapter 9 of the Eminent Domain Code, 26 Pa.C.S. Sections 901-907 (Special Damages for Displacement); 23 CFR Part 710.301 and 710.309 Subpart B and C, the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970, 42 U.S.C. Section 4601; and federal regulations entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, 49 C.F.R. Part 24.

C. Policy Statement. It is the policy of the Pennsylvania Department of Transportation that no residential occupant shall be displaced by any construction project unless, and until, comparable replacement housing has been provided for or is built. Replacement housing will be fair housing, meaning open and offered to all affected persons regardless of race, color, religion, sex, national origin, age or handicap, and will be within their financial means and reasonably accessible to their places of employment, public services, and other conveniences.

No person, family, business, farm operation, or nonprofit organization will be required to move as a result of highway construction without expiration of at least 90 days written notice.

D. Availability of the Relocation Assistance Program. The Relocation Assistance Program is available to all qualified persons, families, businesses, farm operations, and nonprofit organizations that are wholly or partially displaced by a Pennsylvania Department of Transportation highway project. Relocation advisory services are also available to any person occupying property immediately adjacent to property acquired when the Department determines that such person or persons are caused substantial economic injury because of the acquisition, when such person is caused substantial economic injury because of the acquisition.

E. Relocation Assistance

1. The relocation assistance advisory services program will be carried out so that displaced persons will receive uniform and consistent services and benefits in the form of compensation regardless of race, color, religion, sex, or national origin. The services required herein are intended, at a minimum, to assist displaced persons in relocating to a new location. The services shall be provided by personal contact, except, if such personal contact cannot be made, the District will document the file to show that reasonable efforts were made to achieve the personal contact.

2. Eligibility. Relocation assistance advisory services will be offered to:

   a. Any person who meets the definition of a displaced person.

   b. 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.

   c. Any person who, because of the acquisition of real property used for a business, farm operation or non-profit organization, moves from other real property used for a dwelling, or moves personal property from such other real property.

F. Relocation Offices.

1. District Office. The District should maintain personal contact and provide displaced persons with information from other agencies rendering services useful to displaced persons. Such agencies are to include,
but not be limited to: social welfare agencies, urban renewal agencies, redevelopment authorities, public housing authorities, Federal Housing Administration, Veterans Administration, Small Business Administration, Farmer's Home Administration, Department of Community Affairs and local chambers of commerce, and Department of Housing and Urban Development.

The District should coordinate its relocation activities with other displacing agencies to the greatest extent practical. Contact should be maintained with the Department of Housing and Urban Development and Veterans Administration relative to properties owned by them that may be available for sale.

Personal contact should also be maintained by providing current local sources of information on replacement properties, including private listings, real estate brokers, property managers, apartment owners and operators and home building contractors. Subscriptions will be obtained (where possible) for multiple listing services, apartment directory services, neighborhood and metropolitan newspapers, and other local sources.

2. Project Site Office.

   a. Establishment of a Site Office. The need for the establishing a site office to service the displaced person(s) located on a project will be determined on a project-by-project basis by the District Right-of-Way Administrator. An adequate sign, visible to the public, stating "Department of Transportation Relocation Assistance Office", or similar language, will identify all project site offices. These offices shall be open during hours convenient to the displaced person, including evening hours when necessary.

   b. Site Office Requirements. A site office must be accessible to the general public by means of public transportation, or within walking distance of the project, and will be open during normal work hours and during evening hours when deemed necessary to serve the public. The site office must also meet ADA accessibility requirements. If possible, such office should be arranged to afford privacy during the interview. A relocation advisor will be responsible for providing assistance for each project. The advisor will be required to make frequent contacts with and be available for evening appointments at the convenience of the displaced persons. Where a site office is not practical, relocation advisors will meet with displaced persons in their homes or pre-determined locations.

The following items should be made available:

(1) Local ordinances pertaining to housing, buildings code and open housing.

(2) Consumer educational literature on housing, shelter costs and family budgeting.


(4) A current and continuing list of decent, safe and sanitary replacement dwellings, both for rent and for sale, fair and open housing available to persons without regard to race, color, religion, or national origin, drawn from various sources, suitable in location, size, price and condition for a displaced persons.

(5) A current and continuing list of similar commercial properties for sale and for rent.

(6) Current data for such costs as security deposits for utilities, leases and closing costs, typical down payments, interest rates, and terms, taxes, and assessments.

(7) Maps showing location of schools, parks, playgrounds, shopping areas and appropriate public transportation routes, schedules and costs.

G. Minimum Advisory Assistance Service Requirements.

1. The District relocation assistance program must include such measures, facilities or services as may be necessary or appropriate to:

   a. Determine 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 process will include a personal
interview with each person and subsequent meetings throughout the relocation process. These actions are taken in the normal course of the pre-acquisition and negotiations phases.

b. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings, and explain that no one can be required to move unless at least one comparable replacement dwelling is made available.

c. Inform the 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 payment.

d. Whenever possible, minority persons will be given reasonable opportunities to relocate to decent, safe and sanitary replacement dwellings not located in areas of minority concentration that are within their financial means. This policy, however, does not require the Department to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

e. All persons will be offered transportation to inspect housing to which they are referred. It is preferable that state vehicles are used for this purpose, but other means of transportation, such as the advisor's personal vehicle or taxi service, may be used.

f. Provide current and continuing information on the availability, purchase prices and rental costs of comparable and suitable commercial properties and locations for businesses.

g. Assist any person displaced from a business, farm operation, non-profit to obtain and become established in a suitable replacement location. These would include the following:

   (1) Understanding the business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

   (2) Determination of the need for outside specialists in accordance with §24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.

   (3) An identification and resolution of personality/realty issues. Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property.

   (4) An estimate of the time required for the business to vacate the site.

   (5) An estimate of the anticipated difficulty in locating a replacement property.

h. Minimize hardships to persons 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.

i. Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to displaced persons, as well as technical help to persons applying for such assistance.

2. Advisory services will be administered on a reasonable basis commensurate with the displaced persons' needs. The extent of these services could vary from minimum assistance (when displaced persons are involved who are well informed, mentally, physically and financially able to manage their displacement and who, as a consequence neither need or desire Department assistance), to almost unlimited advisory services and assistance (for those who are elderly, infirmed, immobile or otherwise unable to cope with their displacement or economic problems).

3. The relocation advisor must offer relocation assistance to every displaced person. Further, the advisor must provide relocation assistance to every displaced person unless the displaced person specifically states that there is no need for assistance. Even then, the relocation advisor must make a subjective judgment as to the ability of the displaced person to relocate from their residence or other displaced person to relocate to replacement facilities. If the relocation advisor does not feel the displaced person possesses the ability to relocate without help, the relocation advisor should, if at all possible, furnish assistance despite the displaced
person's statement that it is not necessary and document the claim file.

4. It is mandatory that the relocation advisor notifies the displaced person in writing of the availability of comparable replacement housing even if the displaced person may have no intention or desire to relocate into a dwelling unit comparable to the one acquired. The relocation advisor can fulfill this requirement by informing the displaced person of the comparable replacement housing utilized in the supplemental evaluation and other similarly priced comparables. The advisor can then tailor continuing relocation efforts to locating replacement housing that meets the particular desires of the displaced person.

5. The relocation advisor has a multitude of sources for replacement housing. These sources would include, but are not necessarily limited to the following:
   a. The internet
   b. Real estate brokers and boards of realtors.
   c. Multiple listing agencies.
   d. Real estate developers.
   e. HUD and VA area and region offices.
   f. Builders and construction associations.
   g. Real estate management firms.
   h. Public housing agencies.
   i. Newspaper advertisements.
   j. Mobile home dealers.
   k. Banks and other lending institutions.

6. Sometimes a quantity of available housing and lots not listed with real estate brokers can be obtained if the District places an ad in the real estate section of a local newspaper soliciting listings and information on available housing. Similarly, when faced with a problem locating available housing, the advisor might obtain a lead on replacement housing by placing an ad detailing the specific type of dwelling unit needed.

7. Once the displaced person locates replacement housing, the advisor must be sufficiently knowledgeable in real estate practice to guide the displaced person through the procedures necessary to obtain this housing. It is not the responsibility of the advisor to assume the role of the real estate broker or salesman, the lessor, the lending institution or the attorney. Rather, the advisor should counsel the displaced person concerning lease and purchase agreement provisions, security deposits, earnest money, mortgages and other form of financing, closing costs and settlement procedures.

8. Concurrently, the advisor should assist the displaced person in making preparations for the move, and recommend the various moving methods available so that the replacement property can be occupied as soon as possible after the displaced person obtains possession.

9. It is the duty of the advisor to ensure that the displaced person receives all payments and monies to which he or she is eligible or qualified for and is entitled. In order to facilitate the payment process, the advisor shall assist the displaced person in completing all required forms, as well as obtaining any necessary supporting documentation for the payment.

10. Accurate record of the advisor's progress on each claim is a necessity. Immediately after each contact with the displaced person, the advisor will record the events that transpired during the contact on the appropriate ROW Office Claimant Contact Maintenance screen. The advisor should note the date of the contact, person contacted, the topics discussed, the displaced person's attitude and opinion, available replacement housing offered, if any, and any other pertinent information obtained during the contact.
H. Relocation Payments - General.

1. Relocation Payments Not Considered as Income. Relocation payments will not be considered as income or resources for the purpose of determining the eligibility for assistance under any state law, federal law except for any federal law providing low-income housing assistance, or Social Security Act (42 U.S. Code 301 et seq.), or for the purposes of the Internal Revenue Code of 1954, redesignated as the Internal Revenue Code of 1986 (Title 26, U.S. Code), state or local personal income or wage tax laws, corporation tax laws or other tax laws.

2. Waiver of Relocation Assistance. The relocation advisor may not request that a displaced person waive rights to relocation assistance and payments. However, the displaced person may provide a written statement that they have chosen not to accept some or all of the benefits to which they are entitled. Any such statement must clearly show their understanding of available benefits and must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed and dated by each adult displaced by the relocation and may not be coerced by the Department.

3. To Whom Supplement Payments are made. Payments will be made directly to the residential or business displaced person(s). The displaced person(s) may direct a payment to a third party by executing the directive to pay section of the application for payment form.

4. Delivery of Payment Checks. Payment checks will be delivered by mail. In exceptional circumstances, a Department employee, other than the person who computed the payment, may personally deliver the check.

5. Withholding of Relocation Payments for Rent Owed to the Department. The Department may not deduct from any relocation payment any rent owed to the Department by the displaced residential or business displaced person per 49 CFR 403(a)(6).

The Department shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor. The Department is considered a creditor.

6. Claim Processing in Advance of Relocation. A claim for payment may be applied for and processed prior to the actual relocation. However, the displaced person must present adequate documentation to substantiate the claim for any type of relocation payment.

This procedure is particularly advantageous for residential relocates who are purchasing a replacement dwelling and who need funds at settlement. The displaced person should be advised that the Department sufficient notice and file a claim for payment within a sufficient period of time prior to settlement in order to ensure that the check will be processed in time and available for disbursement.

Checks will be made payable to the displaced person and mailed to the attention of the District Right-of-Way Administrator. In the case of a replacement housing or down-payment supplement, checks may be held by the District Right-of-Way Administrator until settlement, at which time the check will be delivered to the displaced person. Prior to releasing the check, the advisor will inspect the documents relating to the sale of the replacement, including the actual statement of closing costs, to ensure that the Department is paying the correct amounts. If the check is greater than the amount due, the check will be presented and the advisor will require that a check be made payable to the Department in the amount of the overage prior to presenting the advance payment check to the displaced person.

In the case of an advance rent supplement, the check will be turned over to the displaced person when he or she occupies the replacement or provides a fully executed lease.

Advance replacement housing supplement payments may be made in condemnation cases. However, since the amount of the replacement housing supplement payment cannot be determined due to pending condemnation proceedings, a provisional replacement housing supplement payment may be calculated by deeming the maximum offer for the property as the acquisition price. Advance payment of such amount may be made upon the owner-occupant's agreement that the amount of the replacement housing payment will be recomputed upon final determination of the condemnation proceedings and may require a refund or adjustment to the funds received for the acquisition commensurate with the amount of the award.

The above conditions are a part of the "Claimant's Agreement and Certification" on Form RW-560. See
Section 4.03.H.5.d.

If the displaced person does not agree to such adjustment, the replacement housing supplement payment will be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

In the case of an advance moving cost and/or business relocation payment, the check will be made payable to the displaced person and mailed to the attention of the District Right-of-Way Administrator or designated representative. The check will be turned over to the displaced person when he or she vacates and moves their possessions from the acquired property.

7. Overage (Credit) Payment Procedure. Where overpayment occurs, overage checks made payable to the Department are processed through the ROW Office system. Credit payments are entered as a negative amount (e.g., -50.00). Use the same internal order (cost function) used to process the original debit payment. When entering the Payee Name and Address in the Claim Payment Maintenance screen, use a format similar to the following:

PDOT to Credit R/W Claim for Overpayment of Closing Costs.

The overage check, along with one copy of the ROW Office invoice displaying the negative payment amount will be submitted to Central Office for processing to the Comptroller.

I. Appeal Procedure.

1. Actions Which May Be Appealed. The determination by the Department of a displaced person's eligibility for, or the amount of, any relocation assistance payment may be appealed.

Appeals may be conducted by hearing or summary disposition process (See 4.01.G.5 below). The aggrieved person (claimant) will have the opportunity for a prompt hearing at a designated time and place, or may state the basis for the appeal and include supporting documentation, if applicable, in the written request. Where a hearing is requested the appellant shall have the right to be represented by counsel, and to present evidence, including evidence of comparable replacement dwellings, moving expenses and other matters bearing on special damages for displacement. Stenographic services will not be provided by the Department. The appellant may hire stenographic service if desired at their expense or electronically record proceedings in any manner deemed reasonable by the Department.

2. Review of Files by the Appellant. Upon written request by the appellant, the District will provide a copy of its claim file containing all non-privileged material used in rendering the Department's original decision and otherwise pertinent to the appeal. Specific questions should be referred to the Central Office Acquisition Unit for coordination with the Office of Chief Counsel.

3. Requests for an Appeal. Requests for an appeal must be submitted by the appellant or appellant's legal counsel in writing to the attention of the District Right-of-Way Administrator hand delivered or by U.S. mail to the appropriate District Office. Alternative methods such as email, fax or telephone communications are not acceptable to initiate a formal administrative appeal.

Appeals involving multiple claims may only be filed on one parcel at a time; that is, all appeals are heard individually on a per claim basis. Blending multiple dispute scenarios into a single appeal case may distort the focus needed to gather facts regarding the issue being appealed.

4. Time for an Appeal. The claimant has a right to appeal from the moment they receive a written determination of relocation benefits up to a period of 18 months from the date final payment of just compensation is made; or, when the claimant moves from the acquired property, whichever is later.

Where a declaration of taking has been filed, the Department will not conduct an administrative appeal hearing until the preliminary objection period (if applicable) expires or when preliminary objections, if filed, are withdrawn or resolved. For acquisitions requiring PUC approval, this requirement is satisfied where land is appropriated by PUC order.
5. Types of Administrative Appeals. When the District receives a written request for an appeal, they must determine if the appellant desires an appeal by hearing or consents to a summary disposition. The type of appeal desired must be communicated to the Central Office Acquisition Unit in the written appeal request.

a. Appeal by Hearing. Where the appellant requests a hearing, the Central Office Acquisition Unit Chief will coordinate a convenient time and place. Central Office will provide the official notification to the appellant or their Counsel and the District Right-of-Way Administrator involved in the claim being appealed. The District Right-of-Way Administrator will be required to attend the appeal hearing. Appeal hearings will be conducted by the Central Office Acquisition Unit Chief unless otherwise directed by the Chief, Utilities and Right-of-Way Section. Hearings are generally informal in nature and the appellant is given ample opportunity to present any fact that he or she feels is pertinent.

b. Summary Disposition. If the person does not desire a hearing, all applicable documentation must be submitted to the Central Office Acquisition Unit as soon as practical for summary disposition (see 4.01.G.9.)

Note: Even where an appeal is requested, the Department reserves the right to dismiss the appeal pursuant to summary disposition where the facts are not in dispute and the right to relief is clear.

6. District Responsibilities. Upon receipt of a written request for an appeal (hearing or summary disposition), the District Right-of-Way Administrator must assemble the administrative record to date for the appeal. The administrative record includes the written request received, all pertinent claim files, emails, and other relevant documents. Once assembled, the District Right-of-Way Administrator will submit the administrative record to the attention of the Chief, Central Office Acquisition Unit for review. Use form RW-491 for this purpose. Claim files included in the administrative record must be organized chronologically. Records may be shared electronically on the Department's shared network folder located at P:\PennDot Shared\C-O ROW File Sharing. Prompt coordination between the District Office and the Central Office Acquisition Unit is required to prevent delays or impacts to project schedules.

7. Central Office Acquisition Unit Responsibilities. Upon receipt of the administrative record for the appeal (hearing or summary disposition), the Central Office Acquisition Unit will assign an administrative docket number. All references to the appeal from this point forward will reference the assigned administrative docket number. No fee shall be charged for the taking of an administrative appeal under this subsection.

8. Disposition of Appeals by Hearing. Within 30 days of receipt, Central Office will perform a complete review of the administrative record for the appeal.

After the review is complete, the Central Office Acquisition Unit Chief will schedule the hearing. The hearing will be held at either the District Office or Central Office.

Central Office will provide official written notification to the Appellant, or their attorney and the District Right-of-Way Administrator involved in the claim being appealed. Form RW-492 will be used for this purpose. The notification will include the following:

a. Date the Appeal was received.

b. Date, time, and place of the appeal.

c. A brief statement of the matter being appealed.

d. The right to be represented by legal counsel

e. Notice regarding special accommodation for accessibility (if necessary)

f. Docket number

g. S.R.

h. County
9. **Summary Disposition.** Where an appeal by hearing is not requested by the Appellant, the Department will conduct an appeal by reviewing the administrative record within 30 days of the completed RW-491 received by the Central Office Acquisition Unit. Central Office will provide official written notification to the Appellant, or their attorney and the District Right-of-Way Administrator regarding the pending review. Form RW-493 will be used for this purpose. Similar to the process where a hearing is conducted, the Department will issue a written decision outlining the basic facts and basis for its decision. Even where an appeal is requested, the Department reserves the right to determine the matter by summary disposition where appropriate. Summary disposition may be appropriate, even where a hearing has been requested, under the following circumstances—

a. Where the basic facts involved in the appeal are not subject to reasonable dispute; and,

b. Where the party's respective rights to relief are clear.

10. **Results of the Appeal.** Upon completion of the administrative record, either by hearing or summary disposition, the Central Office Acquisition Unit Chief will issue its decision in writing. The written decision will include an explanation of the essential facts and grounds upon which it is based. An original will be delivered to the Appellant (or their attorney, as appropriate) with a copy to the District within 30 days of the appeal hearing date subject to any continuances. Where a summary disposition is conducted, the written decision will be delivered within 30 days of the RW-493 mail date.

Final decisions of the Department as an administrative agency are subject to appeal to the Commonwealth Court. An Appellant will be provided written notice of these further appeal rights in the decision.

J. **Definitions.**

**Acquired Dwelling** – A dwelling that has been acquired by the Department.

**Acquiring Agency** – A state agency, other entity, or person acquiring real property under the Eminent Domain Code. A state agency means 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 any person who has the authority to acquire property by eminent domain for public purposes under state law.

**Acquisition Cost** – The general damages, or in the event of amicable acquisition, the price paid by the acquiring agency.

**Alien Not Lawfully Present in the United States** – An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act, and whose stay in the United States has not been authorized by the United States attorney general, and/or an alien who is present in the United States after the expiration of the period of stay authorized by the United States attorney general or who otherwise violates the terms and conditions of admission, parole or authorization to stay in the United States.

**Business** – Any lawful activity, except a farm operation, that is conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing and/or marketing of products, commodities, and/or any other personal property; or primarily for the sale of services to the public; or primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or a nonprofit organization that has established its nonprofit status under applicable status under federal and state law.

**Comparable Replacement Dwelling** – A dwelling that meets all of the following criteria:

- It is decent, safe and sanitary.
- It is functionally equivalent to the acquired 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 acquired 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
dwellings is functionally equivalent to the acquired dwelling, the acquiring agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the acquired dwelling. For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or, consequentially less living space than the displacement dwelling.

- It is adequate in size to accommodate the occupants.
- It is in an area not subject to unreasonable adverse environmental conditions.
- It is in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
- It is on a site that is typical in size for similar dwellings located in the same neighborhood or rural area with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses.
- It is currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In those cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply. Determinations will be made according to the family composition at the time of displacement and the current housing program criteria, not the size of the acquired unit. When advising a displaced person receiving government housing assistance, the relocation advisor should inform them of the short term nature of benefits under the Uniform Act (42 months) compared to the longer term benefits of the subsidized housing program. (See Chapter 4.10)
- It is within the financial means of the displaced person.
- A replacement dwelling purchased by a homeowner in occupancy at the acquired dwelling for at least 90 days prior to initiation of negotiations is considered to be within the homeowner's financial means if the homeowner will receive the full replacement housing supplement in accordance with the purchase price up to the amount of the selected comparable and all incidental expenses.
- A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving a rent supplement, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental and utility costs for the acquired dwelling. Unless they fall under the 30% rule for low income and number of family members.
- 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 (e.g., less than 90 day tenant), comparable replacement rental housing is considered to be within the person's financial means if an acquiring agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent and utilities for the acquired dwelling as described in 4.03.K.2.g.(1). Such rental assistance must be paid under replacement housing of last resort as referenced in 4.03.A.2.b.
- Open to persons regardless of race, color, religion or national origin in a manner consistent with the Fair Housing Act (Title VIII of the Federal Civil Rights Act of 1968, 42 U.S.C.A. §3601 et seq.) and the Pennsylvania Human Relations Act (43 P.S. §§951-962) and regulations promulgated under those acts.

Condemn – To take, injure or destroy private property by authority of law for a public purpose.

Condemnee – The owner of a property interest taken, injured or destroyed, not including a mortgagee, judgment
creditor, or other lien holder.

**Condemnor** – The acquiring agency, including the Commonwealth of Pennsylvania, that takes, injures or destroys property by authority of law for a public purpose.

**Contributes Materially** – During the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the acquiring agency determines to be more equitable, a business or farm operation:

- Had average annual gross receipts of at least $5000, or
- Had average annual net earnings of at least $1000, or
- Contributed at least 33 1/3 percent to the owner or operator's average annual gross income from all sources.

If the application of the criteria noted above creates an inequity or hardship, the Department may approve the use of other criteria as determined appropriate.

**Court** – The court of common pleas.

**Department** – The Commonwealth of Pennsylvania, Department of Transportation.

**Displaced Person**

1. Any condemnee or other person who moves from real property or who moves his or her personal property from real property:

   As a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for a program or project undertaken by an acquiring agency; or,

   On which such person is a residential tenant or conducts a small business, a farm operation or a business as defined in this section as a direct result of rehabilitation, demolition, or such other displacing activity under a program or project undertaken by an acquiring agency in any case in which the displacement is permanent.

2. Solely for the purpose of Section 902 (Moving Costs), any person who moves from real property or moves his or her personal property:

   As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by an acquiring agency; or,

   As a direct result of rehabilitation, demolition, or other displacing activity of other real property on which such person conducts a business or farm operation, under a program or project undertaken by an acquiring agency where the displacement is permanent.

3. A person who was in occupancy of the real property on or before the date of acquisition, notwithstanding the termination or expiration of a lease entered into before or after the event giving rise to the displacement.

4. Members of a family are collectively regarded as a single household.

**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.

**Housekeeping Dwelling** – Includes a kitchen area that contains a fully usable sink connected to hot and cold potable water, and sewage drainage system, and adequate space utility service connections for a stove and refrigerator.

**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 under 18 years of age. Household income for purposes of this regulation also 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.

Dwelling – The traditional/customary house or residence, regardless of whether the unit is owned or rented. A single family house, a single family unit in a multi-family property, a unit of a condominium or cooperative housing project, a non-housekeeping unit, a mobile home or other residential unit that is considered by local custom to be the displaced person's place of customary or usual abode.

Customary or Usual Abode – The established, fixed, permanent or ordinary dwelling place or place of residence of a person, as distinguished from a temporary and transient, though actual, place of residence. It is a legal residence as distinguished from a temporary place of abode; or a home, as distinguished from a place to which business or pleasure may temporarily call him or her.

In instances where the place of permanent and usual abode may be in question, consideration should be given, but not limited to, the following indicate of permanent residency:

- The location in which a person is legally registered to vote.
- The location which a person declares to be his or her residence and for the purpose of registration of his or her automobile and for the payment of federal, state and municipal or local taxes.
- The location in which the dependent children reside and attend the schools located within their assigned school district.

Economic Rent – The amount of rental income a property would likely command in the open market if it were vacant and available for rent.

Fair Market Value – For purposes of this Chapter, the amount approved by the Central Office reviewing appraiser representing the value of the right-of-way for land and/or improvements to be acquired plus damage, if any, to the remaining property. This approval determines the amount of the offer to be made to the owner.

Family – Two or more individuals living together in a dwelling who:

- are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit, or
- are not related by blood or legal ties but live together by mutual consent not separated by common elements of the dwelling.

Farm Operation – Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

Initiation of Negotiations – delivery of the initial written offer of just compensation by the acquiring agency to the owner or the owner's representative to purchase the property, whenever the displacement results from the acquisition of the property by an acquiring agency with the power of eminent domain. However, if the acquiring agency issues a notice of its intent to acquire the property, and a person moves after that notice but before delivery of the initial written purchase offer, initiation of negotiations means the actual move of the person from the property.

When the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by an acquiring agency with the power of eminent domain), initiation of negotiations means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

In the case of a temporary or permanent relocation of a tenant as a result of an acquisition of real property by an acquiring agency not using the power of eminent domain, the initiation of negotiations does not become effective to establish eligibility for tenants until there is a written agreement to purchase the real property.
Tenants that occupy a property that may be acquired amicably must be fully informed of 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 (Only if they have not already moved). See persons not displaced in 6 below.

In the case of a permanent relocation to protect the public health and welfare under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Publication L. 96-510, or "Superfund"), initiation of negotiations begins with the formal announcement of such relocation or the federal or federally coordinated health advisory where the federal government later decides to conduct a permanent relocation.

**Mortgage** – Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price, of real property under the laws of the state in which the property is located, together with the credit instruments, if any, secured thereby.

**Non-Housekeeping Unit** – A unit which meets the local code standards for a hotel, boarding house, etc. (i.e., no kitchen facilities)

**Nonprofit Organization** – An organization that is incorporated under the applicable laws of a state as a nonprofit organization, and exempt from paying federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

**Legal Occupancy** – The legal right or title to physical possession of real property. In terms of residential relocation assistance, permanent occupancy is established by the criteria described in the Customary or Usual Abode in this section.

**Owner of a Dwelling** – A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

- 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.
- An interest in a cooperative housing project that includes the right to occupy a dwelling.
- A contract to purchase any of the interests of estates described above.
- Any other interest, including a partial interest, which in the judgment of the acquiring agency warrants consideration as ownership.

**Personal Property** – Any tangible property not considered to be real property for the purpose of general damages under the laws of the Commonwealth.

Note: Any personal property converted to real estate under the assembled economic unit doctrine is not personal property under this definition.

**Persons Not Displaced** – The following is a nonexclusive listing of persons who do not qualify as displaced persons under this Chapter:

1. A person who moves before the initiation of negotiations, unless the Department determines that the person was displaced as a direct result of the program or project. The Department must provide permanent relocation benefits to anyone displaced for one year or more.
2. A person who initially enters into occupancy of the property after the date of its acquisition for the project.
3. A person who has occupied the property for the purpose of obtaining assistance under the Pennsylvania Eminent Domain Code and/or Uniform Act.
4. A person who is not required to relocate permanently as a direct result of a project. Where this occurs, contact the Central Office Acquisition Unit for assistance.
5. A person who the acquiring agency determines is not displaced as direct result of a partial acquisition.

6. A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she would not be displaced for a project. Such notice will not be issued unless the person has not moved and the Department agrees to reimburse the person for any expenses incurred to satisfy any contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.

7. An owner-occupant who voluntarily conveys his or her property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this Chapter.

8. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department.

9. A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law. The Department may, at its discretion, provide advisory services to unlawful occupants.

10. An alien not lawfully present in the United States and who has been determined to be ineligible for relocation benefits, except where such eligibility would result in extremely unusual hardship to a qualifying spouse, parent or child who is lawfully present in the United States.

11. In any case in which the Department acquires real property for a program or project, a person, other than a person that was an occupant at the time it was acquired, that occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project, provided adequate notice is contained in the written lease agreement.

**Project or Program** – Any project or program undertaken by or for an acquiring agency that has the authority to exercise the power of eminent domain.

**Relocation Advisor** – A Department Right-of-Way employee or pre-approved Right-of-Way Consultant representing the Department assigned to provide relocation assistance to persons displaced.

**Replacement Dwelling** – A dwelling purchased or rented and occupied by a displaced person as a result of the acquisition for a program or project of a dwelling occupied by the displaced person.

a. **Reasonable Cost of a Comparable Replacement Dwelling** – The actual amount paid by a displaced person for a decent, safe and sanitary replacement dwelling or the amount determined by the Department to be necessary for the purchase of a comparable replacement dwelling, whichever is less.

b. **Amount Necessary to Rent a Comparable Decent, Safe and Sanitary Dwelling** – The actual rent plus utilities paid by a for a decent, safe and sanitary replacement dwelling or the amount of rent plus utilities determined by the Department to be necessary to rent a comparable replacement dwelling, whichever is less.

**Residential Use Portion** – That portion of the acquired or replacement property, consisting of a tract normal for residential use in the project area plus the displaced person's dwelling and any other major exterior attributes on the acquired or replacement tract used by the displaced person primarily for residential purposes.

**Sleeping Room** – any decent, safe and sanitary room designated for private sleeping accommodations.

**Small Business** – A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for purposes of business reestablishment expense payments.

**Tenant** – A person having temporary possession and lawful occupancy of the property of another.

**Uneconomic Remnant** – A parcel of real property in which the owner is left with an interest after partial acquisition of the owner's property and which the acquiring agency has determined has little or no value or utility to the owner.
Unlawful Occupancy – A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations, or is determined by the Department to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law.

Utility Costs – Expenses for electricity, gas, other heating and cooking fuels, water and sewer.

Value in Place of Personal Property – The value personal property would have if installed in real property housing a going business, considering such factors as original cost, delivery and installation costs, physical and economic depreciation costs, physical and economic depreciation, and functional obsolescence.

4.02 RELOCATION PROGRAM FROM THE CONCEPTUAL STAGE UNTIL INITIATION OF NEGOTIATIONS FOR THE PROJECT

When the acquisition of real property is undertaken by the Department resulting in the displacement of any person (i.e., individual, family, partnership, corporation or association), the Department will provide relocation advisory assistance to all displaced persons. Where there are residential displacements, an analysis of the availability of decent, safe, and sanitary replacement facilities is required. When there are business displacements, an analysis of available business sites for sale or lease is required. The Department's relocation program is structured in an orderly and logical sequence of reports, assurances and activities which are required on each highway project involving displacement, beginning with the preliminary engineering report and ending with the relocation of the last displaced person on the project.

A. NEPA/Right-of-Way. During the early stages of project development, the Department must plan projects to identify problems associated with the displacement of individuals, families, businesses, farms, and non-profit organizations. Such planning should be scoped to the complexity and nature of the anticipated placing activity including an evaluation of program resources available to carry out timely and orderly relocations. The Preliminary Engineering phase of the project involves an assessment of the engineering and environmental considerations, along with associated studies and documentation used to determine the scope of an improvement that meets the project needs. The National Environmental Policy Act (NEPA) of 1969 requires the assessment of the impacts of a project to the natural, social, and cultural environment. NEPA ensures that the environmental effects of a project are weighed when making a decision on how to deliver a project. Because many environmental resources are governed by other state and federal laws (e.g., the Clean Water Act, the National Historic Preservation Act, and the Uniform Act), a key component of NEPA compliance is ensuring that projects comply with all the requirements of those laws. For additional information regarding NEPA documentation, refer to Design Manual 1B (pub. 10B), Post-TIP NEPA Procedures.

The potential need to acquire right-of-way for projects is identified during the preliminary engineering as part of the procedures required to comply with NEPA (i.e., the "NEPA process"). Right-of-way projects often create interest from the public during the evaluation of the NEPA process. However, activities related to the acquisition of land (i.e. performing appraisals, offers for right-of-way acquisition or payments made) may not occur until NEPA approval has been obtained for the project, and a right-of-way plan is approved (DE signature at a minimum). Therefore, direct communications with property owners is not conducted during the NEPA process (see 4.02 D below). Since all right-of-way acquisition and relocations must be planned in accordance with the Uniform Act, it is preferred that consultations with property owners remain with the professional right-of-way staff. However, communications with affected property owners may be necessary to discuss issues affecting project design or access issues. Therefore, coordination among the Project Manager, District Environmental Manager and the District Right-of-Way Administrator is essential in determining the overall environmental impacts during the NEPA process.

B. Conceptual Stage Survey.

1. The conceptual stage survey is conducted primarily to collect pertinent data for inclusion in the conceptual stage report, and to uncover any easily identified relocation problems. It begins when the District Right-of-Way Administrator receives a request from:

   a. The District Project Manager, or:

   b. The District Environmental Unit staff, or;
c. The District Environmental Manager

Upon receipt, the District Right-of-Way Administrator will request the District Chief Negotiator or a member of his/her staff to prepare the conceptual stage survey and report. It is recommended that a Right-of-Way staff employee perform a field view of the project to determine potential impacts to improvements, entrances, topography, special needs of the displaced persons, loss of facilities or resources important to the community.

2. The District Right-of-Way Administrator is responsible for providing the information associated with a project involving right-of-way. Although the survey is conducted prior to public meetings, it is important that as much documented factual support as possible be obtained. This information may only be obtained by visual inspection of the area and from readily available secondary sources or community sources. Property owners must NOT be contacted at this time. However, there may be times when those performing survey work are approached by property owners. Where this is the case, an explanation to the property owner emphasizing the preliminary nature of the work for study purposes is reasonable.

3. Data for the conceptual stage survey is obtained from a number of sources. The approximate number of individuals, families, businesses, farms, and nonprofit organizations that will be displaced is obtained from the field view for each of the proposed roadway projects requiring the acquisition of private land.

4. Secondary information sources may be used to obtain data on each of the proposed roadway projects requiring the acquisition of private land. These secondary sources may include, but are not necessarily limited to the following:

a. Local public officials.
b. Census tracts.
c. Planning agencies.
d. Model cities organizations.
e. Real estate brokers and boards of realtors.
f. Multiple listing agencies.
g. Real estate developers.
h. HUD area, region, and insuring offices.
i. Builders and construction associations.
j. Civic organizations.
k. School systems.
l. Tax collectors.
m. Mortgage lenders.
n. Real estate management firms.
o. Real estate transfer reporting services.
p. Local real estate appraisers.
q. Public housing agencies.
r. Utility companies.
s. Right-of-Way personnel.
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C. Conceptual Stage Survey Report.

1. The conceptual stage survey report is a formal written presentation of the relocation data captured for each proposed roadway project requiring the acquisition of private land in the conceptual stage survey and attached to the NEPA document (either a categorical exclusion evaluation, environmental assessment, or environmental impact statement).

The probable availability of comparable decent, safe, and sanitary replacement housing and replacement sites for farms, businesses, and nonprofit organizations is obtained from a tabulation of present and future decent, safe and sanitary replacement housing and replacement sites which may be available in the area, based on real estate market trends and developments.

The report should be completed in sufficient detail to satisfy the requirements of the District Design Unit in the preparation of the NEPA document and the presentation of relocation data at the corridor and design public meeting if one is held.

2. The conceptual stage survey report shall contain information obtained through secondary sources referenced in 4.02.B.3 and 4.02.B.4 to include where applicable:

   a. An estimate of the households to be displaced, including owner/tenant status, estimated value and rental rates of property to be acquired, family characteristics (e.g., minorities, income levels, tenure, the elderly, large families and persons with disabilities when applicable). Include a description of the type of dwelling, (e.g., single family, apartment, townhouse, mobile home).

   b. An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, housing of last resort actions should be considered (see Section 4.07).

For each right-of-way project involving the displacement of a residential household, create a chart showing available housing in increments of $50,000 as illustrated below:

<table>
<thead>
<tr>
<th>Price Range</th>
<th>Type (e.g., single family home)</th>
<th>Estimated Number of Residential Displacements</th>
<th>Estimated Number of Available Replacement Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - $50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$50,001 - $100,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

c. An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

d. 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.

For each right-of-way project involving non-residential displacements, create a chart illustrating the effects of the non-residential acquisition(s) and the applicability of functional replacements:

<table>
<thead>
<tr>
<th>Estimated Number of Non-residential sites</th>
<th>Type (e.g. business)</th>
<th>Estimated Number of Employees</th>
<th>Estimated Number or Available Replacement Sites</th>
</tr>
</thead>
</table>
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a. 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.

b. If a building or a dwelling is noted as being vacant, include an explanation of how the vacancy was determined, such as visually observed during scoping.

c. Identify any special relocation advisory services that may be necessary from the displacing Agency and other cooperating Agencies. This is especially important when tenants are living in government subsidized dwellings. Therefore, when this occurs, meet with the local housing authority to discuss potential replacement government subsidized dwellings in order to coordinate relocation efforts for low income tenants in these situations (See Chapter 4.10).

The following disclaimer must be added to all conceptual stage survey reports:

"Estimates given for dwellings are for planning purposes only in order to secure funding and DO NOT constitute a valuation of real estate". Include a statement that 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 that relocation resources are available to all displaced persons without discrimination.

3. Changes in Scope during the Conceptual Stage.

a. If three years has passed since NEPA approval, or at any time there are changes in a project's scope, impacts or mitigation, the environmental document must be reevaluated. Evaluate whether there are changes to displacements of residences, businesses, tenants, or otherwise, and if so, amend the conceptual stage survey report.

b. Where an approved NEPA document is being reevaluated, coordination by those involved in the original approval must verify the status regarding the right-of-way acquisition. An updated Conceptual Stage Report may be needed in the event the number and/or types of displacements identified have changed.

c. When a NEPA document is being reevaluated and the right-of-way process has moved beyond the conceptual survey stage, the NEPA reevaluation document must explain the status of the right-of-way process.

Note: The Conceptual Stage Survey Report would only need to be revised if the Pre-Acquisition report has yet to be developed. If the right-of-way acquisition process has already started, there is no need to revise the Conceptual Stage Survey Report. Note in the NEPA reevaluation document the status of the right-of-way process, and that the pre-acquisition survey report is available. If changes to a pre-acquisition report occur, only the pre-acquisition report is revised. Do not attach the pre-acquisition survey to the CE reevaluation.

Where additional federal funding is needed, the FHWA will need documentation to evaluate the justification provided.

4. Upon completion of the report, copies should be distributed to the District Design Unit for their use, to the Central Office Acquisition Unit, and a copy retained for the District file.

D. Pre-Acquisition Survey.

1. Following NEPA approval (see 4.02.A) and concurrent with the completion of a project damage estimate, the District Chief Negotiator will initiate a pre-acquisition survey of the project. The pre-acquisition survey is primarily for gathering data for the Pre-Acquisition Report (see 4.02.F). It is intended to produce both an inventory of specific relocation needs and an inventory of available comparable replacement housing and business replacement sites.

2. The District relocation staff will conduct a survey of the individuals, families, businesses, farms, and nonprofit organizations within the proposed right-of-way. The relocation advisor will make personal contact with and interview each displaced person, preferable face-to-face, to obtain the data necessary for completion
of the Relocation Assistance Interview (Residential), and/or Relocation Assistance Interview (Business) in the ROW Office system. It is extremely important at this stage of the relocation process that the relocation advisor obtains accurate, detailed information clearly reflecting both the housing needs of each displaced person and the individual circumstances influencing the relocation process for each displaced person.

3. For residential and business displacements, it is necessary to determine 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 and business.

When the relocation advisor visits the site occupant, the relocation advisor will explain that he or she is conducting a data-gathering survey, and that the visit in no way should be construed as a notice of pending displacement or qualification for any relocation benefits. The following points must be explained to the occupant at the time this contact is made:

a. To qualify for relocation benefits, the persons involved must be in occupancy of the subject property when the Department makes the written offer for the parcel (unless a notice of intent to acquire is issued).

b. That right-of-way plans for the project could change or funding could be cancelled. The contact is being made to determine the relocation requirements of those who will be displaced if the proposed highway project becomes a reality and if final plans require the acquisition of the property of the occupant.

c. That the occupants should not take any actions toward a possible future move that would cause them embarrassment, hardship, or financial loss if the property they now occupy is not acquired by the Department as tentatively planned.

4. An inventory of available replacement housing and business relocation sites is obtained through contact with area real estate brokers, multiple listing agencies, newspapers, or public housing agencies. At a minimum, the information obtained on each residential listing must include: the address or location; asking price; number of rooms; number of bedrooms; type of construction; state of repair; type of neighborhood; proximity of public transportation and commercial shopping areas; and distance to any pertinent social institutions (e.g., churches, community facilities). For available business relocation sites, in addition to the items noted above, a notation of all special features to be found on the property, as well as the number and square feet of all buildings, must be included.

5. During the pre-acquisition interview, the negotiator must inform the persons involved that anyone who is an alien not lawfully present in the United States is ineligible for relocation services and payments unless such ineligibility would result in extremely unusual hardship to a qualifying spouse, parent or child who is lawfully present in the United States. Forms RW-595R or RW-595B must be signed by each residential or business displaced person, respectively, to certify legal residency status in the United States. If the District has reason to believe that the certification is not valid, contact the Central Office Right-of-Way Acquisition Unit for verification.

E. Guidelines on Completion of Relocation Assistance Interviews.

1. General. The RW-593AR Relocation Assistance Interview (Residential) and/or RW-593AB Relocation Assistance Interview (Business, Farm, Nonprofit Organization) form must be completed for each individual, family, business, farm and nonprofit organization to be displaced by the proposed project. This information must be included in the project file. It is extremely important that the relocation advisor obtain accurate, detailed information for completion of the appropriate ROW Office screens.

The relocation assistance interview is normally conducted face-to-face. A relocation assistance interview and the Preacquisition Claim Maintenance screen in ROW Office must be completed for every residential individual and family and for every business, farm and nonprofit organization to be displaced from the right-of-way. It is entirely possible to have a number of pre-acquisition screens for a single parcel or building; it is also possible to obtain both a residential and a business pre-acquisition interview for the same displaced person in the same building.
In the event people moved into and occupy properties scheduled for acquisition, and such occupancy takes place after the pre-acquisition survey has been completed, the relocation advisor must contact the occupants as soon as he or she becomes aware of their occupancy and obtain the data required for the applicable Relocation Assistance Data form.

The information on the Pre-acquisition Claim Maintenance screen must be complete prior to submission of all replacement housing and rent supplement evaluations. This is necessary since subsequent ROW Office activity is dependent upon accurate information from these screens. It is the responsibility of the relocation advisor to ensure that the ROW Office screens contain current, accurate information and to make appropriate changes to the form.

The Department has formulated a suggested pattern for the pre-acquisition interview. This pattern is designed to facilitate information gathering by obtaining data in a logical sequence, instilling confidence in the person being interviewed, and encouraging the interviewee to speak more freely as the interview proceeds. It should be noted that the pattern of completion is merely suggested, and the relocation advisor may obtain the necessary data in whatever sequence desired.

2. Completing the Residential Interview (Forms RW-593AR and RW-594). The relocation advisor completing a residential pre-acquisition interview should explain to the displaced person at the beginning of the interview that some of the questions are of a personal nature and that the displaced person can withhold the requested information if desired. (The displaced person should not be pressed for answers to questions that they feel are offensive or invade their privacy). The relocation advisor should also explain why questions of a personal nature, such as those relating to his income and age, are included in the interview. As the Department will assist the displaced person in obtaining and occupying adequate replacement housing that is within his or her financial means, such information is necessary in determining financial capabilities, as well as bringing to light any extenuating circumstances that will affect the relocation program.

It is suggested that the ROW Office information be completed in the following order:

   a. Determine the name, home address, and home and work telephone numbers of the displaced person and the best time to call.

   b. Determine the number of people residing in the dwelling, broken down into male and female, and state their ages (with adults classified as anyone aged 18 or older).

   c. Enter a description of all buildings on the property and list all rooms in the dwelling unit. If a mobile home is situated on the parcel, state the exterior dimensions.

   d. List any disabilities of the occupants that could affect relocation needs.

   e. Enter a statement as to whether or not the dwelling meets decent, safe and sanitary standards. The relocation advisor should be able to make this determination by routine visual observation. This determination should not be discussed with the displaced person. If the dwelling doesn't meet standards, an explanation must be included in the "comments" section.

   f. Determine the type of displaced person (owner or tenant) and identify the type of dwelling unit occupied (house, apartment or room, or mobile home). If the displaced person is a tenant, determine if the unit is furnished or unfurnished.

   If the dwelling is a mobile home, determine if the home is owned or rented and if the site is owned or rented.

   g. Determine the gross family income from all sources (excluding dependents) of income including wages, interest income, social security, welfare (but not including food stamps), disability payments, and other untaxed sources. Explain, particularly to a tenant, that the amount of income may have a bearing on the supplemental calculation and, if it does, that the amounts will be verified at a later date. Further explain that the displaced person may choose to withhold the information but that the undisclosed income will not be considered in the supplemental calculation.

   h. Enter the date the displaced person occupied the dwelling. Extreme care should be exercised in
completing this item as it establishes eligibility for various relocation benefits.

For tenants, particularly those not previously identified in the conceptual survey, the date of occupancy should be verified by an outside source, such as the owner's rental records. Where the occupancy status determined from an independent source differs from that provided by the claimant, the differences must be resolved and documented in the file, if they affect eligibility.

If the displaced person is a tenant, enter the current rental payment, the cost of utilities and which utilities are and which are not included in the rent. Also, determine if a special tenant-landlord relationship exists (e.g., son-father) and determine if the tenant performs any services in lieu of rent.

If the displaced person is an owner and has an outstanding mortgage, enter the interest rate, original amount and term, the estimated remaining amount and the monthly payment.

i. Indicate the displaced person preference for an area in which to relocate, such as a school district or political subdivision.

j. Indicate the displaced person's tentative relocation plans.

k. The area reserved for comments should include any and all information the relocation advisor feels may be pertinent to the relocation.

l. Indicate whether or not a tenant is receiving government assistance and collect application information.

m. The head of household and all other occupants must certify their legal residency status in the United States and acknowledge receipt of Bulletin 47 by signing Form RW-595R.

n. Title VI Questionnaire: In order to comply with the requirement in 23 CFR 200.9b(4), which requires the collection of statistical data relating to race, it is necessary for the relocation specialist to ask the head of household his or her race and national origin and document it in Right-of-Way Office. Form RW-594 should be used in the field to assist with the interview. If the displaced person requests a further explanation why the data is being collected, the specialist should explain that the federal government uses the information to monitor the broad impacts of highway projects to ensure that there are no disproportionate impacts on groups of any given race or national origin.

National Origin is the status of belonging to a particular nation by birth, origin or naturalization. It is a subjective term and can be the country where a person was born, where their ancestors came from, or even the country where they have become a citizen.

Race is a self-identification data item in which respondents choose the race or races with which they most closely identify. The relocation specialist should ask the head of household to select the one category under "race" that best applies to them and other occupants in the household.

Information collected on this form should be entered on the Occupant Maintenance screen of ROW Office for the "Head of Household" only. Under "Relationship", select "Head of Household". Then select the race and national origin from the choices offered. If the displaced person refuses to answer the questions and the relocation advisor is able to make a determination, then the advisor should complete the form based on observations. If the relocation advisor is unable to make a determination, then he should make a notation on the Form RW-594 and select "No Response/Could Not Determine" for "race" and "national origin" on the Occupant Maintenance screen.

3. Conducting the Business, Farm and Nonprofit Organization Interview. The pre-acquisition survey interview and the completion of the Business Pre-acquisition Claim Maintenance screen in ROW Office are the critical first steps in the business acquisition and relocation process. It is essential that complete and accurate information be gathered at the time of the interview, or as soon as possible after the interview. This information will be used as part of the evaluation process to determine the application or non-application of the Assembled Economic Unit Doctrine. See Section 4.05.B.2.
Chapter 4 - Relocation Assistance

The interviewer must explain the acquisition and relocation processes and advise the owner of all the steps that will be taken and all the Department representatives who will visit them in order to complete inventories, valuations, estimates and offers.

Completion of the business interview Form RW-593AB is relatively self-explanatory since the form was designed with a checklist of necessary information. The interviewer must explain to the owner the importance of the information requested of him or her and must solicit copies of documents necessary to finalize the valuation and relocation processes. Since it is usual that the owner will not have ready access to copies of all the requested documents, the interviewer should make arrangements for a follow-up visit to collect them. Some documents, such as a lease or mortgage, may be recorded at the courthouse and can be obtained there by the interviewer, if it is more convenient for the owner.

The general description must include a general listing of the real estate, fixtures traditionally associated with buildings (water heater, furnace, etc.), fixed machinery and equipment, moveable machinery and equipment, goods held for sale and other personal property. The Department appraiser responsible for writing the APA should accompany the relocation specialist to distinguish between realty and personalty for purposes of the real estate appraisal and M&E valuation.

A videotape or similar digital recording of the entire property including those items being inventoried MUST be made. Photographs should also be included in the claim file.

The description must be completed and placed in the file after the pre-acquisition survey interview is completed and prior to the completion of the appraisal problem analysis. It need not be a "nuts and bolts" listing of each and every item. However, it should be in sufficient detail to give the reader a general idea of the amount and types of real and personal property on the parcel.

The description is to be used as a guide to the real estate appraiser and the M&E appraiser in completing the Inventory of Improvements, Form RW-663B, and on uncomplicated cases, to obtain moving cost estimates. In extreme cases, the description and tapes can be used to document cases where claimants load up a parcel with personal property.

The description may be brief but must fully describe the business activity (e.g., bar and restaurant, retail sales specializing in cigars, or manufacture and sale of egg cartons).

The interviewer must observe, solicit and note information regarding special features, such as a walk-in cooler.

While it is recognized that the owner will probably not know about their relocation plans at the time of the interview, it is necessary to question the owner about future plans and to encourage the owner to start considering options. This question should be followed-up at every opportunity until the owner makes a final decision.

The federal identification number of the business is necessary to process acquisition and relocation payments.

Finally, Form RW-595B must be signed by the business owner to certify their legal residency status in the United States and acknowledge receipt of Bulletin 47.

F. Pre-Acquisition Report.

I. Minimum Data. After completion of the pre-acquisition survey, relocation assistance interviews, and the interview forms, forward to the District Right-of-Way Administrator for review and approval. Prior to any relocation payments being made, the District must enter the "DO Approved Date" on the Residential Preacquisition Claim Maintenance screen or the Business Preacquisition Claim Maintenance screen of ROW Office.

After completion of the pre-acquisition survey, all of the information is presented in a formal, written report. The District Chief Negotiator is responsible for coordinating the completion of the Pre-Acquisition Report. The report is designed to present the Department's detailed relocation plan for the project and must include, at a minimum, the following data:

a. A tabulation of all individuals, families, businesses, farms and nonprofit organizations to be
displaced by the project. Each group of displaced persons should be further subdivided by occupancy status (i.e., owner-occupant or tenant). If unique characteristics of a displaced person are expected to affect their eligibility for certain relocation benefits, a discussion of those factors and the affected benefits is required.

b. A summary of available replacement housing and business relocation sites obtained in the pre-acquisition survey. It is usual that replacement housing and business relocation sites that are available at the time the report is submitted will be removed from the market prior to the time of displacement. However, it is reasonable to assume that the supply of replacement housing and business relocation sites will remain fairly constant throughout the life of the project, unless an unusual influence (e.g., family size, special needs of the displaced persons, and the availability of comparable housing) will increase or decrease the number of listings available for sale or rent in the area. This section of the report should explain whether or not a future change is expected in the average number of listings, and if so, why. This section of the report should also mention the sources used to compile the list of available replacement housing and business relocation sites.

An available business site within the meaning of this section means one that is available or adaptable to the business being relocated. The site must be within a reasonable distance from the area from where the business draws its customers.

The following factors should be considered in the search for a site: the type of business; the type of inventory used by the business; the type of real estate; the ability of the business, including its machinery, equipment and fixtures, to be physically moved to and adapted to the site; the businesses’ patrons, customers and market; and zoning.

The listing and probable selling price of available sites should be noted. Indicate if no sites are found.

c. An analysis of federal, state, and community programs affecting the availability of housing in the project area. Notation should be made of any concurrent displacements in the project area by other Department projects, as well as by other governmental agencies. The impact of these displacements on the project should be evaluated and discussed.

d. A correlation of the displaced person's needs versus available replacement housing and business relocation sites. This is accomplished by evaluating the information contained on the Residential Pre-acquisition Claim Maintenance screen in ROW Office and the project damage estimate with the list of available replacement housing to ensure that a comparable replacement property is available within the supplemental limits. The information contained on the Business Pre-acquisition Claim Maintenance screen in ROW Office must be correlated with the list of available business relocation sites and the prospects for relocation of the businesses must be discussed.

e. Outline the anticipated major relocation problems and discuss proposed solutions including the need for housing of last resort. If the survey reveals that housing of last resort will be required, include a statement to that effect. If the survey reveals no major problems, include a statement that housing of last resort will be used if it is determined to be necessary during the course of acquisition.

f. A statement of required lead-time and the estimated period of time (in months) necessary to conduct an orderly, efficient, and humane relocation program starting with the date of initiation of negotiations for the project and ending with the relocation of the last displaced person on the project.

2. Attachments to the Report. The following attachments are made a part of the pre-acquisition report:

   a. Relocation Assistance Interview – Non-Residential – (Form RW-593AB).

   b. Relocation Assistance Interview – Residential – (Form RW-593AR)

   c. Map showing location of project.

3. Approval.
a. Upon completion and approval by the District Right-of-Way Administrator, the Pre-Acquisition report will be sent to the Central Office for quality assurance review and filing into the claim file.

b. The DO Approved date must be entered prior to submitting relocation payments into ROW Office.

Upon the occupancy of a new owner/tenant, a revision for that displaced person should be made and sent to Central Office for review.

G. Public Hearings. The District Right-of-Way Unit should be involved in the preparation for and participation in the hearings to the extent requested by the project manager.

Copies of Publication 47, Bulletin 47, A General Guide to the Relocation Assistance Program of the Pennsylvania Department of Transportation, and Publication 83, When Your Land is Needed for Transportation Purposes, should be made available to persons who attend public hearings.

Refer to Publication 295, Public Involvement Handbook, for a discussion of the public hearing process.

H. Relocation Notices.


This brochure is given to every displaced person at any time after receiving the authority to acquire, but no later than the pre-negotiations contact with the displaced person. See Chapter 3, Section 3.02.E.

This brochure is also made available to the public at public hearings for a project.

2. Notice of Intent to Acquire (prior to initiations of negotiations) RW-530.

a. When to Issue the Notice. A notice of intent to acquire may be issued to owners and tenants when the Department desires to establish eligibility for relocation benefits prior to the initiation of negotiations for the parcel. Such notice cannot be issued on any parcel prior to authorization to proceed with acquisition activities.

Discretion must be exercised when considering whether to issue a notice. It should be used only when the initiation of negotiations on the parcel is imminent. When such notice is issued, every effort should be made to commence negotiations as soon as practicable to prevent possible subsequent occupancy and to minimize rental problems for the owner. The need to relocate in advance of the fair market value offer for the owner's property must be fully evaluated.

b. Documentation of the File. When the relocation advisor or negotiator assigned to the claim recognizes the need for the issuance of a notice of intent to acquire prior to the initiation of negotiations, he or she should document the file to show:

   (1) The need for the notice;
   (2) Whether or not appraisals or waiver valuations of the property have been completed;
   (3) An estimate of time from the issuance of such a letter to the time the first negotiations contact will be made (formal written offer);
   (4) Any other pertinent facts

These procedures to be followed in order not to allow a subsequent occupant to establish eligibility for relocation benefits.

c. Approval to Issue the Notice. Upon the approval of the District Right-of-Way Administrator, the District may issue a RW-530, notice of intent to acquire. Where a Notice of Intent to Acquire is issued, enter the date into the ROW Office of the Notice of Intent Date located in the Residential or Business Relocation Claim Maintenance screen.
d. Issuance to a Tenant. When the notice of intent to acquire is furnished to an owner, it also must be given to the tenant, if any, within 15 days. If it is given to a tenant, the owner must be simultaneously notified of such action.

e. Central Office Notification. A copy of the notice and the backup documentation justifying the issuance of the notice must be submitted to the Central Office at the time it is sent to the displaced person.

3. Notice of Relocation Eligibility, Form RW-592. Where the Department does not desire to establish eligibility for relocation benefits prior to the initiation of negotiations, eligibility for relocation assistance will begin on the date of initiation of negotiations for the occupied property. Therefore, on the date of initiation of negotiations for the parcel, every owner who is to be displaced will be given Form RW-592. The form will also be given to every tenant who is to be displaced as soon as possible after the initiation of negotiations with the owner, but no later than 15 days after the date.

4.03 RELOCATION OF RESIDENTIAL OWNER AND TENANT-OCCUPANTS

A. General Provisions.

1. Payments and Benefits—General. The following outlines the payments and benefits available to a displaced owner or tenant of a residence. The occupancy status (owner or tenant) and length of occupancy determines the type of supplemental payment that a displaced person may receive.

Note: Supplemental payment limits may be exceeded in last resort housing situations. See Section 4.06.

a. An eligible occupant is a person who meets all the eligibility requirements for a supplemental payment as discussed in Section 4.03.A.2.

(1) An eligible owner-occupant of 90 days or more may receive:

- A supplemental payment: either a replacement housing supplement plus increased mortgage costs and closing costs not to exceed $31,000, or a down payment supplement including closing costs not to exceed $7,200, or a rent supplement not to exceed $7,200 or the amount that would have been offered as a replacement housing supplement, whichever is greater (limited by the rental calculation).
- Residential moving costs.
- Attorney, engineering and appraisal fees, a combined total not to exceed $4,000 per parcel.
- Relocation advisory assistance.

(2) An eligible tenant-occupant of at least 90 days may receive:

- A supplemental payment: either a down payment supplement including closing costs, not to exceed $7,200, or a rent supplement not to exceed $7,200.
- Residential moving costs.
- Attorney, engineering and appraisal fees, a combined total not to exceed $4,000 per parcel.
- Relocation advisory assistance.

b. A subsequent tenant is a person who occupies the property after the Department has acquired the property and is not eligible for any type of relocation assistance payment described in this Chapter. However, relocation advisory assistance applies to all types of displaced persons. See Chapter 5, Property Management, for a discussion regarding subsequent tenants.

2. Eligibility Requirements for a Supplemental Payment.
a. Length of Occupancy Requirements. To be eligible for a supplemental payment, the displaced person must have owned (or rented) and occupied the acquired dwelling for 90 days immediately prior to:

- The issuance of a notice of intent to (RW-530) acquire (See Section 4.02.H.2); or
- The initiation of negotiations for the parcel (See Form RW-592, Section 4.02.H.3); or
- The issuance of an advance notice of move date (See Form RW-590, Section 4.07.B).

b. Exception to Occupancy Requirement. Less than 90 day owner or tenant occupants are eligible to receive a rent supplement; however, it must be paid under housing of last resort regardless of the amount.

c. Acquisition Requirement. The Department must acquire the dwelling. If a person moves as a result of the initiation of negotiations and the dwelling is not acquired, a payment may be made.

d. Purchase/Rent, Occupancy and Decent, Safe and Sanitary Time Requirements. The displaced person must purchase or rent and occupy a decent, safe and sanitary replacement dwelling within one year from the date of the move from the acquired dwelling; or, if an owner, the date of receipt of the final payment of the full acquisition cost of the acquired dwelling; or, in the case of condemnation, the date the required amount is deposited in court, whichever is later. The one-year time limit may be extended for good cause by the Chief, Utilities and Right-of-Way Section.

e. Claim for Payment Requirement. The displaced person must file a claim for payment within 18 months of the later of the applicable dates mentioned in Section 4.03.A.2.d. The 18-month limit may be extended for good cause by the District Right-of-Way Administrator and documented appropriately in ROW Office.


a. A displaced person is not required to relocate to the same occupancy status (owner or tenant) held at the time of acquisition.

b. It is the Department's responsibility to make available a comparable replacement dwelling that will enable the displaced person to retain his or her original status. This includes tenants eligible for government housing assistance (See Chapter 4.10).

The Department is required to give an owner a replacement housing supplement offer and a tenant a rent supplement offer. Upon request, the Department will give an owner a rent supplement offer and the Department will give a tenant a down payment supplement offer. However, the Department is not required to use housing of last resort procedures in order to accommodate a displaced person's desire to change status.

For example, if a tenant's rent supplement offer is less than $7,200 (not housing of last resort), the Department is not required to use housing of last resort to provide a down payment supplement. Note that an owner-occupant of 90 days or more that was offered a replacement housing supplement up to $31,000 could receive a rent supplement up to the amount of the housing supplement without requiring approval under housing of last resort. The amount of the actual rental payment must be supported by rental computations as described in Section 4.03.L.

4. Payment After Death. A replacement housing payment is personal to the displaced person and upon the displaced person's death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

a. In the case of a rent supplement, the amount attributable to the displaced person's period of actual occupancy of the replacement housing prior to death will be paid.

b. The full payment will be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy the replacement dwelling.

c. 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 displaced person will be disbursed to the estate.

B. Ordering Supplemental Evaluations. When the fair market value is ready to be forwarded to the Central Office reviewing appraiser, the District Chief Appraiser will order replacement housing or rent supplement evaluations as necessary.

C. Comparable Listings.

1. Who Computes Supplemental Offers. Comparables may be selected and supplemental offers may be computed by any qualified Department right-of-way employee. There is one exception to this rule. An employee who determined the fair market value on a parcel (whether by appraisal or waiver valuation) cannot select comparables or compute the supplemental offer on the same parcel. In the event of litigation and to the greatest extent possible, staff employees will present the selection of comparables and testimony.

2. Verification of Data. The relocation advisor will note the characteristics of the acquired dwelling by reviewing the valuation data and the needs of the displaced person by verifying the data recorded on Form RW-593AR. It is the responsibility of the relocation advisor to review the form for information that is pertinent to the type and/or size of the comparable that is needed. This must be done prior to completing the supplemental evaluation. If, during the review, the relocation advisor finds information that is not consistent with the fair market value or his or her knowledge of the claim, the relocation advisor must meet with the evaluator to reconcile any differences.

3. Number of Comparables. The relocation advisor will select three dwelling units that are most comparable to the acquired property. If three similar dwellings are not available within the immediate market, the relocation advisor may expand the search in concentric circles around the acquired dwelling until three comparable listings are found. The search may also be expanded to include dwellings of a different style that offer the same function and utility as the acquired dwelling. If three listings still cannot be found, the file should be fully documented to substantiate this fact.

4. Use of Builder's Cost Estimates.

   a. A building contractor's quoted price may be used as a comparable in determining the amount of a replacement housing payment provided:

      (1) Conventional comparable listings are not available.

      (2) The price quoted is for a completed dwelling, together with a lot and all utilities.

      (3) Land is available and the contractor can deliver a completed dwelling within a reasonable time.

      (4) The displaced person will not be required to move until construction of the new home is completed.

      (5) A confirmation from the contractor is included in the claim file.

   b. An estimate of this type must be based upon the replacement cost and not the reproduction cost of the acquired dwelling.

5. Comparables Must Be Functionally Similar to the Acquired Property. A comparable must be functionally similar to the acquired dwelling, particular attention being paid to the number of rooms and living space. The comparable dwelling must perform the same functions as the acquired dwelling, but it need not be identical to the acquired dwelling. See the definition of comparable in Section 4.01.J. Obviously over-priced comparables should be ignored.

6. Decent, Safe and Sanitary. Comparables must meet decent, safe and sanitary standards. Refer to Section 4.03.D.

7. Neighborhood. Comparables should be selected from the neighborhood in which the acquired dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the
8. Availability of Comparables Prior to Displacement.
   a. No displaced person will be required to move from the acquired dwelling unless at least one comparable dwelling has been made available. Where possible, three or more comparables will be made available. A comparable dwelling will be considered to be made available if:
      
      (1) The displaced person is informed of its location; and
      
      (2) The displaced person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
      
      (3) The displaced person is assured of receiving relocation assistance and compensation in sufficient time to complete the purchase or lease of the property.

   b. When making a replacement housing or rent supplement offer, the comparable dwellings used to compute the supplement must be made known to the displaced person in writing by indicating the address, probable selling price or rent of the comparable and the date of availability.

   c. Determining the availability of the selected comparable. The selected comparable used to establish the replacement housing supplement must be available as of the date of the offer. The selected comparable is deemed available if it sells after 30 days. In other words, if the selected comparable sold after 30 days there is no need to recalculate the supplement. Where the selected comparable sells within 30 days from the date of the offer, the supplement may be recalculated at the discretion of the Right-of-Way Administrator.

D. Decent, Safe and Sanitary Housing.

1. Dwellings That Must Meet Standards. Dwellings, whether comparable listings used to compute a supplemental offer, available listings shown to a displaced person as part of relocation assistance, or replacement dwellings purchased or rented by a displaced person must meet the standards for decent, safe and sanitary housing. Note: See 49 CFR 24.2(a)(8) for Decent, Safe and Sanitary requirements.

2. Minimum Standards. A decent, safe and sanitary dwelling is one that conforms to all applicable housing and occupancy codes and similar ordinances or regulations. However, if the code or ordinances do not outline any standards, the following minimum standards will apply.
   a. Water – the dwelling has a continuing and adequate supply of hot and cold potable water.
   b. Kitchen requirements – the dwelling has a kitchen or an area set aside for kitchen use which contains a sink in good working condition and connected to hot and cold water, and an adequate sewage system. A stove and refrigerator in good operating condition will be provided when required by local codes, ordinances or custom. When these facilities are not so required by local codes, ordinances or custom, the kitchen area or area set aside for such use will have utility service connections, and adequate space for the installation of such facilities.
   c. Heating system – the dwelling has a heating system capable of sustaining a healthful temperature of approximately 21 °C (70 °F).
   d. Bathroom facilities – 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.
   e. Electrical system – the dwelling has safe electrical wiring system adequate for lighting and other devices.
   f. Structurally sound – the dwelling is structurally sound, weather tight and in good repair.
   g. Egress – the dwelling contains unobstructed egress to safe, open space at ground level. If the
dwellings are on the second story or higher, with access through a common corridor, the common corridor on each story must have at least two means of egress.

h. Number of rooms/area of living space – The dwelling must be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes. In addition, the dwelling must have separate bedrooms for children of opposite gender, with no more than two children occupying each bedroom. It is recommended that separate bedrooms be provided for those separated by four years of age or more.

i. Displaced person with a disability – the dwelling must be free of any barriers that would preclude reasonable ingress, egress, or use of the dwelling by a displaced person with that type of disability.

3. Rental of Sleeping Rooms. The standards for decent, safe and sanitary housing as applied to rental of sleeping rooms will include the minimum requirements contained in paragraphs 4.01.D.2.c, e, f, g, and h. A sleeping room must also have a lavatory, bath and toilet facilities that provide privacy, a window that opens properly and a door that can be locked if such facilities are separate from the room.

4. Exceptions to Standards. The Chief, Utilities and Right-of-Way Section, and the Federal Highway Administration (on federal projects) may grant exceptions to decent, safe and sanitary standards. Requests should be limited to items and circumstances that are beyond the reasonable control of the displaced person to adhere to the standards. Approved exceptions will not affect the computation of the replacement housing payment.

5. Decent, Safe and Sanitary Inspections. An inspection is made to the extent necessary to obtain information to complete the Decent, Safe and Sanitary Inspection form (RW-538). Information captured is used for the administrative purpose of determining eligibility of displaced persons for payment under this section and is not a representation for any other purpose.

a. Decent, Safe and Sanitary Inspector. Prior to submitting the displaced person's claim for payment, the relocation advisor must inspect the replacement dwelling to determine it meets the standards for decent, safe and sanitary housing. Any individual in the District Right-of-Way Unit performing right-of-way acquisition, or contracted right-of-way consultant may perform decent, safe and sanitary inspections.

b. Inspection of Replacement in another Engineering District. If the displaced person moves within the Commonwealth but outside the geographical limits of the District in which the acquired property is located, and is otherwise eligible for a supplemental payment, a request for a decent, safe and sanitary inspection must be submitted to the appropriate District Right-of-Way Office. The request will include an original and three copies of either Form RW-560, RW-562, RW-563, or RW-566, whichever is applicable. The originating District should complete the basic information required for the forms. Upon receiving the request, the inspection will be accomplished as soon as is practical, and the completed forms, including the signature of the claimant, and other required documentation will be returned to the originating District for further processing.

c. Inspection if Replacement is in Another State. Whenever a displaced person moves to another state, the following letter will be addressed to the appropriate state Right-of-Way Office.

SAMPLE

Attached, you will find an original and three copies of an application for a Supplemental Payment.

Claimants formerly of (complete mailing address) have moved to (complete mailing address of the new property).

We would appreciate your arranging for an inspection of the property at (the new address in the state to whom you are writing) by one of your representatives and if the property is decent, safe and sanitary, have your representative sign in block 11 under signature of Real Estate Specialist.

Your representative should also obtain the signature of the property owner and a copy of the settlement
statement or lease for the new home

After you obtained the necessary signature, the application should be returned to:

_________________________, District Executive

Pennsylvania Department of Transportation Address

ATTENTION: ____________, District R/W Administrator

We appreciate your assistance and cooperation, and assure you of our willingness to return the favor at any time.

Truly Yours,

Contact the Central Office for out of state addresses.

d. Decent, Safe and Sanitary (DS&S) Inspection of Comparables. The selected comparable listing used to compute replacement housing, rent, and down payment supplement offers must meet decent, safe and sanitary standards. Where feasible, the selected comparable used as a basis for calculating a housing or rent supplement offer must be inspected both inside and outside to ensure that it meets decent, safe, and sanitary standards prior to using it to calculate a supplement. If an interior inspection is not feasible, the reason must be fully documented as described in Section 4.03 below.

It is not required that a full interior be performed on the additional comparables, however an exterior inspection must be performed. However, the relocation advisor may use their judgment to determine if an interior inspection is necessary. Based on information from a realtor and an exterior inspection, if the relocation advisor believes that the additional comparables would meet decent, safe and sanitary standards, the comparable listing can be used. Forms RW-570RH and RW-570RS should be noted accordingly. However, when the listing is an older home or if the relocation advisor feels that it is otherwise suspect, a complete interior inspection must be made. In the event the displaced person purchases the additional comparable, a complete interior inspection must be made.

For the availability rules relating to the selected comparable see Section 4.03.C.5.

e. Justification for not Inspecting the Interior of the Selected Comparable. Normally, an interior and exterior inspection is required for the selected comparable to determine compliance with decent, safe, and sanitary standards. However if an interior inspection is determined not to be feasible after a diligent effort, then it is permissible to use a comparable as the basis of calculating a supplement without the benefit of an interior inspection.

For properties listed for sale, three failed requests to local realtors must be documented on the ROW Office Claimant Contact Screen, and that information must be attached to Form RW-570RH-EVAL. The name of each realtor, their company name, phone number, and date of call must be recorded on the attached sheet.

For rental properties, if it is not feasible to inspect the interior of the selected comparable, it must be documented that the owner/property manager refused to allow an interior inspection for each comparable used on Form RW-570RS-EVAL. The name, phone number, and date of call must be recorded for each owner/property manager and that sheet must be attached to Form RW-570RS-EVAL.

f. Timing of the Inspection of the Replacement. When the displaced person notifies the relocation advisor that he or she has chosen a replacement dwelling, the relocation advisor will arrange to have the dwelling inspected for compliance with decent, safe and sanitary standards. The relocation advisor must stress the importance of this inspection, emphasizing that it is in the displaced person's best interests to have the inspection completed before he or she becomes financially obligated to either purchase or rent a replacement property, since the Department will not issue payment on any supplement unless and until the replacement dwelling meets or exceeds all decent, safe and sanitary standards (except Construction of a New Replacement Dwelling). Form RW-538 will be used to complete the inspection.
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applicable.

i. Purpose of the Inspection. The Department takes a firm position that the decent, safe and sanitary inspection of the replacement dwelling is conducted for the sole purpose of determining a displaced person's eligibility for a supplemental housing payment, and that approval of the replacement dwelling for that purpose in no way provides any assurance or guarantee that there are not deficiencies in the dwelling that may develop or appear at a later date.

It is incumbent upon the relocation advisor to ensure that the displaced person clearly understands that approval of the replacement dwelling by the Department in no way can be construed as a warranty against deficiencies in the dwelling or in its equipment and fixtures which may be uncovered at a future date. It is the responsibility of the displaced person to protect his or her best interest and investment in the purchase or rental of a replacement property, and the Department will assume no responsibility or blame if structural, mechanical, legal, or other unforeseen problems are discovered after the inspection has been conducted.

j. Payment of Inspection Fees. As a general rule, decent, safe and sanitary inspections and/or evaluations are performed by Department employees or right-of-way consultants working under a right-of-way acquisition contract. However, it may occasionally become necessary to hire an outside contract to perform a decent, safe and sanitary inspection or to make a determination of the estimated cost of decent, safe and sanitary repairs. Refer to no bid procurements or miscellaneous costs related to right-of-way claims (maximum $10,000), Chapter 6, Section 6.07, for the proper procedures to pay for such services.

6. Decent, Safe and Sanitary Inspection Guidelines.

a. General. In order to properly conduct a decent, safe and sanitary inspection, the relocation advisor must first become familiar with all applicable provisions of local building, plumbing, electrical, housing and occupancy codes and similar ordinances or regulations. Copies of such codes, ordinances or regulations should be obtained from the municipalities in the project area.

The following is a suggested administrative procedure for performing a decent, safe and sanitary inspection. It specifies important areas to be checked by the inspector. However, it is not meant to be all-inclusive, nor is it intended to restrict the inspector in the independent performance of his or her duties.

b. Exterior Inspection. The exterior of the dwelling must be weather tight. Check all painted areas for flaking and peeling. Check mortar points in brick for deterioration and the necessity for repainting. Patched areas are an indication of possible trouble. Pay particular attention to the condition of the flashing. This is frequently the origin of roof leaks. Note the condition of the gutters and downspouts. Check for a sagging roof. Observe the condition of the porches (e.g., floor, railing, and steps). Check the area where the septic tank is located for overflow, odors and the discharge of waste into other than approved disposal systems. Inspect any fire escapes for proper attachment to the building and condition. Note any accumulation of trash or garbage in the yard. Check the chimney for tilt and deteriorated mortar joints. The top of the chimney must be a minimum of one meter (3 feet) above the highest part of the roof or any trees in the immediate vicinity.

c. Interior Inspection.

(1) Floors should be sound and level, with no noticeable pitch or sag. Floor coverings (e.g., tile and linoleum) should not be cracked or broken. Walls should be sound, with no crumbling plaster or major cracks; wallpaper should not be peeling. There should be sufficient windows and doors in each room to provide adequate natural lighting, ventilation, access and privacy. Windows and doors should be checked for proper operation and functional locks where necessary. Panes of glass should not be cracked, broken or missing. Sticking windows or doors are usually the result of paint buildup and/or seasonal swelling; however, windows and doors that are severely out of plumb indicate the possible existence of structural damage in the supporting framework for that portion of the building. (Look for light entering around jambs and window frames). Ceilings should not be water stained, sagging, contain major cracks or have peeling plaster. Each room should contain sufficient heating and electrical outlets for the intended use of the room. Note the presence of any octopus outlets and
the proliferation of extension cords. Stairways should have a solid tread and be adequately illuminated. If the rise is more than one meter (3 feet), a handrail is required. Rooms, to be considered habitable, must be of size sufficient for use by normal sized people. Any room obviously too small for its intended use, or in which the ceiling is too low or a substantial portion of the floor area is usable only with difficulty, should be noted. Inspect the fireplace and hearth to ensure it was properly constructed and installed. Look for any evidence of infestation by rodents and fleas, ticks, or lice.

(2) Kitchen – The kitchen must contain space and utility connectors for a stove and a refrigerator. It must also contain a sink and space for food preparation. Check the sink to ensure that it is connected to hot and cold running water and attached to a drain with a trap. Make sure that there are no water leaks under the sink. If the kitchen contains a ducted range hood, make sure it is properly vented to the outside and not into the attic.

(3) Bath – The bathroom must contain a tub or stall shower, a commode and a sink. Both the sink and tub or stall shower must be connected to hot and cold running water, a trap and a drain. The commode must be operable, have a connection to running water and be attached to a waste line. The bathroom must be adequately ventilated, contain provisions for artificial lighting and afford privacy to its occupants. The light fixtures in the bathroom should not be operated by a pull chain.

(4) Attic – Look for water stains on the sheathing, rafters, and around chimney and valleys. With the lights out, check the roof for small holes. The attic should have provision for adequate ventilation to prevent heat buildup.

(5) Basement – Check the basement walls for cracks, bulges or buckles. If the basement leaks, water stains will be apparent on the walls. Inspect the floor joists and subfloor under the kitchen and bathroom for water stains indicating leaks. Basement stairs should be solid and well illuminated and have a handrail. The hot water tank should be properly vented (unless electric) and contain a safety valve. The sill, joists and headers should be checked for termite infestation, if accessible. (If no mud galleries are visible, randomly probe the structural members with a screwdriver). Note the type and condition of the plumbing supply and drain lines. Look for saddle clamps and use extra diligence when inspecting any and all items that give the appearance of being done by the "home handyman."

(6) Wiring – At a minimum, artificial lighting must be provided for in all halls, stairways and baths. All outlets must have cover plates. Check all switches to make sure they are operable. No temporary wiring is permissible. A 60 amp, 220-volt entrance is the minimum acceptable. Make sure it is properly grounded. Inspect the wiring for size and condition. 14-gauge wire is the minimum acceptable wire size, and frayed or bare wires or splices not in approved boxes are not permissible. Inspect the fuse box for bypass fuses. The electrical entrance must have a main power disconnect, as well as separate power disconnects for the electric range outlet, electric hot water tank and/or electric dryer outlet.

Note: When inspecting the electrical system of a replacement dwelling, the relocation advisor should exercise extreme caution. He or she is in unfamiliar surroundings, and is not aware of the peculiarities of the particular electrical system. Before performing any part of the electrical inspection, the relocation advisor should ensure that the system is properly grounded and no fuses have been bypassed. The inspector should have with a basic understanding of electricity and the components of the electrical system. When in doubt - don't touch!

(7) Furnace – The furnace must be properly vented and should have a safety switch, stack control and primary safety control (anti-flood control for oil, thermocouple for gas). Check the condition and operation of the furnace motor. All space heaters must be properly vented. Fuel oil storage tanks in the basement must be located a minimum of two meters (6 feet) from the furnace, and must have fill and vent pipes that terminate outside the building. Both gas and heating oil have distinctive odors. Any leaks should be easily discernible by smell.
E. Replacement Housing Supplement Offer Computations, Form RW-570RH.

1. Selection of Comparable Listings. Comparables will be selected in accordance with the criteria found under the definition of a comparable replacement dwelling in Section 4.01.J and the procedures outlined above in Section 4.03.C. Form RW-570RH is completed for each comparable listing.

2. Determination of the Probable Selling Price of a Comparable Replacement Dwelling - Form RW-570RH-EVAL

   a. Completion of Form RW-570RH-EVAL. The relocation advisor will enter in the appropriate spaces under the column "Acquired" the required items of comparison on lines A-H of the form. Any difference noted in the items of comparison between the valuation and the relocation advisor inspection of the acquired dwelling should be resolved at this time. The relocation advisor will also review the information regarding family size, disabilities, and other items found in ROW Office on the relocation screens.

   The relocation advisor will then enter in the appropriate spaces under the columns "Comparable" the required items of comparison on lines A-H of the form and the list price of the selected comparables on line J of the form.

   b. Displaced person with a disability-Add-On to Comparables. Displaced persons with a disability must be provided comparable dwellings free of barriers impeding reasonable ingress, egress and use. If the selected comparable dwelling does not have the required structural features necessary to provide reasonable ingress, egress and use, the costs to provide them must be added to the listing price of the comparable. Such costs must be supported by contractor's estimates and the relocation advisor must ensure that the changes can actually be made to the particular comparable. The add-on must be fully documented and explained on Form RW-570RH.

   c. Choice of the Most Comparable. After comparing the acquired dwelling to the comparable listings and verifying their availability on the market, the relocation advisor should choose the one listing which is most comparable, and equal to or better than the acquired dwelling. The relocation advisor should then enter its listing price (plus add-on, if applicable) on the form and thoroughly state the reasons for the selection in the remarks section.

3. Determination of the Amount Attributable to the Residential Use Portion of the Acquired Dwelling Form RW-570RH-EVAL. In a typical residential taking, the acquired property consists of a single-family dwelling located on a tract of land that is typical for residential use in the area. There are two situations in determining the acquisition cost of the acquired.

   a. Where a partial take displaces the residence, the acquisition cost is comprised of amounts paid for direct damages, severance, and temporary construction easements only. Amounts for cost of adjustment are not included in the acquisition cost.

   b. Where a total take displaces the residence, the acquisition cost is then the entire fair market value offer.

   In both situations, any administrative settlement award on the acquired dwelling must also be added to the acquisition cost in computing the replacement housing supplement.

   At times, the property being acquired does not represent the typical situation in that it contains excess land or buildings, it is on land with a use higher and better than residential, or the owner's unit is part of a multi-family or mixed-use building. In these cases, the residential-use portion of the acquired dwelling must be determined. Refer to Section 4.03.E.

4. Amount of the Offer - Form RW-570RH-EVAL. After the relocation advisor determines the listing price of the most comparable listing, he or she deducts the amount attributable to the residential-use portion of the acquired property. The result represents the amount of the replacement housing supplement offer.

5. Certification of the Offer - Form RW-570RH-EVAL. Upon completion of the above, the supplemental relocation advisor will complete the certification statement, sign and date the Form.
6. **$31,000 Limit on Offers.** Under no circumstances may a replacement housing supplement offer exceed $31,000 unless the District Right-of-Way Administrator gives prior approval. Refer to Section 4.06, for procedures to be followed in the event no comparables are available that will permit a replacement housing supplement offer of $31,000 or less. The District Right-of-Way Administrator's approval authority does not exceed $50,000. Replacement housing supplement offers exceeding $50,000, including closing and increased mortgage costs, require Central Office approval.

**NOTE:** Closing and increased mortgage costs are included in the $31,000 limit. When the computed offer nears, but is still under the limit, closing and increased mortgage costs must be estimated to ensure that the total does not exceed $31,000.

7. **Review of the Offer Computation.** Completed supplemental evaluations are submitted to the district relocation chief for review. The District Right-of-Way Administrator may designate another person to perform the review at the Administrator's discretion. If not acceptable, the computations will be returned to the originating relocation advisor with appropriate comments. If acceptable, the District Reviewer will indicate approval by signing the form and entering the approval date of the supplemental offer on the Supplemental Benefit Maintenance screen in ROW Office. A copy of the approved evaluation must be sent to the Central Office along with a copy of the offer letter as soon as they are completed and are ready to be given to the displaced person.

8. **Preparation of Form RW-556SP, Supplemental Payment Offer Letter.** The offer letter will be prepared in the District Office. The original is signed and dated by the District Right-of-Way Administrator. Sufficient copies of the letter should be prepared and distributed as follows:

   a. The original is to be hand delivered to the displaced person.

   b. One copy is included in the District file.

   c. One copy is sent to the Central Office for inclusion in its file.

9. **Presentation of the Offer.**

   a. **Replacement Housing Supplement Offer, Form RW-556SP.** The replacement housing supplement offer should, to the greatest extent practical, be made at the same time the fair market value offer is made. It is advantageous for these two offers to be made as a package so that one offer reinforces the other. In addition, an offer of estimated increased mortgage costs must be made at this time. See Section 4.03.J.4.

   Prior to making the offer, the advisor must check the figures on the offer letter to ensure that they match the computation on the evaluation Form RW-570RH-EVAL. This review will also serve to alert the advisor to carve-out situations that must be explained at the time of the offer presentation.

   Most of the time the negotiator will also act as the relocation advisor. However, if there is a separate negotiator and relocation advisor on a claim, the following procedures apply:

   (1) The relocation advisor and negotiator should confer for the purpose of arranging an appointment at the convenience of the displaced person. A joint visit is recommended to present a team approach, to present a package offer of the fair market value and the replacement housing offer, and to give the displaced person other pertinent acquisition and relocation information.

   (2) If the relocation advisor is not present at this time, the negotiator may act as the advisor and will notify the District Relocation Unit of the date the offer was made by noting this date on a copy of the supplemental offer letter. If the negotiator does not act as the advisor, he or she shall give written notification to the relocation advisor. The advisor is then required to contact the displaced person within 15 days, present the written offer and make a complete verbal presentation of the relocation assistance program. In any event, Publication 47, Bulletin 47, *A General Guide to the Relocation Assistance Program of the Pennsylvania Department of Transportation*, must be delivered at initiation of negotiations for the parcel, unless the displaced person has a current copy.

   b. **Rent Supplement Offer to an Owner-Occupant, Form RW-556RS.** Should the owner-occupant indicate, at any time, that he or she wishes to rent replacement housing, the relocation advisor will...
request, by office memo, a rent supplement computation. When possible, the relocation advisor will re-
contact the owner-occupant and present the rent supplement offer within 15 days of the date the owner
indicated a desire to rent. At this time, the advisor will describe the method by which the payment was
calculated.

The rent supplement offer to an owner-occupant cannot exceed $7,200 or the amount of the replacement
housing supplement, whichever is greater. However, the actual amount of the offer must be supported by
the rent supplement calculation shown in Section 4.03.K.

c. Relocation Assistance Program Explanation. At the time the supplemental offer is presented, the
relocation advisor is required to fully explain the relocation assistance program. The presentation must
include an explanation of the eligibility requirements for all applicable relocation payments.

d. All contacts must be fully documented on the Claimant Contact Maintenance screen in ROW
Office.

F. Non-Typical Acquisition/Carve-Out Situations.

1. Excess Land.

   a. If the acquired dwelling is located on a tract larger than typical for residential use in the area, the
   maximum replacement housing payment is the listing price of a comparable replacement dwelling on a
   tract typical for residential use in the area, less the acquisition price of the acquired dwelling on that
   portion of the acquired land which represents a typical tract. The acquisition price includes direct
   damages, severance, and temporary easements only. Amounts for cost of adjustment are not included.

   As an example:

   There is a total take of a dwelling on an 80,000 sq. ft. tract of land. The acquired property is appraised at
   $150,000. A normal residential lot in the area of the taking consists of a 20,000 sq. ft. tract, thus
   necessitating the carve-out of 60,000 sq. ft.

   To determine the amount of the replacement housing supplement offer, subtract the value of the acquired
dwelling on only 20,000 sq. ft. of the land from the listing price of the most comparable listing.

   The amount attributable to the acquisition cost of the dwelling on 20,000 sq. ft. of land will then be used
to determine the amount of the replacement housing supplement payment.

   As an example:

   | Listing price of the most comparable listing | $160,000 |
   | Minus value of acquired dwelling on 20,000 SF lot |
   | (as determined by an appraiser) | - $135,000 |
   | Replacement housing supplement offer | $25,000 |

   Another acceptable method of "carving out" the value of the excess land is to determine a rate per acre or
   per square foot for the excess land and to deduct the value of that excess land from the total "before
   value" of the acquired property. In the example above, if the excess land was valued at $0.25 per square
   foot, the carve-out would be 60,000 square feet times $0.25/SF = $15,000. The amount of the offer
   would be calculated as follows:

   | Listing price of the most comparable listing | $160,000 |
   | Minus acquisition cost of the acquired property |
   | ($150,000 appraised value - $15,000 carve-out) | - $135,000 |
   | Replacement housing supplement offer | $ 25,000 |

   a. When the acquired property contains buildings other than the residence that are used for other than residential purposes, the residential use portion will be determined by deducting that portion of the fair market value attributable to these buildings from the fair market value of the entire property. This residential-use portion will then be used when determining the replacement housing supplement offer and payment.

   b. The value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential-use portion. This value may be established by an appraisal done by a staff appraiser. The residential-use portion will represent the amount paid for the replacement property when determining the replacement housing supplement payment.

3. Major Exterior Attributes. When the comparable dwellings are similar to the acquired dwelling except that they lack a major exterior attribute, such as a site that is significantly smaller than the acquired site or does not contain a garage, an outbuilding, or an in-ground swimming pool, the appraised value of the attribute must be carved out of the fair market value of the acquired property before the calculation of supplemental payment is made.

   When an item is unusable and is listed in the appraisal as having minimum or no value, it is not necessary to replace the item. Therefore, it is not necessary to look for comparables having the item or carve the item out of the fair market value. If the item creates a negative effect on value, that amount should be removed from the acquired dwelling before the calculation is made.

   CAUTION: The necessity for a carve-out under this section is eliminated when, during the updating process, comparables are found that do contain the attributes. If this occurs, the supplemental offer computation must be revised using the asking price of the new comparable and the full fair market value of the acquired property. The decision whether or not to actually offer the revised amount is made based upon the procedures found in Section 4.03.G.2.

   Carve-outs for major exterior attributes only apply to the lack of the attribute in the selected comparable dwellings. If a replacement dwelling lacks any attributes, a carve-out is not made.

4. Highest and Best Use Other Than Residential. When the acquired dwelling is located on a tract of land where the fair market value is established on a use higher and better than residential, the replacement housing supplement offer (and, subsequently, the payment) will be determined by deducting the acquisition price of the acquired dwelling including the acquisition price of that portion of the acquired land which represents a typical sized lot for the area from the probable selling price of the most comparable listing.

   As an example:

   The property taken is 6,000 sq. ft. out of a 16,000 sq. ft. tract.

   The 6,000 sq. ft. tract is improved with an owner-occupied single-family dwelling.

   The highest and best use of the property is commercial.

   The land value as documented in the appraisal is $100,000 per 4,000 sq. ft., $150,000 for the 6,000 sq. ft. taken.

   The value of the building is $0 since it would have to be demolished in order for the tract of land to be used commercially.

   The typical size of residential lots in the project area is 4,000 sq. ft.

   Based upon this information, the supplemental offer and payment must be computed using $100,000 as the acquisition cost of the dwelling on a typical sized lot. This was determined as follows:
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<tr>
<td>Value of the land for a typical sized residential lot</td>
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5. **Partial Takings of a Normal Lot with a Buildable Lot or Remaining Uneconomic Remnant.**

The following two situations are included in this section because they represent frequently encountered acquisition situations that are similar to other carve-out situations.

**a. Remaining Buildable Lot.** In this situation, the acquired dwelling is located on a tract normal for residential use in the area and only a portion of the tract is being acquired, including the residence, leaving a buildable lot. The buildable lot will be treated like an uneconomic remnant even though it does not meet the uneconomic remnant definition. As such, the District must make an offer to purchase the buildable lot. Where the offer is accepted, the replacement housing supplement offer will be determined by deducting the before value of the entire parcel from the probable selling price of the most comparable listing. The same before value shall be used to compute the amount of the payment whether or not the claimant accepts the offer for the buildable lot.

**b. Remaining Uneconomic Remnant.** The Department is required to make an offer to purchase uneconomic remnants. In this situation, the acquired dwelling is located on a tract normal for residential use in the area and only a portion of the tract is being acquired, including the residence, leaving an uneconomic remnant.

If the uneconomic remnant offer is not accepted, the acquisition cost of the acquired dwelling and land, not including the value of the uneconomic remnant, must be used to compute the amount of the payment.

For example:

- Probable sale price of most comparable listing: $200,000
- Acquisition cost of acquired dwelling and land (not including UR): $150,000
- Replacement housing supplement = $50,000

If the uneconomic remnant offer is accepted, the acquisition is treated as a "total take", and the before value of the entire property must be used to revise the housing supplement offer and compute the amount of the payment. A complete explanation of this procedure must be given to the owner at the initial offer presentation.

For example:

- Probable sale price of most comparable listing: $200,000
- Before Value of entire property including UR: $175,000
- Replacement housing supplement = $25,000

6. **Multi-Family Dwellings.**

**a.** When the acquired property consists of a multi-family structure of which one unit is owner-occupied, the replacement housing supplement offer is computed as follows:

The value of the owner's unit only is to be used as the base for the supplement, not the entire fair market value. The value of the non-owner-occupied units must be deducted from the fair market value in order to determine the value of the residential-use portion.

**b.** When the replacement property is a multi-family structure, only the value of the owner's dwelling unit can be used to determine the supplemental payment, not the entire purchase price. The payment
would be the difference between the value of the owner's dwelling unit at the displacement site and the value of the dwelling unit at the replacement site.

   a. When the dwelling unit is part of a structure that also includes space used for non-residential purposes, the amount of the replacement housing supplement offer will be determined by using only that part of the fair market value that relates to the residential-use portion of the acquired property.
   b. When the replacement property is a structure that includes space used for non-residential purposes, only that part of the total cost which relates to the value of the owner's dwelling unit can be used when determining the replacement housing supplement payment.

G. Multiple Occupancy of a Single Dwelling.

1. General Policy. The basic policy of the Department in most multiple occupancy situations is to provide a single supplemental offer that will provide sufficient funds to enable all the occupants to relocate together into a single replacement dwelling. This policy leaves the displaced persons as they were found. The Department will not provide multiple supplemental offers and payments and therefore expend additional funds simply to enable the occupants to relocate separately for personal reasons.

   After a single offer is made, and if the occupants choose to relocate separately, a single payment will be made which may be shared by the occupants. See 2. below.

   Multiple supplemental offers and payments to occupants of a single dwelling will be made only when the conditions outlined in 3. below are present.

   See Section 4.03.O.12 for a discussion of moving cost payments in multiple occupancy situations.

2. Sharing of Supplemental Payments When Single Offer is Made. In situations where the Department computes and offers a single supplement, but two or more occupants move to separate decent, safe and sanitary replacement dwellings, each occupant will be entitled to receive a share of any supplemental payment that would have been made if the occupants had moved together to a decent, safe and sanitary replacement dwelling.

   The price or rent of the replacement dwelling will be the combined total of the price or rent of the separate decent, safe and sanitary replacement dwellings.

   A single payment will be made and the check will be made payable to all occupants who are entitled to a share of the payment.

   The payment will not be delivered until all occupants have vacated the acquired dwelling.

   In the situation where the Department offers a single supplement, the occupants move to separate replacement dwellings but not all the replacement dwellings meet decent, safe and sanitary standards, the occupants who move to decent, safe and sanitary replacements will be entitled to receive a prorated share of any supplemental payment that would have been made if the occupants had moved together to a decent, safe and sanitary replacement. In this situation, a check for the prorated amount will be made payable to those occupants who moved to a decent, safe and sanitary replacement.

3. Multiple Supplemental Offers and Payments. In the rare situation where it is determined that two or more occupants maintain separate households within the same dwelling, each occupant will be entitled to separate supplemental offers and payments.

   The Central Office Acquisition Unit will make determinations of multiple households. Requests for determinations should include, but is not limited to, the following information:

   a. The number of occupants.
   b. The relationship of the occupants to one another.
c. The ownership or tenancy status of the various occupants.

d. Rent paid, if any.

e. The physical characteristics of the acquired dwelling.

f. The number and type of rooms that are exclusively used by the various occupants.

g. The number and type of rooms that are shared by all the occupants.

h. The tax filing status of the various occupants.

H. Updates and Revisions of Supplemental Offer Computations.

1. Updates.

a. An update is a review of the supplemental computation to determine the availability of comparable properties when projects are delayed.

An update is documented by a memo to the file that states the reason for the update, the effective date of the update and makes one of the following statements:

(1) That the original comparable is still available.

(2) That the original comparable is no longer available but that there are others available at or below the price of the original comparable (list addresses and prices in the memo).

(3) That the original comparable is no longer available, there are none available at or below the price of the original comparable and only higher-priced comparables are available. In this case, in addition to the update, a revision of the supplement must be made.

Note: If no comparables of any kind are available, a builder's cost estimate and/or last resort housing procedures must be used.

b. Updates are made at the following times:

(1) Every 90 days for displaced persons who are considered to be actively searching.

(2) When the displaced person secures replacement housing; for example, when the displaced person enters into an agreement to purchase (see note), signs a lease, contracts to build, or arranges to permanently move in with relatives.

In this situation, the effective date of the update is the date the displaced person secures the replacement housing. No further updates will be made beyond that date unless the displaced person notifies the Department that there has been a change in plans and begins to actively search for another replacement property.

Note: An update is not necessary when the displaced person purchases a replacement dwelling that is priced at or below the price of the comparable dwelling.

2. Revisions. Only applicable if the appraised value has changed or there is a dramatic shift in the Real Estate market that changes the value of comparable housing.

a. The revision of a supplemental offer means a re-computation of the supplement resulting in a change in the amount of the offer.

b. A revision must be made when an update reveals that there are no longer comparables available within the amount already offered or whenever the fair market value is increased.

c. A revision must be made if an administrative settlement is paid on the acquired dwelling. In this case, the "Price of Acquired Dwelling" in the computations below is increased by the amount of the
administrative settlement.

d. The decision whether or not to actually offer the revised amount depends upon changes in the amount of the fair market value and/or the determined cost of replacement. The determined cost of replacement is the sum of the Department's fair market value plus the supplemental offer. This is synonymous with the listing price of the comparable upon which the supplement is based.

Examples:

<table>
<thead>
<tr>
<th>(1)</th>
<th>Comparable</th>
<th>Original Computation</th>
<th>Revised Computation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$225,000.00</td>
<td>$225,000.00</td>
<td></td>
</tr>
<tr>
<td>PRICE OF ACQUIRED DWELLING</td>
<td>-$215,000.00</td>
<td>-$220,000.00</td>
<td></td>
</tr>
<tr>
<td>OFFER</td>
<td>$10,000.00</td>
<td>$5,000.00</td>
<td></td>
</tr>
</tbody>
</table>

In this case, the determined cost of replacement has not changed, but the fair market value has. A new offer of $5,000 must be made.

<table>
<thead>
<tr>
<th>(2)</th>
<th>Comparable</th>
<th>Original Computation</th>
<th>Revised Computation</th>
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<tr>
<td></td>
<td>$225,000.00</td>
<td>$228,000.00</td>
<td></td>
</tr>
<tr>
<td>PRICE OF ACQUIRED DWELLING</td>
<td>-$215,000.00</td>
<td>-$215,000.00</td>
<td></td>
</tr>
<tr>
<td>OFFER</td>
<td>$10,000.00</td>
<td>$13,000.00</td>
<td></td>
</tr>
</tbody>
</table>

The determined cost of replacement has increased. A new offer of $13,000.00 must be made.

<table>
<thead>
<tr>
<th>(3)</th>
<th>Comparable</th>
<th>Original Computation</th>
<th>Revised Computation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$225,000.00</td>
<td>$228,000.00</td>
<td></td>
</tr>
<tr>
<td>PRICE OF ACQUIRED DWELLING</td>
<td>-$215,000.00</td>
<td>-$219,000.00</td>
<td></td>
</tr>
<tr>
<td>OFFER</td>
<td>$10,000.00</td>
<td>$9,000.00</td>
<td></td>
</tr>
</tbody>
</table>

Both the determined cost of replacement and the FAIR MARKET VALUE have increased. A new offer of $9,000 must be made.

<table>
<thead>
<tr>
<th>(4)</th>
<th>Comparable</th>
<th>Original Computation</th>
<th>Revised Computation</th>
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<tr>
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<td>$225,000.00</td>
<td>$223,000.00</td>
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</tr>
<tr>
<td>PRICE OF ACQUIRED DWELLING</td>
<td>-$215,000.00</td>
<td>-$215,000.00</td>
<td></td>
</tr>
<tr>
<td>OFFER</td>
<td>$10,000.00</td>
<td>$8,000.00</td>
<td></td>
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</tbody>
</table>

The determined cost of replacement has decreased. This is the situation described in Section 4.03.G.1.a.(2). In this case, it is unnecessary to prepare a new evaluation, Form RW-570RH. An update memo is placed in the file and a new offer is not made. When the payment package is prepared, the $225,000 comparable will be used as a basis for the maximum supplemental payment.

<table>
<thead>
<tr>
<th>(5)</th>
<th>Comparable</th>
<th>Original Computation</th>
<th>Revised Computation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$225,000.00</td>
<td>$223,000.00</td>
<td></td>
</tr>
<tr>
<td>PRICE OF ACQUIRED DWELLING</td>
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<td>-$219,000.00</td>
<td></td>
</tr>
<tr>
<td>OFFER</td>
<td>$10,000.00</td>
<td>$4,000.00</td>
<td></td>
</tr>
</tbody>
</table>

The determined cost of replacement has decreased while the FAIR MARKET VALUE has increased. In this case, the revised supplement must be based upon the original determined cost of replacement and the new fair market value or;
Chapter 4 - Relocation Assistance

Original Comparable $225,000.00
New Fair Market Value $219,000.00
$6,000.00

A new offer of $6,000 must be made.

e. Presentation of Revised Offers. When a revised offer is made, the offer letter, Form RW-556SP, must be clearly marked "Revised Offer - this offer supersedes the offer dated _________." The new figures upon which the revised offer is made must be entered on the computation portion of the form and the reason for the revision must be fully explained to the displaced person.

I. Replacement Housing Supplement Payment Computation.

1. Definition. The replacement housing supplement is the amount, if any, which when added to the acquisition cost of the acquired dwelling equals the reasonable cost of a comparable replacement dwelling. The reasonable cost of a comparable replacement dwelling is the actual cost paid by a displaced person for a decent, safe and sanitary dwelling, or the amount determined by the Department to be necessary for the purchase of a comparable replacement dwelling, whichever is less.

2. Decent, Safe and Sanitary Inspection. When the displaced person notifies the relocation advisor that he or she has chosen a replacement dwelling, arrangements must be made to conduct a decent, safe and sanitary inspection of the replacement in accordance with Section 4.01.J. Since the payment cannot be made unless the displaced person purchases and occupies a decent, safe and sanitary dwelling, this inspection should be made prior to the time the displaced person becomes financially obligated to purchase the property even if the property is one of the comparables. Form RW-538 will be used to document the inspection.

3. Purchase of a Replacement Dwelling. A displaced person purchases a dwelling when the displaced person:

   a. Acquires an existing dwelling. Copies of the deed and settlement statement support the purchase price.

   b. Purchases a life estate in a retirement home. The actual cost will be the entrance fee plus any other monetary commitments to the home, except that periodic service charges may not be considered. The payment is limited to the reasonable cost of purchasing a comparable replacement dwelling, less the acquisition cost of the acquired dwelling.

   c. Relocates to a dwelling that he or she previously owned. Any displaced person who has obtained legal ownership of a replacement dwelling or land upon which the replacement dwelling is constructed, either before or after displacement, and occupies the replacement dwelling after being displaced, but within the one-year limit, is eligible for a payment if the replacement dwelling meets the decent, safe and sanitary requirements. The purchase price of the replacement dwelling will be the current fair market value of the previously owned dwelling as documented by a District staff appraisal.

   d. Rehabilitates a dwelling that he or she owns or acquires. When the replacement dwelling selected by the displaced person has decent, safe and sanitary deficiencies, the cost to correct such deficiencies is eligible to the extent that the purchase price, cost of the replacement dwelling, and the cost of correcting the deficiencies do not exceed the maximum payment based on a comparable replacement dwelling.

   e. Constructs or contracts for the construction of a new decent, safe and sanitary dwelling on a site which he or she owns or acquires.

   f. Retains, moves and occupies the acquired dwelling. See Section 4.03.H.6.

4. Occupancy of a Replacement Dwelling. A displaced person occupies a replacement dwelling within the meaning of this section only if the dwelling is his or her permanent customary or usual abode as defined in Section 4.01.J.
5. Application for Payment, Form RW-560.

   a. Upon receipt of all necessary documentation, the relocation advisor shall enter the appropriate information on the form.

   b. The following values are needed:

      (1) The price of the most comparable property and the value of the residential-use portion of the acquired property. These values are found on the approved Form RW-570RH.

      (2) The amount paid for the replacement dwelling. See Section 4.03.H.3.

          Only the value of the residential-use portion of the replacement can be used. See Carve-Outs, Section 4.03.E.

      (3) The amount of closing costs supported by a copy of the closing settlement statement.

      (4) The amount of the increased mortgage costs.

   c. If the closing and/or increased mortgage costs cannot be paid at the time of the execution of this form, they may be paid later using Form RW-540.

   d. Claimant's Agreement and Certification. These statements protect the Department in the case of litigation. None of these paragraphs may be deleted or changed except for the "I, (We)" statements, and no additional conditions can be added. Any alteration to this section of the form will result in the rejection of the payment.

   e. Payment Procedure. This section of the form was added to put the displaced person on notice that the claim for payment is an application for payment and that no payment will be made until the application is approved.

   f. All parties entitled to a share of the payment must sign the form.

   g. The replacement housing supplemental payment package submitted to the Central Office for payment should include:

      • Claim information transmittal letter, Form RW-943.

      • ROW Office Claim Payment Invoice print out (1 copy).

      • DS&S inspection Form RW-538

      • Payment Form RW-560, original and 1 copy.

      • Documentation to support the price paid for the replacement property, closing costs and mortgage costs. All payment information must be added to ROW Office prior to submission to the Central Office for processing.

      • Any other pertinent information.

6. Replacement Housing Supplement Payment to an Owner-Occupant Who Retains and Moves the Acquired Dwelling.

   a. Owner-Occupant, 90 Days or More. If the owner retains ownership of the dwelling, moves it from the acquired site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the lump sum of:

      (1) The moving expenses and cost of restoration to a condition comparable to that prior to the move, including the retention value of the retained dwelling; and
(2) The cost incurred to make the unit decent, safe, and sanitary; and

(3) The current fair market value for residential use of the replacement site, unless the claimant did not own the acquired site and there is a reasonable opportunity for the displaced person to rent a suitable replacement site.

The acquisition cost of the acquired dwelling will be the total amount determined to be just compensation for the real property. The retention cost of the dwelling will not be deducted from the acquisition cost before the replacement housing computation.

If the price of the replacement dwelling is less than the acquisition cost of the acquired dwelling for the items listed above, the owner is entitled to a down payment supplement not to exceed the lesser of $7,200 or the purchase supplement amount.

b. Owner-Occupant, of less than 90 days. A less than 90-day owner-occupant who retains the acquired dwelling, and moves it to another location shall be entitled to a payment not to exceed the price of the comparable minus the sum of paragraphs (1) through (3) in Section 4.03.H.6.a, provided:

(1) The total payment shall not exceed $7,200.

(2) The full amount of the payment must be applied to the expenditures enumerated in paragraphs (1) through (3) in Section 4.03.H.6.a.

7. Replacement Housing Supplement Payment to an Occupant with Partial Ownership. When a single-family dwelling is owned by several persons, and occupied by only some of the owners, the payment will be the lesser of:

a. 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

b. 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.

The amount of the supplemental offer in claims of this will typically be the amount computed in b. above. When this offer is presented to the displaced person, a full explanation of the method of payment must be made and the parcel file must be documented concerning this explanation.

If the application of this procedure, because of unusual circumstances, creates an undue hardship on the occupant with a partial ownership, the full facts along with a recommended solution should be submitted to the Central Office.

8. Payment Computation When an Owner Changes from a Rent to a Replacement Housing Supplement.

a. If an owner-occupant relocates and claims a rent supplement payment, he or she may subsequently claim a replacement housing supplement. This is provided that he or she purchases and occupies the new replacement dwelling within the original one-year period and files a claim for payment within the original 18-month period as mentioned in the eligibility requirements of this paragraph.

b. Amounts paid by the Department as a rent supplement must be deducted from the replacement housing supplement payment.

c. The Department will not pay the cost of the second move.

J. Closing Costs (Costs Incidental to the Purchase of a Replacement Dwelling) – Internal Order 81117.

1. Eligible Costs. A displaced person who is otherwise eligible for a replacement housing or down payment supplement is entitled to be reimbursed for the reasonable expenses actually incurred incident to the purchase of the replacement dwelling and customarily paid by the buyer, not including prepaid expenses.

Examples of such costs include:
Chapter 4 - Relocation Assistance

a. Legal, closing and related costs, including those for title search, preparing conveyance instruments, preparing surveys and plats, recording fees, and notary fees.

b. Lender, FHA, or VA application fees and appraisal fees.

c. Loan origination or assumption fees that do not represent prepaid interest.

d. Professional home inspection and termite inspection.

e. Owner's and mortgagee's evidence of title (e.g., title insurance limited by the price of the comparable).

f. Credit report.

g. Title Insurance (not to exceed the costs for a comparable replacement dwelling)

h. Escrow agent's fee.

i. Sales or transfer taxes limited by the listing price of the comparable, and other miscellaneous costs such as but not limited to:

   (1) Endorsements.

   (2) Flood certification when required by the buyer's financial institution.

j. Mortgage document preparation fee and other miscellaneous costs, such as but not limited to:

   (1) Tax service fee.

   (2) Underwriting fee.

k. Other costs determined by the Department to be incidental to the purchase.

2. Ineligible Costs. Prepaid expenses as referenced in 1. above refers to monies deposited in escrow with the lending institution for the payment of taxes and insurance as they become due.

3. Limited Costs. The title insurance policy and sales or transfer taxes must be based upon the selected most comparable property. If the displaced person purchases a replacement dwelling for more than the listing price of the most comparable property, the Department will participate only in the amounts necessary to purchase the comparable.

As an example:

Most comparable property $20,000; transfer tax $200

Replacement property purchased $30,000; transfer tax $300

The Department will reimburse the amount of $200.

4. Time of Computation and Payment. Closing costs are normally computed after the displaced person purchases a replacement dwelling, thereby actually incurring these expenses. However, an advance payment can be made.

If paid at the time of the replacement housing supplement payment, the closing cost payment will be recorded on Form RW-560. Otherwise, Form RW-540 will be used.

K. Residential Increased Mortgage Costs – Internal Order 81118.

1. General.

   a. Increased mortgage cost payments are made available to displaced 90-day owner-occupants to
compensate for the costs of refinancing an existing mortgage. This payment includes two parts.

1. The first part for increased mortgage interest is 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 acquired dwelling.

2. The second part consists of purchaser points and loan origination or assumption fees that are not paid as closing costs. Because this payment is designed to enable a displaced person to buy down their new mortgage, it is necessary to make these funds available to the displaced person at settlement.

Owners of 90 days or more are eligible to receive increased mortgage payment when utilizing a housing supplement

Tenants and less than 90-day owners who choose a down payment supplement are not eligible to receive the increased mortgage cost payment.

b. Multi-Use Properties. The interest payment on multi-use properties will be reduced to the percentage of the owners dwelling unit of the multi-use property.

c. Second Mortgages. When the acquired property is encumbered by a second mortgage, the interest on the second mortgage is included in the calculation for the payment. The fact that the second mortgage may have been obtained for purposes unrelated to the dwelling is irrelevant.

In these cases, two separate computations, one for each of the old mortgages, must be completed.

2. Eligibility Requirements.

a. Since the increased mortgage cost payment is a part of the replacement housing supplement payment, the eligibility requirements listed in Section 4.03.A.2 apply.

b. In addition, eligibility for increased mortgage cost payments requires that the dwelling acquired by the Department was encumbered by a bona fide mortgage that was a valid lien on the dwelling for not less than 180 days prior to the date of initiation of negotiations for the acquisition of the property.

Note: The date of Initiation of negotiations and the notice of intent to acquire (RW-530) are the only key dates.

3. Purchaser Points, Loan Origination Fees, or Assumption Fees. Points, loan origination fees, or assumption fees are payable even if the buy down payment is not applicable because the interest rate of the new mortgage is less than the interest rate of the old mortgage.

Mortgage discount, purchaser or loan origination points (seller's points are not eligible) are limited per Section 4.03.J.6.d.

4. Offer Determination.

Offer Responsibility. The offer is the amount necessary to buy down a replacement mortgage at a higher interest rate so that the monthly payment remains the same, plus points based upon prevailing rates. It is based upon prevailing rates of interest and points in the area and estimated payoff information on the acquired property.

It is the responsibility of the District to present a written Offer of Estimated Increased Mortgage Costs, Form RW-556IMIP to the displaced person as soon as possible following initiation of negotiations. Calculation of Estimated Offer. During the pre-negotiation contact with the owner-occupant of a residential dwelling the following information should be secured:

1. The current principal balance, remaining term, interest rate and monthly payment for the mortgage on the acquired property. It is important that accurate information be secured from either the displaced person or, upon written authorization from the displaced person, from the displaced
person's lending institution.

(2) A written statement of prevailing interest rates and points for thirty-year fixed rate conventional financing for area mortgages.

(3) Note: In the case of a variable or adjustable rate mortgage, the interest rate in effect at the time of the interview should be used to determine the offer.

http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/midpcales/

(4) Points are computed based upon the calculated mortgage, which is an amount at a higher rate of interest that results in a monthly payment the same as the monthly payment on the mortgage on the acquired property.

5. Offer Computation. Based upon the information and prevailing rates secured in accordance with 4.b. directly above, an offer amount is computed using a financial calculator or Form RW-578IMP.

Step 1: Enter the mortgage balance

Enter the monthly payment (principal and interest only)

Enter the current monthly interest rate

Solve for the remaining term

Step 2: Enter prevailing monthly interest rate

Enter payment from Step 1

Enter the remaining term

Solve for the principal value

Step 3: Remaining principal balance of mortgage

Less: Principal balance from Step 2

Equals: Amount needed to buy down mortgage

Step 4: Prevailing points rate

Times: Principal balance from Step 2

Equals: Participating point reimbursement

Step 5: Buy down from Step 3

Plus: points from Step 4

Equals: OFFER

6. Payment Determination.

a. Payment Computations. Upon request, the Central Office Acquisition Unit will compute the amount of the payment.

b. Rounding Figures. Because of differences among financial calculators, it is recommended that uniform rounding guidelines be followed. Dollar amounts are to be rounded to the nearest cent (.01), the term to the nearest one hundredth of one period, and percentages to the nearest one hundredth of one percent.

As an example:
$589.8249 is rounded to $589.82,

18.79983 months is rounded to 18.80 months,

1.066 percent is rounded to 1.07 percent

c. Required Documentation. The following documentation is required:

(1) A copy of the Offer of Estimated Increased Mortgage Costs, Form RW-556IMIP along with the computation worksheet.

(2) A copy of the mortgage on the acquired property, showing the original term, rate of interest, and monthly payment.

(3) Documentation from the lending institution verifying the date of payoff, the principal balance at payoff and, in case of a variable rate mortgage, the interest rate in effect at the time of payoff.

(4) A copy of the mortgage commitment on the replacement property, showing the term, rate of interest, amount, monthly payments and points.

(5) Proposed settlement sheet showing applicable mortgage related expenses.

d. Limiting Factors. While it is the responsibility of the Department to compensate a displaced person for the increased cost of mortgage financing brought about by the taking of the displaced person's property, limits have been placed upon the various factors used in the payment computations to protect the Department from over-compensating the displaced person.

The limiting factors for the increased mortgage payment computation are:

(1) The lesser of the remaining principal balance of the old mortgage or the amount of the new mortgage.

(2) The lesser of the remaining term of the old mortgage at the time of payoff or the term of the new mortgage.

(3) The lesser of the mortgage interest rate of the new mortgage or the prevailing interest rate for conventional thirty-year mortgages currently being charged by lending institutions in the general area of the replacement property.

(4) If the displaced person cannot obtain the prevailing rate because of poor credit, request a waiver of this limitation from the Chief, Utilities and Right-of-Way Section.

Examples:

The calculated mortgage is $10,000, but the displaced person takes out a new mortgage in the amount of $20,000. The computation must be based on $10,000.

The remaining term at the time of payoff is 240 months, and the displaced person takes out a 15-year (180 month) mortgage on the replacement property. The computation must be based upon the 180-month period.

The interest rate of the new mortgage is 14%, while other lending institutions are giving mortgages under essentially the same terms at 12%. The computation must be based upon the 12% rate.

The amount of purchaser points, fees, and other mortgage closing expenses are also limited, based upon the lesser of the calculated mortgage or the mortgage on the replacement property. Also see Section 4.03.J.3.

In the case of a variable or adjustable rate mortgage, the interest rate in effect at the time of payoff is used to compute the payment.
In the case of home equity loans, the payoff amount used to compute a payment is the lesser of the principal balance on the date of acquisition or 180 days prior to initiation of negotiations.

7. Payment Computation. The principal reduction (or buy down) computation results in the buy down amount that is the payment that, if it were applied to the amount to be refinanced, would cause the monthly payment of the refinanced amount to be equal to the original monthly payment.

The computation takes into consideration the limitations discussed in Section 4.03.J.6.d. A financial calculator or Form RW-578IMP may be used for the calculation.

Step 1: Enter amount of principal balance at payoff
   Enter monthly interest rate at time of payoff
   Enter monthly payment
   Solve for remaining term

If the term of the replacement mortgage is less than the remaining term of the mortgage on the acquired property, go to Step 1A. Otherwise, go to Step 2.

Step 1A: Enter amount of principal balance at payoff
   Enter monthly interest rate at time of payoff
   Enter term of replacement mortgage
   Solve for hypothetical monthly payment

Step 2: Enter remaining term or term on replacement, whichever is less
   Enter prevailing or replacement interest, whichever is less
   Enter monthly principal and interest payment from Step 1 or the hypothetical payment from Step 1A, whichever is greater
   Solve for principal balance

Step 3: Principal balance from Step 1
   Minus: Principal balance from Step 2
   Equals: Buy down amount

Step 4: Principal balance from Step 2
   Times: Points actual or prevailing depending upon the interest rate used in Step 2
   Equals: Points reimbursement

Step 5: Buy down amount from Step 3
   Plus: Points reimbursement from Step 4
   Plus: Appraisal, survey, mortgage prep and recording fees, etc.
   Equals: Increased mortgage interest costs

8. Time of Payment. Increase mortgage costs must be paid to the claimant at or near the time of settlement on the replacement property in order to reduce the new mortgage as intended.

If paid at the time of the replacement housing supplement payment, the increased mortgage cost payment will
be recorded on Form RW-560. If paid otherwise, Form RW-540 (original and 1 copy) will be used.

L. Rent Supplements.

1. Definition. A rent supplement payment is the amount of money determined to be necessary to compensate a displaced person for additional rental costs he or she will experience for 42 months after relocation.

The payment is determined by deducting the base monthly rent and utilities of the acquired dwelling from the lesser of the rent and utilities of the comparable dwelling or the actual rent and utilities of the replacement dwelling, and multiplying the difference by 42 provided it does not exceed the maximum payment amount.

For 90 day tenants, the maximum amount of this payment is $7,200 unless the provisions of housing of last resort apply. For 90-day owner-occupants, the maximum amount of this payment is $7,200 or the amount of their replacement housing supplement offer or unless the provisions of housing of last resort apply. For all less than 90 day occupants, a rent supplement payment may only be made under housing of last resort, regardless of the amount 24.403.(e).

2. Rent Supplement Offer Computation, Form RW-570RS.

a. Who Computes Rent Supplement Offers. Comparables may be selected and supplemental offers may be computed by any qualified Department right-of-way employee.

There is one exception to this rule. An employee who determined the fair market value or performed a waiver valuation on a parcel cannot select comparables or compute the supplemental offer on the same parcel.

b. Number of Comparables. The relocation advisor shall select the three dwelling units that are most comparable to the acquired dwelling unit. Every effort shall be made to obtain at least three comparable dwellings. Less than three comparables may be used when additional comparables are not available and the file is fully documented to substantiate this fact.

Note: Where a displaced person receives a government housing subsidy, a public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. Additionally, 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.

However, nothing in this part prohibits an Agency from 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 Agency is obligated to inform the person of his or her options under this part.

See Section 4.10 regarding government subsidized housing.

c. Availability of Comparables.

(1) No displaced person will be required to move until at least one comparable is made available. If available, three or more comparables must be made available. Made available means that:

- The displaced person is informed of its location in writing. This is accomplished by indicating the address, the cost of the rent and utilities and the date of availability on the Rent Supplement Offer Letter, Form RW-556RS; and

- The displaced person has sufficient time to negotiate and enter into a lease for the property. This obligation is fulfilled by giving the displaced person as many available listings as possible as part of relocation advisory assistance and by updating or revising the supplement as necessary. The displaced person is also assured of receiving a payment in sufficient time to complete the lease of the property.
(2) When the relocation advisor is computing the offer, he or she must verify that the comparables are available as of the date of the computation.

d. Assessing the Needs of the Displaced Person. The relocation advisor will note the characteristics of the acquired dwelling by reviewing the valuation and the needs of the displaced person by reviewing the data recorded in ROW Office on the Pre-acquisition Claim Maintenance screens. The relocation advisor should personally visit the acquired dwelling and verify all pertinent information through discussions with anyone having relevant knowledge. Any contradictions or inconsistencies must be addressed and reconciled before selecting the comparables.

e. Comparable Selection. Once the needs of the displaced person are determined, the relocation advisor will select the three most comparable available listings.

Listings used as comparables must be functionally similar to the acquired dwelling in accordance with the definition of comparable located in Section 4.01.J.

Note: If it is determined a displaced person is receiving assistance under a government housing subsidy, the rules of that program governing the size of the replacement dwelling shall apply. See Chapter 4.10.

Listings must also be inspected to ensure that they meet the decent, safe and sanitary standards, found in Section 4.01.J.

f. Adjustments for Utilities. Since the cost of utilities are an integral part of monthly housing costs, the base monthly rent of all dwellings used to compute a rent supplement offer and payment must be adjusted to include utilities.

Electricity, gas, other heating and cooking fuels, water and sewer are the only utility charges that are considered. The following link is provided to assist in preparing calculations for tenants: http://www.huduser.gov/portal/resources/utilallowance.html

When computing a rent supplement offer, the relocation advisor must determine which, if any, of the utility charges mentioned above are not included in the monthly rent of the acquired and comparable dwellings. When it is determined that any of the above are not included in the monthly rent, the average monthly charge for the utility must be determined for the particular dwelling unit and that amount must be added to the monthly rent of the dwelling.

g. Base Monthly Rent of the Acquired Dwelling.

(1) For tenants, the base monthly rent of the acquired dwelling shall be the lesser of:

- The actual average monthly cost of rent and allowable utilities. Economic rent may be used instead of actual rent if the tenant paid little or no rent and the use of economic rent would not result in a hardship to the tenant; or

- Thirty percent of the average monthly gross household income. This can only be used if the tenant's average monthly gross household income 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 for the area. These low income limits can be found at https://www.huduser.gov/portal/datasets/il.html. All sources of income, including interest income, social security, welfare (but not including food stamps, energy assistance, scholarships and earned income tax credits), disability payments and other untaxed sources of income from all adult occupants, will be included in the determination of average gross household income. Income from dependent children is not considered. Full time students over 18 may be considered dependents at the discretion of the Department. Income will be verified through a review of the displaced persons' signed federal and state income tax forms. If the displaced person refuses to provide the tax forms, the base monthly rent will be the actual or economic rent, whichever applies.

The 30% formula will not be used when the only displaced persons occupying the acquired dwelling are dependents. A full-time student or resident of an institution may be assumed to be a dependent.
unless the person demonstrates otherwise; or

The total of the amounts designated for shelter and utilities if the displaced person is receiving a housing assistance payment from a program that designates the amounts for shelter and utilities.

(2) For owners (see 4.03.K.2), the base monthly rent of the acquired dwelling shall be the economic rent plus utilities. Note that the 30% of monthly gross household income formula does apply to low income owners or tenants of less than 90 days, but it does not apply to 90-day owners. 90-day owners are eligible for a maximum rental payment up to $7,200 or the amount of their replacement housing supplement offer, whichever is greater, whether or not they qualify for housing of last resort.

(3) The appraiser or valuation preparer who determines the fair market value or any other qualified Department employee may establish economic rent.

h. Calculation for an Owner-Occupant. Where an owner-occupant elects to rent rather than purchase, the amount of the offer will be computed by deducting the monthly economic rent and utilities of the acquired property from the rent and utilities of the most comparable listing and multiplying by 42. At no time will the rent supplement be greater than that calculated for the housing supplement offer.

As an example:

Amount of housing supplement offer: $15,000

Rent and utilities of most comparable dwelling $800

Economic rent and utilities of acquired dwelling $-600

Difference $200

\[ \times 42 \]

Amount of offer $8,400*

* If supported by the rental calculation, the rent supplement offer to an owner-occupant may be as high as the housing supplement offer without using housing of last resort procedures.

i. Calculation for a Tenant-Occupant. The amount of the offer will be computed by deducting the base monthly rent from g.(1) above, from the rent and utilities of the most comparable listing and multiplying the difference by 42. Note: Refer to Chapter 4.10 where a displaced person is receiving assistance under a government housing subsidy.

Example No. 1: Actual and economic rent and utilities of the acquired dwelling is $700 per month, income is $2500 per month and does not qualify as "low income," no rental subsidy, most comparable listing is $800 per month including utilities.

Rent of most comparable $800

Actual rent and utilities of the acquired dwelling $700

Difference $100

\[ \times .42 \]

Amount of offer $4,200
Example No. 2: Actual and economic rent (and utilities) of the acquired dwelling is $400 per month, income of $1300 per month qualifies as "low income", no rental subsidy, most comparable listing is $500 per month including utilities.

Rent of most comparable = $ 500
Lesser of actual rent and utilities of the acquired dwelling $400 or 30% x $1300 = $390 = $390
Difference $ 110
$ 110
\[ \times 42 \]
Amount of offer $ 4,620

3. $7,200 Limit on Offers. Under no circumstances may a regular rent supplement offer to a tenant exceed $7,200 unless the District Right-of-Way Administrator gives prior approval. The District Right-of-Way Administrator's approval authority does not exceed $12,000. Refer to Section 4.06, for procedures to be followed in the event no comparables are available that will permit a rent supplement offer of $7,200 or less.

4. Certification of the Offer. Upon completion of Form RW-570RS-EVAL, the relocation advisor will sign, date and complete the certification statement on the reverse side of the form.

5. Review of the Rent Supplement Offer Computation. The completed supplemental evaluation is submitted to the District Relocation Chief for review. If acceptable, the relocation chief will indicate concurrence by signing the form. If not acceptable, the computation will be returned to the originating relocation advisor with appropriate comments.

6. Preparation of Form RW-556RS-Offer Letter. The District will prepare the offer letter. The original of the letter will be signed and dated by the District Right-of-Way Administrator. Sufficient copies of the offer letter should be prepared and distributed as follows:

a. The original is to be hand delivered to the displaced person.

b. One copy for the District file.

c. One copy for the Central Office file.

7. Presentation of the Offer.

a. Contacts with the Fee Owner and Tenant. When the rent and down payment supplements are ready to be offered to the tenant, the advisor and negotiator may, if feasible, arrange for a concurrent appointment with the fee owner. The fee owner will be informed that the Department will be in contact with the tenant to present the supplemental offers and to advise and assist in the pending move.

b. Offer Contact with Tenant. Within 15 days of the initiation of negotiations with the fee owner, the relocation advisor will contact each tenant to be displaced, and present, in writing, the supplemental offer Form RW-556RS, including the address of the main comparable and, if possible, a list of other available listings that can be rented for the amount of the offer or less.

The relocation advisor shall offer persons transportation to inspect housing of which they are referred.

Prior to making the offer, the advisor must check the figures on the offer letter to ensure that they match the appropriate computation on the evaluation Form RW-570RS-EVAL.

At the time the supplemental offer is presented to the displaced person, the relocation advisor is required to fully explain the relocation assistance program. The presentation must include an explanation of the eligibility requirements for the following:

(1) The supplemental payments and the process to make application.
(2) Moving costs.

(3) Closing costs.

(4) Ninety/thirty day notices.

(5) Attorney, engineering and appraisal fees.

(6) Administrative Appeal procedures.

c. All contacts must be fully documented on the Claimant Contact Maintenance screen in ROW Office.

8. Updates.

a. An update is a review of the supplemental computation to determine the availability of comparable properties. As previously referenced in Chapter 4.03.C.8.b, the selected comparable need not be updated unless it exceeds 30 days from the date it was selected.

An update to the housing supplement will be required when the District RW Administrator has determined that there has been a significant change in prices of comparables since the housing offer was made to the claimant. This is documented by a memo to the file that states the reason for the update and the effective date of the update.

9. Revisions.

a. A revision is a re-computation of the supplement resulting in a change in the amount of the offer.

b. Revisions are normally necessary only if an update reveals that only higher priced comparables are available. However, there could be other situations, such as a mistake in the original computation, which would require a revision.

c. Revisions will be reviewed in accordance with the review provisions of this section.

d. As a general rule, if the revision results in a higher offer the new amount will be offered. If the revision results in a lower offer, the lower amount will not be offered, but will remain in the file as proof of a proper revision. The exception to this rule would be a lower offer that was the result of a revision made to correct an error in the original offer.

e. Presentation of Revised Offers. When a revised offer is made, the offer letter must be clearly marked "Revised Offer - this offer supersedes the offer dated __________.” The new figures must be entered on the computation portion of the offer letter and the reason for the revision must be fully explained to the displaced person.

M. Rent Supplement Payment Computation.

1. Decent, Safe and Sanitary Inspection. When the displaced person notifies the relocation advisor that he or she has chosen a replacement rental unit, or is purchasing replacement housing, arrangements must be made to conduct a decent, safe and sanitary inspection in accordance with Section 4.03.D. Since the payment cannot be made unless the displaced person rents and occupies a decent, safe and sanitary dwelling, this inspection should be made prior to the time the displaced person becomes financially obligated to rent the property. Form RW-538 will be used to document the inspection.


a. Upon receipt of the necessary documentation, the relocation advisor will enter the appropriate information on the form.

Note: Where a displaced person receives a government housing subsidy, see Section 4.10 regarding government subsidized housing.

Necessary documentation includes a copy of the lease, if applicable, or a rent receipt for the replacement
Particular care must be taken in the situation where the displaced person rents a replacement dwelling from a family member. The District must make a determination that the displaced person's representation of actual rent paid for the replacement dwelling is a reasonable approximation of economic rent. If the actual rent is significantly more or less than economic rent, the economic rent must be used to compute the amount of the payment.

b. Adjustments of the Rent for Utilities. The rent of the replacement dwelling may have to be adjusted to make sure that it includes electricity, gas, other heating and cooking fuels, water and sewer. See Section 4.03.K.2.f.

c. The payment will be based upon the lesser of the rent and utilities of the comparable, or the rent and utilities of the replacement. Rent relocation advisors can utilize the HUD website for average rents.

http://www.huduser.gov/portal/resources/utilallowance.html

d. Claimants application and certification statements. These statements protect the Department and release the Department from further claims. None of the paragraphs may be deleted or changed except for the I (we) statements and no additional conditions can be added. Any alteration to this section of the form will result in the rejection of the payment.

e. Payment Procedures. This section of the form was added to put the displaced person on notice that the claim for payment is an application for payment and that no payment will be made until the application is approved.

f. All parties of legal age are entitled to a share of the payment must sign the form.

g. Recomputation of the Payment after Occupancy of the Replacement. Once a displaced person files a claim for a rent supplement, the amount of this payment is established, and will not be changed regardless of rent fluctuations in the replacement.

A displaced person may file a second claim for payment of a rent supplement if:

(1) The first rent supplement payment was computed on a replacement that rented for less than the comparable. The total of the two payments cannot exceed the final rent supplement offer.

(2) The displaced person actually moves to the second replacement property within the original 12-month period to rent and occupy a replacement. The Department will not pay the cost of the second move.

h. Disbursement of the Rent Supplement Payment. The amount of the rent supplement payment, determined as shown above, will be paid in a lump sum, unless the Department determines on a case-by-case basis and for good cause that payments should be made in installments.

i. Application for a Down Payment Supplement After Receiving a Rent Supplement. If, within the 12-month period to rent and occupy, the displaced person moves and purchases a decent, safe and sanitary dwelling, he or she may qualify for a down payment supplement. See Section 4.03.N for the computation of the payment.

j. Rent Supplement Payment Package. The payment package should include:

(1) Claim information transmittal letter, Form RW-943.

(2) ROW Office Claim Payment Invoice printout (1 copy).

(3) Payment Form RW-562, original and 1 copy.

(4) Decent, safe and sanitary inspection Form RW-538.
(5) Rent receipts or signed lease agreement to support the rental paid for the replacement property.

(6) Any other pertinent information, including utility information.

(7) Negotiations progress must be recorded on the Claimant Contact Maintenance screen in ROW Office.

N. Down payment Supplements (Occupants of 90 Days or more).

1. Definition. The down payment supplement is the amount necessary to enable an eligible person to make a down payment plus closing costs on the purchase of a decent, safe and sanitary replacement dwelling, not to exceed $7,200.


   a. No Comparables Necessary. Since the payment will be based upon the replacement dwelling only, no comparables are necessary. If, however, a displaced tenant requests listings of homes for sale, they should be provided as part of advisory services.

   b. Amount of the Offer. The amount of the offer will be $7,200 in all cases except where housing of last resort applies.

3. Presentation of the Offer. Refer to Section 4.03.D.9 (owners 90 days or more) or Section 4.03.K.7 (owners and tenants of less than 90 days).

O. Down Payment Supplement Payment Computation.

1. Decent, Safe and Sanitary Inspection. When the displaced person notifies the relocation advisor that he or she has chosen a replacement housing unit to purchase, arrangements must be made to conduct a decent, safe and sanitary inspection of the replacement in accordance with Section 4.01. Since the payment cannot be made unless the displaced person purchases and occupies a decent, safe and sanitary dwelling, this inspection should be made prior to the time the displaced person becomes financially obligated to purchase the property. Form RW-538 will be used to document the inspection.

2. Documentation. The relocation advisor will obtain the following information (note however, that the DS&S inspection may not be delayed waiting for documentation):

   a. A copy of the signed and dated purchase contract (or deed if the sale has taken place) for the replacement dwelling

   b. A copy of the estimated or actual statement detailing closing costs. These include expenses related to evidence of title, recording fees, attorney fees, real property transfer taxes, and other closing costs incidental to the purchase and financing of the replacement dwelling.

3. Claim for Payment, Form RW-566.

   a. Upon receipt of the required documentation, the relocation advisor will enter the appropriate information on the form.

   b. Parts 1, 2, 3, 4 and 5. These items document the eligibility requirements and are self-explanatory. All applicable dates must be entered and all questions answered. If any dates are questionable, such as the date of occupancy of the acquired property, they should be verified by an outside source and documented in a memo to the file.


      (1) Line 6.a. represents the amount of the offer, $7,200.

      (2) Line 6.b. represents the total amount paid for the replacement property including closing costs.

      (3) Line 6.c. is the lesser of lines 6.a. or 6.b. and is the amount of the Department's payment.
d. Part 7. Claimant's Application and Certification. These items must be fully explained to the displaced person. None of these items may be deleted or changed except for the "I (We)" statements. Since these items protect the Department in the event of litigation, any alterations to this section will result in a rejection of the payment.

e. Payment Procedures. This section of the form was added to put the displaced person on notice that the claim for payment is an application for payment and that no payment will be made until the application is approved.

f. All parties of legal age are entitled to share in the payment must sign the form.

g. Down payment supplement claim payment package submitted to the Central Office should include:
   (1) Claim information transmittal letter RW-943.
   (2) ROW Office Claim Payment Invoice printout (1 copy).
   (3) Original and 1 copy of payment Form RW-566.
   (4) Decent, safe and sanitary inspection Form RW-538.
   (5) Other required documentation (b. above) and any other pertinent information.

Negotiations progress for the acquired dwelling must be recorded on the Claimant Contact Maintenance screen in ROW Office.

h. Generally, the Department's share of the payment must be applied to the purchase price of the replacement dwelling. However, when the amount actually paid by the claimant equals or exceeds the maximum amount of the offer, the payment or a portion of the payment may be made directly to the displaced person.

4. Payment Computation When Displaced Person Changes from a Rent to a Down Payment Supplement.

   a. If a displaced person moves from the acquired property and receives a rent supplement payment, he or she may still be eligible to claim a down payment supplement. This is provided that he or she purchases and occupies the new replacement dwelling within the original one-year period and files a claim for payment within the original 18-month period as mentioned in the eligibility requirements of this paragraph.

   b. Amounts paid by the Department as a rent supplement must be deducted from the down payment supplement payment.

   c. The Department will not pay the cost of the second move.

P. Residential Moving Costs.

1. Eligibility.

   a. Any owner or tenant-occupant displaced from a dwelling will be reimbursed for reasonable expenses incurred in moving and for the removal, transportation, and reinstallation of personal property.

   b. A claim for payment must be filed within 18 months of the later of:

      (1) The date the displaced person moves or moves his or her personal property from the acquired real property; or

      (2) If an owner-occupant, the date the displaced person receives final payment of the full acquisition cost for the acquired property.

With the approval of the District Right-of-Way Administrator, the 18-month time limit may be extended for good cause.
2. Time of Payment—Advance Payment. Normally, the moving payment is made only after the move has been accomplished; however, the payment may be processed in advance and a check issued to the displaced person to the attention of the District Right-of-Way Administrator. The check will be held in the District Office and be delivered by a person other than those employees who negotiated the move or determined the amount of the move. The check will be delivered immediately after the move has been completed.

3. One Moving Cost. Generally, a displaced person is only eligible for one moving cost. However, where it is shown to be in the public interest, the District Right-of-Way Administrator may permit more than one move of a displaced person. Authorization must be made before the first move. An example would be a claimant who agrees to a temporary move to accommodate the Department's clearance schedule.

The file must be fully documented to show the reason that a second move is in the best interest of the Department, as well as the District Right-of-Way Administrator's approval.

The displaced person may choose reimbursement for both moves based upon either the appropriate fixed schedule or actual costs. However, if the displaced person wants reimbursement for storage costs, both payments must be based upon actual costs.

4. Choice of Move Type and Payment Method. The displaced person may choose the type of move and payment method that best suits the displaced person's needs.

The displaced person may choose to perform a self-move. Under this option, the displaced person can choose to be paid based on the fixed schedule payment or based on actual costs supported by receipted bills and hourly logs. Residential self-move payments cannot be based on the lower of two commercial moving cost estimates.

The displaced person may hire a commercial mover.

Moving cost payments can be determined based on the cost of one method or a combination of the methods listed below.

The amount and type of documentation necessary to process the moving cost claim for payment varies depending upon the type of move and method of payment chosen.

5. Fixed Schedule Payment—Occupants of Unfurnished Dwellings and Unfurnished Rental Units.

a. An owner displaced from his or her dwelling or a tenant displaced from an unfurnished rental unit may choose to receive payment for moving and related expenses based upon a fixed schedule. A displaced person who elects to be paid on a fixed schedule basis may employ a mover or perform a self-move. The amount to which he or she is entitled is based upon room count as follows:

<table>
<thead>
<tr>
<th>Number of Rooms</th>
<th>Amount of Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$500</td>
</tr>
<tr>
<td>2</td>
<td>$750</td>
</tr>
<tr>
<td>3</td>
<td>$1,000</td>
</tr>
<tr>
<td>Each Additional Room</td>
<td>$200 each</td>
</tr>
</tbody>
</table>

b. Determination of Room Count. The number of rooms for the purpose of determining the fixed schedule moving payment will be established by the advisor, in accordance with the following instructions:

(1) No firm rule can be established as to what constitutes a room; however, as a guide to establish the room count for moving cost purposes, it should be an area adequately furnished for a specific living purpose.

(2) "Adequately furnished" means minimum furnishings to accomplish the purpose for which the room is being used. For example, a mattress on the floor would not qualify an area as an adequately
furnished bedroom; however, a definable area furnished with a bed and dresser would qualify. Basements, attics and outbuildings may be counted as rooms when such spaces do, in fact, contain sufficient personality as to constitute a room. Bathrooms are not counted as rooms.

(3) Any differences in room count between the valuation document and the Preacquisition Claim Maintenance screens in ROW Office should be explained by a memo to the file and photos.

6. Fixed Schedule Payment—Occupants of Furnished Living Quarters. The displaced occupant of furnished living quarters, including sleeping room tenants, may receive a moving cost payment of $400 for the first room plus $70 for each additional room. A person with minimal possessions who occupies a dormitory-style room shared by two or more unrelated persons will receive a moving cost payment of $100.


   a. An owner or tenant-occupant displaced from a dwelling is entitled to payment of his or her actual moving and related expenses as the Department determines to be reasonable and necessary. The displaced person may hire a commercial mover to perform the move.

   b. Reimbursable costs include:

      (1) Transportation of the displaced person and personal property not to exceed 50 miles.

      (2) Packing, crating, unpacking and uncrating of the personal property.

      (3) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property.

      (4) Storage of the personal property for a period not to exceed 12 months unless the Department determines that a longer period is necessary. Storage costs cannot be paid if the storage site is a part of the acquired property or other property owned, leased or controlled by the displaced person. The District Right-of-Way Administrator may approve storage costs beyond 12 months, if justified. The file must be appropriately documented.

      (5) Insurance for the replacement value of the property in connection with the move and necessary storage.

      (6) The replacement value of property lost, stolen or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent or employee) where insurance covering such loss, theft or damage is not reasonably available.

      (7) For mobile homes, the reasonable cost of repairs and/or modifications so that a mobile home can be moved or made decent, safe, and sanitary.

      (8) The cost of a non-refundable mobile home park entrance fee, limited by the amount of the fee at a comparable mobile home park.

      (9) Other moving-related expenses that are not listed as ineligible under c. below, as the District Right-of-Way Administrator determines to be reasonable and necessary.

   c. Ineligible residential moving and related expenses.

      (1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership.

      (2) Interest on a loan to cover moving expenses.

      (3) Personal injury.

      (4) Expenses for searching for a replacement dwelling.

      (5) Refundable security and utility deposits.
d. Moving Cost Estimate.

(1) The displaced person must secure one estimate from a reputable, local mover regularly engaged in residential moving. This estimate shall be submitted to the Department for review prior to the move.

Note: In the normal move situation, the Department does not pay for residential moving cost estimates. In unusual circumstances, the District may pay for the estimates with the prior approval of the Central Office Acquisition Unit.

(2) Upon review and the approval of the estimate, the District will inform the displaced person that the estimate is acceptable using Form RW-596R.

(3) If the estimate appears unreasonable or if the move is unusual in nature, additional estimates may be obtained. Generally, when more than one estimate is obtained, the low estimate will be approved. When the low estimate is not approved, documentation substantiating the selection of a higher estimate must be included in the claim file.

e. Reimbursement will be limited to paid receipts for a reasonable amount submitted at the conclusion of the move.


a. An owner or tenant-occupant displaced from a dwelling may perform a self-move and be reimbursed for actual, documented out-of-pocket expenses.

b. The only items eligible for reimbursement are those items actually incurred and documented with receipts or canceled checks. Examples of eligible items include insurance, equipment rentals and packing materials.

c. Wages paid for the labor of persons who physically participate in the move are eligible for reimbursement but must be fully documented by logs and diaries. The hourly rate paid for labor costs cannot exceed the rate paid by commercial movers. The total number of hours needed to complete the move cannot exceed the number that would have been needed by a commercial mover.

d. All costs must be actual and reasonable as determined by the Department. The displaced person is not required to secure an estimate. However, the District may secure estimates, as necessary, to determine the reasonableness of charges submitted by the displaced person.

9. Moving Cost Payment to Owners of Buildings Containing Rented Furnished Living Quarters. Fixed payments do not apply to owners of buildings containing rented furnished living quarters except for the quarters occupied by the owner, provided the owner's quarters are in the building being acquired. The furnishings supplied by the owner in the units being rented can be moved only on an actual cost basis as a business move. See Section 4.05.D.

10. Moving Costs When the Acquired Dwelling is Retained by the Owner-Occupant. The cost to move a retained dwelling, any other structure, or any item (e.g., furnace or hot water tank) determined to be real estate prior to the move is not a reimbursable moving cost. However, if an owner-occupant retains the dwelling and chooses to use it as a means of moving personal belongings and furnishings, he or she may be eligible to receive a moving cost payment based on the fixed schedule payment.

11. Moving Costs When There is No Displacement of Residential Occupants Where there is a taking from residential or unimproved property that does not cause the displacement of residential occupants but does require the removal of personal property from the area taken, the move is considered to be non-residential. The moving cost finding procedures found under business moving costs in Section 4.05.D.10 must be used to make the moving cost payment. In this situation, it is not proper to use the residential fixed schedule payment procedures. This situation is most commonly found where the only part taken from an otherwise residential property is a shed or out-building and the contents must be moved or where unimproved land is taken which requires the removal of personal property, such as a woodpile.
12. Moving Costs for Seasonal Residences. The owner of a seasonal residence that is acquired may receive either the actual cost or fixed schedule cost moving payment as described in sections 1 through 10 above, as applicable. That is, the owner may claim either the actual cost or fixed schedule moving cost payment.

13. Multiple Occupancy.
   
   a. In those situations where a single supplemental offer was made to the occupants of the acquired dwelling but two or more occupants choose to move to separate replacement dwellings, the occupants are entitled to their prorated share of an actual cost or fixed schedule moving payment.
   
   Payments will not be delivered until all occupants have vacated the acquired dwelling.
   
   b. In those situations where it has been determined that there is more than one household occupying the acquired dwelling and where multiple supplemental offers are made, each household is entitled to a separate moving cost payment. If a fixed schedule payment is chosen, the payment will be based upon the unfurnished schedule for rooms exclusively occupied by the household and the furnished schedule for community rooms.

   
   a. Upon the move of the displaced person the relocation advisor will conduct a post-move inspection of the acquired property to verify that the move occurred, and notify the Property Management Unit of the date the acquired dwelling was vacated, noting this date on Form RW-943 (Claim Information Transmittal Letter).
   
   b. A moving cost payment package submitted to the Central Office must include:
      
      (1) Claim information transmittal letter Form RW-943.
      
      (2) ROW Office Claim Payment Invoice printout (1 copy).
      
      (3) Original and 1 copy of Form RW-540, Claim for Relocation Payment.
      
      (4) Copies of moving cost estimates and verification of final costs.
      
      (5) Copy of Form RW-596R, where applicable.
      
      (6) Any other pertinent information (e.g., paid receipts, memos).
   
   Negotiations progress must be reported on the Claimant Contact Maintenance screen in ROW Office.
   
   c. Payment Directly to the Mover. Payment may be made directly to the mover if the displaced person elects to execute the directive to pay section of Form RW-540.

Q. Appraisal, Engineering and Attorney Fees.
   
   1. Eligibility.
      
      a. The owner of any right, title or interest in real property acquired or injured by the Department who is not otherwise eligible for reimbursement of such fees under Sections 306(g), 308 and 709 of the Eminent Domain Code will be reimbursed in an amount not to exceed $4,000 as a payment toward reasonable expenses actually incurred for appraisal, attorney and engineering fees.
      
      b. Eligibility is extended to any displaced owner or tenant and any other owner of real property acquired by the Department, including absentee owners and owners of unimproved land.
      
      c. Department policy is not to request or accept a claimant's waiver of their eligibility.
   
   2. Limitation.
      
      a. The combined total of the appraisal, engineering and attorney fees cannot exceed $4,000 for each
property.

b. This payment is made as reimbursement for amounts actually spent by the claimant for costs incurred for these fees with regard to the acquired property. Internal order numbers 81126 (Attorney Fees), 81127 (Appraisal Fees), and/or 81128 (Engineering Fees) may be used separately or in combination as reimbursement when making these payments.

3. Payment and Documentation. The payment package submitted to Central Office must include:
   a. Claim information transmittal letter Form RW-943.
   b. ROW Office Claim Payment Invoice printout (1 copy).
   c. Original and 1 copy of Form RW-540, Claim for Relocation Payment.
   d. Copies of the itemized, receipted bill from the appraiser, engineer or attorney.
   e. Any other pertinent information.

Negotiations progress must be reported on the Claimant Contact Maintenance screens in ROW Office.

The District may not require the claimant to give a copy of the appraisal as a condition for payment.

R. Relocation Program on Projects Affected by a Natural Disaster.

1. General. The provisions and procedures contained in this Chapter, as modified by this paragraph, are applicable to relocation programs on projects in areas that are designated as natural disaster areas.

All mobile homes that were in use as dwellings and were destroyed, demolished or damaged beyond reasonable repair by any natural disaster will be considered real property.

2. Tenure of Occupancy. Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel may be considered to be in constructive occupancy provided that location approval for the project had been given by the Department, and the Federal Highway Administration where applicable, when the disaster is declared.

3. Computation of Replacement Housing Payment for a 90-Day Owner Who Purchases.
   a. Fair Market Value of Acquired Residence. The value of the damaged or destroyed residence will be the pre-disaster fair market value of the entire property interest, except for improvements made since the disaster.
   
   b. Computation. The replacement housing payment will be in the amount, if any, which when added to the amount for which the Department acquired the damaged or destroyed dwelling equals the lessor of:

   (1) The actual cost the owner pays for a decent, safe, and sanitary dwelling, or
   (2) The amount determined by the department as necessary to purchase a comparable dwelling.

S. Emergency Acquisition and Relocation Procedures.

1. General. The District Executives will approve and initiate emergency acquisitions and relocations.

Emergency acquisitions and relocations can be initiated whenever the Department's roads, bridges and drainage infrastructure or real property cause life threatening or serious emergency conditions to persons and their property. This can be a result of natural disasters or other activities that cause failures of the Department's infrastructure or real property.

Emergency conditions can also be proclaimed by various federal and state agencies such as the Federal Emergency Management Agency, Pennsylvania Emergency Management Agency, and the Governor of the
Commonwealth of Pennsylvania, pursuant to Section 7303 of the Emergency Management Services Code, 35 P.S. § 7303 (b) etc.

It should be noted if Section 7303 of the Emergency Management Services Code, 35 P.S. § 7303 (b) is implemented, that this applies when the Governor declares a major disaster or emergency to exist, and in which case the Governor is authorized through the use of the Commonwealth or it's instrumentalities, "to clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety, or public or private property." 35 P.S. § 7303 (a). This exception only applies to removal and clearance operations, not subsequent repairs, construction or acquisition of real property.

2. If a natural disaster affects an approved highway project, causing emergency conditions, refer to Section 4.03.Q.

3. For emergency situations where there has not been an approved project, the following policy provisions will apply:

   The nature of the emergency and affected areas must be identified by District personnel.

   The District Executive will authorize emergency acquisition and evacuation of properties and residents or employees thereof that involve emergency situations related to the Department's infrastructure or real property.

   A project needs to be established, an SPN and funding source identified also.

4. Initial Response Procedures. Initial response efforts include work done by county maintenance forces related to the clearing of debris, protective measures, roadway, shoulder and bridge repair.

   The Bureau of Maintenance and Operations is the coordination point for all disaster related emergencies.

   The Program Center is responsible for establishing a statewide MPMS number to enable each District to attach SPN's to charge Department force work related to initial response efforts. SPN's must be attached to the designated MPMS number to receive federal reimbursement.

   The Bureau of Fiscal Management ensures that funds are available so as not to impact county maintenance budgets.

   General rule regarding SPN's:

   • In "declared counties" on the federal aid system use program code 621.
   • In "declared counties" not on the federal aid system use program code 663.
   • In "undeclared counties" use program code 711 (100% state funding).

Coordination with the FHWA should begin immediately when federal aid roads are included within an area identified as a disaster area. The FHWA Emergency Relief Program may in some instances be utilized for funding of acquisition and relocation costs, depending on the circumstances of the situation. In general, Emergency Relief Program funding for right-of-way is limited to that which is directly attributable to repair of eligible damage sites. Generally all elements of the highway within its cross section that are damaged are eligible for repair under the ER program. Funding for the purchase of right-of-way to alleviate private property damage caused by the collapse or malfunction of the public (federal) road system will only be considered on a case by case basis upon application to the FHWA and with subsequent approval by the FHWA. However, it is important to note that this is a reimbursement program and funding will not be available at the initiation of the project. Additionally a proclamation must be issued and prior authorization from FHWA will be required. A Damage Inspection Report (DIR) must be completed by the FHWA and the Department.

A qualified appraisal must be prepared and a written offer made to owners of effected properties. On projects with federal funding in any phase, the Department is still required to follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) in emergency acquisition situations.

Districts also have the option of using 100% State funds. When using 100% State funds, the provisions of this
Manual, apply except to the extent that they are overridden by the special emergency provisions. Funds may be encumbered within a District from other units such as the County maintenance fund or by application to the State Emergency Account with the Program Management Committee's (PMC) approval. A DIR is not needed for expenditure of state funds.

5. Evacuation in Emergency Situations. Interim replacement housing made necessary by evacuation can be done by Districts by two methods:

   a. Temporary placement of displaced residents in motels or boarding houses.

      (1) The Commonwealth purchasing card is the appropriate method to secure hotel/motel rooms and make payment for emergency temporary lodging for interim residences displaced from property owned by PennDOT when the need is less than $10,000.

      (2) The purchase of temporary lodging may only be authorized by the District Executive. The purchasing card holder at the District Fiscal Office will need the approval and justification before making the purchase.

      (3) The purchasing card holder in the District Fiscal Office would likely be the person to make the purchase. The purchasing card holder will need to inform the hotel/motel that the authorization is limited to the specified room night(s).

      (4) The specifics of the need must be documented by memo to file in the Claimant Contacts Maintenance screen in ROW Office.

      (5) Prior notifications and approvals are not needed from Central Office, Comptroller Operations or Office Services. However, the Director, Bureau of Office Services must be informed after-the-fact if/when this occurs to notify Comptroller for audit purposes. Inform the Central Office Acquisition Unit to ensure this information is relayed through the appropriate channels.

      (6) Per Comptroller Operations policy, an Agency Lodging card or Corporate Card is not the appropriate mechanism for hotel/lodging for this purpose.

      (7) Miscellaneous property management costs submitted through ROW Office are not appropriate as the hotel/motel requires a secure means of payment (i.e., credit card) to reserve the room.

   b. Temporary placement of displaced residents in apartments or other suitable dwelling.

      Cost Function 1119 – Non Residential Moving Costs will be used to reimburse the claimant for DS&S interim shelter costs where motels or boarding houses are unavailable.

      Reimbursement for the cost of meals during emergency displacements will be in accordance with the Commonwealth Travel Procedures Manual, 230.1 Amended, Section Four, Subsistence. Generally, reimbursement will be verified by receipts.

T. District Follow-up-When Supplemental Payment Claim Not Filed. A displaced person must purchase (or rent, whichever is applicable), a decent, safe and sanitary replacement property within 12 months from the date of the move from the acquired property or, if an owner, the date of receipt of the final acquisition payment, whichever is later.

The claim for payment must be filed no later than 18 months after the same applicable date. In order to assure that no displaced person jeopardizes his or her payment eligibility due to a lack of information or because of misinformation, each otherwise eligible displaced person who has not yet filed a supplemental payment claim, and who has only 180 days remaining in order to satisfy the occupancy requirements will be personally contacted, if possible, by the relocation advisor who will again explain the supplemental payment requirements. Similarly, if a displaced person has satisfied the occupancy requirement, but has not yet filed a claim and the expiration of the 18-month filing period is imminent, the displaced person is to be personally contacted and assisted in filing a claim.

It is the responsibility of the District Chief Negotiator to examine, on a monthly basis, the District relocation records in order to identify those displaced persons in need of a follow-up contact by the relocation advisor. The District
Chief Negotiator will notify the appropriate relocation advisors of contacts they will need to make. All actions taken must be documented in the parcel file.

4.04 MOBILE HOMES

A. General Information.

1. Mobile Home as a Replacement. A mobile home may be considered a replacement dwelling, for a displaced person displaced from a mobile home, provided it substantially meets the requirements for decent, safe and sanitary dwellings.

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 "primary" place of residence; it is located on a purchased or leased site and connected to or has available all necessary utilities for functioning as a housing unit on the date of the displacing Agency's inspection; and, the dwelling, as sited, meets all local, State, and Federal requirements for a 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).

2. Decent, Safe and Sanitary Standards. A mobile home is to be considered decent, safe and sanitary if it meets the standards set forth in Section 4.01.J.

Special attention must be given to the decent, safe and sanitary condition of the acquired mobile home, as follows:

A decent, safe and sanitary inspection of the acquired mobile home must be performed at the time of the pre-acquisition survey.

Included in the inspection must be a determination as to whether the mobile home is adequate to accommodate the family to be relocated and whether the mobile home would be decent, safe and sanitary if it is moved to another site.

This information must be included in ROW Office on the Residential Pre-acquisition Claim Maintenance screen. A Residential Pre-Acquisition Worksheet can be used in the field to simplify ROW Office entry.

If the acquired mobile home is retained and used as the replacement dwelling, a complete interior and exterior decent, safe and sanitary inspection must be made at the replacement site.

3. Owners of Mobile Home Parks and Occupants Not Affected by the Take. Where the Department determines that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or to go out of business, the owners and occupants of the mobile homes not within the actual taking but who are forced to move would be considered to be displaced persons and eligible to receive the same payments as though their dwellings were within the actual taking. In such cases, the owner of the mobile park would be eligible for the assistance and payments available to other businesses, in accordance with the provisions of this Chapter.

B. Eligibility Determinations. 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.

The length of ownership and occupancy of the mobile home on the mobile home site will determine the occupant's status as a 90-day owner or tenant.

The mobile home must be occupied on the same site (or in the same mobile home park) for the requisite 90 days to make the occupant eligible for the appropriate down payment or housing supplement payment limitations of $7,200 or $31,000, respectively.

All mobile home occupants may be eligible to receive a rent supplement; however, the amount of the offer and the procedures for approval vary depending upon the length of ownership and type of occupancy. See Section 4.03.A.
C. **Acquisition of Mobile Homes.**

1. **When Mobile Home is Realty.** A mobile home that can clearly be classified as real estate is acquired in the same manner as the Department would acquire a conventional single-family dwelling. The general, but not the only, guideline for this determination is the situation where the mobile home is without axles and is affixed to a foundation in such a fashion that removal of the mobile home from the foundation will cause substantial injury to the mobile home.

   In this situation the standard procedures and forms would be used to complete the acquisition.

2. **When the Mobile Home is Personal Property.**

   a. **General Policy.** It is the policy of the Pennsylvania Department of Transportation that mobile homes will be acquired as if they were real estate even though they meet the traditional definition of "personal property." That is, the Department will determine a fair market value, make a written offer to purchase the mobile home, offer the owner the right to retain the mobile home and have settlement documents executed to finalize the purchase.

   b. **When the Mobile Home is Owned by the Same Person Who Owns the Land.** In the situation where the mobile home is owned by the same person who owns the land upon which the mobile home is located, the value of the mobile home would simply be included in the fair market value of the acquired property.

   In this situation the standard procedures and forms would be used to complete the acquisition.

   c. **When the Mobile Home is Personalty and is Owned and Occupied by Tenants of the Land.** The most common application of this policy is the situation where the mobile home is owned and occupied by a displaced person or family who are tenants on the land. That is, the mobile home owner-occupant rents the land upon which the mobile home is located from a separate landowner.

   The acquisition of the mobile home in this situation does not include the land upon which the mobile home is located. The land is acquired from the landowner.

3. **ROW Office Procedures.** When the mobile home owned and occupied by a displaced person or family who are tenants on the land where the mobile home is located and is being acquired as personalty, the value of the mobile home is not included in the parcel fair market value. Instead, a sub claim is established for the mobile home owner and "mobile home" is selected on the "Claim Description Maintenance" screen of ROW Office.

   The value of the mobile home as personalty must be entered on the "Claim Maintenance" screen of ROW Office under "Mobile Home Acq Per Amt". This serves as the District Chief Negotiators approval of the payment amount. Note that this amount does not affect the allocated amounts of the fair market value, if any.

4. **Valuation.** The fair market value of the mobile home is determined by surveying persons and businesses that routinely deal in used mobile homes. Generally, the fair market value will be equal to the trade-in value of the mobile home.

5. **Fair Market Value Offer.** The fair market value offer to purchase the mobile home is made using Form RW-356MH. Attached to the offer letter are a Summary of Just Compensation form RW-356A, an Inventory of Improvements form RW-663, and a copy of a Plan of the Area to be Acquired, if not previously given at an earlier negotiations contact.

   Note the retention paragraph in the offer letter. While retention is offered to the owner, care must be taken regarding the effect of the retention upon the replacement housing and rent supplement payments. If the mobile home does not meet Decent, Safe and Sanitary standards either because of its "as is" condition, because of the likelihood of damage through the move process or because of the size of the mobile home in relation to the size of the family, the owner will forfeit supplemental benefits if the mobile home is used as the replacement dwelling.

6. **Settlement and Payment Procedures.** Form RW-364MH will be used as the settlement document and
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must be included in the payment package.

The mobile home owner must give the Department title to the mobile home using the procedures detailed in Chapter 5, Section 5.07.E.

Form RW-313 must be completed, signed and included in the payment package.

NOTE: Since there is no real estate tax as part of the transaction, none will be computed or paid.

Internal order number 81114 will be used for mobile homes acquired as personalty.

D. Replacement Housing Payments - General.

1. Computation of Offers and Payments. Housing, down payment and rent supplement offers and payments will be computed in accordance with the appropriate paragraphs in Section 4.03. The following paragraphs set forth the restrictions and exceptions to normal procedures. The offer computation will, in each situation, set the maximum limit of the supplemental payment.

2. Comparable Dwellings.
   a. When a mobile home is acquired, the comparable should be an existing mobile home and site with comparable occupy (rented site or owned).
   b. When a suitable existing mobile home on a site is not available, a new mobile home and site may be used as the comparable. When using a new site without public utilities, the relocation advisor must make lump sum adjustments to the supplemental computation to reflect the cost of preparing the tract for use as a mobile home site.

   If the tract has public utilities available, the lump sum adjustment should reflect the estimated reasonable cost necessary to provide the required connections to these public utilities at that portion of the tract on which the mobile home is to be situated. These costs may include items such as tap-in fees, pipe, trenching, inspection fees, sub poles, masts, meter sockets, and electrical entrance panels.

   If one or more public utilities are not available at the tract, the lump sum adjustment should also reflect the estimated reasonable cost of providing on-site alternatives to the public utilities (e.g., drilling and casing a well, installation of a water pump and line, installation of a DEP approved sewage disposal system, conversion of the furnace, hot water tank and range from natural to bottled gas).

   In the original computation, written estimates or a statement citing the sources of the estimated amounts must document all lump sum adjustments to the supplement. When the supplement is recomputed for payment, all lump sum adjustments to the selling price of the site must be supported by receipted invoices for the work performed.
   c. When a new mobile home is not available, an existing conventional dwelling (including the value of the land) may be used as the comparable.

E. Supplemental Offers to 90 - Day Owner – Occupants.

1. Acquisition of Mobile Home and Site Both Owned by the Occupant. The replacement housing supplement offer will be based upon the difference between the price of a comparable mobile home and site and the acquisition cost of the acquired mobile home and site.

2. Acquisition of Mobile Home Owned by the Occupant and Site Rented by the Occupant. The replacement housing supplement offer will be based upon the difference between the price of a comparable mobile home and the acquisition cost of the acquired mobile home plus the difference between the rent of a comparable site minus the rent of the acquired site multiplied by 42.

   If it is determined that the claimant paid little or no rent, then the Department will use Economic Rent to determine the rent supplement.
The 30% of monthly gross household income formula does apply to low income owners or tenants of 90 days or more.

This combined offer cannot exceed $31,000.

The replacement housing supplement payment may be applied toward the purchase of a replacement mobile home or conventional dwelling.

The rent supplement payment may be used to lease a replacement site or applied to the purchase price of a replacement site; or may be applied, along with the replacement housing supplement, to the purchase of a replacement mobile home or conventional dwelling.

F. Supplemental Offers to 90 - Day Tenants. These occupants are entitled to a rent supplement offer based upon the difference between the rent of a comparable mobile home and site minus the rent of the acquired mobile home and site multiplied by 42.

G. Owners and Tenants of Less than 90-Days. These occupants are entitled to a rent supplement offer based upon the difference between the rent of a comparable mobile home and site minus the rent of the acquired mobile home and site multiplied by 42. This payment must be made under housing of last resort procedures regardless of the amount.

H. Moving Costs.

1. General. Owner or tenant occupants displaced from an acquired mobile home may be paid either a fixed payment, an actual cost move, or a combination.

2. Fixed payment schedules.

<table>
<thead>
<tr>
<th>No. of Rooms</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$500</td>
</tr>
<tr>
<td>2</td>
<td>$750</td>
</tr>
<tr>
<td>3</td>
<td>$1000</td>
</tr>
<tr>
<td>Each additional</td>
<td>$200</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No. of Rooms</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$380</td>
</tr>
<tr>
<td>Each additional</td>
<td>$ 60</td>
</tr>
</tbody>
</table>

3. Actual Cost Move. The procedure for reimbursement of moving costs on an actual cost basis remains the same as for other residential occupants with particular attention paid to the attachments and utility connections. A reasonable amount to pack and secure personal property may be added.

The reasonable cost of disassembling, moving and reassembling any attached appurtenances such as porches, decks, skirting and awnings that were not acquired, anchoring of the unit, and utility "hook-up" charges are eligible for payment. Hook-up charges should include only the expenses required to attach the mobile home to utility connections existing above ground level at the replacement site. Payment may be made to the owner or mobile home dealer through directive to pay procedures.

4. Mobile Home Park Entrance Fee. Non-returnable entrance fees are reimbursable as part of actual cost moving expenses unless the Department determines that comparable mobile home parks that do not require entrance fees are available.
If a mobile home requires repairs and/or modifications so that it can be moved and made decent, safe and sanitary and the District determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

4.05 BUSINESSES, FARMS AND NONPROFIT ORGANIZATIONS

A. Eligibility Requirements.

1. General Requirements. Generally, any business, farm, or nonprofit organization is eligible for relocation payments when:

   a. It is legally in occupancy upon the earliest of the following: At the time it is given a written notice of intent to acquire; or at the initiation of negotiations for the acquisition of the property; or on the date the Department acquires the property; or when the Department issues a Form RW-590, Advance Notice of Move Date; and

   b. It moves from the real property, or moves its personal property from the real property subsequent to the earliest date established above (a business "moves" when it vacates the acquired property and turns possession over to the Department, whether it discontinues or reestablishes); and

   c. It files a claim for payment within 18 months of the later of the date it moves, or the date it receives final payment of the full acquisition cost for the acquired property, if an owner-occupant. The District Right-of-Way Administrator may extend the time limit for good cause.

2. Specific Requirements. In addition to the general requirements above, there are specific requirements that must be met in order to qualify for the various relocation payments. These specific requirements are included in the discussion of the individual payments in the sections that follow.

B. Acquisition and Relocation Procedures.

1. General.

   a. The process involving the acquisition and subsequent relocation or discontinuance of a business is the most complicated, labor intensive and time-consuming right-of-way activity.

   The process begins at the pre-acquisition survey interview stage and runs until the actual move and reestablishment or discontinuance of the business. Successful completion of the process requires the full cooperation and coordination among all the various right-of-way disciplines: appraisal, negotiation, relocation, and property management. It also requires close coordination with the Office of Chief Counsel. The factor that complicates this type of claim is the application or non-application of the Assembled Economic Unit Doctrine. The doctrine requires the acquisition of a business' personal property (except goods held for sale) as if it were real estate in certain circumstances. The entire acquisition and relocation process is dependent upon the application or non-application of the doctrine.


   b. The following outlines the full business acquisition process. By completing the full process, in sequence, the Department will have the information it needs to determine if the doctrine applies to the business. Further, following this process will enable the negotiator/relocation advisor to fully inform the business owner of his or her relocation options early in the acquisition process.


   a. Step 1. Pre-Acquisition Survey Interview. (Reference Section 4.02.E.3) The person conducting the interview will advise the owner of all the steps in the acquisition and relocation process, including an explanation of the various Department employees who will visit the business in order to complete inventories, appraisals, valuations and estimates.
The interviewer will also solicit various types of information from the business in addition to the information obtained during the Conceptual Stage Survey.

This information is made a part of the claim file and will be evaluated by the person making the decision regarding the application of the doctrine.

b. Step 2. General Description of Improvements and Personal Property. (Reference Section 4.02.E.3.) The appraiser and relocation advisor must meet onsite to develop a general listing of the real estate, fixtures traditionally associated with buildings (e.g., water heater, furnace), fixed machinery and equipment, moveable machinery and equipment, goods held for sale and other personal property.

A videotape or similar digital recording of the entire property including those items being inventoried MUST be made. Photographs should also be included in the claim file.

The description must be completed and placed in the file after the pre-acquisition survey interview is completed and prior to the completion of the appraisal problem analysis. It need not be a "nuts and bolts" listing of each and every item. However, it should be in sufficient detail to give the reader a general idea of the amount and types of real and personal property on the parcel.

The description is to be used as a guide to the real estate appraiser and the M&E appraiser in completing the Form RW-663B, and on uncomplicated cases, to obtain moving cost estimates. In extreme cases, the description and video recordings can be used to document where claimants acquire a significant amount of personal property post inspection.


d. Step 4. Pre-Negotiations Contact. (Reference Chapter 3, Section 3.02.E.) At this contact, the negotiator explains the effect of the taking, explains the acquisition and relocation processes in general terms, delivers the portfolio, which includes Publication 47, Bulletin 47, A General Guide to the Relocation Assistance Program of the Pennsylvania Department of Transportation, and answers the owner's questions. The information gathered at the pre-acquisition survey interview must be reviewed and any information missed during the initial interview must again be solicited. The owner should again be questioned with regard to his or her relocation plans.

This information is made a part of the claim file. Any changes to the owner's status or plans must be fully documented.

This contact is mandatory for business relocation claims.

Unlike a residential displaced person, the non-residential owner may move the items and receive moving costs, or receive a personal property loss for items purchased by the Department. There is no requirement to presume personal property (non-doctrine claims) must be purchased by the Department. If necessary, the District R/W Administrator, at his/her discretion may provide assistance in an effort to provide the greatest benefit to the owner.

e. Step 5. Appraisal Problem Analysis (APA) and Use of the Doctrine. (Reference Chapter 2, Appraisals) The development of the APA must take into consideration information previously developed. This includes the pre-acquisition survey and pre-negotiation contact interviews, the inventory of improvements and the analysis of available relocation sites. All available information will be used to make the decision on whether to apply the doctrine.

f. Step 6. Solicitation of Appraisers/Appraisals. (Reference Chapter 2, Appraisals) In addition to the fair market value appraisal report, excerpts from the M&E report are needed in order to make the offer and the relocation presentations.

When the doctrine applies:

A listing of Fixed and Moveable M&E showing the fair market value severed (Retention Value) to
be used as part of the offer presentation. For details, refer to Step 8 below, Section 4.05.B.2.h.

When the doctrine does not apply:

A listing of the Fixed M&E showing the fair market value severed (Retention Value) to be used as part of the offer presentation. For details, refer to Step 8 below, Section 4.05.B.2.h.

A listing of the Moveable M&E showing the fair market value in place to be used as part of the relocation presentation. For details, refer to Section 4.05.E.1 - 4.

g. Step 7. Obtain Moving Cost Estimates. (Reference Section 4.05.D.4.) Using the machinery and equipment report discussed above as a guide, obtain moving cost estimates from commercial movers in accordance with Section 4.05.D.4. The estimates must be broken down into two sections, one for the cost to move all items of moveable machinery and equipment and other items of personal property and the second for goods held for sale, if applicable.

These estimates may be updated during the negotiation and relocation process, as necessary.

h. Step 8. Make the Fair Market Value Offer. (Reference Chapter 3, Section 3.02.E.) The written offer is made and explained in accordance with standard procedures. A complete explanation of the basis of the offer is made. The explanation is dependent upon whether the doctrine was applied to the claim.

If the doctrine applies, Form RW-356BOO/AEUD will be used as the offer letter. Everything, except goods held for sale as noted below, associated with the business unit (land, buildings including traditional fixtures, fixed machinery and equipment and moveable machinery and equipment, including other personal property) is included in the fair market value offer and acquired as real estate. The owner is advised that any goods held for sale are NOT INCLUDED in the offer. At the time, the Department obtains possession of the real property; any remaining goods held for sale will be handled and paid for using standard relocation procedures.

If the doctrine does not apply, Form RW-356BOO will be used as the offer letter and the offer will include only those things normally associated with a fair market value payment. Moveable machinery and equipment, other personal property and goods held for sale are handled as a part of the relocation presentation.

In either case, it is the responsibility of the negotiator to know what is and what is not included in the offer by thoroughly reviewing the valuation and discussing it with the appraiser, District Chief Appraiser, and/or Review Appraiser.

Attached to the offer letter are the Form RW-356A, the Form RW-663B, and a plan of the acquired property. Also, attached to the Form RW-663B is a copy of the machinery and equipment report with all the values deleted except for the fair market value severed (Retention Value).

If the doctrine does not apply to the claim, only the fixed M&E portion of the report will be attached. If the doctrine applies to the claim, the fixed and moveable M&E portion of the report will be included, since the value of all those items is included in the fair market value.

i. Step 9. Explain the Retention Policy. (Reference Chapter 5, Property Management) The Department may or may not choose to give the owner the opportunity to retain the structures. The offer letter states that, upon acquisition, buildings and structures will be demolished unless the owner notifies the Department within 30 days that they wish to retain. If the owner chooses to retain and advises the District within the 30-day period, the District must decide to allow or not allow retention. If retention is not to be allowed, the owner must be notified in writing. If retention is to be allowed, a retention value is placed upon the building or structure, and the owner is advised in writing of the amount. The amount of the retention value is deducted from the fair market value when the claim is paid or is directly paid by the owner. The district property manager determines the retention value, if any.

The Department must give the owner the opportunity to retain the items of fixed machinery and equipment and fixtures forming part of the reality. If the doctrine applies to the claim, we must give the owner the opportunity to retain items of moveable machinery and equipment since, under the Doctrine,
those items are considered to be realty. The opportunity to retain is stated in the offer letter and the owner is given 30 days to advise the Department of his or her intention to retain items. A copy of the M&E report showing the fair market value severed (equal to the retention value) is attached to the offer letter. If the owner chooses to retain and advises the Department within the 30-day period, the retention value (fair market value severed) for the items is paid by the owner. Payment is made by either a deduction from the fair market value payment or directly by the owner.

Any retained item (whether it is a building, structure, fixed machinery, equipment and fixtures or moveable machinery and equipment acquired as part of the realty under the doctrine) is moved at the expense of the owner. Structures and machinery, equipment and fixtures not retained become the property of the Department and are disposed of by the Property Management Unit. Note that if the doctrine does not apply, items of moveable machinery and equipment and other items of personal property that are purchased using the personal property loss payment procedures cannot be retained (see 4.05.E.4.).

j. Step 10. Explain the Relocation Process. The relocation advisor must give a complete explanation of the relocation assistance program to the owner. The advisor must explain each payment and the documentation and steps that must be taken in order to receive payment. As with the fair market value, the explanation is dependent upon whether or not the doctrine was applied to the claim.

C. The Assembled Economic Unit Doctrine. The Assembled Economic Unit Doctrine (the Doctrine) is an acquisition process that is unique to Pennsylvania. When the Doctrine is applied to a business acquisition, items of personal property in the business are no longer considered personal property but, instead, are considered to be real estate and are acquired as such. There is one exception: Items of a businesses' inventory that are for sale (Goods Held for Sale) are always considered to be moveable personal property and are never included in the Doctrine.

The application of the Doctrine and the subsequent transformation of personal property into real estate make a critical difference in the business acquisition and relocation processes. Items of real estate are acquired and paid for as part of the fair market value payment. The business owner may then choose to retain some or all of the items but must (1) pay a retention value for the items to the Department and (2) move the items to a new location at the owners' expense.

When the Doctrine does not apply, items of personal property are handled using normal relocation procedures and the business owner may choose to (1) move the items to a new location with the Department making a moving cost payment or (2) turn the items over to the Department with the Department making a personal property loss payment (based on the value in place of the item).

The Relocation Advisor must know if the Doctrine was or was not applied to the acquisition of the claim. The Relocation Advisor must also know the retention value of items of real estate and the estimated cost to move and the value in place of items of personal property.

D. Moving Cost Payment.

1. General. The moving cost payment is made to reimburse a business for actual, reasonable costs incurred to move its personal property to a new location. Internal order number 81119, Non-residential moving costs, will be used when making this payment.

The application or non-application of the Doctrine affects this payment.

If the Doctrine applies, only goods held for sale qualify to be moved and the moving cost payment is not applicable to any other item of fixed or moveable machinery, equipment or fixtures. All of those items are included in the fair market value and are acquired and either become the property of the Department or are retained by the owner and moved at the owners' expense.

If the Doctrine does not apply, the moving cost payment is applicable to any item of personal property that is moved, including goods held for sale.

2. Eligible Moving Costs. The following items are eligible for reimbursement as moving costs if determined to be reasonable and necessary and are actually incurred during the moving process:
a. Transportation costs for moving the personal property. The transportation charges will normally be reimbursed for up to the first 50 miles of travel only. When the move exceeds 50 miles, all estimates should be prepared based upon a move of 50 miles. Similarly, the mover's bill must be broken down to show transportation costs for the first 50 miles as well as the cost for the remainder of the distance. When the Department determines that the business cannot be relocated within a 50 mile limit, reimbursement will be allowed to the nearest adequate and available site. The file must be fully documented in order to ensure federal participation.

b. Packing, crating, unpacking and uncrating the personal property.

c. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property. This includes connections to utilities available nearby. It also includes modification to the personal property necessary to adapt it to the replacement structure, the replacement site or the utilities at the replacement site. Modifications necessary to adapt the utilities at the replacement site to the personal property are also payable. Expenses for providing utilities from the right-of-way to the building or improvement are also payable. The Department will not reimburse the cost of reconnecting equipment that was stored at but not connected to the acquired real estate.

d. Storage costs not to exceed 12 months and moving from storage. The District must determine that the storage is reasonable and necessary based upon the needs of the Department and the displaced person, the nature of the business, the plans for permanent relocation, the amount of time available for the relocation process and whether storage will facilitate relocation. The Department may set the terms for the storage, including prohibiting the storage site's use as a temporary business site.

Storage costs for a longer period of time may be approved if the Department determines and documents that a longer period is necessary.

Costs for storage of personal property on property owned, leased or controlled by the displaced person are not eligible.

e. Insurance for the replacement value of the personal property in connection with the move and necessary storage.

f. Where insurance covering loss, theft or damage is not reasonably available, the replacement value of property lost, stolen or damaged in the process of moving, not through the fault or negligence of the displaced person, his or her agent, or employee.

g. Any license, permit or certification required at the replacement location to operate the business being relocated. The payment is based on reimbursement of actual, reasonable and necessary costs and is limited to those amounts that are (1) for the remaining useful life of the existing permit, license or certification or (2) the costs of new licenses, permits or certifications required to operate the business at the new site.

Liquor licenses are not covered under this section. They are handled through the appraisal process.

h. Professional services necessary for planning the move of, moving, and installing personal property at the replacement location.

i. The relettering of signs and the cost of replacing stationary on hand at the time of the move that is made obsolete by the acquisition.

j. Professional services in connection with the purchase or lease of a replacement site, including feasibility surveys, soil testing, and marketing studies to determine site suitability.

k. Impact fees or one-time assessments.

3. Ineligible Moving Costs. The following items are not eligible for reimbursement as moving costs:

a. Any additional operating expense incurred because of operating at a new location except as provided as a business reestablishment expense.
b. Cost of moving structures, improvements, or other items of realty retained by the owner.

c. Physical changes to the real property at the replacement location of a business, farm or nonprofit organization except as provided as a business reestablishment expense.

d. Interest on loans to cover moving expenses.

e. Loss of goodwill.

f. Loss of trained and/or skilled employees.

g. Loss of business and/or profits.

h. Personal injury.

i. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency

j. Refundable security and utility deposits.


a. Responsibility to Obtain Estimates. It is the Department's responsibility to obtain commercial moving cost estimates. A business may also obtain an estimate if it wishes and, if reasonable and timely, it should be evaluated along with the Department's estimates.

b. Distance Limit. Estimates should be prepared based upon a move of 50 miles, since the location of the replacement business site is usually not known at the time estimates are obtained. If the business owner specifies a replacement site at the time estimates are being obtained, the estimates should be based on a move to that site if the distance is less than 50 miles.

c. Paying for Estimates. Moving cost estimate fees in excess of $10,000 must be contracted and paid for in accordance with Departmental procurement for services procedures as detailed in the Commonwealth'sManual M215.3, Procurement Handbook. The Department will pay for moving cost estimates up to $10,000 as a claim payment using internal order 81163 and G/L Account 6412050. Refer to no bid procurements or miscellaneous costs related to right-of-way claims (maximum $10,000), Chapter 6, Section 6.07, for the proper procedures to pay for moving cost estimates. The Department will not pay for estimates obtained by the displaced person.

d. Number of Estimates. The District must obtain at least two moving cost estimates on non-doctrine claims and at least one on doctrine claims. On a non-doctrine claim, if the relocation advisor is able to obtain only one moving estimate, the file must be documented with a memo explaining the inability to obtain more than one estimate. Where the Department obtains the estimate, the amount applicable to the claim will be provided to the owner in writing prior to payment.

e. When Estimates are Obtained. Estimates should be obtained as soon as the real estate appraiser submits the machinery and equipment report to the Appraisal Unit. The moveable section of the machinery and equipment report will be used as a guide to obtain the estimates. On less complicated claims, it may be possible to obtain the estimates earlier based upon the general description of the personal property and the videotape.

f. Breakdown of the Estimates. The estimates must be broken down into two sections, one for the cost to move all items of moveable machinery and equipment and other items of personal property and the second for goods held for sale, if applicable. Estimates should further be broken down to show the estimated moving costs of the items of personal property that are going to be moved and the cost of those items that are not going to be moved. At the time of the initial estimate, if the owner does not know the items that will and will not be moved, the estimates should be based upon the assumption that everything will be moved. Then, once the owner makes specific moving plans, the approved estimate can be updated showing the breakdown of those items that will and those items that will not be moved.
g. Site Visit with Owner and Movers, Specialized Moves, Distance of Move. Moving cost estimates are solicited from local, reputable movers regularly engaged in moving the type of business being acquired. In making arrangements for the estimates, the advisor will make personal on-site contact with the business owner and a representative of each of the selected movers and review the specifications for the move. Any questionable items must be resolved at this time. In the event portions of the move require specialized equipment and/or technical expertise, such as riggers, the entire move may be divided into phases, with separate estimates obtained for each phase. If the owner does not specify a replacement site, estimates will be based upon the 50 miles limit.

h. Review and Approval. Moving cost estimates must be reviewed to ensure they are correct and reasonable. The file and ROW Office are then documented with the amount of the estimates. If an estimate is unacceptable but can easily be corrected, the District may make the correction and consider the corrected estimate along with the otherwise acceptable estimates. If one or more of the estimates are unacceptable and uncorrectable (due to a wide variance in cost, omitted items, etc.) additional estimates must be secured. Normally, the low estimate shall be approved. The higher estimate may be approved if it can be justified as being in the best interests of the Department.

5. Moving Cost Requirements.

a. Inspection. The owner must allow the Department to make reasonable and timely inspections of the personal property at both the acquired and replacement sites and to monitor the move.

b. Advance Notice of Move. The owner shall provide the Department reasonable advance written notice of the approximate date of the start of the move.

6. Business Move Conducted by a Commercial Mover. For all moves of businesses, farms and nonprofit organizations using a commercial mover, the advisor assigned the claim will:

a. Make a personal inspection of the items to be moved and obtain moving cost estimates as discussed above. This inspection should be accomplished, if possible, in the company of the owner.

b. At the time of the move, correlate the items on the estimate that are scheduled to be moved with those items of real estate shown in the valuation to ensure that items paid as part of the fair market value will not be included for moving cost reimbursement.

c. Personally monitor the move to be better prepared to determine the validity of the actual moving charges. This action will not be required in every instance. The decision to monitor the move will be made by the District Chief Negotiator, after consideration of the amount and complexity of the move.

d. Review the final moving charges to ensure they are correct and reasonable. The displaced person, in the claim for payment, must present receipted bills and a post-move list of the items actually moved. If the items on the post-move list deviate from those on the estimate, the payment will be adjusted accordingly. Should the billing exceed the estimate by a margin of more than ten percent, the mover will be required to submit written justification to the Department.

e. Review the post-move inspection of the acquired property performed by the property management section. If items classified as real estate are missing, payment for moving should be withheld until the problem is resolved. The right-of-way representative should follow Section 5.04 INVENTORY OF IMPROVEMENT AND OWNER RETENTION to resolve issues arising from missing property.

7. Negotiated Business Self-Move—Estimates Available. The business has the option of performing a self-move. The relocation advisor will obtain estimates from commercial movers as discussed above. After review and acceptance of the estimates, the relocation advisor will contact the business and negotiate an amount for a business self-move not to exceed the amount of the lowest estimate.

The amount of the move is negotiated because of several factors. For example, the estimate was based upon the move of all the personal property for a distance of 50 miles; in all likelihood, the actual move will include less than all the personal property and will be for a distance of less than 50 miles. In addition, the moving cost estimate includes the mover's profit, overhead and other charges that the displaced business will not incur.
When agreement is reached between the relocation advisor and the business, the business will furnish the District with a letter in which they agree to move their business for the negotiated amount. Attached to this letter should be the inventory of items to be moved.

The relocation advisor will provide surveillance of business self-moves.

After completion of the move, and after reviewing the post-move inspection, the negotiated amount may be paid without further documentation.


   a. In the event moving cost estimates cannot be obtained, or if circumstances (such as large fluctuations in inventory) prevent reasonable estimates in the opinion of the Department, the displaced business may be paid their actual reasonable moving costs supported by receipted bills or other evidence of expenses incurred. The allowable expenses of a self-move under the provision may include:

      (1) Amounts paid for truck and/or equipment hired.

      (2) 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 the number of hours and/or days that the equipment is used for the move.

      (3) 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.

      The Department will not reimburse the business for any labor costs involving premium pay for overtime unless it is found to be justified and is approved in advance. It is the responsibility of the business to schedule the move so as to accomplish the relocation during normal working hours. The Department will be liable only for reimbursement of the regular hourly straight rate of pay for all labor costs.

      (4) 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.

   b. The law requires that all moving expenses be actual and reasonable. To ensure this, the District will be expected to provide surveillance of the move.

   c. No item of moving costs will be reimbursed without adequate documentation to support the payment. It is the responsibility of the relocation advisor to ensure that each item of moving costs is both reasonable and substantiated by receipted bills or other valid evidence of expenses incurred. This will require a certain amount of field investigation and research into items such as the wage actually paid and the cost of operating vehicles and/or equipment.

   d. Upon completion of the move, the business will submit to the Department an itemized statement of actual cost incurred and all other supporting documentation, including an "as moved" inventory.

   e. The final moving charges must be reviewed to ensure they are correct and reasonable. If the items moved deviate from the pre-move inventory, the payment will be adjusted accordingly.

   f. Review the post-move inspection of the acquired property performed by the property management section. If items classified as real estate are missing, payment for moving should be withheld until the problem is resolved.


   a. A business may use a commercial mover for some items and a self-move for other items.
b. Moving costs must be fully documented for each type of move and submitted as separate moving cost payments.


a. A qualified member of the relocation staff, other than the relocation advisor assigned to the claim, may make a moving cost finding. This is particularly advantageous for small business and commercial moves.

b. After the business and the District agree to an amount for moving costs, the business will furnish the District with a pre-move list of items to be moved and sign Form RW-596MCF stating its willingness to perform the move for the agreed upon amount.

c. After verifying that the items have been moved, the relocation advisor will complete the bottom portion of Form RW-596MCF and the agreed upon amount may be paid without further documentation.

d. In the event that a payment is requested prior to completion of the move, the payment will be made care of the District Right-of-Way Administrator and the relocation advisor should not sign the bottom statement on Form RW-596MCF.

11. Other, Non-Residential Self-Move—No Permanent Business or Residential Displacement. When the taking does not require the displacement of a business or residence but does require the move of personal property that is stored on unimproved land or in an outbuilding, a qualified member of the relocation staff may make a moving cost finding. Follow the procedures found in Section 4.05.D.10.

12. Delivery of Payment Checks. Delivery of payment checks will be by mail. In exceptional circumstances, a Department employee, other than the person who negotiated the move or made the moving cost finding, may personally deliver the check.

13. Claim for Payment—Payment Directly to Mover. Form RW-540, original and 1 copy, with appropriate backup documentation will be used as the claim payment form. Payment may be made directly to the mover by executing the directive to pay section of the form.

The payment package submitted to Central Office must include:

a. Claim information transmittal letter Form RW-943.

b. ROW Office Claim Payment Invoice printout (1 copy).

c. Original and 1 copy of Form RW-540, Claim for Relocation payment.

d. Documentation to substantiate the claim, including moving cost estimates, findings, and receipted bills.

e. Any other pertinent information.

Negotiations progress report information must be included on the Claimant Contact Maintenance screen, and moving cost estimates must be entered on the Moving Cost Estimate Maintenance screen in ROW Office.

14. Moving Personal Property that is of Low Value but High Bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the Department, the allowable moving cost payment shall not exceed the lesser of:

a. The amount which would be received if the property were sold at the site; or,

b. The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Department. Where the amount of material is very significant, such as a large culm pile (i.e., waste material), and it has been
determined that the Assembled Economic Unit Doctrine applies, the stockpiled material will be acquired as real estate.

E. Personal Property Loss Payment.

1. General. This payment is made to reimburse a business displaced person for personal property:
   a. That is not included in the fair market value,
   b. That is not moved by the business displaced person, and
   c. That is turned over to the Department.

The application or non-application of the Doctrine affects this payment.

If the Doctrine applies, only goods held for sale qualify and the personal property loss payment is not applicable to any other item of fixed or moveable machinery, equipment or fixtures. All of those items are included in the fair market value and are acquired and either become the property of the Department or are retained by the owner and moved at the owner's expense.

If the Doctrine does not apply, the payment is applicable to any item of personal property including goods held for sale that is not moved by the owner but is turned over to the Department. Note that an owner CANNOT choose to claim a personal property loss payment and then retain and move the personal property.

Internal order number 81129, Personal Property Loss, will be used when making this payment.

2. Limitations. This payment cannot be made for any item that is included in the fair market value.

A business displaced person CANNOT choose to claim a personal property loss payment and then retain and move the personal property. If a displaced person chooses to keep and move an item of personal property to a new location, he or she is to be paid moving costs as discussed in Section 4.05.D. The "retain and move" procedure is applicable only to items that are included in and paid for as part of the fair market value.

3. The application or non-application of the doctrine as it affects the personal property loss payment.
   a. When the Doctrine Applies. Only "goods held for sale" may qualify for personal property loss payment. Goods held for sale are not considered as a part of the real estate and, therefore, are not included in the fair market value offer. The legal reason for this is that goods are not permanently installed at the business site. The practical reason for this is that a business will normally stay in business and continue to sell its goods from the date of the offer until possession is given to the Department.

   The personal property loss payment is not applicable to any other item of fixed or moveable machinery, equipment or fixtures. All of those items are included in the fair market value and are acquired as part of the real estate and either become the property of the Department or are retained by the owner and moved at the owner's expense.

   b. When the Doctrine Does Not Apply. The personal property loss payment is applicable to any item of personal property, including goods held for sale.

4. Determining the Amount of a Personal Property Loss Payment.
   a. Personal Property Loss Payment Determination. The amount of the personal property loss payment for an item is based upon the item's value in place.

   The value in place is documented in the machinery and equipment report. In order for the displaced person to make an informed decision regarding which items to move and which items to leave behind, items requiring the owner to sell it themselves, and claim the personal property loss payment, the advisor must give the displaced person a copy of the moveable section of the M&E report, including the value in place of the items.
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The value in place of "goods held for sale" is generally the price the business paid for the item, documented by receipts and other business records. If the value in place of goods held for sale is not readily apparent, contact the Chief of the Central Office Acquisition Unit for advice.

Goods held for sale may not be valued along with machinery and equipment (M&E) on Form RW-277. However, with the approval of the Chief of the Central Office Acquisitions Unit, an M&E appraiser or qualified expert in that particular business may separately estimate the value in place of goods held for sale.

The value in place of goods held for sale shall be based on the cost of the goods to the business, i.e. their wholesale price, not the potential selling prices. The following definition for wholesale price must be used:

The wholesale price is set by a producer or manufacturer for the sale of goods to intermediaries in the supply chain who then distribute the goods ultimately to the retail sector. Wholesale prices are based on volume sales and are set low enough to allow a profit margin for those down the distribution chain up to and including the ultimate outlet.

In the case where goods held for sale are manufactured by the acquired business, their wholesale price can be determined by adding the cost of raw materials to the cost of direct labor and manufacturing overhead.

When acquiring vehicles as "goods held for sale," the owner should provide documentation of the price the business paid to acquire the vehicle(s) as demonstrated by reliable proof and business records. If the business is unable or unwilling to provide this documentation, the current "wholesale" or trade-in value should be offered. The Department of General Services State Surplus Division may be contacted to assist in determining an appropriate value of vehicles.

Costs to improve or repair a vehicle cannot be considered. For example, a car dealer may not submit labor costs to repair a vehicle after the M&E valuation has been established. Note: The purchase of vehicles is not mandatory. The Department is not obligated to purchase a vehicle which can be moved where a reasonable price cannot be negotiated.

b. Purchase of Personal Property from a Displaced Business That is Not Owned in Total by the Business. The following parameters and requirements need to be adhered to when the Department purchases personal property from a displaced business that does not own the personal property outright without any debt owed to the seller.

This applies to both moveable M & E and "goods held for sale".

When a displaced business elects to take a personal property loss payment it is important that the negotiator inquire and determine if the claimant, in fact, does have full unencumbered ownership of that personal property. If the claimant does not, the specific terms of purchase need to be verified prior to making a payment for personal property loss. The following should be verified by information provided by both the wholesaler or dealership of the personal property and the claimant; what outstanding debt is owed, and to whom, on any personal property the claimant wishes the Department to purchase. This would include verification of outstanding balances, principal balances on floor plans or monthly "rolling accounts", and payoff verification from creditors or wholesale suppliers.

That portion of principal or outstanding balances that are attributable to personal property not on the subject property are not eligible for payment. This would be for M & E previously purchased and no longer at the acquired property or "goods held for sale" that have been sold previously and obviously would not be left behind to the Department. It will be necessary to determine what portion of any outstanding balances owed to creditors is attributable to personal property that is still in the claimant's possession at the acquired property.

When it is determined that a claimant owes a balance due on personal property he/she wishes to have the Department purchase, the claimant must be willing to have a Directive to Pay done for his creditors for
any portion of outstanding balance on that personal property at the acquired subject to the following restrictions.

- For moveable M & E, the payment will be equal to the value in place of the items, even if the balance due exceeds the value in place.

- For "goods held for sale" payment will generally be the price the business paid for the item documented by receipts and business records. If the balance due exceeds the sum total of what the business paid for the "goods held for sale" the Department is only obligated to pay up to the documented price the business paid for the items.

5. Transfer of Ownership—Disposition of Items. Items purchased under this section become the property of the Department and must be disposed of in accordance with accepted property management procedures. See Chapter 5.07.

6. Claim for Payment and Documentation. All M&E valuation reports should be reviewed by the District for reasonableness and compliance with policy. Where the equipment is very specialized or the total fair market value in place exceeds $100,000, Central Office Acquisition Unit may be contacted to assess the need for a formal review on Form RW-278 by a fee reviewer. Refer to Chapter 2, Section 2.22 regarding M&E valuations and reviews.

Prior to making a payment, the advisor must visit the acquired site to ensure that the items are no longer in the possession of the displaced person but instead are actually in the possession of the Department. The advisor must also again review the valuation to ensure that items to be paid under this section were not included in the fair market value payment.

The payment package submitted to Central Office must include:

- Claim information transmittal letter Form RW-943.
- ROW Office Claim Payment Invoice printout (1 copy).
- Original and 1 copy of Form RW-540, Claim for Relocation payment.
- Documentation to support all values used to compute the payment (normally the M&E report).
- Any other pertinent information.

Negotiations progress report information must be included on the Claimant Contact Maintenance screen in ROW Office.

F. Searching Cost Payment.

1. General. This payment is made to reimburse a business, farm, or non-profit organization for actual expenses which are incurred searching for a replacement location. Internal order number 81125, Business Searching Costs, will be used when making this payment.

2. Amount of Payment. A displaced business, farm or nonprofit organization is entitled to reimbursement for the actual, reasonable expenses incurred in searching for a replacement site, not to exceed $2,500.

3. Eligible Expenses. Eligible expenses include transportation expenses at the current reimbursement rate allowed by the Department, meals, lodging away from home and the reasonable value of time actually spent in search. Both the owner's and the owner representative's time, based on a reasonable hourly rate, can be reimbursed for activities directly related to securing a new site. This includes time spent obtaining permits, attending hearings, and negotiating the purchase or lease of a replacement site. It also includes the fees of real estate agents or real estate brokers, exclusive of any fees or commissions related to the purchase of a replacement site.
4. Claim for Payment and Documentation. The payment package submitted to Central Office must include:
   a. Claim information transmittal letter Form RW-943.
   b. ROW Office Claim Payment Invoice printout (1 copy).
   c. Original and 1 copy of Form RW-540, Claim for Payment.
   d. Documentation to substantiate the claim—receipted bills or certified statements to support the time spent in search and hourly wage rates.
   e. Any other pertinent information.

Negotiations progress report information must be documented in the Claimant Contact Maintenance screen of ROW Office.

G. Business, Reestablishment Expense Payment.

1. General. The maximum amount of this payment is $25,000. Internal order number 81121, Business Reestablishment Expenses, will be used when making this payment.

2. Eligibility Requirements.
   a. To be eligible the displaced person must:
      (1) Meet the eligibility requirements set forth in Section 4.05.A.
      (2) Be classified as a small business defined as a business having not more than 500 employees working at the site being acquired or displaced by the project. Note that even though outdoor advertising devices are defined as a business, they are ineligible for this payment.
      (3) Be reestablished at a new site, actually incur the expense and document the expense.

In addition, the Department must determine that the expense is reasonable and necessary. As part of this determination, the relocation advisor must perform a personal, on-site inspection of the replacement site to verify that the expenses were incurred and were reasonable and necessary. This inspection must be documented by an entry on the Claimant Contact Maintenance screen in ROW Office.

A change in the type of business at the replacement site does not affect eligibility.

b. Ineligible Businesses. Part-time businesses in the home that do not contribute materially to the income of the household are considered ineligible businesses. The criteria for "contributes materially" is found in Section 4.05.H.2.a(5). Sites occupied solely by outdoor advertising devices are not eligible for this payment.

3. Eligible Expenses. Eligible expenses may include, but are not limited to:
   a. Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.
   b. Modifications to the replacement property to accommodate the business operation or to make replacement structures suitable for conducting the business.
   c. Construction and installation costs for exterior signing to advertise the business.
   d. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling and carpeting.
   e. Advertisement of replacement location.
   f. Estimated increased cost of operation during the first two years at the replacement site, for such
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4. Ineligible Expenses. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary or otherwise eligible:

a. Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.

b. Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

c. Interior or exterior refurbishments at the replacement site that are for aesthetic purposes, except as provided at (3) above.

d. Interest on money borrowed to make the move or purchase the replacement property.

e. Payment to a part-time business in the home that does not contribute materially to the household income.

5. Claim for Payment and Documentation. The payment package submitted to Central Office must include:

a. Claim information transmittal letter Form RW-943.

b. ROW Office Claim Payment Invoice printout (1 copy).

c. Original and 1 copy of Form RW-540, Claim for Payment.

d. Documentation to substantiate the claim, such as receipted bills.

e. A statement regarding the inspection of the replacement site.

f. Any other pertinent information.

The relocation advisor's inspection of the replacement site that is required in Section 4.05.G.1 must be entered on the Claimant Contact Maintenance screen in ROW Office.

H. Business Dislocation Damages.

1. General. The minimum payment is $3,000 and the maximum payment is $60,000. Internal order number 81120, Business Dislocation Damages will be used when making this payment.

A business is eligible for this payment whether or not it reestablishes at a new location.

A business is eligible for this payment regardless of the application of the doctrine.

2. Eligibility Requirements.

a. Businesses. For the business to be entitled to this payment, the Department must determine that:

(1) The business owns or rents personal property that must be moved in connection with such displacement and for which an expense would be incurred in such move, and the business vacates or relocates from the acquired site.

(2) The business cannot be relocated without a substantial loss of its existing patronage, either clientele or net earnings. A business is assumed to meet this test unless the Department determines that it will not suffer a substantial loss of its existing patronage.

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department and which are under the same ownership and engaged in
the same or similar business activities.

(4) The business is not conducted at an acquired dwelling or site solely for the purpose of renting such dwelling or site to others.

(5) The business contributes materially to the income of the displaced owner.

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 the Department determines to be more equitable, a business or farm operation:

- Had average annual gross receipts of at least $5,000; or
- Had average annual net earnings of at least $1,000; or
- Contributed at least 33-1/3 percent of the owner or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given case, contact the Central Office Acquisition Unit to determine other appropriate criteria.

b. Farms. The amount of this payment is equal to the farms' average net earnings as computed in accordance with Section 4.05.H.4 but it cannot be less than $3,000 or more than $60,000. In the case of a partial acquisition of land that was a farm operation before the acquisition, the payment will be made only if the Department determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

c. Non-Profit Organization. A displaced non-profit organization may receive this payment if the Department determines that it cannot be relocated without a substantial loss of existing patronage defined as membership or clientele. A non-profit organization is assumed to meet this test unless the Department demonstrates otherwise.

d. Other Eligibility Requirements.

(1) The business, farm or non-profit organization must provide information to be eligible for the payment. A displaced business, farm, or non-profit shall make available to the Department either copies of applicable signed federal, state and local tax returns, or certified financial statements.

(2) Separate Legal Entities.

Separate legal entities will not each be entitled to a payment under this subsection if they actually constitute only one business. In determining whether two or more legal entities constitute a single business entitled to only one Business Dislocation Damages payment, the following factors, among others, will be taken into consideration:

- The extent to which the same premises and equipment are shared.

- The extent to which substantially identical or interrelated business functions are carried out and business and financial affairs are commingled.

- The extent to which the entities are held out to the public and to those customarily dealing with them as one business.

- The extent to which the same person or closely related persons own, control, or manage the affairs of the entities.
e. Non-Occupant Owners of Businesses—Renting or Leasing Real Property. To be eligible for this payment, the business must occupy the premises from which it is displaced. Therefore, in the case of an absentee landlord whose business consists of renting or leasing real property, no payment will be computed, offered, or paid.

3. Determination of Eligibility or Ineligibility. The District Relocation Section will initiate all investigations necessary to establish eligibility or ineligibility in accordance with the requirements set forth in Section 4.05.H.2. All information must be documented in the file. Necessary information should be solicited from the business at the initiation of negotiations.

4. Payment Evaluation Form RW-570BDD, Business Dislocation Damage Estimate. The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced.

When a net loss is suffered for any of the years under consideration, the net income for that year will be considered to be zero. This figure is used as the basis to calculate net earnings when additional compensation is applicable.

Specifically, since net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse and dependents, those amounts must be added to the income to determine the net earnings. An assessment of whether an officer of a corporation is or is not an owner must also be considered.

If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings will be based on the actual period of operation at the acquired site projected to an annual rate.

Average annual net earnings may be based upon a different period of time when the Department determines it to be more equitable. The use of this provision can only be made with the concurrence of the Chief, Utilities and Right-of-Way Section.

Financial statements for the two 12-month periods prior to the acquisition must support the average annual net earnings formula for a nonprofit organization earning in excess of $1,000. The amount of the payment is based upon the average of two years annual gross revenues less administrative expenses. Gross revenues 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.

I. Appraisal, Engineering and Attorney Fees. Refer to Chapter 4.03.P.

J. Increased Mortgage Costs.

1. General. Whenever the acquisition of a business property results in the termination of an installment purchase contract, mortgage or other evidence of debt on the acquired property, thereby necessitating an installment purchase contract, mortgage or other evidence of debt on the property purchased for the same use as the acquired property, the owner will be compensated for any increased interest and other debt service costs which he or she is required to pay in financing the acquisition of the replacement property. Internal order number 81140, Business Increased Mortgage Costs will be used when making this payment.

2. Eligibility Requirements. The acquired property must have been subject to an installment purchase contract or encumbered by a bona fide mortgage or other evidence of debt secured by the property that was a valid lien on the property for not less than 180 days prior to the initiation of negotiations for the acquisition of such property.

Note: Initiation of negotiation or the notice of intent to acquire (RW-530) are the only key dates; the date of the order to vacate does not apply to this payment.

3. Computation of the Payment. Because of the complexities involved in computing the amount for which the business is eligible, the District may submit the required information to the Central Office. When necessary, the amount for payment will be computed by Central Office, and the District will be informed of the
amount of reimbursable increased interest costs.

Where this occurs the District shall gather all bona fide mortgage, lease, or other evidence of debt information and submit it to Central Office for calculation.

K. Relocation of Off-Premise Outdoor Advertising Devices (OADs).

1. Applicability. Under Pennsylvania Law, off-premise OADs are presumed to be personal property and are included in the definition of a business. Therefore, off-premise OAD owners are eligible for the relocation assistance and payments available to a displaced business (except business reestablishment expense).

The provisions of this Section apply to any OADs advertising third-party matters not conducted on the premises which must be relocated because it is in the required right-of-way or other areas to be acquired as a part of a highway improvement project. This applies to tenant-owned as well as landowner-owned off-premise OADs. Traditional billboards are the most common examples of off-premise OADs.

2. Non-Applicability. The provisions of this Section do not apply to the following:
   a. OADs that are acquired as real property (on-premise OADs physically annexed to the land or building). Refer to Chapter 3, Section 3.03P.2.a (On-Premise OADs) and Section 3.03.E.
   b. Portable OADs (on-premise OADs which are not physically annexed to the land or building). Refer to Chapter 3, Section 3.03P.2.c. (Portable OADs) and Chapter 4, Section 4.05.K.
   c. OADs that are considered to be illegal because the owner of the OAD has no legal relationship with the property owner or because the owner is required to have a permit from the Department pursuant to the Outdoor Advertising Control Act 160 of 1971 (OAC Act) but does not.
   d. The owner of an OAD that is located within the Department's legal right-of-way without any legal relationship or permit from the Department.

3. Relocation Assistance. Off-premise OAD owners are to be provided with information regarding the availability of relocation benefits and payments. They are also to be provided with other required notices. See Relocation Notices, below.

Off-premise OAD owners are to be provided current and continuing information on the availability, purchase price, and/or rental costs of suitable properties and locations for relocation. Although the Department is not obligated to find a replacement site for an affected off-premise OAD, off-premise OAD owners are to be assisted in obtaining and becoming established in a suitable replacement location. Care should be taken to ensure that any replacement site identified as available by the Department, or for which moving costs are paid, is in conformance with the requirements of the OAC Act and local zoning regulations.

Although replacement sites may be difficult to identify due to zoning restrictions on the location of off-premise OADs, in accordance with Pennsylvania case law, the lack of a suitable replacement site does not change an off-premise OAD's designation as personal property.

4. Relocation Notices.
   a. General Information Notice, Publication 47 (Refer to Section 4.02.H.1.) Publication 47, Bulletin 47, A General Guide to the Relocation Assistance Program of the Pennsylvania Department of Transportation, is to be given to every off-premise OAD owner.
   b. Notice of Relocation Eligibility, Form RW-592 (Refer to Section 4.02.H.3.) This notice must be given to every off-premise OAD owner on (or within 15 days of) the initiation of negotiations for the parcel depending upon the off-premise OAD owner's status as an owner or tenant of the land.
   c. Advance Notice to Move Date-Off-Premise OAD, Form RW-590OAD (Refer to 4.08.B.1) The
Form RW-590OAD is given to every off-premise OAD owner at or around the time of the fair market value offer for the parcel in order to fulfill the Departments' responsibility to give at least a 90-day notice of the earliest date by which they need to move their personal property.

d. Notice to Vacate- Off-Premise OAD, Form RW-591OAD. (Refer to Section 4.08.B.2) The Form RW-591OAD is given to the OAD owner toward the end of the acquisition phase of a project when actual possession is required for clearance of the project. This form can be sent after the land has been acquired amicably or through a declaration of taking and at least 60 days have expired since the Forms RW-356OAD and RW-590OAD were presented to the owner. The Form RW-591OAD informs the claimant that if they fail to select a payment option or move their off-premise OAD by a specified date, the Department will assume they have abandoned it in place and have chosen the personal property loss payment. If the claimant fails to respond by the specified date, then we are deeming the OAD to be abandoned in place. If the claimant responds to the Form RW-591OAD letter, but is indecisive, the District should send a second letter stating that we are assuming that they are abandoning the OAD in place and choosing the personal property loss option.

5. Relocation Payments.

a. General Option. The owner of an off-premise OAD affected by a transportation project may choose to move the OAD and receive a moving cost payment or choose to abandon the OAD in place and receive a tangible personal property loss payment.

Under either payment option above, the owner may also receive a searching cost payment to a maximum of $2,500 and an appraisal, engineering and attorney fee payment to a maximum of $4,000.

If the off-premise OAD is not owned by a company engaged in the business of erecting and maintaining such devices, the owner may also be eligible for a business dislocation damage payment.

Off-premise OAD owners are not eligible for a business reestablishment expense payment.

b. ROW Office Entries.

(1) Establishing a Claim. When off-premise OADs are owned by the landowner, all payments must be processed under the primary claim, regardless of the number of OADs located on the site. When the OAD(s) are owned by a tenant, one sub-claim should be established for the OAD owner, regardless of the number of OADs owned by that tenant on the site.

When a claim is established, "Outdoor Advertising Device" must be selected as a Claim Description Code on the Claim Description Maintenance screen of ROW Office. The OAD Code should only be selected once per claim, even if the claimant owns multiple OADs on that parcel.

Where the off-premise OAD is acquired by the personal property loss payment, enter the appropriate "Demo By Type" code (i.e., within the highway construction contract or separate demolition contract) in the Property Management Parcel Maintenance screen and add the "Demolition" Claim Description Code to the Claim Description Maintenance screen.

Where the off-premise OAD is moved, a vacate date must be entered in the Business Relocation Claim Maintenance screen. Neither the "Demo by Type" nor the "Demolition" Claim Description Code are entered for an off-premise OAD where an OAD is being moved (see 4.05.K.5.b.(3) below.

(2) Business Relocation Entries. Because an off-premise OAD is considered a business, the applicable fields on the Business Relocation Claim Maintenance screens must be completed. At a minimum, this includes the dates that notices were sent, the DO Approved date and the date that all relocation payments were made.

(3) Payment Entries. At the time of payment, the "OAD Moving Costs" or "OAD Personal Property Loss" Claim Description Code ( whichever is applicable) must be selected on the Claim Description Code Maintenance Screen. Where there are multiple OADs being moved or purchased, the applicable Code(s) should be selected only once per claim. OAD moving costs or OAD
personal property cost amounts must be entered on the Business Relocation Claim Maintenance screen for a payment to be made. Only the field applicable to what is being paid should be entered. When multiple OADs are being moved or purchased, enter the total moving cost or total personal property cost being paid. OAD moving costs or OAD personal property cost amounts should not be entered in the fields labeled "moving costs" or "personal property costs" on the Business Relocation Claim Maintenance screen.

c. Moving Cost Payment. General procedures for this payment are found in Section 4.05.D.

The owner of an off-premise OAD is eligible for most of the relocation assistance and payments available to a displaced business. One of those benefits is the payment of moving costs, if desired. Two moving cost estimates are required for moving costs in excess of $5,000. However, for moving costs of $5,000 or less, a qualified relocation advisor, other than the relocation advisor assigned to the claim, can make a moving cost finding consistent with Section 4.05.D.10.

The moving cost estimate should be entered on Form RW-260OAD, and if applicable, the moving cost estimate or moving cost finding memorandum should be attached as an addendum. If the moving cost finding was completed by the relocation advisor, it is not necessary to attach a separate moving cost finding memorandum. If an off-premise OAD owner indicates his intention to move the device, it is not necessary to value it, however, it is advisable to obtain the value and moving cost early in the project to avoid potential delays.

The purpose of the moving cost payment is to reimburse the owner of an off-premise OAD for the actual, reasonable costs to disassemble, move, reassemble and erect the OAD at a new location. The Department will obtain moving cost estimates or make a moving cost finding and advise the owner of the appropriate amount.

As an alternative to the reimbursement method, OAD moving costs may be provided to the claimant as partial payment prior to the relocation of the sign based on the lower of two moving cost estimates provided by the Department. Where this method is selected, the payment must be made payable to the appropriate party to the attention of the District Right-of-Way Administrator. The District Right-of-Way Administrator may only release the check upon verification the sign has been removed from the required right-of-way for right-of-way clearance purposes. Note: Proper planning must be considered as a check is only valid for 180 days and must be delivered promptly to prevent the check from going stale. Upon delivery of payment, the OAD owner may then choose to hire someone to perform the move or perform a self-move. The District Right-of-Way Administrator must ensure a valid vacate date is entered into ROW Office as referenced in 4.05.K.5.b.(1) upon assurance the OAD has been removed.

Reconstruction of the OAD onto another location may result in eligible moving costs exceeding the partial payment provided. Where this occurs, application for payment must be submitted with actual receipts sufficient to describe the cost(s) incurred to move the OAD. Internal order 81180, Outdoor Advertising Device Moving Costs, will be used when making this payment. Proof that no upgrades (e.g., functional replacements, capital improvements) to the OAD resulted from the move must be evaluated prior to processing additional payment. As such, the claim file must be documented with a photograph of the OAD at its previous location prior to the move and a photograph of the reconstructed OAD at its new location for comparison. It is recommended the evaluation include a site inspection of OAD by the District. Contact the Central Office Acquisition Unit for advice and concurrence prior to submitting payment in addition to the estimate previously provided.

Similar to standard eligibility requirements, the claim for additional OAD moving cost payment must be made within 18 months of the later of the date it moves, or the date it receives final payment of the full acquisition cost for the acquired property (if an owner-occupant). The Chief, Utilities and Right-of-Way Section may extend the time limit for good cause.

Eligible costs are listed in Section 4.05.D.2. Internal order number 81180, Outdoor Advertising Device Moving Costs, will be used when making this payment.

d. Tangible Personal Property Loss Payment. General procedures for this payment are found in Section 4.05.E.
The tangible personal property loss payment is provided to reimburse the owner for the loss of the off-premise OAD after giving possession of the OAD to the Department. The payment will be based upon the value in place of the OAD as determined by the Department's valuation expert in accordance with the Department's valuation policy. See the Appendix A, Appraisal Guide, Chapter 2, Appraisals and Chapter 3, Section 3.03.Q.3. In order to qualify for this payment, the owner must turn possession of the off-premise OAD over to the Department.

Internal order 81179, Outdoor Advertising Device Personal Property Loss, will be used when making this payment. Note that it is not necessary to obtain moving cost estimates if an off-premise OAD owner indicates her intention to accept a personal property loss payment.

e. Payment packages: personal property loss or moving costs for an off-premise OAD. Payment packages for personal property loss or moving costs of an off-premise OAD must include the following:

   (1) Form RW-943 using an internal order number of 81179 for OAD Personal Property Loss or 81180 for OAD Moving Costs.

   (2) Original and 1 copy of Form RW-540 using an internal order number of 81179 or 81180.

   (3) Form RW-260OAD.

      - For personal property loss payments, the moving cost information may be omitted.

      - For moving cost payments, the valuation information may be omitted.

   (4) ROW Office Claim Payment Invoice printout (1 copy).

   (5) For a payment to be processed, the OADs "value in place" or the approved moving cost estimate must be entered on the "Business Relocation Claim Maintenance" screen of ROW Office. These fields are labeled "OAD Personal Property Cost" and "OAD Moving Costs", respectively.

f. Searching Cost Payment. General procedures for this payment are found in Section 4.05.F.

This payment is subject to a maximum of $2,500 for reimbursement of actual, reasonable expenses incurred in searching for a replacement site.

g. Appraisal, Engineering and Attorney Fee Payment. General procedures for this payment are found in Section 4.03.P.

This payment is for reimbursement of an amount up to $4,000 toward reasonable expenses actually incurred for appraisal, engineering and attorney fees.

h. Business Dislocation Damage Payment. Some off-premise OAD owners may be eligible to receive this payment in addition to the other relocation payments. However, this is not an option if the advertising device is owned by a company in the business of erecting and maintaining such devices. If you believe that an owner may be eligible for this payment, contact the Central Office Acquisition Unit Chief for advice and concurrence.

4.06 REPLACEMENT HOUSING OF LAST RESORT

A. General.

1. Rights of the Displaced Person. The provisions of this section do not deprive any displaced person of the right to receive relocation assistance, moving costs or replacement housing payments for which eligibility has otherwise been established, nor of the freedom of choice in the selection of replacement housing. The procedures do not require a displaced person, unless under contract with the Department to accept a dwelling in lieu of an acquisition payment for the real property from which he or she is displaced or the replacement housing or rent supplement payment for which he or she may be eligible.
2. The Department's obligation of providing comparable replacement housing will have been discharged when comparable replacement housing has been made available for 30 days or more to the displaced person. If the displaced person does not accept the comparable replacement housing computation amount 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 paid for decent, safe, and sanitary housing, whichever is less.

3. Civil Rights. All aspects of any last resort housing shall comply in full with all federal and state codes with regard to civil rights, environmental protection, equal employment opportunity, equal housing, and minority business enterprise. The selection of prime contractors and subcontractors shall be made by the Department on a nondiscriminatory basis and in accordance with the requirements in Title VIII of the Civil Rights Act of 1968 and the HUD Amendment Act of 1974.

4. Authority. Authority for the implementation of this section is derived from Section 905 of the Pennsylvania Eminent Domain Code.

5. Change of Status. The Department is required to provide replacement housing (make a supplemental offer) that places the displaced person in the same ownership or tenancy status held prior to displacement regardless of the amount. Therefore, if a tenant's rent supplement computes to more than $7,200, the Department must make the appropriate offer regardless of the displaced person's desire to change occupancy status. However, the displaced person's desire to change status must be fully discussed in the last resort housing plan as one of the alternative solutions and documented by a supplemental evaluation. See Section 4.06.D.

For example, a rent supplement offer for a tenant-occupant of over 90 days computes to $8,000, making last resort housing necessary. Although an actual down payment offer is not computed, the tenant is offered up to $8,000 as a down payment offer in addition to the rent supplement offer.

On the other hand, the Department is not required to use last resort housing and make payments greater than the normal limits simply to accommodate a change in occupancy status. If a 90-day tenant's rent supplement offer is less than $7,200, then last resort housing is not necessary; if a down payment offer is requested, it shall be no more than $7,200.

90 day owners are eligible for a maximum rental payment up to $7,200 or the amount of their replacement housing supplement offer, whether or not they qualify for housing of last resort. For example, an owner qualifying for a replacement housing supplement of $31,000, being the difference in costs between the displacement dwelling and the selected comparable only, can elect to receive a rent supplement up to the same amount without requiring approval under housing of last resort. The actual rent supplement must be supported by the rental supplement calculation using the replacement dwelling fair market rent. See Section 4.03.K.

For an owner or tenant of less than 90 days, a rent supplement of any amount must be approved and paid under Housing of Last Resort.

B. Application of Last Resort Housing. Last resort housing must be provided when:

1. Comparable replacement housing is not physically available.

2. Comparable replacement housing is physically available but not within the normal supplemental limits—$31,000 for owners, $7,200 for tenants.

3. The actual or estimated combined total of housing supplement, closing costs and increased interest costs exceeds $31,000 for a 90-day owner-occupant.

4. In the case of a partially eligible occupant (with less than 90 days of occupancy), the amount of rent and utilities for a comparable rental unit exceed the person's base monthly rent and utilities for the acquired dwelling as described in, 4.03.K.2.g.(1). This payment requires approval under last resort housing regardless of the amount.

C. Identification of Last Resort Situations.
1. Pre-Acquisition Stage. Normally, last resort housing situations are first identified in the pre-acquisition stage, during the pre-acquisition survey. When it appears that a sufficient supply of comparable decent, safe, and sanitary replacement housing may not be available to satisfy the requirements of such housing as defined in this Chapter, or that such housing is not available, the Department will discuss with the owner the number and characteristics of dwellings to be provided under last resort housing procedures and an estimated amount of the supplement. For an owner, the supplement is estimated by comparing the price of an existing comparable or a builder's cost estimate plus a lot to the estimated fair market value on the Claim Estimate Maintenance screen in ROW Office. For a tenant, the present rent is compared to comparable rents. Identification of last resort situations at this stage gives the Department an early opportunity to program last resort housing funds and allows lead-time in which to prepare for actual relocation. The information noted above must be included in the pre-acquisition report under anticipated major relocation problems.

2. Acquisition Stage.
   a. Preparation of Forms RW-570RH, RW-570RS. When the relocation advisor finds that there are no comparable dwellings available that will provide a supplement within the normal limits, the relocation advisor should complete the Supplemental Payment Evaluation, Form RW-570RH-EVAL or RW-570RS-EVAL along with Form RW-570RH or RW-570RS for each listing, using the most comparable property regardless of price.

   In the case of a replacement housing supplement that approaches but is not over the $31,000 limit, closing and increased mortgage interest costs must be estimated to ensure that the total does not exceed $31,000. If this estimation shows that the total will exceed $31,000, a last resort housing plan must be prepared.

   Completed supplemental payment evaluations are given to the District Chief Negotiator for review and must be included in the last resort housing plan.

   b. Review of Payment Evaluation Forms RW-570RH-EVAL, RW-570RS-EVAL. Replacement Housing Supplement Evaluations, Form RW-570RH, and Rental Supplement Evaluations, Form RW-570RS, must be reviewed and approved by the District Right-of-Way Administrator (or District Chief Negotiator). The review is to be completed in order to ensure comparability of the selected property, to ensure that other suitable properties were not overlooked, and to ensure that proper procedures were used. However, the supplemental offer CANNOT BE MADE until a last resort housing plan is approved (See Section 4.06.E).

D. Last Resort Housing Plan Requirements. In the development of a last resort housing plan for each claim, innovative approaches and methods are encouraged. The plan must include all applicable items of information listed below.

1. Statement of Facts. This should be a brief synopsis of the claim detailing the reasons why last resort housing is needed. It should refer to the completed Evaluation Form RW-570RH-EVAL and/or Form RW-570RS-EVAL.

2. Listing of Alternative Solutions. Applicable solutions must be fully discussed and analyzed. A cost estimate must be included for each alternative listed.
   a. Super Supplement Alternative. Simply stated, this method consists of making an offer and payment greater than $31,000 for a housing supplement or $7,200 for a rent supplement.

   If a 90 day or more owner-occupant indicates a desire to rent replacement housing, a Rent Supplement Evaluation, Form RW-570RS-EVAL, must be prepared and made a part of the plan. That means that two evaluations—the Housing Supplement Form RW-570RH-EVAL of greater than $31,000 and the Rent Supplement Form RW-570RS-EVAL must be included.

   For a tenant-occupant, the rent supplement will be offered and maybe used as down payment and or closing costs.

   Any payments made under the super supplement alternative are limited to the lesser of the amount offered or the amount actually spent to rent, buy or make a down payment on the replacement property.
b. Purchase of Land and/or Dwellings. Dwellings can be purchased by the Department to replace the acquired dwelling of a 90-day owner-occupant or to rent to a displaced tenant-occupant. The property purchased must be offered for sale on the open market and the owner must voluntarily act to sell his property to the Department.

90 day or more owner-occupant, the offer would be to purchase a dwelling on the claimant's behalf in lieu of the Department paying the acquisition cost of the acquired property. The owner occupant cannot be required to accept this option. If this becomes the approved alternative, the Central Office will assist the District in the preparation and approval of the necessary legal agreements.

In the case of a 90-day tenant-occupant, the plan would consist of purchasing a DS&S dwelling with fair market rent and utilities comparable to the displacement dwelling and renting it to the displaced person for a 42-month period.

The cost of this alternative would be estimated over the 42-month period using the formula:

\[ \text{Price of the dwelling and related closing costs.} \]
\[ \text{PLUS property management costs.} \]
\[ \text{MINUS amount of rent collected.} \]
\[ \text{MINUS amount received for disposal of the dwelling.} \]

c. Construction of New Dwellings. The same instructions as discussed in b. apply.

d. Purchase and/or Rehabilitation of Existing Dwellings to Meet Decent, Safe and Sanitary Requirements. This alternative consists of the purchase of a dwelling [as in alternative b.] that does not meet decent, safe and sanitary requirements and adding the necessary rehabilitation costs. This can be done provided that the cost of acquisition and/or rehabilitation does not exceed the cost of constructing a new comparable dwelling.

e. The Relocation and the Refurbishing or Rehabilitation of Dwellings. This alternative consists of purchasing land to which an acquired dwelling would be moved. This land/dwelling would then be offered to an owner displaced person in lieu of acquisition costs or to a tenant displaced person for rent.

f. Removal of barriers for the disabled.

g. Any other method of relocation.

3. Recommended Solution. The recommended solution generally will be the most economical of the alternative solutions.

4. Other Requirements. The last resort housing plan should also include, if applicable:

a. The arrangements for rental housing management and its cost, if any.

b. The disposition of the proceeds from rental, sale, or resale of such housing.

c. How construction will be monitored.

d. Any other comments pertinent to providing replacement housing.

E. Last Resort Housing Plan Review and Approval. The District Right-of-Way Administrator has limited authority to approve the Last Resort Housing Plan. This authority is limited to super housing supplements up to $50,000 and super rent supplements up to $12,000. As such, the District Right-of-Way Administrator may approve the Housing of Last Resort Plan within his or her approval authority. Where these amounts are exceeded, the Last Resort Housing Plan must be submitted to the Central Office Acquisition Unit for review and approval. The District may proceed with the offer and implementation of the plan only after the Housing of Last Resort Plan has been approved.
Where the limited authority applies, the District Right-of-Way Administrator or Chief Negotiator shall enter the "Housing of Last Resort Amount" in the Residential Relocation Claim Maintenance screen of ROW Office.

Where the limited authority is exceeded, the Central Office Acquisition Unit will enter the "HLR CO Approval Date" on the Residential Relocation Claim Maintenance screen of ROW Office.

Once the "HLR CO Approval Date" is entered in ROW Office, the Central Office Acquisition Unit will provide the District an approved copy of one of the following documents given the displaced person's tenancy.

1. RW-570RH-Eval Payment Evaluation for Replacement Housing Supplement
2. RW-570RS-Eval Payment Evaluation for Rent Supplement

F. Programming of Funds. Funding for normal last resort housing costs (those simply involving the payment of a supplement in excess of the $7,200 - $31,000 limits) may be authorized under the "Acquisition" section of Form D-4232. Funding for any other type of last resort housing cost (such as buying a replacement property and renting it back to the displaced person, or building a replacement property) must be authorized under the "Other" section of D-4232.

G. Last Resort Housing Offer. Upon receipt of approval of the plan, the District will make the offer in accordance with instructions received from the Central Office.

H. Last Resort Housing Payments.

1. Payments to Fully Eligible Occupants.
   a. Replacement housing supplements will be paid to the owner occupant directly, following the procedures outlined in Section 4.03.
   b. Rent and down payment supplement payments to tenants will be made following the procedures outlined in Section 4.03. Approval of a housing of last resort rent supplement establishes the maximum benefit for either a rental or down payment supplement. The down payment supplement, including reasonable closing costs, shall not exceed the approved rent supplement.

2. Payments to Partially Eligible Occupants. Housing supplement payments divided between eligible occupants will still be considered a housing of last resort payment. For example displaced persons in a household who choose separate replacement dwellings will be offered their portion of the total amount of the housing supplement.

3. Other Payments. Other last resort housing payments shall be made in accordance with the approved last resort housing plan (e.g., closing costs and increased mortgage costs).

I. Disposal of Last Resort Housing Units.

1. Disposal Guidelines. Where the alternative referenced at 4.06.D.2.b is necessary, disposal of the last resort housing units purchased for a federally funded project, and following the 42-month tenant occupancy entitlement period, will be in accordance with the following.
   a. If the housing units are transferred to another federal, state, or local governmental agency, FHWA will not require a credit to federal funds where:
      (1) The units will continue to be used for public housing purposes, and
      (2) The Department receives no payment for the units transferred. If for some reason the Department is compensated for the units, the amount received shall be credited to federal funds on the same pro rata basis as the original federal participation in the purchase or construction of the units.
   b. Federal funds will not participate in costs incurred in the transfer of last resort housing units to another federal, state, or local government agency in cases where no credit to federal funds is required.
instances where a credit to federal funds is required, the costs of disposition may be deducted from the proceeds of the sale.

If the Department disposes of the last resort housing units to a party other than another federal, state, or local government agency, a credit to federal funds will be required. This credit will be prorated as in 1.a(2) above and will be based upon the amount received through disposal by public sale or other approved Department real property disposal procedures.

2. Federal Credit When There is No Disposal. When the Department elects not to dispose of last resort housing units after expiration of the 42-month tenant eligibility period in order to allow the continued occupancy by the tenant or in order to use the housing for public purposes, no credit to federal funds is required as long as fair market rent is charged to the tenant and applied to Title 23 Federal Aid projects.

3. Approval to Dispose. All actions proposed to dispose of last resort housing units must be submitted to the Central Office for approval.

J. Federal Participation.

1. Eligible Costs. Federal aid funds will participate in the actual reasonable costs incurred by the Department in providing last resort housing when incurred in accordance with the provisions of this section. Such costs include but are not limited to:

   a. The acquisition price of land and/or dwellings and costs incidental thereto to meet comparable housing and DS&S standards.

   b. Moving of houses.

   c. Site development.

   d. Architectural and engineering fees.

   e. Landscaping.

   f. Rehabilitation of existing housing.

   g. Construction of new housing.

   h. Legal fees and expenses.

   i. Other expenditures necessary to produce dwelling units that are compatible with other dwellings in the neighborhood and meet DS&S standards.

   j. Any direct costs of providing last resort housing incurred by the Department, political subdivision, local public agency, or housing advisory committee.

2. Federal Share. Federal reimbursement for the costs of last resort housing shall be determined in accordance with the appropriate federal pro rata share of funds involved for the particular project.

4.07 RELOCATION PROGRAM AT CONSTRUCTION STAGE

A. General. The general contractor will not be allowed to proceed with physical construction on any part of a project until all occupied properties have been permanently vacated. In limited circumstances, the contractor may be allowed to proceed with construction, even though all properties have not been vacated, provided FHWA grants a conditional clearance certification and construction does not interfere with occupants that have not vacated and a reasonable, firm vacate date can be established.

Note: This is not a normal procedure, and the decision to approve it must be carefully and accurately documented. Prior concurrence of Central Office (and Federal Highway Administration, where applicable) is required.

B. Advance Notice of Move Date (90-Day Notice) and Notice to Vacate.
1. Form RW-590 - Advance Notice of Move Date. The construction or development of a project must be scheduled so that no displaced person is required to move without at least 90 days written notice from the Department. Exceptions to this provision should be made only in the case of very unusual condition and with the written approval of the Chief, Utilities and Right-of-Way Section and, when applicable, the Federal Highway Administration.

Each occupant, owner or tenant, will receive a notice, either as part of an amicable agreement or as a separate letter, which will specify the earliest date by which he or she may be required to move.

The notice may be given to an owner occupant and should be given to a tenant occupant at the initiation of negotiations for the parcel. **Note:** When this procedure is used, the 90-day clause must be deleted from a subsequently executed amicable agreement or application for payment of estimated just compensation on owner-occupied claims. In this case, the 90-day clause may be deleted as long as a 90-day notice has previously been provided by the Form RW-590. Caution: Do not confuse the 90-day clause with the 90-day free rent clause.

The issuance date of the notice is one of the key dates used to determine eligibility for a supplemental payment (See Section 4.05.A). It is particularly important in the case of tenants who occupy the property after the initiation of negotiations.

When the District learns that a tenant has occupied a property after the initiation of negotiations but prior to the date of acquisition, they should immediately issue the notice. Taking this action will limit the Department's liability for relocation benefits. See Section 4.03.A.2.

The notice should never be issued to subsequent occupants—that is, tenants who occupy a property after the Department has acquired it—since these occupants are illegal they should be removed immediately for trespassing and are not entitled to any relocation benefits. See Chapter 5, Property Management.

2. Notice to Vacate, Form RW-591. When actual possession of the property is required for the orderly clearance of the right-of-way, a 30-day notice to vacate will be issued. The notice may be sent as soon as the required possession date is known, as long as the required possession date is at least 90 days from the date of issuance of the advance notice of move date and at least 30 days in the future. The notice to vacate may run concurrently with the last 30 days of the advance notice of move date. The notice to vacate cannot be given until the Department has legal possession of the property.

The notice shall give a firm, specific date by which the displaced person must vacate the property, in accordance with the Department's need for the property. The date may be extended with the approval of the District Right-of-Way Administrator when conditions warrant, but any extension must be in writing and must give another specific date by which the property must be vacated.

The 30-day notice to vacate is sent by certified mail (return receipt requested) to all affected owners and tenants. A single notice may be sent to a husband and wife who are owners as tenants by the entireties but in all other cases of joint ownership, each owner must receive a separate notice. One copy of the notice is retained in the District file, an information copy is sent to the District Property Manager, and one copy is sent to Central Office. Shortly after the notice is received by the displaced person, the relocation advisor shall personally visit the displaced person to again offer all possible assistance, and to establish the specific date to vacate based on the date shown on the certified mail return receipt card. Once this date is established, it should be noted on the District's copy of the notice and in the ROW Office Claimant Contact Maintenance screen. It is then the relocation advisor's responsibility to do everything possible to assist the displaced person to meet the established vacation schedule.

Note that this requirement also applies to the owners of off premise advertising devices or personal property only moves that are located within the required right-of-way.

C. Evictions.

1. Eviction for Cause — Displaced Person's Rights. Eviction for cause must conform to applicable state and local law. Any person who has met the eligibility requirements but who is later evicted for cause on or after the date of initiation of negotiations retains the right to the relocation payments and other assistance set forth in
Chapter 4 - Relocation Assistance

2. Eviction Procedures. When eviction becomes necessary, follow the procedures for the preparation of a writ of possession in Chapter 3, Acquisitions.

4.08 CIVIL RIGHTS AND EQUAL OPPORTUNITY REQUIREMENTS

All aspects of the relocation assistance program of the Department shall be conducted without regard to race, color, religion, creed, ancestry, national origin, age, handicap or sex. The Department, through its field representatives, should advise all claimants of this policy of nondiscrimination. Displaced persons who feel that they have been discriminated against because of any of the factors heretofore listed should be advised to write the District Right-of-Way Administrator and explain their situation.

Replacement housing listings shall be available to all displaced persons without regard to race, color, religion, ancestry, national origin, age, handicap or sex. Each District will make listing agencies aware of this requirement. If any instance of discrimination against displaced persons by listing agencies is reported, the District shall attempt to ascertain the facts of the case. If the charges of discrimination are valid, the listing agency will be so notified, and the listing will no longer be used.

Independent contractors employed by the displaced person for the purpose of moving the displaced person's personal effects, moving the displaced person's home, or any other services to the replacement property will be expected to observe these nondiscrimination statutes. If any incidence of discrimination is observed, the contractor involved will be asked to explain actions taken involving the particular displaced person.

Availability of financing and access to any social services required by the displaced person shall be on a nondiscriminatory basis.

In all cases where discrimination is alleged or suspected, complaints will be investigated in accordance with the Department's Title VI Investigative Procedures. In the event of alleged or suspected discrimination, the District Right-of-Way Administrator should contact the District Title VI Coordinator who will initiate and coordinate the investigation.

The provision herein shall comply with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063 and the HUD Amendment of 1974.

4.09 FORMS, REPORTS, RECORDS

A. Forms. The following non-exclusive list of forms are used in the implementation of the relocation assistance program. The form number and form name are listed for each form. It is essential that current editions be used since they reflect current policy and procedures. Destroy out of date forms.

<table>
<thead>
<tr>
<th>Form Number</th>
<th>Form Name</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>RW-530</td>
<td>Notice of Intent to Acquire</td>
<td>Refer to Section 4.02.H.2.</td>
</tr>
<tr>
<td>RW-538</td>
<td>Decent, Safe and Sanitary Inspection Form</td>
<td>Refer to Section 4.03.D.</td>
</tr>
<tr>
<td>RW-540</td>
<td>Claim for Relocation Payment</td>
<td>This form is designed to include every payment relating to relocation assistance with the exception of replacement housing, rental and down payment supplement payments that are processed on Forms RW-560, RW-562 and RW-566 respectively. Closing costs on the replacement property and increased mortgage costs are normally processed on Form RW-560. However, Form RW-540 will be used to make these payments when they have not been included on Form RW-560. Note that Form RW-540 contains a &quot;Directive to Pay&quot; section in the event that the claimant wishes to assign the payment to a third party.</td>
</tr>
</tbody>
</table>
When a claim for any of the applicable relocation assistance costs is submitted to the Central Office for payment, the original and 1 copy of Form RW-540, which has been executed by the claimants, must be accompanied by all the necessary documentation to substantiate the claim.

RW-356OAD  Offer to Purchase OAD and Summary of Just Compensation

RW-556RS  Rent and Down Payment Supplement Offer Letter
This form informs a displaced person of the maximum amounts of the rent or down payment supplement. It also explains the eligibility requirements that must be fulfilled in order to qualify for the payment and the decent, safe and sanitary requirements. Refer to Section 4.03.K.

RW-556SP  Replacement Housing Supplement Offer Letter
This form informs a displaced person of the maximum amount of the replacement housing or down payment supplement. It also explains the eligibility requirements that must be fulfilled in order to qualify for the payment, and the decent, safe and sanitary requirements. Refer to Section 4.03.D.

RW-556IMIP  Estimated Increased Mortgage Payment Offer Letter
This form letter informs a displaced person of the amount of estimated increased mortgage payment. Refer to Section 4.03.J.

RW-560  Claim for Payment—Replacement Housing Payment
Refer to Section 4.03.I.

RW-562  Claim for Payment—Rent Supplement
Refer to Section 4.03.L.

RW-563  Claim for Payment – Application for Government Subsidized Payment Supplement

RW-566  Claim for Payment—Down Payment Supplement
Refer to Section 4.03.N.

RW-570BDD  Evaluation of Business Dislocation Damages
Refer to Section 4.05.H.

RW-570RH  Available Housing Comparable

RW-570RH-EVAL  Payment Evaluation Form for Replacement Housing Supplement
Refer to Section 4.03.I.

RW-570RS  Available Housing Comparable

RW-570RS-EVAL  Payment Evaluation—Rent or Down Payment Supplement
Refer to Section 4.03.K.

RW-590  Advance Notice of Move Date

RW-590OAD  Advance Notice of Move Date OAD
Refer to Section 4.08.B.

RW-591  Notice to Vacate

RW-591OAD  Notice to Vacate, Move/Abandon OAD
Refer to Section 4.08.B.

RW-592  Notice of Relocation Eligibility
Refer to Section 4.02.H.3.
B. Records and Reports.

1. Relocation Records – General. As a minimum, the Central Office and the District Right-of-Way Units must document the following for each official claim file for a project:
   
   a. State and federal project and parcel identification.
   
   b. Names and addresses of displaced persons and their complete, original and new addresses and telephone numbers.
   
   c. Personal contacts made with each relocated person, including for each relocated person:
      
      (1) Date of notification of availability of relocation assistance.
      
      (2) Name of the relocation advisor offering or providing relocation assistance.
      
      (3) Whether the offer of assistance in locating or obtaining replacement housing was declined or accepted, and the name of the individual accepting, or declining the offer.
      
      (4) Dates and substance of subsequent follow-up contacts.
      
      (5) Date on which the relocated person was required to move from the property acquired for the project.
      
      (6) Date on which actual relocation occurred; and whether relocation was accomplished with the assistance of the District, referral to other agencies, or without assistance. If the latter, an approximate date for actual relocation is acceptable.
      
      (7) Type or tenancy before and after relocation.
   
   d. For displacements from dwellings:
      
      (1) Form RW-594, Title VI Questionnaire, completed for the head of household
      
      (2) Number in family.
      
      (3) Type of property (single detached, multi-family, etc.).
      
      (4) Value of monthly rent.
      
      (5) Number of rooms occupied.
   
   e. For relocated businesses:
      
      (1) Type of businesses.
      
      (2) Whether continued or terminated.

2. Moving Expense Records. The Central Office and District Right-of-Way Units shall maintain records containing the following information regarding moving expense payments:
   
   a. The date the removal of personal property was accomplished.
b. The location from which and to which the personal property was moved.

c. 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.

d. Itemized statement of the costs incurred supported by receipted bills or other evidence of expenses.

e. Amount of reimbursement claimed, amount allowed and an explanation of any differences.

f. Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage, and that it is not part of a commercial enterprise having at least three other establishments not being acquired.

g. When moving expense payments are made in accordance with a schedule, the data called for in c. and d. above, need not be maintained. Instead, records showing the basis on which payment was made shall be maintained.

3. Replacement Housing Payment Records. The Central Office and District Right-of-Way Units shall maintain records containing the following information regarding replacement housing payments:

a. The date of the receipt of each application for such payments.

b. The date on which each payment was made or the application rejected.

c. Supporting data explaining how the amount of the supplemental payment to which the applicant is entitled was calculated.

d. A copy of the closing statement to support the purchase or down payment and incidental expenses when replacement housing is purchased.

e. Computations to support the increased interest payment.

f. The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement setting forth:

(1) The amount of the replacement housing payment.

(2) His or her understanding that the determined amount is to be used in connection with a federal-aid highway project.

(3) That he or she has no direct, indirect, present or contemplated personal interest in this transaction, nor will derive any benefit from the replacement housing supplement.

g. A statement by the Department that, in its opinion, the displaced person has been relocated into adequate replacement housing.

4. Records Available for Inspection. The above relocation records will be available at reasonable hours for inspection by representatives of the federal government who have an interest or responsibility in these matters.

5. Periodic Report of Residential Moving Cost Schedules

a. Periodically, the District will be requested to initiate a survey to determine the adequacy of the current residential moving cost schedules.

Local, reputable movers shall be contacted in order to determine their charges for moving:

(1) Unfurnished dwellings.

(2) Furnished dwellings.

b. Requests to complete the report will be issued by the Central Office as necessary.
6. Uniform Relocation Assistance and Real Property Acquisition Annual Report. Central Office is responsible to submit an annual report to FHWA. The report will be compiled from data supplied by ROW Office. If the data from ROW Office is incomplete or inclusive, the appropriate District Right-of-Way Unit will be required to correct and/or provide the appropriate data to Central Office. The Central Office Acquisition Unit will submit the report annually to FHWA on or before November 1 of each year.

4.10 Government Subsidized Housing

Section 8 of the Housing Act of 1937, officially called the Housing Choice Voucher Program, is a rent subsidy program funded by the U.S. Department of Housing and Urban Development (HUD). The Housing Choice Voucher Program enables low-income families to rent privately-owned decent, safe and sanitary housing. Administered by local housing agencies, the program gives landlords the opportunity to receive a subsidy representing the difference between 30% of an eligible tenant's adjusted gross income and reasonable housing rent as determined under HUD rules. In other words, the program pays the balance of a rent payment that exceeds 30% of the renter's monthly income.

Types of Section 8 benefits include:

1. Tenant-Based. A certificate (voucher) based on the income of the tenant and rent paid. Tenant-based vouchers are attached to the tenant; when the tenant moves, the assistance moves with the tenant.

2. Project-Based Assistance. A benefit attached to a specific property that participates in the Project-Based Section 8 Program. If the tenant moves, the benefits remain with the next resident of the dwelling, not the with the tenant.

The Housing Choice Voucher Program provides rental assistance to enable a tenant to move from one unit to another. Families may rent most market rate dwellings as long as the landlord agrees to rent to Section 8 voucher holders. The guarantee to the owner makes up the difference between the tenant's contribution and the rent in the owner's contract with the government.

As a result of a Department highway project, where a displaced person is identified as receiving Section 8 benefits prior to displacement, the Department is obligated to inform the displaced person of his or her options to prevent their Section 8 benefits from being affected.

Where a displaced person accepts assistance under a government housing assistance program, the rules of that program governing the size of the dwelling apply. Rental assistance will computed on the basis of the displaced person's out-of-pocket expenses and monthly financial need for the replacement housing. A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit. Additionally, 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.

At any time during negotiations but prior to a relocation supplement payment being made, a displaced persons can voluntarily opt out of the Government Subsidized Housing program. A memo to file will be created in Right of Way Office documenting the claimant's intentions to discontinue their participation. If a supplement has been calculated based on a subsidy and the claimant opts out of the program, then the Department will recalculate the supplement using the applicable eligibility and criteria in Section 4.03.

Out of Pocket-Expense computations

Where a displaced person participates in a subsidized housing program, out-of-pocket expenses must be incorporated into the computation for rent supplement. To determine out-of-pocket expenses, the housing subsidy current as of the time of the relocation interview must be obtained.

Rent Supplement Computation, Form RW-570RS. The general policy set forth in Chapter 4.03.K applies. Where a government subsidy is identified, the RW-570RS Rent Supplement payment evaluation form is used to capture subsidized housing information and provides the computation steps necessary to determine the appropriate rent supplement where government subsidies must be considered.
Execution of the Claim for Payment. Form RW-563. The general policy set forth in Chapter 4.03.L applies. The RW-563 Application for Government Subsidized Payment Supplement form is used to compute the out-of-pocket expenses where a government subsidy is provided.

As an example:

**Acquired Dwelling**

- Rent Plus Utilities of the Acquired Dwelling: $900
- Minus the Housing subsidy provided: $500
- Equals the Out-of-Pocket Rent: $400

**Most Comparable Listing**

- Rent Plus Utilities of the most comparable listing: $1,500
- Minus the Housing subsidy provided: $500
- Equals the Out-of-Pocket Rent: $1000

**Replacement Housing Offer**

- The Out-of-Pocket Rent of the most comparable listing: $1000
- Minus the Out-of-Pocket rent of the Acquired property: $400
- Equals the monthly need: $600
- Multiply X 42 for the replacement housing offer: $25,200
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CHAPTER 5

PROPERTY MANAGEMENT

5.01 GENERAL

Property management responsibilities, as related to right-of-way acquisition, include the maintenance and protection of lands and improvements acquired for highway purposes from the time of acquisition until construction begins or the property is sold or otherwise transferred. This includes the removal or demolition of improvements, maintenance and leasing of property, and disposal of excess land not needed for present or future transportation needs. It also includes leasing of right-of-way land outside the traveled portion of highways after construction is completed.

Property management activities are conducted in accordance with the Title 67 Pa. Code Chapter 495, and 23 CFR, part 710. It is important to remember that in addition to laws and regulations relating directly to property management, all activities must be conducted openly and honestly within the framework of systems and regulations governing state government operations. Some areas of particular awareness are:

- Fiscal and accounting procedures and systems.
- Purchasing procedures.
- Environmental regulations.
- Safety and health regulations.
- Equal opportunity regulations.

All activity must be conducted with an aim toward promoting the Department's mission and the public interest.

The procedures discussed in this section and throughout this Manual are intended to provide uniform, logical, and consistent procedures for the performance of property management and right-of-way activities throughout the Department. The accomplishment of this goal requires the best effort and cooperation of staff at all levels within the Districts and between the Districts and the Central Office.

5.02 INTERIM LEASING AND MANAGEMENT OF PROPERTIES

The Secretary of Transportation is authorized to "lease real property acquired for any state designated highway or other transportation facility as is not required for the free movement of traffic, including area above, beneath and outside the traveled way, as well as area required but not yet utilized for construction or reconstruction of a transportation facility." (67 PA Code Section 495.1) This section deals with interim leasing of properties not yet utilized for construction.

Note: While this section deals with property management procedures, it should be noted that in actual practice, these activities will be conducted and coordinated with negotiations leading to right-of-way acquisition.

A. Interim Leases. Interim leases, using Lease Agreement, Form RW-670I, are intended for short-term leasing during the period between the acquisition of the required right-of-way and construction of the highway. After construction of the highway project has been completed, Joint Use Lease, Form RW-670JU will be used to lease any right-of-way not required for free movement of traffic in accordance with the joint use procedures described in Section 5.03. The Department may lease to a private entity during the interim period between property acquisition and construction without first offering public agencies an opportunity to lease the parcel.

Lease Agreement, Form RW-670I is the instrument for interim leasing of properties. Additional paragraphs may be added to the lease agreement to deal with special circumstances, such as environmental considerations, not covered by the standard lease provisions.
B. Ninety Day Free Occupancy.

1. In the case of an amicable acquisition, the seller is assured 90 days rent-free occupancy from the date of execution of the Form RW-317AF. In signing Form RW-317AF, the owner agrees to sign the Form RW-670I, if remaining past the 90-day free occupancy period.

2. In the case of condemnation, the seller is allowed 90 days rent-free occupancy from the date of filing of Form RW-448D. If the property is not needed immediately, the claimant may be allowed to rent the property for additional time by signing Form RW-670I.

C. Leasing to Claimants.

1. Leasing to Former Owners.
   a. Former owners of property acquired for right-of-way may lease back their former property if it is not immediately required for construction. Rent will be on a month-to-month basis. If there is a probability that the claimant will remain in occupancy past the 90 days rent-free occupancy period provided in the Agreement of Sale or Application for Payment of Estimated Just Compensation, Form RW-670I, shall be provided to the claimant for signature at the same time as the Agreement of Sale or Application for Estimated Just Compensation. A "made on" date shall not be entered on Form RW-670I; however, a "commencing" date reflecting the ninety-day rent-free period shall be entered.

   No advance rent is collected at this time. The purpose of having the interim lease signed (be sure to date all signatures) is to reinforce the obligation of paying rent after 90 days. The lease package should be submitted for approval in a timely manner in order to process the lease and prevent the dated signature(s) from going stale.

   b. Claimants are guaranteed 90 days occupancy after the Department acquires the property or 90 days from receipt of the Form RW-590, whichever is earlier. They are guaranteed a 30-day notice to vacate the property. The notice may run concurrently with the last 30 days of the 90-day occupancy period. See Chapter 4, Section 4.07 for procedures for issuing the 90-day notice and the 30-day notice to vacate.

2. Decent, Safe and Sanitary Housing (DSS).
   a. Dwellings to be leased must meet decent, safe and sanitary standards as set forth in Chapter 4, Relocation Assistance.

   b. A right-of-way claimant who lives in a non-DSS property should be relocated as soon as possible and the house should be demolished.

3. Rights of Landlords and Tenants. Former owners of buildings with tenants may continue to collect rents during the 90-day period. After the property has been acquired, the Department assumes the leases of the tenants and tenants will pay their rent to the Department. When the acquired leases expire, tenants wishing to continue leasing must sign a Department lease.

4. Estimated Just Compensation. When Estimated Just Compensation for a property is deposited into the court, the former owner will be sent a Form RW-467. This informs the claimant of the deposit into the court and the monthly rent if he elects to occupy the property. Rent is computed from the date of the deposit with the court. The District shall follow up to obtain a signed lease agreement.

5. Lease Agreement. Form RW-670I is used to lease properties on an interim basis. After Form RW-670I is completed by the District, signed and dated by the lessee, the original is sent to Central Office under cover of a Form RW-670T, for approval by the Chief, Utilities and Right-of-Way Section. Following this approval, the interim lease agreement is routed for review and approval by the Office of Chief Counsel, Comptroller Operations, Office of Deputy General Counsel, and the Office of Deputy Attorney General.

After the interim lease is fully approved and executed, the Office of Chief Counsel will enter the "made on" date, that is the date of the final approval signature. The lease is then returned to the District where copies are made for distribution: one copy is sent to Comptroller Operations, 555 Walnut Street – 9th floor, Harrisburg, Pa. 17101 Attn: Contracts Division, and one copy is sent to Treasury, G11 Finance Building, Attention Audits.
Prior to the "commencing" date of the lease, a copy is provided to the tenant, and the rent for the first month (and surety deposit, if applicable) is collected.

D. **Refusal to Sign Lease.**

1. **Refusal to Sign.** A former owner of right-of-way property who wishes to remain on the property must sign Form RW-670I and pay monthly rent. Failure to do so subjects him or her to eviction.

A tenant of a former property owner must also have a lease. If the property was acquired amicably, the Commonwealth succeeds to the lease and may collect the rent based on the prior lease and amount. If the property was acquired by Declaration of Taking, the Commonwealth has no right to insist on the terms of the former lease. The Department may negotiate a new lease with the tenant or seek eviction of the tenant for non-execution of a lease.

2. **Eviction.** If a tenant does not pay rent for two months, eviction proceedings may begin. The procedure for eviction of tenants is spelled out in Section 5.02.F.

3. **Relocation Benefits.** A tenant who is entitled to relocation benefits will retain that entitlement while leasing his previously owned property. Eviction does not compromise a claimant's right to any relocation benefits to which the claimant may be entitled.

E. **Rent Payments.**

1. **Payment.** Procedures for processing rent payments are described in Section 5.09. Right-of-Way personnel should refer to Section 5.09 for the handling of rent payments.

2. **Determination of Rent.** There are three ways to determine rent:

   a. 6% of acquisition cost will be used to calculate the first year's rent to be paid by a former owner-occupant. However, this amount should not exceed economic rent, i.e., fair rent for short-term occupancy.

   b. Economic rent will be charged to former owner-occupants after one year and to all subsequent tenants.

   c. Reasonable previous rent is based on rent previously paid, but not more than economic rent.

3. **Minimum Rent.** Rents should be set at fair market value. No rent should be set at less than $85.00 per month or $1,020 per year without specific prior authorization of the Chief, Utilities and Right-of-Way Section.

4. **Re-evaluation of Rent.** To assure maintenance of current economic rents, rent for former owner-occupants will be re-evaluated at the end of one year and every two years thereafter. Rent for subsequent tenants will be re-evaluated every two years. The District Right-of-Way Property Manager may conduct rent re-evaluations for residential and other non-complex rentals. The District Right-of-Way Administrator and Chief Appraiser should be consulted before proceeding. Rent evaluations for complex commercial or industrial rentals should be conducted by a Generally Certified appraiser.

5. **Rent Records.** The District will maintain the original (and only) interim lease file; therefore, it must be complete and accurate. A Form RW-669 must be maintained for each property. The Central Office will not have an interim lease file.

F. **Overdue Rent.**

1. **Warnings.**

   a. Tenants whose rent is one week past due are to be contacted to remind them of their overdue rent and give them a verbal warning to pay.

   b. If a tenant is delinquent for one month, Form RW-671 will be sent to the tenant.
c. If no satisfactory response is received within 30 days, Form RW-672 will be sent to the tenant. The District Right-of-Way Administrator will request the Office of Chief Counsel to initiate legal action to collect rent owed or proceed with eviction. The request should be in writing.

2. Litigation of Right-of-Way Claim. If a right-of-way claim is to be litigated, the Office of Chief Counsel will be requested to deduct rents owed the Commonwealth from the final settlement.

G. Subsequent Interim Tenants.

1. Renting Vacated Properties. When a right-of-way claimant vacates a property, it may be rented to another tenant. Factors affecting the decision to re-rent include:
   
   a. The Length of time remaining until construction of the highway.
   
   b. The advantages or disadvantages of having a building occupied.
   
   c. The condition of the building.

An inventory of properties available for lease will be kept in the District Right-of-Way Office. A list of applicants for rentals should also be maintained. When a property becomes available for lease, applicants should be contacted in order of their place on the list to determine their interest in leasing the property.

2. Application/Credit Check. The prospective tenant must fully complete Form RW-668. This application is then used to obtain a credit report. Payment for the credit report may be made using the miscellaneous right-of-way cost procedures: set up a parcel miscellaneous (MSC) sub-claim, and use internal order number 81148 along with G/L accounting code 6412050 to establish the ROW Office claim payment.

3. Subsequent Interim Tenant (SIT) ROW Office Sub-claim. When the District is satisfied that the applicant would be an acceptable tenant, a new sub-claim is established in ROW Office for the parcel to be leased. The claim description code is SIT, which identifies the sub-claim as a subsequent interim tenant. After ROW Office generates the sub-claim number, ROW Office Claim Maintenance screen (at a minimum) must be entered to capture tenant information. Rent receipts are then entered and tracked in ROW Office using this specific sub-claim number for this subsequent interim tenant.

4. Executed Lease Required. Form RW-670I is prepared. The lease is forwarded to the Central Office Right-of-Way Administration and Property Management Unit (Administration Unit) under cover of Form RW-670T. Upon receipt, the package will be reviewed and the lease routed for execution.

After the interim lease is fully approved and executed, the Office of Chief Counsel will enter the "made on" date that is the date of the final approval signature. The lease is then returned to the District where copies are made for distribution: one copy is sent to Comptroller Operations, 555 Walnut Street – 9th floor, Harrisburg, Pa.17101, Attn: Contracts Division, and one copy is sent to Treasury, G11 Finance Building, Attention Audits. Prior to the "commencing" date of the lease, a copy is provided to the tenant, and the rent for the first month (and surety deposit, if applicable) is collected.

The District will then forward the initial rent payment, surety deposit (if applicable), and ROW Office Credit Invoice (Claim Payment Invoice screen shot) to the Central Office Right-of-Way Administration and Property Management Unit. Ensure rental payment is allocated to the correct fiscal year for the referenced rental period.

A subsequent interim tenant may not occupy Department property prior to receipt of a fully executed Form RW-670I.

5. Interim Lease Agreement Numbers. Rent receipts for interim leases are credited to the R/W project by processing the rent payment via ROW Office credit. Therefore an agreement number for fiscal purposes is not needed.

However an agreement number must be displayed on the lease agreement for tracking through the legal approval process. An interim lease agreement number may be created and maintained (record log) by using the district number, the letter "I" and 3 sequential log numbers, e.g., 061001, 081012, etc.
6. No Supplemental Payments. A subsequent tenant is not eligible for supplemental payments or moving costs. In order to prevent misunderstanding, the following statement must be added to the lease and initialed by both parties:

"Moving costs and relocation payments will not be paid by the Department upon termination of this lease."

H. Insurance. Renters are required to obtain liability insurance, listing the Commonwealth as an additional insured, in the amounts of $100,000 per person/$300,000 in the aggregate. The tenant must submit proof of insurance on the effective date of the lease and at least annually thereafter. The proof of insurance will be kept in the District lease file. The leased property may not be occupied until proof of insurance is provided.

I. Payments In Lieu of Taxes. Lessees, other than public agencies, are required to make payments in lieu of taxes to the political subdivision in which the property is located, if billed. To collect the payment in lieu of taxes, the political subdivision must reassess the property reflecting the change in value caused by construction of the highway or other transportation facility and bill the lessee directly. Failure to make payments in lieu of taxes may be considered a breach of the lease.

J. Repairs.

1. Justified Repairs. Repairs are not normally done on interim leased property. Repairs may be made if they will contribute to maintaining or increasing the rent value of the property and the cost can be recovered from collecting rent.

2. Contracting Procedures/Emergency Repairs. Commonwealth purchasing and contracting procedures must be adhered to when making repairs. Emergency repairs may be authorized in accordance with procedures outlined in Contracting for Services, M215.3.

Form RW-673 must be completed and retained in the District file, and a copy submitted with invoices for payment or rent credit.

If the repair cost will be less than $5,000.00, the miscellaneous right-of-way cost procedures may be used; set up a parcel miscellaneous (MSC) sub-claim, and use internal order number 81168 along with G/L accounting code 6412050 to establish the ROW Office claim payment.

3. Tenant Repairs. Tenants may be allowed to make repairs and improvements to leased property. They must receive permission in advance. Tenants are not allowed to make repairs until they have entered into Form RW-670I. Tenants may be granted rent credit for repairs necessary to keep the property in decent, safe and sanitary condition; use internal order number 81168 along with G/L accounting code 6412050 to credit repair costs against a tenant's rent payment. Repairs or improvements done for the convenience of the tenant will be at the tenant's expense.

K. Utilities. Tenants will pay all utilities for leased properties. In cases where one utility meter serves more than one rental unit, the Department will pay the utility bill. Set up a miscellaneous (MSC) sub-claim for the utility company and use internal order number 81167 along with the G/L accounting code of 6412050 to establish the ROW Office claim payment.

Note: Per 72 P.S. § 7204, Exclusions from Tax, sales tax imposed on fuel oil, gas, steam or electricity purchased for residential use is not subject to tax and cannot be paid for utility costs.

L. Interim Leasing of Vacant Land.

1. Vacant Land to be Leased. Vacant land of value that will not immediately be utilized for construction may be leased. Farmlands in rural areas and parking lots in metropolitan areas are examples.

2. Leasing Procedures. Procedures for leasing vacant land are the same as for improved property.

3. Protection of Special Features. When land to be leased has special features or qualities that should be preserved or protected, such as mature trees that will be retained, a clause should be added to the lease to protect the feature.
4. Changes to Leased Land. Installation of improvements or changes to leased land must be approved in advance by the Chief, Utilities and Right-of-Way Section and must be removed at the end of the lease.

5. Local Zoning. Use of leased land must comply with local zoning regulations and not be offensive to the neighborhood or its inhabitants.

M. Return of Security Deposit. Tenants who are leaving may be due a refund of their security deposit. See Section 5.09.F for the procedure to be followed.

N. Annual Inspection. The District Property Management Unit will conduct an inspection of each leased property annually during the month prior to the anniversary date of the lease. Form RW-675 is to be used to record and report the results of the annual inspection and will be filed in the District interim lease file. If any violations of the lease or deficiencies are noted, they must be corrected as expeditiously as possible. Deficiencies will be monitored until corrected. If a violation of the lease continues beyond a reasonable time, cancellation of the lease would be the appropriate remedy.

O. Leasing to Department Employees Prohibited. Employees of the Department of Transportation may not lease right-of-way property. The Office of Chief Council has issued the following opinion on this question: The "State Adverse Interest Act" provides: "No state employee shall have an adverse interest in any contract with the state agency by which he is employed." 71 P.S. §776.5. "Have any adverse interest," means to be a party to a contract, and "contract" includes a contract or arrangement for use or disposal of land by a state agency. 71 P.S. §776.2.

A lease is a contract, Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979), and a lease for Department right-of-way would be for the use or disposal of land by the Department. The Adverse Interest Act would thus apply to prohibit any Department employee from having an adverse interest therein by being a party to the lease.

5.03 JOINT USE LEASING OF RIGHT-OF-WAY

This section deals with long-term leasing of right-of-way after highway construction is completed. These are long-term leases of areas above, beneath or outside the traveled way. The activities and procedures outlined in this section are authorized pursuant to 71 P.S. §512(c), Title 67, PA Code, Chapter 495, and 23 CFR 710, Subpart D. The opportunity to lease any parcel of real property shall first be offered to interested public agencies; however, if there is no such agency desiring to lease, then the department may lease to one or more private entities.

A. Application Procedure. Individuals or organizations interested in leasing right-of-way should contact the District Executive of the Engineering District in which the property is located. The District right-of-way staff should work with the prospective lessee to make them aware of the procedures and requirements of joint use leasing.

1. Application to Lease Real Property, Form RW-670A. The applicant shall submit Form RW-670A to the District Executive. The application calls for detailed descriptions of the property and the proposed use, including modifications and improvements to be installed, and a site plan. See Exhibit A, flow chart "Joint Use Leasing of Real Property," which shows the steps for submission, review, approval, and signature of application and lease.

2. Joint Use Lease, Form RW-670JU. Form RW-670JU is the standard joint use lease form. It may be used as a guide in advising the prospective lessee of the conditions to be met by a lessee. Discussions with the prospective lessee may reveal special situations or concerns that should be addressed in added paragraphs of the Form RW-670JU.

3. Sub-Leasing. If the lessee plans to sub-lease the property, the manner of choosing the sub-lessee must be indicated on Form RW-670A. The selection process must be fair, equitable and acceptable to the department.

4. Notice to Local Governmental Agencies. At the time of applying to the District Executive, the applicant must notify the municipality and the school district in which the site is located that he or she has filed an application with the Department for a lease. The notice must identify the property, state the proposed use of the property and list any proposed sub-leases. The notices should be sent by registered or certified mail. If additional public agencies are to be notified, the Department must notify the applicant within 30 days of receipt of the application. The applicant must give the Department copies of all notices sent and all responses
5. Rent. The rental amount will be determined by a fair market rental appraisal performed by a qualified employee of the lessor. See Section 5.03.1.1.

6. Expiration of Leases. Lease applications that replace prior leases—expired, outdated, or another type—will be processed using Form RW-670E. All required drawings and other documentation must be submitted. The District must begin the renewal process early enough to ensure that sufficient time is available to completely execute the new lease prior to the expiration of the existing lease. It is recommended that preparation of the new lease be begun at least six (6) to nine (9) months prior to the desired date of commencement or date of expiration.

B. District Review of Application. Upon receipt of an application for a Joint Use Lease, the District Executive will refer the application to the District Right-of-Way Administrator who will review it and make recommendations.

1. General. The District review should include consideration of the impact and appropriateness of the proposed activity on the community and the highway program (i.e., maintenance, construction and environment).

2. Engineering Review. The District review of the lease application will include an engineering review of the proposed lease including:
   a. Safety, considering such factors as the intended use of the property, design and construction of facilities for the leased area, and the impact of the intended use and facilities on the traveled way. Another consideration is whether a highway occupancy permit could be issued for access to the site.
   b. Protection of highway structures located in the leased area. A pier protection plan must accompany the application. An example of this is the construction and maintenance of fixtures to protect the piers supporting an elevated highway when the area beneath the highway is leased. See Publication 72M, Roadway Construction Standards.

3. Environmental. An environmental review will be conducted for every joint-use lease application. Environmental assessments for disposals of real property which will not result in significant environmental impacts may be documented on the "Disposal of Real Property and Lease Agreement Renewal Programmatic CE Applicability Form." The District Environmental Unit will be familiar with the location and use of this form.

   If the Programmatic Agreement does not apply, then preparation of a Categorical Exclusion Evaluation (CEE) must be completed. Refer to the CEE Handbook (Pub 294) for additional guidance. The Environmental Review finding must be approved by the District Executive or his designee. A copy of the approved finding must accompany the lease application.

C. Description of Property and Proposed Use. In order to ensure an accurate description and knowledge of the property and the lease for legal and review purposes, the following descriptive materials shall be prepared in the District and included as a part of the lease application package, as follows:

1. A Right-of-Way plan sheet depicting the area to be leased.
2. A detailed description of the proposed use of the property to be leased.
3. A metes and bounds description of the area to be leased.
4. A site plan of the area to be leased showing all improvements to be installed or affected by such use, i.e., fences, light standards, paving, and structures. If the leased area is below a viaduct, include a cross-section view.
5. Specifications and/or plans for protection from damage to existing piers, columns, drainpipes, fences, light standards, curbs, and other structures.
D. Lease Preparation. When the District review of the application is complete, the District Right-of-Way Administrator will make his recommendation to approve or disapprove the application to the District Executive. If recommending approval, the Administrator will prepare Lease Form RW-670JU to accompany the application. If circumstances call for modifications or additional clauses in the lease, they will be added to the prepared lease. These modifications or additions will be pointed out to the Central Office in a memo to accompany the lease package.

E. Recommendation of Approval. The District Executive will review the application, the lease, and the recommendation of the Right-of-Way Administrator and approve or disapprove the Form RW-670A.

F. Lessee's Signature. If the District Executive approves, the Right-of-Way Administrator will obtain the dated signature of the applicant (lessee) on the prepared lease. The lease "made on" date must not be entered when the applicant signs the lease. The lease will be dated at the end of the review process when it is approved by the Attorney General's Office.

G. Notice in the Pennsylvania Bulletin. When it is clear an application for a joint-use lease will be approved at the District level, the District Right-of-Way Administrator will submit a notice of filing of the application to the Document Law Section of the Legislative Reference Bureau for publishing in the Pennsylvania Bulletin. The notice will identify the applicant, the location and the intended uses proposed for the property. The notice will provide persons objecting to the lease 30 days to file a written protest. A protest must state the basis of the objection and the relevant facts to support it. A copy of the published notice and any responses to it will be included in the lease package. See Exhibit B for a sample notice.

1. Creating a Request to Advertise in the Pennsylvania Bulletin. All advertising requests are processed directly through the Legislative Reference Bureau (LRB).
   a. The Department may place advertisements in the Pennsylvania Bulletin at no cost.
   b. All advertisements must be in paragraph format, and submitted with two (2) original copies, an electronic disc (CD), and a cover letter to:
      Pennsylvania Bulletin, Legislative Reference Bureau, 641 Main Capitol, Harrisburg, PA 17120
   c. There is a 10 day turn-around for all advertisements.
   d. All advertisements must be received by 4:00 PM Wednesday for inclusion in the following Saturday's issue.
   e. Any questions regarding advertisement submission or deadline changes should be made directly to the Legislative Reference Bureau at (717) 783-1530.

2. Priority among Public Agencies and Lack of Need for Notice in Limited Circumstances. The advertisement in the Pennsylvania Bulletin is considered to be sufficient notification to public agencies of the lands' availability and fulfills the Department's obligation under 71 P.S. §512(c).

   If a public agency expresses, in writing, an interest to lease land prior to the notice in the bulletin, that agency will be given priority and the notice does not need to be run.

   After the notice has run, the priority regarding public agencies will initially be based upon the timing of the responses to the notice. The first public agency to express, in writing, its willingness to lease the land consistent with Department procedures will have priority to lease the land.

   If more than one public agency expresses an interest to lease the land consistent with Department procedures at the same time, either before or after the notice, the following order of priority will be used:
   a. State Agencies, Boards and Commissions
   b. County Governments
   c. City, Borough, Incorporated Town or Township Governments
d. School and Vocational School Districts

e. County Institutional Districts

f. Municipal Authorities

g. Local Authorities

H. Lease Package. In the case of multiple agencies, the District should rank the agencies in the District's recommended order and submit their recommendation to the Utilities and Right of Way Section for a determination. When the applicant has signed the lease, a lease package will be assembled, consisting of the application, a copy of the notice published in the Pennsylvania Bulletin and any responses to it, and the prepared lease and supporting materials (as identified on the RW-670A). The package will then be forwarded to the Right-of-Way Administration and Property Management Unit.

I. Lease Terms. The following guidelines, together with the Joint Use Lease, Form RW-670JU, will be used in drawing up a joint use lease. Other terms may be included to deal with particular situations.

1. Rent. Fair Market Value rent will be charged for rental of right-of-way. Adjustments in rent may be made for non-proprietary leases, such as those involving non-profit or governmental organizations. In no case will rent be set at less than the minimum rent established by Departmental directive, unless approved in advance by the Chief, Utilities and Right-of-Way Section. The current minimum rent is $85.00 a month or $1,020 a year. All rents may be reviewed and adjusted after two years as set forth in the lease. All rents must be reviewed and adjusted within a period of five years from the effective (beginning) date of the lease, or from the date the last fair market appraisal was performed, whichever is more recent. There can be exceptions to mandatory rent reviews and adjustments. If the Lessee is an entity which is performing a public service or utilizes the land in a manner which serves the public interest and the terms of the agreement state a fixed minimal rent, there is no need for rental adjustments. The District Right-of-Way Property Manager may conduct rent re-evaluations for residential and other non-complex rentals. The District Right-of-Way Administrator and Chief Appraiser should be consulted before proceeding. Complex rent evaluations and other commercial or industrial rentals should be conducted by a Generally Certified staff appraiser.

Note that pursuant to 23 CFR 710.403(d), which outlines the general requirement for charging Fair Market rent when leasing land obtained with Title 23 transportation funding, several exceptions are made. Among those exceptions are where the land will be used for certain other transportation purposes or a nonproprietary governmental use; and the Department clearly shows a reduced rent is in the overall public interest for social, environmental, or economic purposes. Federal Highway Administration (FHWA) approval is required if the lease affects the Interstate System.

2. Federal, State and Local Statutes. Lessees and sub-lessees must comply with all applicable federal, state and local statutes and regulations. Costs of compliance are to be borne by lessees and sub-lessees.

3. Liability Insurance. The lessee will hold harmless the Department and its employees for claims that may arise from their occupancy and use of the property. Lessees will be required to purchase and keep in force insurance of the types and amounts required by the Department. Minimum insurance requirements are:

a. Public liability insurance of not less than $250,000 per person and $1,000,000 per incident.

b. Property damage or other insurance of the type(s) and amount(s) necessary to protect the lessee and the Department.

c. The requirements noted above are coverage minimums. Insurance requirements for individual leases should be determined according to the risks associated with the individual lease. Paragraph 18 of Lease Agreement, Form RW-670JU states insurance requirements. If higher coverage is required, the figures in Paragraph 18 should be changed to the higher coverage.

d. The Department will be named as an additional insured in all policies.
e. The insurance policies must obligate the insurer to notify the lessee and the Department not less than 30 days prior to cancellation or changes in policies.

4. Improvements to Property. Lessee shall make no changes or improvements to the property without approval of the Department. Upon termination of the lease, the Department may require the lessee to abandon improvements that have been made to the real property or to restore the premises to its previous condition.

5. Termination. Leases may be terminated when the Secretary of Transportation determines the property is required for transportation purposes. Prior notice must be given.

a. Upon such termination, the Department will pay damages as provided in the lease. If the lease does not provide for damages, the Department will pay reasonable damages, if any, as determined by the Secretary.

6. If leases are terminated in this manner, the Department will use its best efforts to provide other suitable premises on real property

Use of Premises

a. held by the Department.

b. The intended use of the property will be specified in the lease.

c. The premises must not be used in a manner to interfere with the safe use of adjacent highways and lands or in a hazardous or unsafe manner.

d. Leasing of property will be subject to the following conditions:

(1) If the Department has only an aerial easement, the area will not be leased.

(2) If the Department has an easement for highway purposes, only highway related uses may be conducted on the leased property, e.g., public parking.

(3) If the Department holds title in fee simple, any use consistent with the public interest and not inconsistent with Department policies may be permitted.

1. Repossession. The Department may repossess leased property upon violation of any terms of the lease.

2. Temporary Use of Right-of-Way. The District Executive may permit temporary use of right-of-way not required for free movement of traffic by public agencies and charitable organizations. A temporary use permit may not exceed 90 days.

3. Payments in Lieu of Taxes. Lessees, other than public agencies, are required to make payments in lieu of taxes to the political subdivision in which the property is located, if billed. To collect the payment in lieu of taxes, the political subdivision must reassess the property reflecting the change in value caused by construction of the highway or other transportation facility and bill the lessee directly. Failure to make payments in lieu of taxes may be considered a breach of the lease.

4. Waiver of Compliance. The Secretary of Transportation may waive compliance with the provisions of Title 67 Pa. Code Chapter 495 upon a showing of good cause by an applicant, lessee, or sub-lessee. The intention to waive compliance and the reasons for waiving compliance must be published in the Pennsylvania Bulletin at least 30 days in advance of the waiver.

J. Central Office Review, Approvals and Signing.

1. Review. Upon receipt of the lease package in the Central Office, the Right-of-Way Administration and Property Management Unit will review the application, lease and supporting materials. They will consult with the Office of the Chief Counsel for assistance in reviewing the lease package, if necessary.

2. Approvals. When the application to lease right-of-way is in final form, it is submitted to the Chief, Utilities and Right-of-Way Section, for his approval. Following approval by the Chief, Utilities and Right-of-Way Section, the application is sent to the following organizations for their review and approval:
Chapter 5 - Property Management

a. Highway Quality Assurance, Bureau of Project Delivery
b. Highway Safety and Traffic Operations
c. Center for Program Development and Management
d. Strategic Environmental Management Program
e. Federal Highway Administration (if interstate highway)

3. Preliminary Legal Approval. When the above approvals have been obtained, the lease is submitted to the Office of the Chief Counsel for preliminary approval.

4. Signing. After the preliminary approval, the lease is executed by a Deputy Secretary of Transportation on behalf of the Commonwealth.

5. Final Reviews and Approval. Following signature by the Deputy Secretary, the lease is sent to the following offices for final review and approval:
   a. Chief Counsel
   b. Office of General Counsel
   c. Comptroller Operations
   d. Attorney General

6. Effective Date. The effective date of the lease is the date it is signed by the Attorney General's Office.

7. Distribution. The approved lease agreement will be returned to the District who will retain the original copy and distribute copies to the Lessee, Comptroller Operations, and Treasury.

K. Proceeds from Leases. Proceeds from leasing of right-of-way are to be used for transportation projects. The federal share of net income from the lease of right-of-way shall be used for activities eligible for funding under Title 23 of the United States Code.

L. Annual Inspection.
   1. The District Property Management Unit shall conduct an inspection of each leased property annually, during the month prior to the anniversary date of the lease.
   2. The Form RW-675 is to be used to record and report the results of the annual inspection.
   3. Forward the completed report, including recommendations to the Central Office Right-of-Way Administration and Property Management Unit.
   4. If any violations of the lease or deficiencies are noted, they must be corrected as expeditiously as possible. Deficiencies will be monitored until corrected.
   5. When corrected, submit a follow-up report. If a violation of the lease continues beyond a reasonable time, a recommendation to cancel the lease will be made in the report.

M. Assignment of Lease. Paragraph 19 of the Joint Use Lease, Form RW-670JU, provides that a lessee may not sublet, transfer, assign or mortgage the lease or any part thereof without the prior written consent of the Department, except a lessee may sublet the premises to an affiliate of lessee or an affiliate of a general partner of the lessee without prior consent.

Assigning a lease is a two-part process. First, consent to the assignment must be obtained from the Department; then, the assignment document is reviewed as to form and legality by the Office of Chief Counsel, Real Property Division.
A request by an individual or organization to assign an existing lease to another must be made to the District Executive, in writing. The request must include a copy of the proposed assignment from the lessee to the other party (whether part of a sales agreement, a stand-alone document, etc.). If a merger or consolidation has occurred, then the document must be the one the company was required to file with the Pennsylvania Department of State. The District should verify that the lessee is assigning all rights and obligations under the lease and that the assignee is a responsible contractor.

The District shall forward a copy of the following documents to the Chief, Utilities and Right-of-Way Section:

1. Written request for assignment.
2. Proposed agreement between the assignor and the assignee.
3. A copy of the existing lease.
4. The District's recommendation.

The Utilities and Right-of-Way Section shall review these documents, and forward them to the Office of Chief Counsel, Real Property Division, for their review using a "proposed assignment of joint use lease" routing sheet. The Legal Approval Tracking System (LATS) should be used for this purpose. The approval of the Office of Chief Counsel will be shown on the routing sheet itself.

If approved, the "proposed assignment of joint use lease" routing sheet will be returned to the District by the Utilities and Right-of-Way Section.

Upon receipt of approval of the assignment of lease from Central Office, the District must contact the Bureau of Fiscal Management to request a PennDOT Customer Number (not a vendor number) for the new lessee (assignee). This may require several business days for the Vendor Data Management Unit (VDMU) and/or Comptroller Operations to review and approve. Note: The agreement number for assignments should be the original agreement number designated with the letters "AS" at the end of the number.

After obtaining the new Customer Number, the District must forward a completed Consent to Assign Lease (Exhibit C) to both the current lessee (assignor) and new lessee (assignee). The Customer Number of the new lessee/assignee shall be included in this letter.

The current lessee must provide the District Executive with the full written agreement between themselves and the assignee/new lessee.

Upon receipt of the executed agreement, the District shall forward a copy of the executed agreement between the assignor and the assignee along with a cover memorandum to the Chief, Utilities and Right-of-Way Section. The Chief, Utilities and Right-of-Way Section, shall review the document and forward it to the Office of Chief Counsel, Real Property Division, for review and approval as to form and legality using an "assignment of joint use lease" routing sheet. Again, LATS should be used for this purpose.

If approved, the "assignment of joint use lease" routing sheet and the assignment agreement will be returned to the District by the Utilities and Right-of-Way Section.

Following receipt of the routing sheet approving the assignment document, the District shall forward a copy each of the Consent to Assign Lease, the lessee's original request for assignment letter, and the routing sheets showing the Office of Chief Counsel's approvals to, Comptroller Operations, Accounts Receivable Unit, 555 Walnut Street-9th floor, Harrisburg, Pa.,17101, the Treasury, G11 Finance Building, Attention Audits, and the Administration and Property Management Unit, Central Office.

The Customer Number of the new lessee/assignee shall be included in the cover memorandum forwarding these documents. Both the current lessee (assignor) and new lessee (assignee) should also be notified that the approval process has been completed.

Upon receipt of the package from the District, the Comptroller Operations will process the following transactions in SAP:
1. Close out the original invoice of the lessee/assignor.

2. Create an invoice to the lessee/assignee under the PennDOT Customer Number created by the Bureau of Fiscal Management.

The original request for lease assignment, copy of the written agreement between the parties, copy of the Office of Chief Counsel's approvals, and a copy of the Consent to Assign Lease must be retained in the District lease file.

**N. Amendment to Joint Use Lease Agreement.** The process for amending a Joint Use Lease requires interaction by the District with the Utilities and Right-of-Way Section both before and after the amendment is executed by the lessee. Terms within an active Joint Use Lease may be revised in lieu of creating a new lease with an adequate description of the amendment and by obtaining the appropriate approvals.

Amendments to Joint Use Leases will normally be identified by the District Office. They are necessary when the rental amount is adjusted or if any other term is to be revised.

A request by the District Right-of-Way Administrator summarizing the changes to amend the Joint Use Lease shall be prepared and submitted to the Chief, Utilities and Right-of-Way Section. The request must include a copy of the lease to be amended and the proposed amendment. Utilization of the amendment sample (See Exhibit D) is recommended to ensure proper format and appropriate signature approvals are included. A template is available on the shared drive at P:\penndot shared\ROW Administration\JUL Amendment Template.

Preliminary review will be by the Central Office, the Right-of-Way Administration and Property Management Unit. They will consult with the Office of the Chief Counsel, Real Property Division, for assistance in reviewing the amendment, if necessary.

Once it has preliminarily approved the amendment, the Utilities and Right-of-Way Section will return the amended lease package back to the District. The District will have the amendment to the lease executed by the lessee and forward the executed amendment back to the Utilities and Right-of-Way Section with a copy of the original lease. Note: The agreement number for amendments should be the original agreement number with the letter "A" at the end of the number.

The Utilities and Right-of-Way Section shall review the amendment and forward it with the copy of the lease to the Office of Chief Counsel, Contracts and Legal Services Section, for preliminary approval. The Legal Approval Tracking System (LATS), with the appropriate routing sheet, will be used for this purpose.

After preliminary approval, the lease is executed by a Deputy Secretary of Transportation on behalf of the Commonwealth. Following signature by the Deputy Secretary, the lease is sent to the following offices for final review and approval: Chief Counsel; Office of General Counsel; Comptroller; and Attorney General. The effective date of the amendment is the date it is signed by the Attorney General's Office.

The approved amendment will be returned to the District who will retain the original copy and distribute copies to the Lessee; Comptroller Operations, Accounts Receivable Unit, 555 Walnut Street-9th Floor, Harrisburg, Pa. 17101; the Treasury, G11 Finance Building, Attention Audits; and the Administration and Property Management Unit, Central Office.

**O. Leasing to Department Employees Prohibited.** Employees of the Department of Transportation may not lease right-of-way property. The Office of Chief Counsel has issued the following opinion on this question:

The State Adverse Interest Act provides: "No state employee shall have an adverse interest in any contract with the state agency by which he is employed." 71 P.S. §776.5. "Have any adverse interest," means to be a party to a contract, and "contract" includes a contract or arrangement for use or disposal of land by a state agency. 71 P.S. §776.2.

A lease is contract, Pugh v. Holmes, 486 Pa. 272, 405 A.2d 897 (1979), and a lease for Department right-of-way would be for the use or disposal of land by the Department. The Adverse Interest Act would thus apply to prohibit any Department employee from having an adverse interest therein by being a party to the lease.
EXHIBIT A
JOINT USE LEASING OF REAL PROPERTY

<table>
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<tr>
<th>APPLICANT</th>
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<tbody>
<tr>
<td>Submit Application to Lease Real Property</td>
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<tr>
<td>Form RW-670A</td>
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<td>Notice to local municipality and school district</td>
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<th>DISTRICT</th>
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<tr>
<td>Review Application</td>
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<tr>
<td>Publish Notice in Pennsylvania Bulletin</td>
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<td>Environmental Review</td>
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<tr>
<td>Prepare Lease, Form RW-670JU (one original), plus ½ size plan sheet(s) as exhibits</td>
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<td>District Executive Approves/Disapproves</td>
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<tr>
<td>Lessee's Signature</td>
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<tr>
<td>Prepare &amp; Submit Lease Package, consisting of Application, Form RW-670A, Lease Form RW-670JU and supporting materials, (plus two full-size highway plan sheets). The package must include the original materials</td>
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<td>Review Lease Package</td>
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<td>Legal Review and Preliminary Approval (Application)</td>
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<td>Obtain Approvals:</td>
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<td>Chief, Utilities and Right-of-Way Section</td>
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<td>Bureau of Highway Safety and Traffic Engineering</td>
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<td>Strategic Environmental Management Program</td>
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<td>Highway Design Quality Control Division</td>
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<tr>
<td>Center for Program Development and Management</td>
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<td>Federal Highway Administration, if applicable</td>
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<tbody>
<tr>
<td>Chief Counsel</td>
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<th>DISTRIBUTION OF COPIES (BY DISTRICT)</th>
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EXHIBIT B
APPLICATION FOR LEASE OF RIGHT-OF-WAY

Notice is hereby given that pursuant to Title 67 Pa. Code §495.4(d), an application to lease highway right-of-way has been submitted to the Department by ____________________________________, Name of Applicant of _________________________, __________________________________________________________, Street                  Town and State
seeking to lease highway right-of-way located at ________________________________________________, Street
____________________________________________,  ___________________________________________, City, Borough, Township                      County
__________________ square feet/hectares ±, adjacent to SR _______________, Section(s)____________________, for purposes of _______________________________________________.

Interested persons are invited to submit, within thirty (30) days from the publication of this notice in the Pennsylvania Bulletin, written comments, suggestions and/or objections regarding the approval of this application to __________________________________________, P.E., District Executive, Engineering District _________, ______________________________________________________________________________.

Address

Questions regarding this application or the proposed use may be directed to:

______________________________________
Name

______________________________________
Title

______________________________________
Address

______________________________________
Telephone Number

For publication, mail two (2) copies and CD to: Pennsylvania Bulletin
Legislative Reference Bureau
641 Main Capital
Harrisburg, PA  17120-0033

______________________________________
Secretary of Transportation
EXHIBIT C

CONSENT TO ASSIGNMENT OF LEASE

DATE

Lessee Name (Assignor) AND Lessee Name (Assignee)
ATTN: contact Person ATTN: Contact Person
Address Address
City, State, Zip+4 City, State, Zip+4

Re: Assignment of Joint Use Lease

______________ County
Agreement Number

Dear Contact Person

The Commonwealth of Pennsylvania, acting through the Department of Transportation, hereby consents to the assignment of rights and obligations under Lease Agreement (Number) from (Former Lessee/Assignor, Customer Number) to (New Lessee/Assignee, Customer Number).

The Commonwealth acknowledges that (New Lessee/Assignee) has agreed to accept and to assume the lease subject to any and all terms, conditions, duties and obligations stated in the lease and its attachments.

Upon execution of the assignment document, please return a copy to the Property Manager named below, at the above address.

If you have any questions, please contact: Property Manager Name at (telephone #) or FAX (Fax #)

Sincerely,

/s/

(District Executive Name)
District Executive
Engineering District XX-X
Address
City, State, Zip+4

cc: Comptroller Operations
    Treasury Department
    Property Management Unit, Utilities & Right-of-Way Section, BOD
    Lease File
EXHIBIT D
AMENDMENT TO LEASE AGREEMENT TEMPLATE

County __________ Agreement No. __________
Lessee __________ Federal ID No. __________

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT, made this _____ day of __________, __________, by and between
the Pennsylvania Department of Transportation
(hereinafter called the "LESSOR") and ________________ (hereinafter called the "LESSEE")

WITNESSETH:

WHEREAS, the LESSOR entered into a lease agreement with the LESSEE on __________, __________ relating
to certain lands acquired by the LESSOR for State highway purposes (hereinafter Lease Agreement); and

WHEREAS, paragraph __ of the Lease Agreement provides that rent shall be adjusted biennially by the
LESSOR on the basis of a fair market rental appraisal performed by a qualified appraiser who may be an employee
of the Commonwealth of Pennsylvania; and

WHEREAS, the LESSOR and LESSEE desire to modify paragraph __ to allow, but not require biennial
rental adjustments.

NOW THEREFORE, intending to be legally bound, the parties hereto agree to amend the Lease Agreement
as follows:

1. The recitals set forth above are incorporated herein by reference as if fully stated

2. Paragraph __ of the Lease Agreement is amended to provide as follows:

"The LESSEE will pay to the LESSOR monthly rent under this lease in the amount of $______. Rent
may be adjusted after two years on the basis of a fair market rental appraisal performed by a qualified
employee of the LESSOR. If rent is adjusted, this Lease will be amended in writing to reflect the adjusted
rent and the LESSOR'S right to adjust the rent two years thereafter. This Lease may be terminated by the
LESSOR upon thirty (30) days written notice given to the LESSEE if the LESSEE refuses to pay the
adjusted rent and/or to execute an amendment to this Lease reflecting new rental terms. 3. Except as set
forth above, the terms of the Lease Agreement remain in effect.

(TEMPLATE IS CONTINUED ON NEXT PAGE)
IN WITNESS WHEREOF, the parties have executed this Amendment the date first above written.

____________________________
LESSEE
By _________________________________ Date

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
By
Deputy Secretary of Transportation Date

APPROVED AS TO LEGALITY AND FORM
BY
For Chief Counsel Date
BY
Assistant Counsel Date

Certified Funds Available under ____
SAP No. ____
SAP Cost Center ______
GL. Account ______
Amount ______

BY
For Comptroller Date

5.04 INVENTORY OF IMPROVEMENT AND OWNER RETENTION

The following procedures relate to recording, valuing and retention by the owner of improvements and equipment associated with property acquired for right-of-way. Completion of an Inventory of Improvement, listing improvements to the property being acquired, is a part of the pre-acquisition process. The listing is used when the Department takes possession of the property to determine that all the improvements and equipment are in place. It is also used if the owner decides to retain improvements and/or equipment associated with the property.

A. Inventory of Improvement, Form RW-663. After a District receives authorization to acquire property for a project, a right-of-way representative will conduct an inventory of machinery, equipment and fixtures that are a part of the property to be acquired. These are listed on Form RW-663, for residential acquisition or RW-663B, for a business. The inventory is to be completed in three copies, one each for the District Appraisal Unit, the District Property Management Unit and the owner. The owner's copy is presented when a written offer is delivered to him.
B. **Delivery of Offer and Inventory of Improvement.** When the negotiator delivers the written offer and the Form RW-663, or RW-663B, to the owner, the negotiator should explain that the items on the inventory are part of the property and are not to be removed. The negotiator should also explain that the owner may retain some or all of the structures and inventoried items, but payment for the property will be reduced by the value of the items retained.

C. **Retention by Owner.** When a property is acquired, the owner may be allowed to retain buildings, structures, machinery, equipment and fixtures.

1. **Buildings and Structures.** If the District permits retention based on the best interest of the Department and the owner is interested, the right-of-way representative will explain the procedure to the owner. This will include retention value, how it is determined, and retention credit from the payment of fair market value of the property. Retention value of buildings and structures is "fair market value severed," i.e., its value if the property was sold in place to be subsequently removed by the buyer. The District Property Manager shall maintain a record of previous sales for determining comparable retention values.

If the owner elects to retain buildings or structures, Form RW-621 is used to transfer ownership of the buildings and structures.

2. **Machinery, Equipment and Fixtures forming a part of the Real Estate.** The owner has the right to elect to retain machinery, equipment and fixtures associated with the property. If the owner is interested in retaining any of these items, retention values will be calculated for each item. Retention value is "fair market value severed," i.e., its value if it were sold to a used machinery dealer or at public auction. If the claimant wishes to retain machinery, equipment and fixtures forming a part of the Real Estate, use Form RW-621.

3. **Assembled Economic Unit.** The property of businesses, farms, and/or non-profit organizations may occasionally be acquired under the principle of Assembled Economic Unit Doctrine. Under this doctrine, a property is valued as a single unit, including the value of machinery, tools and equipment in the value of the property. (For further discussion of Assembled Economic Unit Doctrine, see Chapter 4, Section 4.05 and Chapter 2, Section 2.20).

D. **Payment for Retained Improvements and/or Machinery, Equipment and Fixtures.**

1. **Methods of Payment.**

   a. **Payment by Check.** If the owner wants to pay by check when the Form RW-621 (or Form RW-625) is signed, the payment is entered as a credit payment into ROW Office using internal order number 81144 and G/L Account code 6412030. The payee entry in ROW Office must mirror the payee name written on the check (i.e., PennDOT, Commonwealth of PA, etc.). The District attaches the check and Form RW-621 (or Form RW-625) to the printed copy of the ROW Office Claim Payment Invoice screen for submission to the Central Office Administration and Property Management Unit for processing. Additional information pertaining to payment entries in ROW Office can be found at Chapter 6, Section 6.04.

   b. **Credit Against Right-of-Way Fair Market Value Payment.** If the owner wants to credit the retention value against the payment of right-of-way damages, the right-of-way damages are entered in the ROW Office Claim Payment Maintenance screen as usual to reflect the approved fair market value, and a credit line for the retention amount is entered using internal order number 81144 and G/L Account code 6412030. Form RW-621 is included in the payment package to document the credit amount.

   c. **If the owner wants to retain improvements but has not accepted the Commonwealth's offer, the owner may have the value of the retained items credited from the right-of-way damage claim as litigated. Form RW-621 will be used to record and track the owner's choice.

2. **Disputed Claims.** As with a damage claim, if the owner and the Department cannot reach an agreement on retention values of structures, machinery, equipment and fixtures, the matter may be decided by a board of view or a jury trial.

3. **Revised Inventory of Improvement.**

   a. **If, after Form RW-663, or RW-663B, is initially completed, it is determined that an item has been
incorrectly classified (e.g., items listed as realty are actually personal property), the form should be revised and revised copies sent to the owner and the Central Office.

b. If, in the course of acquisition, the appraisal of the property is revised, a revised Form RW-663, or RW-663B, must be prepared to reflect the revised valuation.

c. If an owner has signed Form RW-621 before an appraisal is revised, the valuation of his property will not be changed. This should be noted on the revised Form RW-663, or RW-663B. If the owner signs Form RW-621 after the revised appraisal, the revised valuation will be used.

d. A copy of Form RW-663, or RW-663B, may be attached to Form RW-621 to list the property being retained and removed. Form RW-621, with attachments, may be used with Form RW-317A or Form RW-317AF. Form RW-621 is given to the claimant and a copy is retained for the District files. Form RW-621 is included as part of the payment package to document the credit amount.

E. Verification of Inventory of Improvement

1. Inventory Check. At the time the Department takes possession of the property, a right-of-way representative will verify that all the items on Form RW-663, or RW-663B, are still in place. Any missing items will be listed in the space provided at the end of the form. When the inventory check is complete and if all items are there, the right-of-way representative will certify on the form that the inspection has been completed and that all items were accounted for.

2. Missing Items. If items are missing, a determination will be made by the District Right-of-Way Administrator as to who is responsible. An effort shall be made to have the missing items returned. If that effort is unsuccessful, the District Right-of-Way Administrator will contact the Central Office, Utilities and Right-of-Way Section to request appropriate action be taken by the Office of Chief Counsel or request assistance directly from the Regional Assistant Counsel in Charge.

3. Submission to Central Office. The certified and dated Form RW-663, or RW-663B, is sent to the Central Office, Utilities and Right-of-Way Section.

4. Securing Inventory. When the Department takes possession of the property, the Department will change locks to the property when appropriate to safeguard items to be auctioned. The keys to all acquired properties will be secured by the Property Management Unit and a log established to monitor access to the keys.

F. Time Limit. An owner will have 30 days from the date of the offer letter to exercise retention rights. If an owner does not elect to retain structures and/or machinery, equipment or fixtures during the 30-day retention period, the owner loses preferred status relative to the property. If the owner later decides to keep any of the structures or machinery, equipment or fixtures, the owner must compete with other bidders in either the sealed bid or auction for disposition.

G. Removal Agreement. An owner who elects to retain one or more structures or inventoried machinery, equipment or fixtures must complete Form RW-621. This establishes what is to be retained, the value of the retention(s), the payment method and the conditions of removal and/or demolition and removal.

H. Rent Payment for Retained Improvements. Owners who retain improvements are required to pay rent from the time they receive payment for the property until they have removed the structure(s) or improvements from the right-of-way. Rent shall be at 6% per annum of Fair Market Value, minus the retention value. It shall not exceed the Fair Market Value of the property to a short-term occupant.

I. Removal of Improvements.

1. Owner Responsible. The property owner who retains improvements will be responsible for removing the property, including arrangements with utility companies and obtaining permits from PennDOT and/or political subdivisions. The work must be accomplished in accordance with Form RW-658A and, if necessary, Form RW-658B, or Publication 408, Specifications, Section 202, whichever method is applicable.
2. **Waiver of Requirements.** On property requiring a minimum effort, such as a sign or shed, the provisions of Specifications 28 and 29 of Form **RW-658A** requiring bonds and insurance may be waived. The decision will be made by the District Right-of-Way Administrator after a review of the circumstances.

**J. Demolition Progress Report.** Form **RW-696** must be completed for the removal project.

**K. Owner Review of Alternate Site.** If an owner elects to retain a structure and move it onto adjacent land, the right-of-way representative should review the applicable profiles and cross sections of the highway plans with the owner so that the owner will understand how the construction will affect the site and its desirability as a site for the structure.

### 5.05 PROPERTY MANAGEMENT CONTRACTS AND DBE/MBE/WBE REQUIREMENTS

While all Department contracts should further the Department's race neutral efforts, those programs or contracts which include any Federal funds are focused on meeting requirements related to the Disadvantaged Business Enterprise (DBE) Program. Those programs that are 100% State funded are focused on meeting minimum participation levels of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE).

The following information should clarify the requirements and steps to be followed in each case or circumstance:

**A. Property management contracts – Disadvantaged Business Enterprise (DBE) Requirements – Federal Funds (any amount).** This section applies primarily to right-of-way demolition contracts, but also applies to other right-of-way property management contracts as appropriate. These procedures are focused on meeting requirements related to the Disadvantaged Business Enterprise (DBE) Program. They are, therefore, intended to supplement and clarify other contracting procedures found in this Manual. The procedures reflect the requirements in PennDOT Publication 1, *Service Purchasing Guide*, and Title 67 Pa. Code Chapter 457, Prequalification of Bidders. Publication 1, *Service Purchasing Guide*, may be accessed at:

P:\PennDOT Shared\Purchasing\Policies & Procedures – Website\Purchasing Manual and Pubs 1 & 3\Pub's Index

1. **Small, No Bid Procurements - Less Than $5,000.00.** There are various acceptable methods to process and pay routine costs up to $5,000.00. This method, applicable to right-of-way costs, is provided so that a more inclusive record of costs associated with a specific claim will be reflected in the ROW Office system.

   Miscellaneous costs up to $5,000.00 required for a specific right-of-way claim (such as utility costs) may be paid with a right-of-way invoice by using the appropriate internal order number and GL account 6412050.

   Note: Per 72 P.S. § 7204, Exclusions from Tax, sales tax imposed on fuel oil, gas, steam or electricity purchased for residential use is not subject to sales tax and cannot be paid for utility costs.

   Small, no bid procurements up to $5,000.00 (such as miscellaneous property management costs or minor demolition work) may also be paid with an invoice generated from ROW Office using the appropriate internal order number and GL account 6412050.

   Such small, no-bid procurement processes must meet the following parameters and are subject to procurement requirements and restrictions:

   a. Does not require formal advertisement.

   b. Considers selection of a Disadvantaged Business Enterprise (DBE) certified by the Pennsylvania Unified Certification Program via their website at [www.paucp.com](http://www.paucp.com).

   c. Determines that the vendor is responsible—the purchaser has viable knowledge about the vendor, and a Contractor Responsibility Program (CRP) Check Certification Form is not required.

   d. Does not require bidding.

   e. Determines best value by shopping around.
Procurement requirements cannot be artificially divided so as to constitute a small procurement, and small procurements should not reflect a pattern of repeated procurement from the same contractor and should reflect a cost which is equal to or less than the market price (Chapter 6, Part 1, DGS Field Procurement Handbook).

The following property management internal order numbers, when used with GL account 6412050 may be used for payments, up to $5,000.00, when such payment is required for a specific right-of-way claim as a result of the acquisition process:

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<td>Legal Advertisements and Notices</td>
</tr>
<tr>
<td>81165</td>
<td>Site Office - Utility Cost</td>
</tr>
<tr>
<td>81167</td>
<td>Utility Cost - Rented Acquired Property</td>
</tr>
<tr>
<td>81168</td>
<td>Repair Cost - Rented Acquired Property</td>
</tr>
</tbody>
</table>

Procedures for Property Management Payment:

Since May 23, 2005, all R/W claims and payments must be established and entered in the ROW Office computer application system (Prior to ROW Office, all right-of-way project information was maintained in the REMIS [Real Estate Management Information System] mainframe database. All data within REMIS was transferred through a complex ROW Office conversion system).

Refer to Chapter 6, Sections 6.01 – 6.03 for detailed instructions as to payment procedures.

2. Demolition Contracts $25,000 or more - PennDOT Prequalified Demolition Contractors. PA Code Title 67 Chapter 457, Prequalification of Bidders, Section 457.3(2) requires the use of prequalified contractors for demolition work when the estimated cost is $25,000 or more.

   a. Prime Contractor. The bidding contractor must be prequalified as a prime contractor for work code classification B - Building Demolition. Contractors prequalified as a subcontractor may not bid.

   b. Prequalified Contractors. A list of current prequalified prime contractors can be accessed on the Department's ECMS website.

      (1) www.dot2.state.pa.us

      (2) Select "Contractor Services"

      (3) Select "Projects **New***"

      (4) Log in or click on enter ECMS as a guest.

      (5) At the top of the screen click on "Business Partner", then "Contractors"

      (6) Click on "Advanced Search"

      (7) Click the drop down arrow by the "Type" box.

      (8) Select "Prime Contractor"

      (9) Click on the magnifying glass near the "Work Class Code" box and select the work class code B – Building Demolition, then select "OK".
(10) Click the "Search" button at the top of the screen.

(11) An alphabetical list of prequalified prime contractors will appear.

(12) Click on any of the prequalified contractors to view the prequalification information.

An alphabetical list of prime contractors prequalified for the work class code chosen will appear, including DBEs (Identified as either MBE or WBE).

It is to be specifically noted that this Prequalified Contractor list is subject to updates and/or changes without notice. Verification of any entry should be obtained from the Penn DOT Prequalification Officer. Contractors wanting information about prequalification may telephone 717-787-7032 or write/visit: Bureau of Construction and Materials Pre-Qualification Office, 7th Floor West, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0094.

Prior to the bid opening, type on the first line(s) of the Form RW-660 a statement to the effect that, 67 Pa. Code Chapter 457.3(2) requires prequalified demolition contractors. This is a federal funded contract. Only the indicated contractor(s) is (are) identified as prequalified and DBE (or No DBE prequalified demolition contractors are available) for the (subject) County or surrounding counties.

3. Demolition Bid Procurements, $5,000.00 to $24,999.99.

a. The Disadvantaged Business Enterprise (DBE) Assurance Clause incorporated in Form RW-658, applies when a federal project number is included in the project identification box on page 1 of 4 of Form RW-658.

b. Advertise as required. Between $5,000.00 and $10,000.00, formal advertising is not required. Interested bidders may be obtained by local advertisement, telephone, fax or other electronic medium. If $10,000.00 or more, use the DGS website www.emarketplace.state.pa.us. Include a reference to prevailing wage rates in the advertisement for bids. The prevailing wages for Federal funds can be obtained online at http://www.gpo.gov/davisbacon/.

c. A bid package must be sent to any DBE prime demolition contractor who is located in the (subject) County, or surrounding counties, or otherwise reasonably nearby.

d. Form RW-660, Bid Opening Record. Prior to the bid opening, list on the bid opening record any solicited contractor identified as a DBE in the remarks column. If no bid was received at the bid opening, indicate such in the remarks.

e. Commonwealth Contractor Responsibility Program. For contracts $5,000.00 and greater, the Commonwealth Contractor Responsibility Program (CRP) is utilized to ensure that the responsibility of the selected contractor is certified. After all bids are reviewed and the selected bid is determined, a request is sent to the District Fiscal Unit for a CRP Check Certification Form for the selected bidder. A CRP Check Certification Form must be signed by the District Fiscal Unit and the original must be included in the completed bid package submitted to the Central Office.

f. For contracts less than $5,000.00, complete the contract package and submit to Central Office in the normal manner. See checklist for required Documentation of Federal Funding.

g. The current Form RW-658 is available on the ROW Office Home Page/ROW Manual.

B. Property management contracts - Minority & Women Business Enterprise (MBE/WBE) Program requirements – 100% State funds. This section applies primarily to right-of-way demolition contracts, but also applies to other right-of-way property management contracts as appropriate. These procedures are focused on meeting requirements related to the Minority & Women Business Enterprise (MBE/WBE) Program. They are, therefore, intended to supplement and clarify other contracting procedures found in this Manual. The procedures reflect the requirements in PennDOT Publication 1, Service Purchasing Guide, and Title 67 Pa. Code Chapter 457, Prequalification of Bidders. PennDOT Publication 1, Service Purchasing Guide, may be accessed at:

P:\PennDOT Shared\Purchasing\Policies & Procedures – Website\Purchasing Manual and Pubs 1\&3\Pub's Index.
1. Small, No Bid Procurements – Less than $5,000.00

   a. Solicitation Requirements.

      (1) Shop around for the best value.

      (2) Formal advertisement is not required.

      (3) No bids are required.

      (4) Purchaser must feel comfortable purchasing from the supplier since a check of the CRP is not required.

      (5) For services, obtain a written statement of work (such as a quote, cost estimate or work proposal) from the vendor.

      (6) If insurance provisions apply, provisions must be referenced and attached to the statement of work. A purchase order must be created. Payment cannot be made using the P-card.

      (7) For supplies, apply guidelines for post consumer recycled content if applicable.

      (8) If creating a purchase order, check for supplier registration. If not registered, instruct vendor to register at www.pasupplierportal.state.pa.us. Vendor must be a registered supplier to create a purchase order.

      (9) Considers selection of an MBE/WBE contractor from those available according to the Department of General Services (DGS) via their website at www.dgs.state.pa.us.

   b. Documentation and Payment Requirements.

      (1) If paying by P-card, no purchase document is created in SAP.

      (2) If vendor doesn't accept P-card or if insurance provisions are applicable, create purchase order.

      (3) Miscellaneous costs up to $5,000.00 required for a specific right-of-way claim (such as utility costs) may be paid with a right-of-way invoice by using the appropriate internal order number and GL account 6412050.

Note: Per 72 P.S. § 7204, Exclusions from Tax, sales tax imposed on fuel oil, gas, steam or electricity purchased for residential use is not subject to sales tax and cannot be paid for utility costs.

      (4) Small, no bid procurements up to $5,000.00 required for a specific right-of-way claim (such as miscellaneous property management costs or minor demolition work) may also be paid with an invoice using the appropriate internal order number and GL account 6412050.

      (5) Refer to Chapter 6, Section 6.01 – 6.03, for detailed instructions as to payment procedures.

      (6) The following property management internal order numbers, when used with GL account 6412050 may be used for payments, up to $5,000.00, when such payment is required for a specific right-of-way claim as a result of the acquisition process:

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Since May 23, 2005, all right-of-way claims and payments must be established and entered in the ROW Office computer application system (prior to ROW Office, all right-of-way project information was maintained in the REMIS [Real Estate Management Information System] mainframe database. All data within REMIS was transferred through a complex ROW Office conversion system).

c. Additional Requirements.

(1) Small, no-bid procurements do not require additional approvals.

(2) Procurement requirements cannot be artificially divided so as to constitute a small procurement, and small procurements should not reflect a pattern of repeated procurement from the same contractor and should reflect a cost which is equal to or less than the market price (Chapter 6, Part 1, DGS Field Procurement Handbook).

2. Small, Informal Bid Procurement – $5,000.01-$10,000.00.

a. Solicitation Requirements.

(1) Formal advertisement is not required.

(2) Contact a minimum of three (3) vendors – one must be a MBE/WBE (DGS website) if available.

(3) Obtain bids by phone, fax, or email.

(4) Obtain written statement of work from vendor on company letterhead for services or confirmation for supplies signed by an authorized company representative.

(5) If insurance provisions apply, provisions must be referenced and attached to the statement of work.

(6) For supplies, apply post consumer recycled content if applicable.

(7) Check for supplier registration. If supplier is not registered, instruct vendor to register at www.pasupplierportal.state.pa.us. The vendor must be a registered supplier to create a purchase order.

(8) Send a request to the District Fiscal Unit for a signed CRP Check Certification Form for the selected bidder.

b. Documentation and Payment Requirements. Form RW-660:

(1) Prior to the bid opening, enter name and price quoted of all vendors contacted in Header Data, Internal Note and indicate which vendor is a MBE/WBE or no MBE/WBE available and the business class code. At the bid opening, if no bid was received, indicate such in the remarks.

(2) The minimum DGS MBE/WBE search is for the county of the demolition site, and surrounding contiguous counties. If the search failed to identify any MBE/WBEs, a statement to that effect must be typed on the first line(s) of Form RW-660. Example: "The DGS website was searched for MBE/WBE demolition contractors (business class code 72103003) in Adams and surrounding counties and no records were found."

(3) If creating a purchase order, attach supporting documentation electronically to the purchase order.
(4) Once released, print and send to vendor.

(5) Do not create Purchase Order for demolition contracts. Instead encumber funds using SAP-7 form and attach to contract package prior to forwarding to Central Office for approval.

c. Additional Requirements.

(1) Obtain Comptroller Operations approval.

3. Formal Competitive Sealed Bidding in excess of $10,000.00.

a. Solicitation Requirements

(1) If pre-qualification is required ($25,000.00 and greater), cross-check MBE/WBE vendors (DGS website) with ECMS for MBE/WBE vendors. At a minimum, bids must be sent to all vendors requesting bid package and to a minimum of two (2) MBE/WBE firms each (if available).

(2) If pre-qualification is not required (amount less than $25,000.00), check for MBE/WBE vendors (DGS website). At a minimum bids must be sent to all vendors requesting a bid package and to a minimum of two (2) MBE/WBE firms each (if available).

(3) Create solicitation referencing and attaching any applicable provisions.

(4) Create request to advertise via DGS website. If applicable, renewal options must be included on the Request to Advertise. In addition to the DGS website, you may solicit interest using other methods, such as local advertising, telephone, fax or other electronic media.

(5) Attach the MBE/WBE Subcontractor and Supplier Solicitation & Commitment Form, STD-168, for solicitations where the anticipated costs are expected to exceed $50,000, or if STD-168 was included in the solicitation, and forward to the Bureau of Equal Opportunity for MBE/WBE evaluation approval (see paragraph 8).

(6) Send a request to the District Fiscal Unit for a signed CRP Check Certification Form for the selected bidder.

b. Documentation and Payment Requirements.

(1) If creating a purchase order, attach supporting documentation electronically to the purchase order.

(2) Once released, print and send to vendor.

(3) Do not create Purchase Order for demolition contracts. Instead encumber funds using SAP-7 form and attach to contract package prior to forwarding to Central Office for approval.

(4) If a contract was created, (excluding demolitions), a purchase order must be created with reference to the contract to obtain needed supplies or services.

4. Navigating the Department of General Services Website (for contracts less than $25,000.00).

a. From the computer Desktop, double click on the "Internet Explorer" icon.

b. Enter www.dgs.state.pa.us

c. On the left of the screen, select "Doing Business with the Commonwealth", then "Bureau of Minority & Women Business Opportunities".

d. Again on the left of the screen, select "MBE/WBE & Certification".

e. In the center of the page, under "Finding a Certified Company", select "MBE/WBE Database".
f. To find a classification code for contractors needed for R/W property management functions, click on Business Classification Code: "Code Look Up." A "Classification Code Criteria Selection" screen will display. Type, for instance, "demolition" in the "Classification Description:" box, and click "search." The "Classification Code Look Up Results" box will display those code numbers that have "demolition" in their code description. The list shows classification code number "72103003" for demolition services.

g. Click on the number "72103003" and the "Search Parameters" screen box again appears. Click on the search box at the bottom, and a listing of known MBE/WBE businesses will display. Other classification codes may be researched in the same manner.

5. Navigating the PennDOT ECMS Website for Prequalified Contractors ($25,000.00 and above).

A list of current prequalified prime contractors can be accessed on the Department's ECMS website.

   a. [www.dot2.state.pa.us](http://www.dot2.state.pa.us).
   b. Select "Contractor Services".
   c. Select "Projects **New**".
   d. Log in or click on enter ECMS as a guest.
   e. At the top of the screen click on "Business Partner", then "Contractors".
   f. Click on "Advanced Search".
   g. Click the drop down arrow by the "Type" box.
   h. Select "Prime Contractor".
   i. Click on the magnifying glass near the "Work Class Code" box and select the proper work class code (B – Building Demolition, B1, Asbestos Removal, etc.) then select OK.
   j. Click the "Search" button at the top of the screen.
   k. An alphabetical list of prime contractors prequalified for the work class code chosen will appear, including MBE or WBE.
   l. Click on any of the prequalified contractor to view the prequalification information.

It is to be specifically noted that this Prequalified Contractor list is subject to updates and/or changes without notice. Verification of any entry should be obtained from the Penn DOT Prequalification Officer. Contractors wanting information about prequalification may telephone 717-787-7032 or write/visit: Bureau of Construction and Materials Pre-Qualification Office, 7th Floor West, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0094.

6. Navigating the ECMS Website for Prequalified Subcontractors. Verification of Prequalified MBE/WBE Subcontractors can be found, if used by the Prime Contractor, on the PennDOT ECMS website. Only prequalified demolition subcontractors may be solicited by the bidding prime demolition contractor. Therefore, it will be necessary to review the PennDOT prequalified list to identify MBE/WBE demolition subcontractors available in the (subject) County and surrounding counties.

   a. [www.dot2.state.pa.us](http://www.dot2.state.pa.us).
   b. Select "Contractor Services".
   c. Select "Projects **New**".
   d. Log in or click on enter ECMS as a guest.
   e. At the top of the screen click on "Business Partner", then "Contractors".
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f. Click on "Advanced Search".

g. Click the drop down arrow by the "Type" box.

h. Select "Subcontractor".

i. Click on the magnifying glass near the "Work Class Code" box and select the proper work class code (B – Building Demolition, B1, Asbestos Removal, etc.), then select "OK".

j. Click the drop down arrow by the "DBE Certification" box.

k. Select "Yes" and at "Minority Code" select "MBE", "WBE" or "MBE/WBE".

l. Click the "Search" button at the top of the screen.

m. An alphabetical list of MBE, WBE, MBE/WBE subcontractors prequalified for the work class code chosen will appear.

n. Click on any of the prequalified subcontractors to view the prequalification information.

7. Commonwealth Contractor Responsibility Program. For contracts $5,000.00 and greater, the Commonwealth Contractor Responsibility Program (CRP) is utilized to ensure that the responsibility of the selected contractor is certified. After all bids are reviewed and the selected bid is determined, a request is sent to the District Fiscal Unit for a CRP Check Certification Form for the selected bidder. A CRP Check Certification Form must be signed by the District Fiscal Unit and the original must be included in the completed bid package submitted to the Central Office.

For contracts less than $5,000.00, complete the contract package and submit to Central Office in the normal manner. See checklist for required Documentation of State Funding.

8. Form STD-168 – MBE/WBE Subcontractor and Supplier Solicitation & Commitment Form. For contracts $50,000.00 or greater, the bidder must complete and submit form STD-168 with the bid. Failure to do so will result in the bid being rejected as non-responsive. However, a bidder will not be rejected as being non-responsive solely because the bidder fails to reach the minimum MBE/WBE participation levels. However, bidders failing to meet the minimum levels of participation must provide, on Form STD-168, an explanation of why the minimum levels were not met.

If an STD-168 is included in a bid of less than $50,000.00, certification must still be obtained.

Provide, with the STD-168 a memo, Subject: Prequalified Demolition MBE/WBE Subcontractors. State that, if the bidding prime contractor desires to solicit MBE/WBE Subcontractors, only the listed prequalified subcontractors may be solicited (or a statement to the effect that there are no MBE/WBE prequalified demolition subcontractors in the subject county or surrounding counties).

The MBE/WBE Subcontractor and Supplier Solicitation & Commitment Form, STD-168, can be accessed on the DGS Website:

a. www.emarketplace.state.pa.us.

b. Select "Bureau of Procurement" at the top of the screen.

c. Select "Bureau of Minority and Women Business Opportunities" at the left of the screen.

d. Select "Forms & Publications" at the left of the screen.

e. Select "STD-168" at the bottom center of the screen.

9. MBE/WBE Determination (from $50,000.00 to $250,000.00). When the apparent successful bidder has been determined, a MBE/WBE determination must be obtained from Bureau of Equal Opportunity, telephone number 717-783-1081.
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a. Prepare a cover memo:

Subject: MBE/WBE Determination
To: Department of Transportation

Bureau of Equal Opportunity
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120-0041

From: District R/W Administrator

(Name and Address)

Attached is a contract to provide PennDOT with demolition services on (project I.D.)

Enclosed is:

Original STD-168
Copy of bid memo re: Prequalified subcontractors
Copy of contract and specifications

Please review as soon as possible and send your evaluation determination approval letter to:

District name and address

If there are any questions, please telephone ____________________.

Thank you.

b. Send above cover memo and enclosures to DOT-BEO. The Bureau of Equal Opportunity will return only the evaluation approval letter.

c. The evaluation approval letter along with the STD-168 and bid memo regarding prequalified subcontractors must be included in the completed contract package.

Otherwise, complete the contract package and submit to Central Office in the normal manner.

10. Demolition Bid Procurements, 100% State Funded Contracts, Greater than $100,000.00.

By memo dated December 26, 2000, the Director, DGS Bureau of Engineering and Architecture, advised that PennDOT is not required to submit demolition contract (greater than $100,000.00) documents to the Bureau of Engineering and Architecture for approval and record.

11. MBE/WBE Determination (contracts greater than $250,000.00)

When the apparent successful bidder has been determined, a MBE/WBE determination must be obtained from the Bureau of Minority and Women's Business Opportunities, telephone number 717-787-7380

a. Prepare a cover memo:

Subject: MBE/WBE Determination
To: Department of General Services

Bureau of Minority and Women's Business Opportunities
Room 611, North Office Building
Harrisburg, PA  17125

From:  District R/W Administrator
  (Name and Address)

Attached is a contract to provide PennDOT with demolition services on (project I.D.)
Enclosed is:
Original STD-168
Copy of bid memo re: Prequalified subcontractors
Copy of contract and specifications
Please review as soon as possible and send your evaluation determination approval letter to:
District name and address
If there are any questions, please telephone ________________.

Thank you.

12. Miscellaneous Information. All advertisements must follow the format established by DGS. This format is available at:

http://www.emarketplace.state.pa.us. Click on "Help" and then click on "Agency Help – (Request to Advertise)".

13. Contract Provisions. Each contract will state that the contractor must comply with certain provisions which are attached to the contract.

The current editions of the below listed provisions may be obtained from: P:\penndot share\ROW Property Management\Contractor Provisions and double click on the desired provision form.

a. Nondiscrimination/Sexual Harassment Clause
b. Contractor Integrity Provisions
d. The American with Disabilities Act
e. Tax Offset Provision
f. Right-to-Know Law Provisions

14. Contents of Demolition Package with all or partial Federal Funding

a. Form RW-658 (include Forms RW-658A, RW-658B, & RW-658C) – use the most recent forms.
b. A copy of each losing bid
   (1) Nondiscrimination/Sexual Harassment Clause
   (2) Contractor Integrity Provisions
(3) Contractor Responsibility Provisions

(4) Tax offset Provisions


(6) Right to Know Law Provisions

d. Copy of advertisement for bids from DGS website www.emarketplace.state.pa.us for bids $10,000.00 and higher.

e. Need SAP-7 Form with funds commitment number for amount of transaction.

f. Form RW-660. If no pre-qualified DBE contractors were available in the subject county or surrounding counties, type a statement to that effect on the Form RW-660.

g. Send a request to the District Fiscal Unit for a signed CRP Check Certification Form for the selected bidder if the bid is higher than $5,000.00.

h. Proposal guaranty of 10% (on bids requiring payment by the Commonwealth).

i. Asbestos inspection report if it was required.

j. Prevailing wage information if contract exceeds $2000.00.

15. Contents of Demolition Package with 100% State Funding.

a. Form RW-658 (include Forms RW-658A, RW-658B, & RW-658C) – use the most recent forms.

b. A copy of each losing bid.


(1) Nondiscrimination/Sexual Harassment Clause.

(2) Contractor Integrity Provisions.


(4) Tax Offset Provisions.


(6) Right to Know Law Provisions.

d. Copy of advertisement for bids from DGS website www.e-marketplace.state.pa.us for bids $10,000.00 and higher.

e. STD-168 MBE/WBE Solicitation and Commitment, $50,000.00 or more.

(1) $50,000.00 - $250,000.00 – Need evaluation determination approval letter from "Bureau of Equal Opportunity".

(2) $250,000.01 and greater – Need evaluation determination approval letter from "Bureau of Minority and Woman's Business Opportunities".

f. SAP-7 Form with funds commitment number for amount of transaction.

g. Form RW-660 (If search for MBE/WBE failed to locate any, need a statement to that effect on Form RW-660).

h. Send a request to the District Fiscal Unit for a signed CRP Check Certification Form for the selected
bidder if the bid is higher than $5,000.00.

i. Proposal guaranty of 10% (on bids requiring payment by the Commonwealth).

j. Asbestos inspection report if it was required.

k. Prevailing wage information if contract will exceed $25,000.00.

16. Persons Authorized to Sign Contracts on Behalf of Corporations. This subsection serves to clarify which officers may execute contracts on behalf of a for-profit or not-for-profit corporation. Note that the following information does not apply to any other legal entity.

Unless the contract, or its accompanying specifications, requires two signatures, a contract may be signed by only one corporate officer, provided that officer is a senior officer. The Office of General Counsel, on January 23, 2001, clarified which titles indicate senior officers. For Department purposes, the Chairman, President, Vice-President, Senior Vice-President, Executive Vice-President, Assistant Vice-President, Chief Executive Officer and Chief Operating Officer are the senior officers of a for-profit or not-for-profit corporation.

Junior officers consist of the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, Chief Financial Officer and Controller. If a senior officer signs for the corporation, then a junior officer may attest the signature of that senior officer. If the contract has the signature of a junior officer only, or if a junior officer signs and another junior officer attests that signature, additional evidence of that officer's authority to sign the contract on the corporation's behalf must accompany the contract. This evidence can be in the form of a corporate resolution, an internal corporate delegation document or a letter from one of the senior officers or the Secretary, authorizing the signatory to sign on behalf of the corporation. This letter must be on a corporate letterhead.

17. Initialing of Changes Made to a Contract. Following are procedures for initialing and dating changes to a contract. Initialing and dating changes to a contract during the contract execution process ensures that all parties involved are still on the same page in terms of the rights and responsibilities of the parties. Requiring a party to adhere to a provision that the party has not seen or agreed to are ethically questionable and legally unenforceable. This subsection sets forth guidelines for initialing and dating changes to contracts.

a. If the contract is changed before the Department and contractor have signed, then a clean copy of the page/document affected must be prepared and sent out for signature.

b. If the changes are made after the contractor has signed the contract, or if changes are made after both the contractor and the Department have signed, then the changes must be initialed and dated by all parties (i.e., the individuals who signed the contract on behalf of the contractor and the Department), as applicable. If available, the individual who signed the contract earlier in the execution process should initial and date the changes.

(1) The individual who initials the changes should be the same individual who signed the contract.

(2) Changes may be initialed and dated by someone other than the individual who signed the contract, if the individual who initials and dates the changes is authorized to sign the contract.

Example A: The president of a corporation signed the contract and is now out of town for a month. The vice-president, or another senior officer, may initial and date the changes.

Example B: The District Executive signed a contract and is now unavailable. Another Department employee, who received delegation from the appropriate Deputy Secretary and has authority to sign that type of contract may initial and date the changes.

(3) If the individual who initials the contract is different from the individual signing the contract, make a notation on the routing sheet or on a separate piece of paper of the name and title of the person who initialed and dated the change.

(4) Typed or handwritten changes are acceptable.
(5) The initials and dates should be made in the right margin, as close as possible to the change provision.

c. Handwritten changes, particularly prices and quantities, must be initialed and dated.

5.06 DEMOLITION/REMOVAL OF IMPROVEMENTS

1. **ROW Office Claim Descriptions.** Improvements and/or structures on the parcel to be acquired of any kind must be documented in the ROW Office Claim Description Maintenance Screen. Parcels requiring demolition are defined by a "Demolition" description added along with a secondary claim description code.

The secondary claim description code clarifies, or fully describes the type of demolition. For example, an occupied building would be represented by claim description "Residential Owner Occupant," or "Business Owner Occupant." If vacant, describe the claim with "Vacant Structure" or "Outdoor Advertising Device" for an on-premise sign.

A list of claim descriptions can be found within a drop-down menu in the ROW Office Claim Description Maintenance screen.

2. Based on the anticipated project letting date, a determination should be made early in the project whether acquired structures should be cleared by use of a right-of-way demolition contract in advance of project construction, or included in the highway contract.

3. For parcels described in ROW Office as "Demolition," an indicator of the type (method) of demolition required must be documented in the ROW Office Property Management Parcel Maintenance screen. Select the appropriate method of demolition within the drop-down box located under the Demolition heading in the Property Management Parcel Maintenance screen.
   
   a. If it is determined the demolition will be included in the highway contract, select "Highway Contract;"
   
   b. if being accomplished through a separate contract, select "ROW Contract." The demolition start and complete dates must be entered for this ROW Contract demolitions.

4. Regardless of the type of demolition used, a brief description of the demolition should be entered into the "Repair Description" field on this screen.

After right-of-way is acquired, it must be cleared for construction. Demolition as used in this section may describe either the demolition or the removal of structures. It is the District Right-of-Way Administrator's responsibility to have the right-of-way cleared on schedule and according to any special requirements.

5. If demolition is to be accomplished by right-of-way demolition contract, demolition efforts should proceed immediately upon acquisition (and vacation) of the structure if the highway letting date is in the near future, or if the structure is in bad condition, an eyesore, or a hazard.

   If construction is not planned in the immediate future and the structure and improvements are in good condition, the structure may be leased to generate income for the project (refer to Section 5.02).

A. **Owner Retention.** Chapter 4, Section 4.05 and Section 5.04 should be read in conjunction with this paragraph. If time and circumstances permit, the Department may allow owners to retain and remove structures from their property. The Department is under no obligation to allow retention of structures. Owners have 30 days from the date of the offer letter to retain improvements. The property owner must pay the market value severed of the retained improvements and sign Form RW-621. When deciding questions concerning property retention, the District Right-of-Way Administrator must balance the interests of the property owner and the best interests of the Department. The retention value may be waived by the District Right-of-Way Administrator as part of an administrative settlement.
B. Demolition or Sale of Improvements. Demolition services are obtained according to the purchasing procedures of the Department and the Commonwealth. Although departmental forms have been developed to fit the particular needs of right-of-way, the procedures are based on Commonwealth procedures that must be followed. These procedures are spelled out in PennDOT Publication 1, Purchasing Guidelines for Services and Supplies, and Commonwealth Manual M215.3, Procurement Handbook. Refer to Section 5.05 for contracting requirements.

Removal of improvements from right-of-way is contracted for on Form RW-658. Form RW-658A, Form RW-658B, and Act No. 287 (Excerpts), Form RW-658C all contain specifications for the demolition of structures and facilities from right-of-way. They are to be followed by both demolition contractors and purchasers of right-of-way structures who plan to remove them. The decision to remove or demolish structures will be made by Right-of-Way personnel in accordance with the circumstances of each case. Time and expediency may dictate the speediest solution, i.e. demolition. If time permits and an interested party is available, the structure may be sold for removal to another site.

C. Advertising for Bids - Demolition. If it is determined a building is to be demolished by separate Right-of-Way contract means, the District must solicit bids for demolition. Where competitive sealed bidding is used, Procurement Code § 512(c) calls for public notice using any of the following methods:

1. Electronic publication accessible to the general public.
2. Advertisement in trade publications.
3. Issuance of invitations for bids to bidders on the purchasing agency's solicitation mailing list.
4. Where prequalification is required for submission of a bid, notification to all contractors who have been prequalified by the purchasing agency. (See Section 5.05 for details).
5. Publication in a newspaper of general circulation.

Requests for bids for demolition must be advertised locally for three consecutive days. The Publications Authorization and Invoice Form, STD-521, is used to place advertising in local newspapers and other publications. This form may be accessed on the DGS Website: www.dgsweb.state.pa.us/stdforms/Forms/STD-521.pdf

The Publications Authorization and Invoice Form, STD-521, is completed by the District Right-of-Way Unit and submitted with the advertising copy to the District Official authorized to sign for the agency. A sample advertisement is contained in Exhibit "A". The advertisement and the completed form are forwarded to newspapers for publication. A miscellaneous sub-claim may be established to pay for advertisements using internal order number 81141 and G/L account code 6412050 to process payment in ROW Office.

6. If bids are anticipated to exceed $25,000.00, bids may only be accepted from prequalified prime contractors, See Exhibit "A".

7. If bids are anticipated to exceed $10,000.00, the DGS Website www.emarketplace.state.pa.us must be used. Include a reference to "prevailing wage rates" in the advertisement for bids.

8. Advertising for demolition bids is normally done subsequent to physical possession of the parcels. If time is critical, advertising may take place before all the parcels are acquired (i.e. Design Build projects). However, caution must be used to ensure the contract is not awarded until all parcels have been acquired. Structures must be vacated before the notice to proceed is issued.

D. Bidding.

1. Bid Package. Bids on demolition or removal contracts must be submitted on Form RW-658, which is given to prospective bidders by the Right-of-Way Unit. Before giving the bid form to prospective bidders, the Right-of-Way staff will fill in contract and bid information on the front and back of Form RW-658. If special conditions are present, such as asbestos, hazardous materials or other problems, an addendum to the contract dealing with the conditions will be prepared and incorporated into the contract. See Section 5.11 concerning hazardous materials.
The complete bid package for prospective bidders consists of Form RW-658, with information supplied, and addenda Form RW-658A, Form RW-658B and Form RW-658C. Also refer to Section 5.05. All contracts must include the following clauses: (1) Nondiscrimination, (2) Contractor Integrity Provisions, (3) Offset Provisions, (4) Contractor Responsibility, (5) Individuals with Disabilities Provisions and (6) the Right-to-Know Law Provisions. If the demolition contract is greater than $25,000 (7) Public Works Employment Verification Act and (8) Public Works Employment Verification Form must also be included in the bid package. These clauses are printed on an Exhibit for attachment to contracts. Each bid package given to potential bidders will include a self-addressed envelope marked "Sealed Bid" for return of the bids to the District. The envelope will be marked with appropriate bid identification so that, when returned, the sealed envelope may be placed with the proper bid opening.

2. Prequalification. If the demolition contract is expected to exceed $25,000, only prime contractors pre-qualified by the Department for demolition work may bid. Refer to Section 5.05.A.

3. Bid Opening. At the advertised place, date and time, the bids will be opened. A designee of the District Right-of-Way Administrator will conduct the bid opening. Even though right-of-way acquisition may be contracted to a consultant, a PennDOT representative must attend all bid openings. Bids will be opened publicly with one or more witnesses present. The bids will be opened one at a time and examined for completeness. Each bid will be recorded on Form RW-660. Refer to Section 5.05 (Federally Funded, B-3, State Funded, E.2) for statements to be placed on Form RW-660 to document various situations.

The apparent low bidder will be announced after all the bids are opened and recorded on Form RW-660.

In the event of a tie bid, each bidder will submit a new bid in an amount no greater than their original bid within 24 hours of the bid opening. In no case will a single bid be approved by the Chief, Right-of-Way and Utilities Division unless the District Right-of-Way Administrator provides a written justification and recommendation to accept the single bid.

Form RW-658 provides two payment options for the bidder to choose.

a. Bidder will pay the Commonwealth. Someone who wants to salvage or move the structure will use this option. The Automated Clearing House (ACH) payment provisions do not apply when the contractor is paying the Commonwealth.

b. Bidder will accept payment from the Commonwealth. This option will be used by a contractor who is primarily interested in providing demolition and removal services. As stated in the RW-658 the Department will make contract payments through the ACH Network, utilizing the Pennsylvania Electronic Payment Program (PEPP). The contractor shall comply with the ACH provisions incorporated in the Demolition Contract. These payment terms are part of the contract.

The bidder will complete either Section 1 or 2 and leave the other section blank.

E. Awarding the Contract.

1. Bid Package. Following the bid opening, the bid package is assembled for processing, review and approval. The bid package consists of the original winning bid, Form RW-658, a copy of each losing bid, and the completed Form RW-660.

Note: The District Right-of-Way Administrator must ensure the appropriate encumbrance is established in SAP prior to submitting the bid package for review and approval. Failure to establish the necessary encumbrance will cause processing delays and may result in the package being returned.

2. Approvals. The bid package is forwarded to the Utilities and Right-of-Way Section for review and approval. After reviewing the bid package, the Right-of-Way Administration and Property Management Unit will submit the bid package to the Chief, Utilities and Right-of-Way Section for approval. Following approval, the contract is submitted to the Office of the Chief Counsel for legal approvals and to Comptroller Operations for fiscal approvals.

When the contract has received all the necessary approvals, it is returned to the District which retains the original and makes copies for the necessary distribution.
3. Awarding the Contract. When the District receives the approved contract, the Right-of-Way Unit will send the successful bidder a copy of the approved contract, together with Form RW-694. Form RW-694 informs the contractor of their successful bid and requests the contractor to provide a Performance Bond, Payment Bond and Insurance Certificate.

When the bonds and insurance are returned, the District Right-of-Way Unit will send the contractor Form RW-695. The Notice to Proceed date will be the "Start:" date that must be entered on the ROW Office Property Management Parcel Maintenance screen.

F. Emergency Demolition. If a structure poses an imminent threat to life or property, Emergency Purchase Service procedures, as outlined in PennDOT Publication 1, Purchasing Guidelines for Services and Supplies, and Commonwealth Manual M215.3, Procurement Handbook, may be utilized. Situations caused by agency procrastination are not considered to be a genuine emergency.

G. Inspection of Demolition Work.

1. Demolition Progress Report, Form RW-696. Form RW-696 is used to monitor the progress and completion of a demolition project. The form is divided into three sections:

   a. Property Management Report - used to record the contract information for the job.

   b. Inspector's Report – provides a summary of the progress and completion of the contract.

   c. Inspection Log – used to record the progress of demolition. The log contains three columns: Date, Demolition Activities, and Comments. The Demolition Activities column lists seven activities to be checked during the demolition process. The comments column provides space for written comments by the inspector. Each comment should be dated and followed-up, if necessary. If more space is required, the back of the form or additional sheets may be used.

When the demolition is satisfactorily completed, the inspector signs the report, certifying the work has been completed. The demolition completed date must be entered in the "Repair Completion" field of the ROW Office Property Management Parcel Maintenance screen.

A separate Form RW-696 must be kept for each parcel of land. A certificate of completion is located at the bottom of the form.

2. Inspector. The District Construction Unit will normally provide an inspector for the demolition contract. If the Construction Unit cannot provide an inspector, the District Right-of-Way Administrator will assign a member of the right-of-way staff to inspect the demolition.

3. Progress. Demolition inspection is an on-going process. Work in progress is monitored, not just completed work. The inspector must determine not only that the work is being done according to specifications, but also is progressing and completed on schedule.

EXHIBIT A
SAMPLE ADVERTISEMENT
DEMOLITION SERVICES

The Pennsylvania Department of Transportation is seeking bids for the demolition and/or removal of structures from property(s) located on__________________________________________, Street or Road
__________________________________________, City, Borough or Town
__________________________________________, Traffic Route ____________________________. S.R.

County

Sealed bids will be accepted by the Department of Transportation, at

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5.07 DISPOSAL OF SURPLUS PROPERTY BY DEPARTMENT OF GENERAL SERVICES (DGS), BUREAU OF SURPLUS OPERATIONS

A. Requirement for DGS Custody. Act 57, formerly Section 510 and 2405 of the Administrative Code of 1929 as amended, states, to the effect that, whenever any personal property of this Commonwealth shall be no longer of service to the Commonwealth, it shall be the duty of the Department in whose possession such property shall be or come, to put such property into the custody of the Department of General Services (DGS). Accordingly, when PennDOT acquires personalty, inventory, fixed or moveable machinery and equipment, or other items as a result of right-of-way acquisition, said items must be turned over to DGS for disposal. It is of great benefit to PennDOT that
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the DGS State Surplus Property Division is available to provide their expert services for this purpose. However, PennDOT must provide DGS full cooperation so that DGS and PennDOT, working as partners, can clear the right-of-way as expeditiously as possible.

B. DGS Notification/Request. In accordance with the above mandate, DGS will be requested to dispose of personalty acquired by the Department during right-of-way acquisition. Requests are not to be made by telephone. The District Right-of-Way Administrator will submit a Form RW-628 to the State Surplus Property Division. Submit one request form for each location/claim. Requests may be faxed (717-783-7447) or mailed to Chief, State Surplus Property Division, P.O. Box 1365, 2221 Forster St., Harrisburg, PA 17105-1365. A copy of the request must be sent to the Central Office Utilities and Right-of-Way Section, Right-of-Way Administration and Property Management Unit. It is not necessary to attach the inventory list to the Central Office copy.

Form RW-628 must be used to initiate the disposal process, and should be sent to DGS at least 6 weeks prior to the anticipated possession date of the items. Form RW-628 includes the name and phone number of the District person who is responsible for all coordination with DGS on the indicated sale. The District must establish a clear understanding with DGS as to when sold items must be removed.

C. Inventory of Acquired Personalty. A complete and accurate inventory containing fair market value of each item, preferably made by a certified appraiser employed by or under contract with the District, must be included with the original request to DGS. If there are only a few items, list them on the DGS request form. Otherwise, attach the inventory to the DGS request form and fax, mail, or email as appropriate. If an inventory list is needed, provide a brief description of the type and number of items on the DGS request. The list must be current and accurate. Items that are to be retained by the claimant or retained by PennDOT must be deleted from the list. The inventory must be secured. When the Department takes possession of the property, the Department will change locks to the property when appropriate to safeguard items to be auctioned. The keys to all acquired properties will be secured by the Property Management Unit and a log established to monitor access to the keys. A reasonable time period (6 weeks) must be allowed for DGS personnel to view the inventory and to determine the appropriate method of disposition. Any items that may be considered hazardous or toxic waste (e.g., barrels of used motor oil) must not be turned over to DGS for disposal. The District Right-of-Way Unit must refer such matters as soon as discovered to the District Environmental Unit for appropriate handling and disposal.

D. Retention of Personalty by PennDOT. If it is determined that items of acquired personalty would be useful to PennDOT, the items may be retained by the District. However, this must be done prior to transferring the items to DGS. The inventory list for the claim must be marked "retained by PennDOT" for the specific items. In addition, a memo to the file must be made regarding the specific items retained by the District, signed by the District Right-of-Way Administrator and the Assistant District Executive who is receiving the items. DGS reserves the right to reject a request for auction if the value of the items taken by PennDOT significantly decreases the value of a potential sale.

E. Acquired Licensed Motor Vehicles/Mobile Homes. If acquired property consists of licensed motor vehicles, ensure that each vehicle has a valid title or salvage certificate. The following must be forwarded to DGS State Surplus for transfer of the vehicle and title to PennDOT:

1. The title to the vehicle signed by the owner(s) and notarized.

2. Form MV-4ST, Vehicle Sales and Use Tax Return/ Application For Registration, with the following sections completed:

   Section A: P A Title Number
   Make of Vehicle
   Model Year
   Vehicle Identification Number

   Section B: Seller's Last Name, First Name, Middle Initial
   Co-Seller (if any)
Section C: Purchaser: PennDOT, Date Acquired

Street address: District Address

City, State, Zip County Code

Section G: Signature of Purchaser (Chief Negotiator or Property Manager, as agent for PennDOT) per Management Directive 205.4 amended, Delegation of Authority to Sign and Delegation to Authorize SAP Payments

Telephone Number

Signature of Seller(s)

3. Actual mileage of vehicle.

4. Keys to each vehicle.

5. In the case of a title being located or based out of state, an MV-1 form is required instead of the MV-4ST. The title, keys, and mileage must be sent to DGS no later than 30 calendar days prior to the auction date. This allows necessary time for DGS to obtain transfer of title to the Commonwealth.

The power of attorney authorizing DGS to transfer title on behalf of PennDOT is to be executed by the Deputy Secretary of Highway Administration unless authority to execute the document is delegated to another PennDOT official. DGS designates who it would like PennDOT to grant power of attorney. The agents designated are usually from DGS’s Bureau of Supplies and Surplus Operations. The power of attorney may be used when and as determined appropriate by the agents given power of attorney, but may be limited or revoked by PennDOT at any time and for any reason. The Utilities and Right of Way Section has the form of the power of attorney and is responsible for having powers of attorney executed and revoked as necessary.

Note: All outstanding liens against the motor vehicle/mobile home must be satisfied before the transfer.

F. DGS Control. As soon as the request and inventory list is made to DGS, they will assume total control of the disposition process. DGS will determine whether the best method of sale is by auction (either physical or on-line), via the internet or sealed bid. DGS will direct the sale and request District assistance, as may be necessary, through the designated District coordinator. If items are not sold by auction or sealed bid, DGS may make the items available for sale through the state surplus sales store or other means, if DGS believes that there are potential buyers or that a potential breach in security may occur on the property. If not, DGS will otherwise dispose of the items at its discretion. If acquired personal property or inventory is determined by DGS State Surplus to be contrary to the public interest to sell (e.g., inventory of an adult novelty store), DGS will dispose of such property. PennDOT is not required to transfer acquired surplus property directly to other state agencies. PennDOT can only do this with DGS coordination but PennDOT must agree to sale price with the other state agency.

G. District Coordination and Staff Assistance. A District staff person must be identified on the DGS request and must be available to coordinate the disposition of personalty with DGS. District staff must be available to open buildings for prospective buyers to inspect the sale items and to assist DGS with auctions as necessary. Utilities to a building should not be turned off until after a sale is completed, including removal of items, as confirmed by DGS and the District Coordinator. All utilities are the responsibility of PennDOT. If it is necessary to board and seal a building to protect the inventory prior to the sale, the District Coordinator must ensure that the building is open and accessible as necessary.

Most sale items will be removed by buyers at the time of sale; items such as fixtures, mechanical and electrical equipment may require several days for removal. The time frame for removal (usually by appointment) will be coordinated by DGS, the buyer, and the District Coordinator, who must also ensure that the building is accessible for the removal process. For the purposes of the sale, it may be expedient to move acquired personalty from the acquisition site to another location for the sale. This, of course, would be coordinated with DGS; however, this move and its associated costs would normally be the responsibility of PennDOT. If the cost is less than $5,000, a ROW Office sub-claim may be set up, and the mover paid using Internal Order Number 81148 and GL Account 6412050.
H. Payment Procedure. DGS will maintain a record of inventory sale items and receipts for assets auctioned or sold. Following the sale or auction of acquired property, proceeds collected from various assets for multiple agencies are deposited within one week of receipt. These deposits are "posted" in SAP by DGS to document the breakdown amounts by agency, generating a Revenue Transmittal document for deposit.

In order for DGS to account for proceeds collected against the appropriate Right-of-Way project, the District must ensure each claimant name, claim number and the SAP commitment number (38* document number) for the project is provided on the "Request to Dispose" form. This will provide DGS the appropriate revenue coding to accommodate the requirements incorporated by Comptroller Operations. With the appropriate information, DGS will be able to account for the transfer revenue due to each claim number.

Following the revenue transmittal process, DGS will notify the Central Office Administration Unit of the completed transaction(s). The Administration Unit will enter a "payment for the record" in ROW Office to document the proceeds against the appropriate claim number in order to maintain DGS revenue for reporting purposes.

I. Purchase of Personal Property by Commonwealth Employees. Commonwealth policy states that, "employees of Commonwealth agencies, including members of their immediate families, are prohibited from purchasing, at Commonwealth used vehicle sales, any vehicles that were assigned to, or were surplus by, their particular agencies if the sales price exceeds $100.00."

"No employee of the releasing agency shall be entitled to purchase any property released from that agency except when the sale price of the property is less than $500.00 per item."

5.08 MAINTENANCE OF ACQUIRED RIGHT-OF-WAY

In the interim period between acquisition of right-of-way and highway construction, various maintenance activities may be required, such as building repairs, grass cutting, or snow removal. If the cost of such activities will be $5,000.00 or less, the miscellaneous right-of-way costs procedures may be used.

A. Miscellaneous Payment Procedures. Establish a sub-claim in ROW Office with claim description code "Misc Small R/W Costs Max $5,000" from the ROW Office Claim Description Maintenance screen.

The contractor name and contractor SAP Vendor Record number will be referenced on the ROW Office Claim Maintenance screen to establish the basis for the payment process.

Comments should be entered in the ROW Office Claimant Contact Maintenance screen to describe the services obtained.

Pay the bill by entering the payment in ROW Office using internal order number 81148 and object code 6412050.

B. Purchasing Procedures. Property management services will be contracted for according to Commonwealth purchasing procedures as outlined in PennDOT Publication 1, Purchasing Guidelines for Services and Supplies, and Commonwealth Manual M215.3, Procurement Handbook. Both manuals contain useful sections outlining the steps in the purchasing process. The purchasing manuals and procedures apply to all purchases, even though the contracts may be bid and awarded using Department forms.

C. Financial Management (SAP). Property management contracts are recorded and tracked in SAP. Property management services costing more than $5,000 require the establishment of sufficient funding (SAP encumbrance) and payment generated in SAP (not ROW Office). Fiscal operations are an integral part of right-of-way work. Care must be taken to enter and maintain information fully and accurately.

D. Contracting for Repairs. It is policy, specifically stated in the leases, that the Department will make no repairs to leased properties. In a few cases, repairs will be done on leased properties. Repairs may be done at Department expense to correct a threat to the health and safety of tenants or the integrity of the structure, or when it is in the Department's interest. All other repairs must be made at the tenant's expense after the District authorizes the repairs.

E. Tenant Repairs. It is possible to have the tenant purchase a repair and be given credit on his rent. This should be limited to small or emergency repairs. It should not be done to circumvent normal purchasing procedures.
F. **Emergency Repairs.** An emergency is an unforeseen combination of circumstances calling for immediate action. Emergency repairs may be undertaken to correct situations that pose an immediate threat to the property or to the health and safety of occupants or the community. Emergency contracting procedures are outlined in PennDOT Publication 1, *Purchasing Guidelines for Services and Supplies*, and Commonwealth Manual M215.3, *Procurement Handbook*.

Emergency repairs must be approved in advance by the District Executive or designee.

Most repairs can be anticipated and processed by usual procedures. Agency procrastination or delay is not justification for an emergency.
REQUEST TO DISPOSE OF SURPLUS PROPERTY BY DEPARTMENT OF GENERAL SERVICES

DATE: __________________

TO: Chief, State Surplus Property Division
P O Box 1365
2221 Forster St.
Harrisburg, P A 17105

Phone: 717-787-4085/9038    FAX: 717-783-7447

FROM: Right-of-Way Administrator: _______________________________________

PennDOT District No._____________________________________________________

Address_________________________________________________________________

Phone:____________________   FAX:___________________

County ___________  SR______________________  Section__________________

Claim No.___________  Claimant Name_____________________________________

Property Location: _______________________________________________________

List items to be sold (if items are too numerous, attach inventory list and FAX or mail as appropriate). If separate list is needed, provide brief description of types of items and volume:
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

Approximate date the property will be available for DGS State Surplus Property Division to take possession: __________________. Approximate date the property must be removed from the project site: __________________.

Name and Telephone of District Coordinator: __________________________________

cc: Utilities & Right-of-Way Sec., Right-of-Way Admin. and Property Management Unit
5.09 HANDLING AND PROCESSING OF RENT PAYMENTS

The handling and processing of rent monies for leased right-of-way property is governed by federal, state and departmental regulations as well as generally accepted accounting principles. Accuracy, completeness and attention to detail are required to ensure the efficient collection and reporting of rents.

The procedures described in this section are intended to provide uniformity and completeness in the processing and handling of rent payments. They also provide a system for safeguarding the Commonwealth's funds as well as protecting those state employees who handle the funds.

Checks and rent documents must be processed and forwarded in a timely manner, not more than three workdays.

A. Uses of Rental Monies. Rent money collected from right-of-way leases is applied to the Motor License Fund and is available for highway programs.

B. Rent Processing.

1. Rent Payments. Rent payments are received at the District Right-of-Way Unit. Rent payments must be made by personal check, certified check or money order. Cash cannot be accepted. Lessees who have had two personal checks returned because of insufficient funds will no longer be allowed to pay by personal check. A handling fee of $20.00 will be charged for each returned check.

2. Timely Processing of Checks. Management Directive 305.5 requires the timely processing of checks.

Each District Right-of-Way Unit must develop procedures to ensure that all monies due the Commonwealth are collected and submitted to Comptroller Operations for deposit with the State Treasury as soon as possible, but no later than three workdays after receipt of funds. Checks should be processed and forwarded as soon as received and should not be held for group processing.

3. Returned Checks. When checks are returned for insufficient funds, adjustments reflecting the return must be made to the financial records.

   a. Interim Lease.

      (1) Check Returns. If an interim lease rent check is returned, notify the Right-of-Way Administration Unit.

      (2) Returned Check Fee. There will be a $20.00 service charge each time a check is returned for insufficient funds. When the service charge is collected, the credit payment will be processed in ROW Office using internal order number 81192 and G/L account code 6412030.

   b. Joint Use Lease.

      (1) Check Returns. When a check for joint use rent is returned, the payment must be reversed against the invoice.

      This is accomplished with a memo through the Right-of-Way Administration Unit to Comptroller Operations. Care should be exercised to ensure that the District records reflecting the status of the invoice are adjusted as well.

      (2) Returned Check Fee. When the payment for the service charge for a check returned for insufficient funds is received, it is processed in the same manner as the joint use rent payment via SAP.

      (3) Cancellation of Personal Check Payments. Tenants who have had two personal checks returned because of insufficient funds will no longer be allowed to pay with personal checks.
C. **Rent Transmittal, Form RW-670R.**

1. **Interim Rent Receipts.** When rent is received at the District Office, the Rent Receipt on the Form RW-670R is completed. If the rent is paid in person, a copy of the receipt is to be given to the payer. If the rent is received by mail, it is not necessary to mail the receipt unless it is requested. The canceled check will serve as a receipt.

When completing the Rent Receipt, it is important that all requested information be provided. For interim lease payments, enter the SAP commitment number on the line titled "Agreement Number," and enter the payment number on the line titled "Invoice Number" found on Form RW-670R.

2. **Joint-Use Lease Receipts.** For Joint Use leases, Rent Transmittal Form RW-670R is forwarded to Comptroller Operations with original signatures. Photocopied signatures are not acceptable.

When completing the Rent Receipt, it is important that all requested information be provided. For Joint-Use lease payments, enter the agreement number together with the current SAP document number for the invoice.

A lessee may make more than a single payment at a time. In this case, be sure that the monthly rent and the number of months covered is recorded on the Rent Receipt and all checks are recorded. In order for Comptroller Operations to properly record and track payments, the months covered by the check must be noted on the face of the check.

Note: The rent payment must also be recorded on Form RW-669.

The Rent Receipt and the entry on the District Rental Record must be handled and signed by two different people.

D. **Interim-Lease Rent Processing.**

1. Upon receipt of the payment, the Rent Receipt section of the Form RW-670R is completed. A copy of this receipt is given to the lessee, if desired. Care must be taken to record all the information on the transmittal accurately and completely. This is necessary to ensure proper recording of the transaction and to assist later processors and reviewers of the payment. If the payment includes credit to the renter for authorized repairs or other such legitimate reasons, this must be reflected on the receipt. The monthly rent must be shown with the credit allowed, if any, and the net payment. The supporting documents must accompany the receipt.

2. When the receipt is completed, Form RW-670R is given to a second right-of-way employee who records the payment on the District Rental Record, Form RW-669 and signs the Rent Transmittal Form acknowledging that the rent payment has been recorded. Receipt of payment and recording the payment must be done by two different individuals.

3. **Right-of-Way Credit Invoice.** Following the receipt and recording of the rent, a credit payment is created in the ROW Office Claim Payment Maintenance screen using the claim number assigned for the leased parcel, if the interim tenant is the original right-of-way claimant. This credits a reimbursement of expenditure for the specific project and claim in ROW Office.

If the interim lease rent payment is from a subsequent interim tenant, a parcel sub-claim number is established using the "Subsequent Interim Tenant" claim description code. The claim number used for the payment would be the sub-claim number of the lessee for the leased parcel.

The payee name and address are entered on the ROW Office Claim Payment Maintenance screen as follows:

- **Payee Name:** PennDOT – Interim Rent Receipt Check No. 12345 from
- **Payee Addr 1:** Sam Jones for
- **Payee Addr 2:** October 2000 rent
- **City:** District 11-0
- **State:** PA
- **Zip:** 15017 0000
For a monthly rent of $500.00, plus the security deposit, enter payment lines in the ROW Office Claim Payment Item Maintenance screen as follows:

<table>
<thead>
<tr>
<th>Internal Order</th>
<th>G/L Account</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>81143</td>
<td>6412040</td>
<td>-500.00</td>
<td>Rent Credit</td>
</tr>
<tr>
<td>81149</td>
<td>6412040</td>
<td>-100.00</td>
<td>Receipt of Security Deposit</td>
</tr>
<tr>
<td>Total Payment:</td>
<td></td>
<td>-600.00</td>
<td>(amount of check payable to PennDOT)</td>
</tr>
</tbody>
</table>

For a monthly rent of $500.00, minus a credit for refund of security deposit and a credit for a tenant paid repair cost, enter payment lines in the ROW Office Claim Payment Item Maintenance screen as follows:

<table>
<thead>
<tr>
<th>Internal Order</th>
<th>G/L Account</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>81143</td>
<td>6412040</td>
<td>-500.00</td>
<td>Rent Credit</td>
</tr>
<tr>
<td>81149</td>
<td>6412010</td>
<td>100.00</td>
<td>Refund of Security Deposit</td>
</tr>
<tr>
<td>81168</td>
<td>6412050</td>
<td>100.00</td>
<td>Repair Cost</td>
</tr>
<tr>
<td>Total Payment:</td>
<td></td>
<td>-300.00</td>
<td>(amount of check payable to PennDOT)</td>
</tr>
</tbody>
</table>

Note that Internal Order 81149, when used with G/L Account code 6412040 and a negative amount, indicates receipt by PennDOT of a rental security deposit. Internal Order 81149 paired with G/L Account code 6412010 and a positive amount, indicates a refund to the tenant of the security deposit or unused rent payment.

Internal Order 81149 and G/L Account code 6412010 may be used as a tenant's rent payment to PennDOT, or to make a refund payment to the tenant.

4. After the credit payment is entered on the ROW Office Claim Payment Maintenance and Claim Payment Item Maintenance screens, double-check for accuracy prior to submitting payment to SAP. Successful payment submissions will produce the SAP Financial Document Number within minutes.

Only one copy of the ROW Office Claim Payment Maintenance screen is necessary for submission; the Comptroller Operations copy is not needed to process a credit payment. Attach the rent payment check to the copy of the Claim Payment Maintenance screen print.

Note: It is not necessary to send a copy of Form RW-670R, to Central Office for interim leases.

5. Comptroller Operations Approval. When Comptroller Operations process the payment check to treasury, an approval date is not returned to ROW Office. Verification of the credit payment being processed can only be confirmed in SAP.

E. Joint Use Lease Rent Processing.

1. Upon receipt of the payment, the Rent Receipt section of the Form RW-670R is completed. A copy of this receipt is given to the Lessee, if desired. Care must be taken to record the requested information on the Form RW-670R completely and accurately. This is necessary for full identification of the property and account involved and becomes the basis for the entry into the SAP system. Any supporting documents must accompany the Form RW-670R.

2. When the receipt is completed, the Form RW-670R is given to a second right-of-way employee who records the payment on the District Rental Record, Form RW-669 and signs the Rent Transmittal Form acknowledging that the rent payment has been recorded. Receipt of the payment and recording the payment must be done by two different individuals. For Joint Use Lease payments, record the agreement number and the invoice number on the Rent Receipt. Ensure the invoice number is current and valid.
3. To process Right-of-Way Joint Use Lease payments, attach the check to the completed Form RW-670R, circle the "TO" address for Accounts Receivable Unit – Comptroller Operations and submit to Comptroller Operations for processing.

4. Revenue Codes for Joint Use Lease Rent Payments. Section 1303 of TEA-21 allows states to retain the proceeds for the lease of real estate on Federal projects as long as the proceeds are used for Title 23, U.S.C., type projects. Therefore, rent payments will be treated as an augmentation to Appropriation 581 and accounted for through the use of two augmenting revenue codes – one for sites on the National Highway System, and one for sites off the National Highway System.

Creating a SAP Invoice for Joint Use Leases

The District Office will create a SAP Invoice using transaction FB70 "Enter customer invoice: Company code COPA."

The following data is required for the Header Section:

a. Customer: enter the customer number.

b. Invoice date: enter the current date.

c. Reference: enter the Agreement number.

d. Amount: enter the amount based on the Terms of the Agreement. See Section 5.09.E.5.

e. Text: place the cursor in the text field and right click on the mouse. A drop down box will be displayed, right click on the drop down box and select Job Number 793 "793 – DOT-RIGHT OF WAY LEASE AGREEMENTS."

f. Doc. type: must use DR (Cust Invoice).

The following data is required for the Coding Section:

a. G/L acct: enter one of the following

   4435948 Revenue from Joint Use Leases (off National Highway System)

   4435949 Revenue from Joint Use Leases-on NHS (on National Highway System)

b. Amount in doc. curr.: enter the amount calculated above.

c. Fund: enter the appropriate Fund (must be at the Program level).

For example:

```
10 581 06 341
  Program
  Fiscal Year
  Appropriation
  Ledger
```
d. Cost center: enter the appropriate Cost center.

For example:

```plaintext
78 4 0650 000
```

Reporting Unit
Organization
Deputate
Agency

e. Text: Enter descriptive narrative including the Billing Time Period and the Rental Fee based on the Agreement (monthly, annual, etc.).

5. Implementation of the SAP system resulted in the elimination of the R10 and Form C-84 once used to account for Joint-Use lease credits. A similar mechanism must be established in SAP using transaction code FB70.

The SAP Invoice creates an account against which joint lease rents are credited. The invoice should be created to comply with the Terms of the Agreement, which will determine the Time Period. In addition, the schedule of payment, as well as the total amount due should be included on the Invoice. For example, rent of $100.00 a month is to be paid monthly for a period of two years, from November 1, 1994 to October 31, 1996, totaling $2,400.00.

If payments are not made according to the schedule, either early or late, or include more than one month's rent in a single payment, this should be noted clearly on the transmittals to both Comptroller Operations and the Right-of-Way Unit. Failure to indicate any deviation from the payment schedule could result in lessees being billed as delinquent when they are in fact current or paid in advance. Payments are credited against an invoice until an amount equal to the invoice has been received.

When the total amount of the invoice has been received, a new invoice will be needed for further payments.

If an invoice is not totally paid, but is replaced or payments are stopped for any reason, the invoice should be canceled by submitting a negative invoice to cancel the balance. Only one invoice per lease should be in effect at a time.

6. When a Joint Use Lease payment has been recorded in the District Right-of-Way Unit, a determination must be made as to whether or not a SAP Invoice has been created for the Agreement. If a SAP Invoice does not exist, the invoice must be created. The new invoice along with the check must be forwarded to Comptroller Operations for processing at the following address:

Comptroller Operations, Bureau of Accounting
General Accounting Division
Accounts Receivable Unit
555 Walnut St. – 9th Floor
Harrisburg, PA 17101

7. A copy of the Form RW-670R is forwarded to the Utilities and Right-of-Way Section, Property Management Unit, for informational purposes.

F. **Refunds of Rent or Purchase Money.** There will be times when a refund must be given. The most frequent situations involve the return of a security deposit at the end of a lease, or return of purchase money if the Department cancels a sale of property.

Form RW-649 is used to process a refund. The application should be prepared with the original and four copies.

The claimant will sign the application. If the claimant is a corporation, association or other organization, the signature will be completed in the "Entity" area of the form.
The original and four copies are then signed by the responsible Real Estate Specialist and the District Right-of-Way Administrator or designee.

If the refund is for an interim lease, the District must enter the payment in ROW Office to generate the Invoice.

The Application for Refund, with supporting documents, is forwarded to the Utilities and Right-of-Way Section, Property Management Unit. The Property Management Unit will review and record the transaction. After approving the refund, the Unit will forward the request to Comptroller Operations, where it will be processed and forwarded to the State Treasurer for payment.

G. Alternative Refund Procedure. An alternative means of refunding a rental security deposit is to deduct the deposit from the last rent payment due. This will avoid several weeks delay until the refund is processed and paid. Caution should be exercised in using this procedure to avoid returning the deposit to an unworthy tenant who may be delinquent in his rent or who might cause damage to the property before leaving.

5.10 ACQUISITION AND SALE OF MOBILE HOMES

For acquisition purposes, mobile homes may be considered personal property or real estate. In either case, they require special processing because they are registered and titled by the Bureau of Motor Vehicles.

A. Personal Property Versus Real Property. For right-of-way acquisition purposes, if the mobile home and the land on which it is located are in the same ownership, the mobile home would usually be considered fixed to the reality (real property). Therefore, the value would be included in the FMV appraisal and treated as any other single-family dwelling.

If the mobile home is located on rented land (as in a mobile home park), it is not included in the FMV appraisal. Instead, it is acquired as personalty (personal property). A subclaim is established using "Mobile Home" as a claim description, a value is established, and payment is made using Internal Order Number 81114, Acquisition of Mobile Home as Personalty.

B. Transfer of Title - Acquisition. When a mobile home is acquired, the title must be transferred to PennDOT. To accomplish this, the owner (claimant) completes the assignment of the title block on Form MV-4ST (Certificate of Title – Vehicle Sales and Use Tax Return – Application for Registration), refer to the sample Form MV-4ST on the following page, and has their signature notarized.

The purchaser(s) part of the assignment of the title block needs to be completed by the District Chief Negotiator or Property Manager, using PennDOT and the District's address as the purchaser and address. Additionally, the Chief Negotiator or Property Manager must make application on behalf of the Department by signing the "application for title and liens" information block and having their signature notarized. Submit the form MV-4ST to DGS no later than 30 Calendar days prior to the sale or auction date. This allows necessary time for DGS to obtain transfer of the title to the Commonwealth.

Note: All outstanding liens against the mobile home must be satisfied before the transfer.

The District and DGS will determine the number of days after the sale by which the mobile home must be removed from the acquired parcel. DGS will include the removal period in the advertisement and/or condition of sale.

C. Transfer of Title - Sale. DGS Surplus Sales will handle the preparation of the new title(s) and be responsible for the transfer(s) of the title after the sale of the motor home. DGS and the District may agree to have DGS send the mobile home title to the District, for the District Chief Negotiator or Property Manager to sign, for the Commonwealth, and notarize locally. In this way, the buyer would not have to travel to Harrisburg to receive the title.
Chapter 5 - Property Management

5.11 HAZARDOUS MATERIALS

Hazardous materials are of a major concern in right-of-way acquisition and administration. The potential for hazardous materials must be considered during the pre-acquisition process. Dealing with hazardous materials can be difficult, time consuming, and expensive. Risks involving these materials should be eliminated or minimized before acquisition. Publication 281, Waste Site Evaluation Procedures Handbook, prescribes the environmental due diligence procedures implemented during project development. The procedures are applicable to property acquisitions, relocations, and dispositions. Coordination with the District Environmental Unit and/or the Central Office Strategic Environmental Management Program Office is necessary to ensure PennDOT environmental risks are identified and minimized.

A. Definition. Hazardous materials are substances that, because of the quantity, concentration, or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or morbidity in either individuals or the total population. These materials may also pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

Federal, state and local laws and regulations define hazardous wastes. The list is long. Right-of-Way personnel should be alert to the possible presence of hazardous materials within the right-of-way, on property proposed to be acquired for right-of-way, or leased lands.

B. Dealing With Hazardous Materials. If a known hazardous waste or material exists or is suspected to exist on the property, it should be dealt with promptly, and before acquisition if possible. It may be necessary to contact and seek guidance from local health officials, fire departments and the Pennsylvania Department of Environmental Protection (PADEP). Legal guidance may be required to deal with these materials. Publication 281, Waste Site Evaluation Handbook, establishes PennDOT's environmental due diligence procedures to assess environmental risk, quantify hazardous substance impact to the environment, inter-agency coordination, reporting, and remediation. Due to the complexities of these procedures, the time and cost commitment, and the desire to minimize PennDOT environmental liability, the District's Environmental Unit and/or Central Office's SEMP Office should be consulted where hazardous waste or materials are known or suspected on properties to be acquired or leased by PennDOT. It may be necessary to re-route the highway rather than to assume the difficult and expensive problems associated with remediating hazardous material on a property.

C. Particular Hazards. Two hazards in particular are likely to be found in land and structures acquired for right-of-way: Regulated Asbestos Containing Materials (RACM) and Underground Storage Tanks (UST).

1. Asbestos. Approximately 20% of acquired improvements contain RACM. Asbestos may be found in buildings of any age. Buildings built between 1950 and 1975 in particular are likely to have RACM. Materials typically containing RACM include fireproofing, decorative coatings, thermal insulation, acoustical insulation, floor coverings, roofing products, ceiling tiles, joint compound, and siding shingles. All structures scheduled for demolition shall be evaluated for RACM. An asbestos survey may be required to document the presence of RACM. If asbestos is found, it must be removed or contained prior to continued use or removal of the structure.

2. Underground Storage Tanks (USTs). USTs represent a hazard due to unknown breaks or leaks potentially releasing hazardous material (contamination) into the soil, posing a threat to water tables and/or human beings. In addition to visible signs of UST in areas known to house them, care must be exercised in identifying hidden tanks that may have been used in the past.

   a. Suspected Contamination During the Acquisition Process. If contamination is suspected from a known UST during the acquisition process, immediately request the land owner contact the Underground Storage Tank Indemnification Fund (USTIF) to assist in determining if the UST is eligible for coverage.

   The USTIF, a subsidiary to the Pennsylvania Insurance Department, was created to assist owners in meeting insurance requirements established by the U.S. Environmental Protection Agency and PADEP. The USTIF indemnifies tank owners for corrective action and third party liability that may occur when the release from a UST has injured another person or that person's property. Restrictions apply.

   b. Contamination Discovered after Acquiring the Parcel. The USTIF will not indemnify another state agency. Therefore, if contamination is discovered after acquiring the parcel (transfer of title), costs for
mitigation or other corrective action will be the responsibility of PennDOT.

3. Other Hazardous Materials. Other hazardous materials may be encountered in the process of acquiring and clearing right-of-way. Right-of-Way personnel must be alert to the possible presence of hazardous wastes such as lead in paint and PCBs in transformers and other equipment. If there is any question about hazardous wastes, District right-of-way staff should seek assistance from the District Environmental Manager.

D. Inspection for Hazardous Wastes/District Environmental Manager. Before demolition, all structures must be evaluated for hazardous wastes. Hazardous wastes, or the potential for finding hazardous wastes may be observed during the initial site assessment, field inspections, appraisal, relocation assistance interview, and the inventory of improvement proceedings, but a thorough inspection of each structure for hazardous wastes must be done prior to advertising for bids for demolition.

Two data fields are provided on the ROW Office Property Management Parcel Maintenance screen to enter the "Inspect for Hazmat Date" and the "Inspect for Hazmat Acq Date (After Acquisition)." In addition, there is an "Inspect for Asbestos Date" field, as well as a series of check-off boxes for various possible hazards (if found), and a corresponding list of remediation dates to be used if any of these hazards are found, identified and remediated.

District Right-of-Way Administrators must consult with District Environmental Managers early in the project to evaluate the potential impact of hazardous wastes on the scheduling and letting of construction contracts. If hazards are found or suspected, a survey must be conducted by a licensed professional. A scope of work and technical specifications for dealing with RACM must be developed by a qualified environmental consultant. This document must include the quantities of friable and non-friable asbestos, including unit costs and total removal costs for each structure. This information is later provided to the demolition contractor or highway contractor as part of the bid proposal process. It is the responsibility of the District Environmental Manager to obtain any necessary asbestos surveys and reports.

When unexpected RACM is found during demolition, or previously non-friable asbestos material becomes crumbled, pulverized or reduced to powder, the Pennsylvania Department of Environmental Protection must be notified and concurrence gained as to the proper method of removal, handling and disposal of the RACM. The demolition operation may be allowed to proceed only with on-site air monitoring. The additional costs incurred by the contractor, due to wetting and testing of the RACM, may be authorized for payment in accordance with Emergency Purchase of Service provision of the Commonwealth Manual M215.3, Procurement Handbook.

E. Removal of Hazardous Wastes. A statewide contractor licensure list is maintained by the Department of Labor and Industry. The potential also exists for a Central Office or District contract to allow for hazardous material assessment and remediation. The list is comprised of prospective bidders who are certified, qualified and experienced in the demolition, removal and disposal of improvements containing RACM. Updated listings of licensed asbestos contractors can be obtained by contacting the Department of Labor and Industry, Bureau of Occupational and Industrial Safety, 717-772-3396. All prospective bidders will be afforded the opportunity to inspect the demolition and removal work to be done. All applicable data from the asbestos survey report, scope of work and technical specifications shall be included in the bid package and be provided to all prospective bidders.

The selected contractor is required to comply with all federal, state and local regulations and guidelines regarding inspection, notification, removal and handling of RACM. The selected contractor is to be advised in writing that the Air Quality Control Bureau of the Department of Environmental Protection (DEP) must be notified ten working days before any demolition commences, or he will be cited by the DEP and/or the USEPA as being in violation of the National Emission Regulation. The penalty for demolition without notification is $1,000 to $4,000 per violation. The demolition contractor must also complete and submit "Contractor Notification of Asbestos Abatement" forms to the Department of Labor and Industry, Bureau of Occupational and Industrial Safety. The contractor can obtain these by telephoning the Department of Labor and Industry. These requirements are included in Form RW-658A.

F. Alertness Required. The regulations governing hazardous materials handling and disposal are very strict, and may be subject to frequent changes. If hazardous materials are found, it is important that appropriate actions be taken in accordance with federal and state laws and guidelines. Failure by Department personnel or contractors to abide by the laws and guidelines may result in delay of the project and possible civil and criminal penalties.
G. **Standards.** Contractors shall be bound by the demolition standards set forth in Section 202 of Publication 408 and the American National Standards for Safety in Demolition Operations. All applicable federal, state and local laws, ordinances, codes, rules and regulations must be adhered to.

**H. Laws and Regulations.** Some of the laws and regulations that regulate working with asbestos and other hazardous waste are listed below. If any questions relating to these or any other areas of hazardous wastes arise, right-of-way personnel should consult with the District Environmental Manager.

The listing is arranged according to the agencies involved.

- **49 CFR 173** U.S. Department of Transportation. Rules and regulations regarding transportation of asbestos containing material.
- **29 CFR 1901.1001** U.S. Department of Labor, Occupational Safety and Health Administration. Regulations regarding asbestos exposure to workers.

In addition to the federal laws and regulations governing hazardous wastes, state regulations also exist. Departments of the Commonwealth that may be involved with environmental or hazardous waste issues include:

- Department of Environmental Protection, Bureau of Air Quality.
- Department of Environmental Protection, Office of Water Quality Management.
- Department of Labor and Industry, Bureau of Occupational Safety.
- Department of Transportation, Environmental Policy and Development.

Property management personnel must maintain a good working relationship with the District Environmental Manager in order to be kept aware of new or changing hazardous waste regulation.

### 5.12 RODENT CONTROL PROCEDURES

Control of rodents and other pests in the right-of-way is an important part of highway construction. Rodents represent a health hazard. Highway construction will disrupt the rodents’ habitats, causing them to move and seek out new habitats. Extermination will destroy the rodents in their existing locations and prevent them from moving and creating health hazards at new sites.

**A. Identification of Rodent Infestation.**

1. District personnel will identify rodent infestations as a part of the acquisition process. They are likely to be found around structures, garbage dumps and landfills. In addition to their own investigations, District personnel should work with individuals and county and local health officials to identify rodent infestations. These investigations should be started no later than the beginning of negotiations.

2. Rodent control measures may require cooperation with adjacent property owners in order to contain and remove rodent infestations.

3. All right-of-way in urban areas should be treated. In rural areas, treatment may not be necessary in undisturbed areas.
B. Rodent Control Inspection. Form RW-693 must be completed on each claim when applicable. The report should be completed to give the most information to the user of the report, and to provide a basis for comparison between inspections. To do this, the evidence, such as droppings, live rats, and amount of food available, should be quantified to aid in comparisons. Two date fields are provided on the ROW Office Property Management Parcel Maintenance screen to enter both the "First Rodent Inspection Date" and the "Second Rodent Inspection Date" for the parcel.

C. Rodent Control. The Right-of-Way Section is responsible for carrying out rodent control procedures. Preparation for this should begin while acquisition is in progress, so that properties may be exterminated as soon as they are vacated.

D. Contracting for Extermination Services.

1. Extermination services are contracted using Form RW-664. While this is a right-of-way contract form, the contracts are administered according to the procedures outlined in PennDOT Publication 1, Purchasing Guidelines for Services and Supplies, and Commonwealth Manual M215.3, Procurement Handbook.

2. The use of sodium fluoroacetate, commonly known as 1080, is specifically prohibited.

3. Extermination, removal of dead rodents and removal of left over baits, etc., must be done in conformity with federal and state regulations.

4. Following the extermination services, another inspection must be made to determine that the services have been properly performed and the rodent problem has been eliminated.

5.13 ACQUISITION/LEASING OF MAINTENANCE SITES

Acquisition and leasing of county maintenance sites (stockyards) is a cooperative effort of the following units: the county maintenance district; District Maintenance, Environmental, and District Right-of-Way; and Central Facilities Management, Utilities and Right-of-Way, Environmental, and Maintenance and Operations. Purchase of maintenance sites is the preferred method, but long-term leases (20 years or more) may be entered into if a suitable purchase cannot be negotiated.

The procedures developed by the Department are found in the most recent version of the Publication 284, Facilities Manual. This manual includes chapters on acquisition, development, maintenance, and security. The following procedures reflect those set forth in Publication 284, Facilities Manual, concentrating on those procedures with which the right-of-way units are directly involved. Certain procedures are common to acquisition and leases; others are specific to the type of transaction.

In general, the District Right-of-Way Administrator and his staff will provide advice, guidance and assistance to the District Maintenance Project Coordinator, the County Maintenance Manager, and the Facilities Management District Coordinator. The Maintenance and Facilities Management staff will determine the need, size and location of the maintenance site. They will also prepare the encumbrance documents. District right-of-way staff shall determine fair market and rental value, and prepare and process packages for Central Office right-of-way staff review and approval.

A. Procedures Common to Acquisitions and Leases.

1. Site Selection. The determination of need and choice of site is handled by the County Maintenance Manager in consultation with the District Maintenance Manager and facilities management.

2. Environmental Review. Facilities management and the District Environmental Unit coordinates environmental site review.

3. Site Plan, Survey and Plot. The County, District and facilities management coordinate to develop a site plan, survey the site and prepare a plot plan and metes and bounds description.

4. Appraisal and Title Search. Upon request by the County or District maintenance, the Right-of-Way Unit conducts a title search and prepares or has prepared an appraisal of the site.
5. Negotiations. The County Maintenance and District Office must decide which unit will negotiate with the landowner. The District Right-of-Way Unit typically fulfills this function.

6. Package to Initiate Central Office Processing. In order to process the legal documents to either purchase or lease a maintenance site, the District Right-of-Way Unit must receive from the District and County Maintenance Units a package of materials. The Right-of-Way Unit will need much of this material if it is to negotiate with the landowner. The following items must be included in the package:

   a. Copies of the bids and bid opening (if available)
   b. Appraisal, provided by the District Right-of-Way Unit
   c. A metes and bounds description of the property
   d. A drawing showing boundaries
   e. A map and statement of the geographic area to be served
   f. Acreage
   g. SR, Segment and Offset of adjacent route
   h. Specific address and/or location
   i. Township and County
   j. Owner's full name, address and telephone number
   k. Deed Book and page number
   l. Distance to nearest town
   m. Utilities available
   n. Environmental statement
   o. Other comments, e.g., access, easements

7. Review of Package. Upon receipt of the acquisition package from District Maintenance, the District Right-of-Way Administrator will review the materials to ensure they are complete and correct. If the package from the Maintenance Units is in good order, the Administrator will proceed with purchase preparations. If there are errors or omissions in the land purchase or lease package, it will be returned to maintenance for completion or corrections.

8. Processing of Legal Documents. The District Right-of-Way Unit process the legal documents necessary to complete the acquisition or lease through the Central Office Utilities and Right-of-Way Unit, Property Management Section.

9. Central Office Review. Upon receipt of the purchase or lease package, the Property Management Unit will review it to ensure that it is complete and correct. If there are any omissions or errors, the package will be returned to the District for correction. If everything is in order, the purchase document will be routed for review and approval. The Central Office Property Management Unit will place the agreement in the Legal Agreement Tracking System (LATS) before forwarding it for review and approval.

The steps in the review and approval process are as follows:

   a. Chief, Utilities and Right-of-Way Section for approval.
   b. Strategic Environmental Management Program Office for review. (purchase only)
   c. Facilities Management Division for review. (purchase only)
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d. Office of the Chief Counsel for preliminary approval. Leases will go directly to the Contracts and Legal Services Section; land purchases will first go to the Real Property Division.

e. Deputy Secretary of Transportation for execution.

f. Office of Chief Counsel for approval as to form and legality

g. Comptroller Operations for certification of availability of funds and approval.

h. Office of General Counsel for approval as to form and legality (not necessary for leases because the form has been pre-approved).

i. Attorney General for approval as to form and legality (not necessary for leases because the form has been pre-approved).

When the contract has been fully executed and approved, it is returned to the Property Management Unit by the Office of Chief Counsel. The date of the last approval becomes the effective date of the legal document. The Office of Chief Counsel will insert that date in the first line of the contract.

None of the standard Commonwealth contracting clauses, e.g. Contractor Responsibility and ADA, are required for the purchase or leasing of maintenance sites because they are real estate transactions. The Right-To-Know Law Provisions are required as they are incorporated in both the Forms RW-680 and RW-682.

10. Preparation and Processing Time. Preparation of a lease or land purchase must be begun at least six (6) to nine (9) months prior to the desired date of commencement, or, in the case of an expiring lease, prior to the date of expiration. This will ensure that all required items are completed and can be submitted in a timely manner.

The lease or purchase package must be received by the Chief, Utilities and Right-of-Way Section, Attention: Administration and Property Management Unit, no later than two (2) months prior to the lease beginning date or the desired closing date of the land purchase. This will allow sufficient time for complete execution.

11. Development of Site. The County, District and facilities management coordinate development of the site.

B. Purchase of Maintenance Site. Purchase is the preferred method to acquire a maintenance sites. Purchase results in ownership of the property, giving the Department total control of the property and the ability to undertake long range planning and use of the property.

1. Required District Right-of-Way Functions. The District Right-of-Way Administrator will initiate several actions necessary to acquire the property. The Administrator will:

   a. Obtain an appraisal of the property to determine the Fair Market Value price. The appraisal must conform to all right-of-way appraisal requirements, but is not normally subject to Federal procedures because Federal funds are not involved.

   b. Obtain a title search to ensure a clear title to the property and determine if any easements or restrictions apply to the property.

   c. Process the legal documents necessary to complete the transaction. See Section 5.13.B.4.

2. Potential District Right-of-Way Functions. The District Right-of-Way Unit may also be called upon to assist and/or coordinate in other actions necessary to acquire property.

   a. Insure that a survey is completed to determine the boundaries of the property.

   b. Coordinate or assist in obtaining subdivision approval for the sale. See Section 5.13.B.3.

   c. Negotiate the purchase with the landowner. If the Right-of-Way Unit is designated to perform this task, the Right-of-Way Administrator will designate a real estate specialist to negotiate the purchase with the owner of the property.
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3. Subdivision Approval. Department policy is that all land acquisitions for maintenance sites will be submitted for subdivision approval where there is a local subdivision ordinance in place. See Publication 284, Facilities Manual, Chapter 2, which includes reference to a sample cover letter to the local government requesting subdivision approval.

   a. All sales will include a clause providing that the grantor will cooperate with the Department to obtain any zoning, subdivision or land development approvals necessary to use the site for its intended purpose. The approvals, if necessary, will be obtained at the sole cost of the Department before closing, although the Department may choose to close without the approvals. The contract may be terminated if approvals are not obtained.

   b. No purchase should be closed until the Department is assured that it can use the site for its intended purpose. This does not mean that all details of construction have been approved, but only that the site can be used as a maintenance site.

   c. District and County Maintenance, facilities management and Right-of-Way personnel will determine who will apply for the approvals. It may be appropriate for Right-of-Way staff to be involved. The application will likely be required to be made under the signature of or with the consent of the seller.

   d. If a request for subdivision approval is denied, the matter should be referred to the Office of Chief Counsel, Real Property Division, as soon as possible because time limits for appealing may apply. The Office of Chief Counsel will work with the District and County to resolve the issues. The District is to keep facilities management advised.

4. Document Processing. When the appraisal, survey and title search are completed and the negotiations have been successfully completed, the District Right-of-Way Unit will prepare Land Purchase Contract (Form RW-682) and Deed in Fee Simple (Form RW-683).

   a. The negotiator or other person who negotiated the purchase will obtain the signature of the seller on the Land Purchase contract (Form RW-682). The Deed in Fee Simple (Form RW-683) should not be executed by the landowner at this time.

Note: The date space in the first line of the contract shall be left blank at the time of preparation. The date will be inserted by the Office of Chief Counsel after full approval of the contract. The date of the agreement will be the date it is approved by the Attorney General's Office.

   b. After the seller signs the contract, it is presented to the District Executive for approval.

   c. When the District Executive has approved the Land Purchase Contract, it is returned to the District Right-of-Way Unit, where it is given a final review and the purchase package is assembled. The Right-of-Way Administrator shall request the County Maintenance Section to post ID-049 to encumber the funds for payment. The inclusion of the Automated Clearing House Network/ Pennsylvania Electronic Payment Program provisions (electronic payment process) in the Form RW-682 has been waived. Execution of the Form RW-682 results in a one-time payment of the purchase price to the land owner. There will not be on going payments.

   d. The purchase package must contain a metes and bounds description; a plot plan; a map and statement of the geographic area to be serviced by the site; the environmental evaluation documents; an appraisal; a title search; a Land Purchase Contract (Form RW-682), a draft Deed in Fee Simple (Form RW-683), and, if appropriate, an administrative settlement by the District Executive recommending approval of a purchase price in excess of the appraised value. See list of required items in appendix.

   e. The completed purchase package is forwarded to the Bureau of Project Delivery, Utilities and Right-of-Way Section, Right-of-Way Administration and Property Management Unit.
5. Contract Completion of Site Purchase. Upon receipt of the approved Form RW-682 the District Property Management Unit will contact the District Right-of-Way Unit and request that County Maintenance initiate the invoice document in SAP, which will generate the settlement check. The check is sent to the District Right-of-Way Administrator for settlement.

   a. When the contract and check are in hand, the District Right-of-Way Unit conducts settlement on the property. The Deed in Fee Simple (Form RW-683) will be executed by the grantor at this time.

   b. Following settlement, the District staff records the deed in the county courthouse. The original deed is filed in the District Right-of-Way Unit. Copies are sent to the Bureau of Office Services, Facilities Management Division, and the seller.

6. Land Development and Zoning Approvals. Department policy is to be a good neighbor in relation to obtaining zoning and land development approvals for maintenance sites. See Publication 284, Facilities Manual, Chapter 3, which includes reference to sample cover letters to the local government requesting approval.

   a. The Department's legal authority to not seek local approvals is better in relation to maintenance sites located within State highway right-of-way as opposed to those located outside State highway right-of-way.

   b. Obtaining zoning approvals relating to use of the property for a government maintenance site is appropriately completed prior to purchase. This may require filing of a request for a special exception or a variance. Obtaining land development approvals relating to the actual construction on the site is more appropriately completed after purchase because the District, County and facilities management do not develop the facility in accordance with applicable guidelines until after the purchase is completed. See Publication 284, Facilities Manual, Chapter 2.

   c. Current Department policy provides that coordinating with local officials in relation to zoning and land development issues is to be a cooperative effort of the County and District office, facilities management, and the Office of Chief Counsel, if necessary. See Publication 284, Facilities Manual, Chapter 3.

C. Leasing of Maintenance Sites. The process of leasing a maintenance site requires much of the same information as for purchase, but results in a lease rather than ownership of the property. For the District Right-of-Way Unit, the process starts formally with the receipt of the maintenance site package. In actuality, the informal process starts much earlier, when maintenance starts looking for a property to lease or buy.

1. Required District Right-of-Way Functions. The District Right-of-Way Administrator will initiate several actions necessary to lease the property. The Administrator will:

   a. Obtain an appraisal of the property to determine a Fair Market Value rent. The appraisal must conform to all right-of-way appraisal requirements, but is not normally subject to Federal procedures because Federal funds are not involved

   b. Obtain a title search to ensure the proposed lessor has a clear title to the property and determine if any easements or restrictions apply to use of the property.

   c. Process the legal documents necessary to complete the transaction. See Section 5.13.C.3 below.

2. Potential District Right-of-Way Functions. The District Right-of-Way Unit may also be called upon to assist and/or coordinate in other actions necessary to acquire property.

   a. Insure that a survey is completed to determine the boundaries of the property.

   b. Negotiate the lease with the landowner. If the Right-of-Way Unit is designated to perform this task, the Right-of-Way administrator will designate a real estate specialist to negotiate the lease with the owner of the property.

   c. Assist in obtaining zoning or land development approvals for the site if deemed appropriate by the
3. When the appraisal and survey are completed and the negotiations have been successfully completed, the Right-of-Way Unit will prepare Form RW-680.

   a. The negotiator will obtain the signature of the lessor on the contract.

   Note: The "executed" date space in the first line of the lease shall be left blank at the time of preparation. The date will be inserted by the Office of Chief Counsel after approval and logging of the lease.

   b. When the lease has been signed and dated by the lessor, it will be presented to the District Executive for approval. When the District Executive has approved the lease, it is returned to the District Right-of-Way Unit, where it is given a final review and the lease package is assembled.

   c. The lease package shall contain all information necessary for review and approval of the lease, including copies of advertisement for a site (if available); copies of bids (if available); a metes and bounds description of the property; a plot plan; a map and statement of the geographic area to be served; the environmental evaluation documents; an appraisal; a title search; SAP-7 Funds Commitment Form; the Lease of Land and/or Building Contract (Form RW-680); and, if appropriate, justification for a lease having a term less than 20 years. See list of required items in appendix.

   d. At the time the lease is signed and dated by the District Right of Way Administrator, the Right-of-Way Unit will request that Maintenance encumber funds for the first rental payment in SAP. The District must ensure funds are encumbered prior to submitting the lease package for approval. When the lease is approved, Maintenance will process an invoice in SAP to generate the payment. As stated in Form RW-680, the Department will make contract payments through the Automated Clearing House Network (ACH), utilizing the Pennsylvania Electronic Payment Program (PEPP). The contractor (lessor) shall comply with the ACH provisions incorporated in the lease.

   e. The completed lease package is forwarded to the Bureau of Project Delivery, Utilities and Right-of-Way Section, Administration and Property Management Unit.

4. Completion of Lease. The fully executed original lease will be returned to the District for distribution. The Central Office Right-of-Way Administration and Property Management Unit will not maintain any maintenance lease files. Upon receipt of the approved Form RW-680, County Maintenance will process the payment in SAP to generate the first rent payment. The payment will be sent to the lessor.

5. Land Development and Zoning Approvals. Department policy is to be a good neighbor in relation to obtaining zoning and land development approvals for maintenance sites. See Publication 284, Facilities Manual, Chapter 3, which includes reference to sample cover letters to the local government requesting approval.

   a. The Department's legal authority to not seek local approvals is better in relation to maintenance sites located within State highway right-of-way as opposed to those located outside State highway right-of-way.

   b. Obtaining zoning approvals relating to use of the property for a government maintenance site is appropriately completed prior to purchase. This may require filing of a request for a special exception or a variance. Obtaining land development approvals relating to the actual construction on the site is more appropriately completed after purchase because the district, county and facilities management do not develop the facility in accordance with applicable guidelines until after the purchase is completed. See Publication 284, Facilities Manual, Chapter 2.

   c. Current Department policy provides that coordinating with local officials in relation to zoning and land development issues is to be a cooperative effort of the County and District office, facilities management, and the Office of Chief Counsel, if necessary. See Publication 284, Facilities Manual, Chapter 3.
6. Short-Term Leases. Although it is Department policy to eliminate leased maintenance sites, especially short-term leases (less than 20 years), it may at times be necessary to enter into a short-term lease. A suitable site may not be available for purchase and no landowner will agree to a long-term lease. This must be done only as a last resort. A written justification for a short-term lease must be prepared by the Maintenance staffs and approved by the Assistant District Executive. The justification must be included in the lease package. Staff negotiating a short-term lease must try to obtain the longest lease possible.

7. Expiration of Leases. When occupancy of a maintenance site is anticipated beyond the expiration date of the existing lease, a new Form RW-680, must be negotiated, executed and processed so that the final approval date is prior to the beginning date of the new lease.

   a. The District must begin the renewal process early enough to ensure that sufficient time is available to completely execute the new lease prior to the expiration of the existing lease. It is recommended that preparation of the new lease be begun at least six (6) to nine (9) months prior to the desired date of commencement or date of expiration.

   b. The lease of land and/or buildings agreement should be received by the Chief, Utilities and Right-of-Way Section, Attention: Administration and Property Management Unit, no later than two (2) months prior to the lease beginning date to allow sufficient time for complete execution.

   c. The new lease must be given a new agreement number. Do not use the number from the lease that will expire.

   d. The package submitted to Central Office for the new lease need not include a copy of an advertisement for bids, a copy of bids, or an environmental statement since the Department will be using the same site. For the same reason, a certification of title reflecting that the lessor is the owner will be sufficient. An appraisal is required only if the amount of the rental payment will increase in a significant amount. An appraisal is not required if there is no rental increase, nor would an appraisal be required if the annual rental increase is a minimal amount, in which case the cost of an appraisal would not be justified.

   e. All documentation as indicated in paragraph E (appendix) under New Lease needs to accompany the lease package. The documentation listed in paragraph E (appendix) under New Lease is required every time a lease is renewed. Photocopies of existing documentation are acceptable providing the information is still accurate. Therefore, complete files should be maintained on all maintenance sites.

8. Assignment of Maintenance Site Leases. When the lessor assigns its interest in the lease to another party, a formal amendment to the lease is not required. Rather, an assignment of contract notice may be processed through the Office of Chief Counsel, Contracts and Legal Advice Section, and Comptroller Operations. See Instructions for Changes to Contractor Information, located on the intranet at P:\Real Property Division Guidance.

9. Termination of Lease. If for any reason the District wishes to discontinue a maintenance site lease, the lease provides that the Department may terminate the lease at any time upon a 30-day notice to the lessor.

D. Condemnation. According to the law, the Department has the authority to condemn property for highway purposes, including a stockpile site. However, the Department must be prepared to justify the necessity of condemnation if preliminary objections challenging the public need for the specific site are filed. If the specific site is sufficiently necessary to District maintenance operations to justify condemnation, such action should be coordinated, in advance, with the Bureau of Maintenance, Bureau of Project Delivery, Utilities and Right-of-Way Section and Office of Chief Counsel, Real Property Division.
E. Appendix

Contents of Maintenance Site Package

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<td>Copies of bids (if available)</td>
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<tr>
<td>Deed in Fee Simple (Draft), Form RW-683</td>
<td>R</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Lease of Land/Building, Form RW-680</td>
<td>R</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>SAP Funds Commitment (SAP-7)</td>
<td>M</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

M - Maintenance  
R - Right-of-Way  
E – Environmental

1When a renewal lease is required for the same site because the existing lease will expire.  
2Only required if rent increases in an amount significant enough to justify an appraisal.  
3Certification of title sufficient.

5.14 PENNSYLVANIA RIGHT TO KNOW LAW

Pennsylvania's Right to Know Law (RTKL) went into effect January 1, 2009. There are eleven forms related to Property Management that must comply with the RTKL, they are as follows:

RW-622 Bid Proposal and Contract for Auction Sale  
RW-625 Purchase Agreement and Bill of Sale (Personalty/Realty)  
RW-658 Bid Proposal and Contract for Sale and Removal of Buildings  
RW-664 Contract for Extermination Services  
RW-670I Lease Agreement (Interim)  
RW-670JU Lease Agreement (Joint Use)
Chapter 5 - Property Management

In February 2010, the Office of General Counsel and the Office of Attorney General approved revised RTKL clauses for contracts and leases and a new RTKL clause for grants. Property management issues would rarely involve the use of a grant. A paragraph (clause) is included in the body of the agreements listed above referencing the appropriate RTKL provisions to be attached to the appropriate contract.

These provisions can be accessed in the ROW Office Home Page and at the following link: P\penndot shared\ROW property management\RTKL.

5.15 FORMS, REPORTS, AND RECORDS

The work and procedures of Property Management are recorded and processed on a set of forms, the 600 series in the Right-of-Way (RW) forms. The following list identifies and describes the Right-of-Way forms used in Property Management. The text of this Chapter also refers to other forms used in Property Management. These forms are in the Commonwealth's series of forms.

The forms are intended to simplify and standardize procedures and produce uniformity of results throughout the Department. Together with their attachments, they provide a record of Property Management Activities.

An understanding of the forms, what they do and how they fit into the process of Property Management, will make the work easier and more efficient. It is important that forms be accurate and fully completed.

A. Right-of-Way Forms

RW-621 Removal Agreement Owner Retained Improvement(s)
Used as a standard contract allowing property owners to retain items from the property being taken for highway purposes.

RW-622 Contract for Auction Sale
Used to contract for the services of an auctioneer.

RW-625 Purchase Agreement and Bill of Sale (Personalty/Realty)
Used to sell property acquired with right-of-way back to the original owner.

RW-625A Bill of Sale (Personalty or Fixtures)
Acknowledges consideration and grants purchaser possession.

RW-626 Buyer Registration (Auction)
Used to register people who attend an auction of right-of-way property.

RW-627 Clerking Sheet (Auction)
Used to record purchasers, description and price of items sold at auction.

RW-628 Request to Dispose of Surplus Property by DGS
Used to list items to be sold by DGS.

RW-649 Application for Refund (Security Deposit, Rent, Purchase of Structure or Other)
Used to process refund of money by the Department.

RW-658 Bid Proposal and Contract Sale and Removal of Buildings
Used to receive bids for removal and/or demolition of structures. It also serves as the contract for the successful bidder.

Note: Form RW-658 contains references to attachments which, by reference, become a part of the contract and must be included as parts of the Contract Package. These are Forms RW-658A, RW-658B, and unnumbered attachments: Commonwealth Nondiscrimination Clause, Contractor Responsibility Provisions, Offset Provision, Contractor Integrity Provisions, and Provisions Concerning The Americans with Disabilities Act.

**RW-658A** Specifications for Demolition or Removal of Structures
Lists standards that must be observed during demolition of structures.

**RW-658B** Specifications of Water Wells, Cisterns and Springs
Lists procedures to be followed when wells, cisterns and/or springs are present at demolition sites.

**RW-658C** Act 287 (Excerpts)
Lists responsibilities of demolition contractors when dealing with underground utility lines.

**RW-660** Bid Opening Record
Used to list bids on right-of-way projects as the bids are opened.

**RW-663** Inventory of Improvement
Used to provide a listing of structures, machinery, equipment and fixtures forming part of real estate being acquired.

**RW-663B** Inventory of Improvements
Used as above, plus moveable machinery, equipment, and fixtures.

**RW-664** Contract for Extermination Services
Used to contract for extermination services for right-of-way property.

**RW-665** Retention Value Appraisal
Appraisal form used to determine value of property being retained by seller.

**RW-668** Rental Application (for Interim Leases)
Used to apply for interim lease of right-of-way property.

**RW-669** Individual Rental Record
Used to maintain a record of rent payments for each lease.

**RW-670A** Application to Lease Real Property (Joint-Use Lease)
Used by applicants for long-term (joint-use) lease to apply for lease of right-of-way property. The Form RW-670A application lists the documents and materials required to support the application. The application is not complete without the supporting documents.

**RW-670C** Notice of Change in Rent
Used to notify tenants that their rent is being increased.

**RW-670I** Lease Agreement (Interim)
Lease document for leasing right-of-way property on an interim or short-term basis between the time of acquisition and the beginning of construction.

Note: Form RW-670I includes, by reference, the following unnumbered items which become a part of the lease and must be attached to it: Commonwealth Nondiscrimination Clause, Offset Provisions, Contractor Integrity Provisions, and Provisions concerning the Americans With Disabilities Act.

**RW-670JU** Lease Agreement (Joint Use)
Used as a standard lease for all joint-use or long-term leases.

Note: Form RW-670JU includes, by reference, the following unnumbered items which become a part of the lease and must be attached to it: Commonwealth Nondiscrimination Clause, Offset Provisions, Contractor Integrity Provisions, and Provisions concerning the Americans With Disabilities Act, and Contractor Responsibility Provisions.

**RW-670R**  
Rent Transmittal  
This form serves as a record of handling of all rent payments in the District Office and is the vehicle for forwarding Joint Use Lease rent payment and related documents to Comptroller Operations. When rent payment is received in the District Office, it is recorded on the Rent Receipt portion of the Form RW-670R. A copy of the form may be given to the tenant as a receipt. The receipt of the rent is entered on the District Rental Record, Form RW-669 and noted on Form RW-670R. The form is completed with all the requested information supplied and all the supporting documents are attached.

The original of the Form RW-670R is sent to Comptroller Operations to transmit the Joint Use Lease rent payment. A copy is retained in the District.

Note: The issuing of the rent receipt and the entry of the payment on the Rental Record must be done by two different people.

Note: Form RW-670R should record the entire transaction, not just the amount received, e.g., the full monthly rent must be recorded. If the payment includes credits, these must be shown as being deducted from the month’s rent to arrive at the net amount due.

**RW-670T**  
Lease Transmittal  
Used to transmit interim lease application package from District to Central Office.

**RW-671**  
Notice of Overdue Rent  
Used to notify tenant that they are delinquent in their rent payments.

**RW-672**  
Overdue Rent—Legal Action  
Notice of legal action against tenant if he has not responded to Notice of Overdue Rent, Form RW-671. This notice and the legal action it reports are initiated if there is no response to Notice of Overdue Rent, Form RW-671.

Note: For action against a claimant entitled to relocation benefits, use Form RW-691.

**RW-673**  
Rented Property Repair Report  
Used to evaluate the need for and types of repairs, including emergency repairs, and provide approval of repairs for leased property.

Note: Be as specific as possible in answering questions on this form.

On Question 3, concerning emergency repair, an emergency is an unforeseen combination of circumstances calling for immediate action. Emergency repairs may be undertaken, with approval, to correct situations that pose an immediate threat to the property or to the health and safety of the occupants or the community.

**RW-674**  
Repair Contract  
To be used to contract for repairs to right-of-way property.

**RW-675**  
Leased Property Inspection Report  
A report on the condition of leased right-of-way property. The inspection is conducted annually and the report is submitted to the Central Office Property Management Unit.
<table>
<thead>
<tr>
<th>Form Number</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>RW-676</td>
<td>Joint-Use Lease Checklist</td>
<td>To be completed by or for applicant for a Joint-Use Lease with PennDOT.</td>
</tr>
<tr>
<td>RW-680</td>
<td>Lease of Land or Buildings</td>
<td>Lease form to be used when the Department leases property from others, such as a maintenance stockpile.</td>
</tr>
<tr>
<td>RW-682</td>
<td>Land Purchase Contract (Maintenance Site)</td>
<td>Contract used to purchase property for maintenance sites in the counties.</td>
</tr>
<tr>
<td>RW-683</td>
<td>Deed in Fee Simple</td>
<td>Deed by which the Commonwealth acquires title to property. This is used when the Department purchases property for a maintenance site.</td>
</tr>
<tr>
<td>RW-685</td>
<td>Bid for the Purchase of Excess Real Estate</td>
<td>Used to receive bids for the sale of excess right-of-way property.</td>
</tr>
<tr>
<td>RW-686</td>
<td>Notice of Auction Excess Real Estate</td>
<td>Provides notice of auction and lists conditions of auction.</td>
</tr>
<tr>
<td>RW-691</td>
<td>Thirty Day Notice Order to Vacate Nonpayment of Rent</td>
<td>This form is to be used for claimants who are delinquent with their rent, either never commenced rent payments as specified in Agreement of Sale (Fee Simple), Form RW-317AF, or fallen behind in rent payments. This form, in addition to providing notice to vacate, reminds the claimant of the relocation benefits to which he is entitled. For action against claimants, this form is used instead of Overdue Rent—Legal/Action, Form RW-672.</td>
</tr>
<tr>
<td>RW-693</td>
<td>Rodent Control Inspection Record</td>
<td>To record and document the presence of rodents on right-of-way property. By filing successive reports, it is possible to document the need for and effectiveness of rodent control activities.</td>
</tr>
<tr>
<td>RW-694</td>
<td>Award and Request for Bonds and Insurance</td>
<td>To notify demolition contractor of winning bid and request the contractor to submit a Performance Bond, Payment Bond and Insurance Certificate.</td>
</tr>
<tr>
<td>RW-695</td>
<td>Notice to Proceed</td>
<td>To notify contractor of receipt of bonds and insurance and telling the contractor to proceed with the work.</td>
</tr>
<tr>
<td>RW-696</td>
<td>Demolition Progress Report</td>
<td>To provide a record of demolition progress and/or completion of demolition. Note: This report is to be completed as demolition proceeds and at the completion of work.</td>
</tr>
<tr>
<td>RW-697</td>
<td>Contract for Sealing and Boarding</td>
<td>Used to contract for sealing and boarding properties on right-of-way. Sealing and boarding secures buildings until they can be demolished or repaired.</td>
</tr>
</tbody>
</table>
The following items do not have Right-of-Way form numbers. They are addenda to all contracts and leases, as appropriate. Additional changes will be issued periodically to ensure current language applies to the contracts, and is provided to the contractor/vendor.

------------------- Commonwealth Nondiscrimination Clause (All Contracts)

------------------- Contractor Responsibility Provisions

------------------- Tax Offset Provision

------------------- Contractor Integrity Provisions (All Contracts)

------------------- Provisions Concerning the Americans with Disabilities Act (All Contracts)

------------------- Right-To-Know Law Provisions

### 5.16 TEMPORARY ACCESS TO DEPARTMENT PROPERTY

Often, persons or entities (requestors) may request temporary access to property under the jurisdiction of the Department. These properties can include highway right-of-way, maintenance facilities or excess land. When these requests are made the requestor may produce their own access documents for Department personnel to sign—usually at the District Office level. These documents may not be signed without referral to and review by the Real Property Division, Office of Chief Counsel, because all contracts entered into on behalf of the Commonwealth must be reviewed as to form and legality under the Commonwealth Attorneys Act and they may include indemnity, release of liability or hold harmless language that could have a substantive impact on the rights of the Department and the Commonwealth and not be legally permissible. As an alternative to using the requestor's proposed document, Districts may follow the procedures in this section and instead inform the requestor that such entry will be permitted under one or several of the following:

1. Highway Occupancy Permit
2. General Release and Waiver Form
3. Right-of-Entry Agreement

Factors determining the process to be used and the type of document needed for the entry include the nature of the Department land involved (e.g., right-of-way; maintenance facilities; or excess land) and the purpose for the entry (intrusive or non-intrusive). Entries within highway right-of-way related to utility facilities and other activities normally approved by use of a highway occupancy permit should be referred to the District Permit Unit for normal handling under permit procedures. Entries onto maintenance or other facility lands should be referred to the Assistant District Executive for Maintenance or the Regional Facilities Coordinator for further handling. Entries onto excess land outside the highway right-of-way and onto highway right-of-way, if not appropriate for a permit, should be addressed by the District Right-of-Way Unit.

Intrusive entries include, but are not limited to, digging, core sampling, drilling for the placement of measuring
instruments (such as for soundings) and/or any other type of in-ground testing. Requests are to be reviewed on a case-by-case basis and the decision to permit the entry under this section is within the discretion of the Engineering District.

A. **Highway Occupancy Permit.** Highway occupancy permits are the appropriate and preferred document for allowing access to highway right-of-way when the requested access involves a utility facility or other activity meeting the requirements for issuing a permit such as a physical change to the cartway, highway structures, slope areas, drainage features or support for the highway. The requirements for issuing permits are detailed in Department Publication No. 170 (Highway Occupancy Permit Manual), Department Publication 282 (Highway Occupancy Permit Operations Manual) and other Department guidance, such as the Department's Highway Occupancy Permit Storm Water Facility Guidebook.

Examples: Where a trucking company needs to dig soil borings within the highway right-of-way; or where an abutting landowner needs to excavate along the edge of shoulder in order to construct a retaining wall on their property.

Entry may proceed only upon the issuance of a permit consistent with Department policy. A highway occupancy permit may not be used for excess land outside the right-of-way or for maintenance facilities.

B. **General Release & Waiver Form, RW-500.** A general release and waiver, RW-500, can be used to allow temporary, non-intrusive entry onto Department property where a highway occupancy permit is not appropriate. Such entry may not interfere with either the travelling public or Department operations. The RW-500 may not be used for intrusive entries onto Department property. The RW-500 also should not be used for entries by minors or groups with minors.

Example: Where an Oil, Gas or Mineral (OGM) company wishes only to walk across Department property and take non-intrusive measurements.

Form RW-500 can be used for non-intrusive entry onto all types of Department property if a permit is not appropriate. The request must be made in writing and contain a clear identification of the property involved; a narrative description of the proposed activities; and the proposed date(s) and time(s) for access.

Entry may proceed only after receipt by the District of the properly completed RW-500.

The Release and Waiver portion of the RW-500 must be executed by the company wishing to make entry and by any and all individuals wishing to make entry. Refer to Appendix F, Signature Authority Guide, to determine who may sign the Release and Waiver on behalf of the company. The letter portion of the RW-500 must be completed by the requestor and issued by the District Executive or delegate.

Release and waivers need not be submitted for approval as to form and legality. The Utilities and Right-of-Way Section must be consulted if any changes to the Release and Waiver are requested. The Utilities and Right-of-Way Section will consult with the Office of Chief Counsel as appropriate.

Form RW-500 provides limited legal protections for the Department. If the District has any concerns about potential liability, then a document that provides stronger protections for the Department, such as a right-of-entry agreement, RW-501, should be used instead.

C. **Right-of-Entry Agreement, RW-501.** A right-of-entry agreement, RW-501, is a contract signed by the parties and subject to form and legality review by the Office of Chief Counsel. See Section 1.07. Refer to Appendix F, Signature Authority Guide, to determine who may sign the RW-501. Form RW-501 can be used for intrusive (or non-intrusive) entry onto all types of Department property if a permit is not appropriate, and must be used for intrusive entry onto excess land outside right-of-way.

In order to complete the RW-501, the requestor must provide an area map showing the location of the entry and a work plan describing the activities to be performed. The District may require special conditions to be in the work plan.

The map must identify the limits of work and the work plan must include adequate measures to protect safety and Department property. Where equipment is to be brought onto the property, the work plan must specify where the equipment will be parked and ensure that it will not be a safety hazard or impede the travelling public or Department
operations.

If the entry involves sampling/testing, the District may require the requestor to provide a copy of the results. Detail as to work zone traffic control must be provided if necessary. The map and work plan are to be attached to the RW-501 as Exhibits "A" and "B" respectively.

The temporary entry may proceed only upon receipt of a fully-executed and approved RW-501.

D. Special Rule for Monitoring Wells. Monitoring wells are intrusive conduct that may only be placed on any type of Department land under a specialized right-of-entry agreement. The RW-501 may not be used for monitoring wells in right-of-way, nor may highway occupancy permits be issued. Contact the Office of Chief Counsel, Right-of-Way and Environmental Section, for a model right-of-entry agreement developed for installation of monitoring wells on Department property.

E. Procedures to Permit Temporary Access to Department Property. Requests by a third party to temporarily access Department maintenance facilities should be forwarded to the Assistant District Executive for Maintenance or the Regional Facilities Coordinator. Requests to access right-of-way should be forwarded to the District Permit Unit. If determined inappropriate for the issuance of a permit, the request should be forwarded to the District Right-of-Way Unit. Requests to access excess land outside right-of-way should be forwarded to the District Right-of-Way Unit. In either case, the RW-607 will be used to determine the proper path and recordkeeping. This form must be completed and submitted to the Chief, Utilities and Right-of-Way Section (See 5.16.G) to be reviewed by the Acquisition Unit which will provide further guidance.

It would be appropriate for the districts to have the Assistant District Executive for Maintenance serve as the District point-of-contact for all matters regarding desired access to Department-owned property until the appropriate unit for processing of the request is properly identified.

Where a requestor produces their own documents to a District Right-of-Way Unit for Department personnel to sign, the District must not sign the documents. If the requestor will not accept use of a standard Department procedure or document as discussed herein, forward the request to the Central Office Acquisition Unit for consultation with the Office of Chief Counsel. The Acquisition Unit will log and monitor the progress of the request for tracking purposes and serve as a conduit regarding the status of the request.

F. Leasing Department Property for Oil, Gas or Mineral (OGM) Rights. Where parties are interested in leasing OGM rights on lands owned by the Commonwealth, the Department of General Services (DGS) possesses jurisdiction pursuant to the authority contained in Act 147 of 2012, known as the Indigenous Mineral Resources Development Act. Contrary to leases routinely prepared and maintained by the Department, Act 147 directs that DGS is to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of valuable coal, oil, natural gas, coal bed methane and limestone which may be found in or beneath State-owned land and to convey Commonwealth rights to coal, oil, natural gas, coal bed methane and limestone. DGS is also given authority by Act 147 to grant rights of ways across State-owned land in connection with OGM rights.

DGS guidelines require that they coordinate with the agency having jurisdiction over the State-owned lands when exercising its authority under Act 147 to insure impacts on government operations are properly considered. DGS guidelines also require that the requester of OGM rights perform any title searches necessary to show that the Commonwealth owns OGM that can be leased or sold.

If OGM rights within Department lands were granted to a third party, the Department would receive 15% of the proceeds under Act 147. 60% would be deposited into the Oil and Gas Lease Fund by DCNR (which is to be exclusively used for conservation, recreation, dams or flood control) and 25% would be directed to the Pennsylvania Infrastructure Investment Authority.

In view of the special Act 147 procedures, normal joint-use leasing procedures found in Chapter 5.02 do not apply to OGM rights. As a practical matter, the Commonwealth owns very little OGM rights within its highway right-of-way. Most right-of-way is owned as highway easement, which includes mineral rights only to the extent necessary for support of the surface of the highway, and most fee simple acquisitions of right-of-way by the Department have excluded mineral rights except as necessary to support the surface of the highway. Facility sites and some uneconomic remnants and rest areas may include OGM rights. However, the most likely scenario is where the Department has acquired the property as an uneconomic remnant and there is no clear indication that OGM rights
have been excepted and reserved to the grantor (i.e., the Department's original claimant), note that Department policy is to sell uneconomic remnants as set forth in Section 3.03.B.1 of this Manual.

The Acquisitions Unit is the central office point of contact for any coordination with DGS in connection with right-of-way and excess right-of-way OGM rights. The Facilities Management Division is the central office point of contact for any coordination with DGS for OGM rights for properties on which Department facilities are located.

G. Procedures to Lease Department Property. The Department of General Services (DGS), pursuant to the authority contained in Act 147 of 2012, known as the Indigenous Mineral Resources Development Act, possesses jurisdiction where OGM leases are requested (this is sometimes referred to as a “nomination” process). Where this occurs, the following procedures apply:

1. Where a request is made to the Department.
   a. The private entity (i.e. gas company) requesting information regarding a lease submits a request to the District Office.
   b. The District Right-of-Way Administrator submits a completed RW-607 to the Chief, Utilities and Right-of-Way Section.
   c. Upon review of the RW-607, the Acquisition Unit Chief will provide a letter to the requesting party that will explain the process with reference to Act 147. A copy of the letter will be provided to DGS. The letter will inform the parties of the Department’s operational concerns, if any.

2. Where the request is made to the Department of General Services.
   a. The private entity (i.e., gas company) requesting information regarding a lease submits a request directly to DGS.
   b. DGS contacts the District with notice of the proposed lease. It is presumed that the DGS and/or the private entity has already established that the Department has jurisdiction and control over the property.
   c. The District Right-of-Way Administrator submits a completed RW-607 to the Chief, Utilities and Right-of-Way Section.
   d. Upon review of the RW-607, the Acquisition Unit Chief will provide a letter to DGS. This letter will inform DGS of the Department's operational concerns, if any.

H. Determining Minimum Depth for Oil & Gas Activities as defined by Act 147. The process of extracting minerals from beneath the surface of land, either leased or where the Department has excepted and reserved OGM rights from its acquisition, involves both vertical and deep horizontal drilling procedures. When private entities conduct drilling activities, the actual depth of which deep minerals may exist may be unknown. As such, exploratory horizontal drilling may be necessary. Where the deep horizontal drilling potentially encroaches beneath lands previously acquired by the Department for a highway project, an assessment regarding ownership of the mineral rights must be considered.

The Department does not typically purchase mineral rights from property acquired (i.e., mineral rights remain with the property owner) for highway projects. The following standard reservation is included in most Department right-of-way amicable settlement documents when acquiring permanent easements or fee simple title:

The SELLER hereby excepts and reserves from this conveyance all right, title, and interest in and to all minerals, including oil, gas, subsurface gas storage, and subsurface gas storage protection together with the right to produce, inject, store subsurface, withdraw, and protect natural gas and oil; said mining, removal, storage and storage protection activities to be accomplished from a minimum depth to be determined by the COMMONWEALTH, from mine shafts, wells or other facilities located off the right-of-way, it being the intent of this provision that the COMMONWEALTH owns the right of support and no mineral activities may take place on the surface of the land acquired by the COMMONWEALTH.

Similar language is also included in declarations of taking condemning land for transportation purposes.
The minimum depth for these activities has been established to be 2000 feet; a shallower minimum depth may be established on a case-by-case basis. This minimum depth relates more to the absence of oil and natural gas at depths shallower than 2,000 feet then it does to the necessity to protect highway and related transportation uses of the surface. In this manner, it should not be confused with the minimum depth standards that apply to the mining of coal. Coal is often found at a shallow depth below the surface, and coal mining activities often lead to surface subsidence. As a result, minimum depths for coal mining are often set at 300 feet. Where damages are not paid for as part of the surface claim, the owner of the coal estate may file a special petition for damages to the State Mining Commission. There is no such similar process for impacts on subsurface oil and natural gas activities, again, since such activities occur deeper below the surface and seldom impact the surface use. The RW-502 form letter is used by the District to respond to minimum depth inquiries. The form is signed by the District Executive or designated representative and sent to the requesting entity with a copy to the Chief, Utilities and Right-of-Way Section.
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CHAPTER 6
ADMINISTRATION

6.01 ROW OFFICE – RIGHT-OF-WAY DATABASE APPLICATION

Since May 23, 2005, all new right-of-way (R/W) acquisition projects must be established in the ROW Office computer application. Prior to ROW Office, all right-of-way project information was maintained in the REMIS (Real Estate Management Information System) mainframe database. Continued technical support issues and costs to maintain software licenses confirmed the need to provide a more state-of-the-art system. All data within REMIS was transferred through a complex ROW Office conversion process.

The purpose of ROW Office is to:

1. Provide an electronic record of the project.
2. Track project milestones.
3. Incorporate various approvals.
4. Provide data security.
5. Ensure various system checks (business edits) for fiscal integrity.
6. Provide a platform for future electronic enhancements.
7. Enhance user accessibility by utilizing system administration functions with Central Office Right-of-Way.

A. Access to ROW Office. Access to ROW Office is limited to PennDOT employees and contracted consultants (external users) who need to enter or review right-of-way project data in order to fulfill job requirements. Requests for ROW Office access are submitted by District and Central Office ROW Administrators to the Central Office Right-of-Way Administration Unit and should include the employee's name, organization, job title, desired UserID and contact information. A convenient security request form is available via the ROW Office Home Page.

B. Location of ROW Office. ROW Office is accessed via the internet at https://www.dot11.state.pa.us.

C. ROW Office Navigation. Navigation is done through the displayed navigation pane in ROW Office. In addition to system message information and links to other useful websites, the navigation pane displays the major functional areas of responsibility within the R/W business process. Specific user permissions determine the folders displayed. Each folder, once expanded, displays the screens available to the user. Folder and individual screen access is granted to authorized users per their assigned tasks.

D. Pre-REMIS Archives. Data contained within the Pre-REMIS archives consists of historical data previously maintained via the former REMIS "Converted System." This archived project and claims data dates back to the 1960 era and provides significant information when needed. The Pre-REMIS Archives database is accessed through the ROW Office system by selecting the Public Folder and clicking on "Pre-REMIS Archives" on the navigation pane.

E. ROW Office Help Screens. A link to basic Help Screens are located on each ROW Office screen and can be accessed via the circular question mark icon located on the upper right corner of each screen. Help information within these screens is limited to system fundamentals.

F. ROW Office Events. Data and event dates for the R/W project should be entered in ROW Office in a timely manner to reflect the progress of acquisition. Many ROW Office screens or data fields require the entry of data on
other screens in order to function properly. It is important to understand how various ROW Office screens relate to other screens to associate parcel and claim data.

6.02 RIGHT-OF-WAY ENCUMBRANCE - ROW OFFICE TO SAP VIA XML INTERFACE

The ROW encumbrance necessary to pay right-of-way claims is defined by a designated Work Breakdown Structure (WBS). The SAP computer system is the statewide financial system used to manage financial transactions within the Commonwealth. Unlike ROW Office, SAP access is restricted to Commonwealth employees. When a R/W project is established in ROW Office, the state project number (SPN) and program code, along with other associated project funding data, are entered on the Project Maintenance screen to create WBS. Encumbrance funding codes, including the WBS are entered directly into SAP, normally by non-right-of-way personnel within a District Office. For right-of-way staff, elements within the SPN provide the basis for creating the WBS elements. For better understanding, see figure 6.1 for an example of the Work Breakdown Structure.

It does not matter if the approved encumbrance is approved (posted) in SAP first, or the WBS is established in ROW Office first. Both ROW Office and SAP will conduct a continuous automated polling process to search for a matching WBS via the XML (Extensible Markup Language) interface. If a WBS match is found, SAP will send an electronic message to ROW Office. Within minutes, the SAP funding information is exported to ROW Office resulting in the SAP commitment number displayed in ROW Office. Only the WBS is matched during this process. The SAP commitment number for ROW projects always begins with "38" and consists of ten characters (i.e., 3800000425). After the match occurs via the XML interface, ROW Office payments are defaulted to the imported SAP commitment number.

Care must be exercised to ensure the WBS used to establish the SAP right-of-way commitment correctly matches the intended ROW Office WBS. There should be only one WBS associated with one SAP ROW commitment. The commitment verification process must confirm the correct WBS is displayed for the desired project.

SAP transaction FMZ3 is used to conduct this verification. For more specific guidance or problem resolution, contact your District Fiscal Officer or District SAP Power User.

There may be more than one WBS line item displayed in FMZ3 for each fiscal year. However, if multiple line items
are entered, all multiple WBS elements within the commitment document must be identical for each line item. WBS entries that differ from one another within the same SAP commitment document will block further updates from passing between SAP and ROW Office. This will most likely result in payment problems.

Therefore, it is important that a District ROW person verify on the ROW Office Project Maintenance screen that the desired SAP ROW commitment number has, in fact, been imported from SAP and that the claims established on the ROW Office project will be paid accordingly.

To the greatest extent possible, determine the ROW project funding by the time the SAP ROW commitment is approved in SAP. A subsequent change in funding could require canceling the affected claims in the initial ROW Office project and re-establishing a new ROW Office project with the changed program and modified WBS. ROW Office will not accept duplicate WBS entries.

If it is known that a change in funding will occur, such as when there are advanced takings or total takes are to be acquired on a gap plan using 100% state funds, use an "A" or "G," etc., in the subproject field of the WBS and the desired 100% state program number. Establish only the advance claims or total take claims in the ROW Office project. If the other project claims are to be acquired with federal funds, establish a different ROW Office project using the "real" WBS (with a "0" in the subproject field) and the desired federal program number. When a ROW clearance certificate is requested, be sure to include both ROW Office projects in the request.

6.03 SAP VENDOR RECORD

A SAP Vendor Record must be established for every right-of-way claimant or alternate payee before a payment can be made. The following procedures apply.

A. Definitions.

Customer Master Database - A central database containing information necessary for the accounts receivable function in SAP.

Employer Identification Number (EIN) - A nine-digit number assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. This number may also be referred to as a TIN and is assigned by the IRS.

Form W-9 - An IRS form entitled "Request for Taxpayer Identification Number and Certification."

SAP Master Vendor Number - A unique six-digit number assigned to each vendor by SAP when the vendor is added to the vendor master database.

Social Security Number (SSN) - A nine-digit number assigned to an individual by the Social Security Administration. This number may also be referred to as a TIN. This number is assigned for identifying payments made to an individual by an employer/contractor for tax filing and reporting purposes.

Taxpayer Identification Number (TIN) - The nine-digit federal identification number assigned to a business or to an individual by the federal government. The TIN may be a Social Security Number, in the case of an individual, or it may be an Employer Identification Number for a business, trust, estate, partnership, corporation or similar entity.

United States Postal Service (USPS) Standard - An addressing standard issued by the USPS for mailing purposes.

Vendor Master Database - A central database containing information necessary for the procurement and accounts payable functions in SAP.

B. SAP Accounting Vendor Record. A SAP Accounting Vendor Record must be established for every right-of-way claimant prior to entering any payment in ROW Office. SAP will assign an Accounting Vendor Number which will normally begin with "6," or "7," e.g., 700033.

If the payment is to be made to an alternate payee through the use of a Form RW-380 Directive to Pay, e.g., a mortgage company or tax collector, an Accounting Vendor Record must be established for each alternate payee, which will be related to the claimant's Vendor Number by a suffix, e.g., 700033-001, 700033-002.
If the payment is to be sent to a secondary address, e.g., c/o District R/W Administrator, or c/o Assistant Counsel for deposit of E.J.C., an Accounting Vendor Record must be established for each secondary address, which will be related to the claimant's Vendor Number by a suffix, e.g., 700033-003, 700033-004.

When a payment is submitted from ROW Office to SAP for processing, SAP will search the Vendor Record for a matching Vendor Record Number including the three digit suffix. When a match is found the payee and address will be applied to the payment by SAP. Therefore, prior to entering a payment in ROW Office:

1. Review the SAP Vendor Record (and suffix number if applicable) to verify the desired payee and address exist; and
2. Ensure that the matching payee and address are entered on the ROW Office Claim Payment Maintenance screen exactly as displayed on the Vendor Record.
3. The SAP vendor record payee name displayed will mirror the format produced on the check.
4. Zip+four must be used for every address. The zip+4 may be obtained/confirmed by using the United States Postal Service Website: www.usps.com/zip4 Note: ROW Office automatically adds a space to separate the zip+4.

C. Substitute Form W-9. Obtain the current Form W-9, Request for Taxpayer Identification Number and Certification, from the ROW Office Home Page link.

Note that the nine digit Taxpayer Identification Number (TIN) is indicated on the Form W-9 as either the claimant's Social Security Number or Employer Identification Number (EIN).

Provide Form W-9 to the right-of-way claimant along with the instructions. Make sure to provide a return address for the District Office.

Include the names of both the husband and wife; however, obtain only the taxpayer identification number and signature of the spouse whose name is listed first.

For a sole proprietorship, obtain the claimant's name; show "DBA" (doing business as) and the business name.

D. ROW Office Negotiations Folder (formerly known as the REMIS Negotiations Progress Report). Prior to ROW Office, the REMIS Negotiations Progress Report was used to provide Form W-9 information about the claimant, dates of certain events, identification of the assigned Negotiator and captured the Supervisor Review Date. This screen served as the platform during the design of ROW Office to enhance data entry and record keeping. Specific information within the various categories of REMIS, have been designed to be entered in ROW Office through separately defined data entry screens, replacing the sole screen in REMIS. Each of the following ROW Office screens share one or more of the data elements taken from the Form W-9 which were previously comprised within the REMIS Negotiations Progress Report.

1. Claimant Maintenance screen. The Claimant Maintenance screen is used to add claimants to claims and captures basic claimant and claimant attorney data.
   a. Name Standards. Other than mirroring the information from the Form W-9 provided by the claimant, previous spacing requirements and data entry standards for adding claimant names in REMIS no longer exist with the implementation of ROW Office (i.e., last name first, two spaces, etc.).
   b. Primary Claimant. The Primary Claimant check box should be checked (✔) to populate the claimant name information on the header portion of other corresponding screens within ROW Office. The absence of the checkmark will result in no claimant name information displayed on the other screens.
2. Claimant Address Maintenance screen. The Claimant Address Maintenance screen is used to add addresses to claimants and should also mirror the address provided on the Form W-9. Multiple Claimant Address records can be added by utilizing the Address Type dropdown box to define the different addresses desired.
3. Claim Maintenance Screen. The Claim Maintenance screen is used to update claim records. This screen
is tied to the CLAIM table and provides the vendor information used to establish the six-digit SAP Accounting Vendor Record. Additionally, this screen records Settlement data, Tax information, Possession dates, Claim Status, Utilities data, District ROW Clearance Status dates, and Mobile Home information if applicable to the claim.

E. SAP Vendor Data Management Unit. The Vendor Data Management Unit (VDMU) will enter and maintain all data in the SAP Vendor Record.

FAX the signed Form W-9 to VDMU at FAX number (717) 214-0140. However, before sending the W-9 ensure the following:

1. Verify that the vendor is not in the SAP Vendor Record before sending a request to VDMU.


3. Always use a FAX cover sheet or transmittal sheet that identifies the originating office.

4. Always type on FAX cover sheet: Please create a R/W accounting vendor in SAP. If questions, contact: PennDOT District ____, name, telephone number.

5. Always type COUNTY of the W-9 address on FAX cover sheet.

6. Last, but not least, if there is any suspicion that all or any part of the W-9, as FAXED, will not be easily readable, TYPE the W-9 information on the FAX cover sheet.

7. Retain the original signed W-9 in the District claim file.

For illustration purposes, the Form W-9 FAXED to VDMU was for:

TIN: 888-33-4044
Joe and Beth Thompson
1234 Main Street
Any Town, PA 18015-2203

SAP Vendor Record assigned Accounting Vendor Number 703933.

Regarding "Accounting Vendors," as indicated, the submission of the W-9 requested creation of an Accounting Vendor distinguishes a R/W claimant from a Purchasing Vendor. Purchasing Vendors bid and do business with the Commonwealth under a contract (i.e., a R/W fee appraiser or demolition contractor would be a Purchasing Vendor). Accounting Vendors cannot be used for procurement purposes. Accounting Vendor numbers begin with "6," or "7." Alternate Payee. Every ID-056 R/W payment created in ROW Office must have a SAP Vendor Record that matches the payee name and address. An alternate payee situation would occur when all or a portion of a R/W claimant's damages are paid to:

1. ABC Title Co.

2. Escrow Agent for Thompson

3. XYZ Mortgage Co.

4. Acct# 123456 Thompson

5. Evergreen Twp Tax Collector

6. Acct# 67890 for Thompson

7. Joe and Beth Thompson or

8. Northumberland Cnty Prothonotary

Send a request for alternate payee to VDMU by E-mail to: Ra-PSC_Supplier_Requests@state.pa.us.

Include the following information:

TO: VDMU

FROM: PennDOT District _____
Name and Telephone

SUBJ: Request for Alternate Payee
Accounting Vendor No.703933
TIN: 888-33-4044
Name: Joe and Beth Thompson

Alternate Payee: Joe and Beth Thompson or
Northumberland Cnty Prothonotary

Alternate Address: c/o ____________ , Assistant Counsel*
PennDOT O of CC PO Box 8212
Harrisburg, PA 17105-8212

Reason: Deposit of E.J.C. into court.

* Insert name of Central Office attorney currently handling E.J.C. payments.

F. Secondary Address. Rather than send a payment directly to a R/W claimant, it is sometimes necessary to send the payment "in care of" (c/o) a secondary address such as the District R/W Administrator.

Send a request for as secondary address to VDMU by e-mail to: Ra-PSC_Supplier_Requests@state.pa.us.

Include the following information:

TO: VDMU

FROM: PennDOT District _____
Name and Telephone

SUBJ: Request for Secondary Address
Accounting Vendor No.703933
TIN: 888-33-4044
Name: Joe and Beth Thompson

Payee: Joe and Beth Thompson

Secondary Address: c/o PennDOT R/W Administrator
45 Thoms Run Rd
Bridgeville PA 15017-2834

Reason: settlement R/W claim

G. Searching the SAP Vendor File.

1. Payee and Address Information. Every ROW Office ID-056 right-of-way payment must find a match of the payee and address in the SAP Vendor Record in order to successfully process the payment to Treasury for issuance of the check. Therefore, prior to creating a ROW payment, the SAP Vendor Record must be searched to confirm that an Accounting Master Vendor Record has been created for the claimant. Additionally, an alternative payee vendor record or secondary address vendor record, if applicable, must be confirmed to ensure the alternate or secondary payee record has been attached to the claimant's Master Vendor Record for any payments not going directly to the claimant.
The search is also necessary to determine the "formatted" name and address as displayed in the Vendor Record. This is important because the name and address found in the formatted address in SAP must be entered exactly the same way on the ROW Office Claim Payment Maintenance screen. A slight difference in the formatted name in SAP or ROW Office will prevent payment from being processed. Both must mirror the other. Specific instructions on the method used to check the formatted address can be found at 6.03.1 below.

2. Searching SAP R/3 for Vendor Record.
   a. The following is offered as a basic guide. For more specific guidance or problem resolution, contact your District Fiscal Officer or District SAP Power User.
   b. Enter SAP transaction code "XK03" or "FK03" for vendor display.
   c. The "Display Vendor: Initial Screen" will appear.
   d. Click on the "Matchcode" icon at right end of "Vendor" field.
   e. Within "Restrict Value Range," select the "Vendors (General)" search window.
   f. An asterisk (*) placed at the end (right) of a search criterion will obtain a list that matches all data to the left of the *. As indicated, all R/W claimants are accounting vendors, which begins with 6 or 7. If ",7*" is entered in the "Vendor" field, a list of all accounting vendor numbers that begin with "7" will display. If ",H*" is entered in the "City" field, along with ",7*" in the "Vendor" field, all accounting vendor numbers that begin with "7" and located in cities that begin with "H" will display. However, for practical purposes, this search is too broad. A more defined search, as below, will obtain faster results.
   g. To search, for example, R/W claimant Thompson, enter "18015*" in the "Postal Code" field and ",7*" in the "Vendor" field. The result will list all accounting vendors with zip code 18015 + ",4." Entry of "18015-2203" and ",7*" would result in the fewest matches.
   h. The search for Thompson reveals the SAP assigned Accounting Vendor Number 703933. This vendor number must be entered on the ROW Office Claim Maintenance screen in the "SAP Vend No:" field.
   i. After a R/W claimant's Accounting Vendor Number is determined, it should always be entered in the SAP vendor search window as 703933* so that all variations to the Master Vendor Record will display.

H. Check the SAP Vendor Record "Formatted Address".

It is essential to search the SAP Vendor Record prior to entering a payment in ROW Office so that payments are not misdirected. Upon receipt of an invoice, SAP will match the Vendor Record Number and suffix number from the ROW Office claim payment maintenance screen. SAP will direct payment to the payee and address of that matching vendor.

Using SAP transaction XK03, enter the desired vendor number in the "Vendor" field on the "Display Vendor: Initial Screen," press the F7 key to "select all" and press "enter" to execute.

After the Vendor Record information displays, click on the "Preview" box, which will display the "Formatted Address." This is the payee name and address that SAP will use to process the payment, and the payee name and address that must be entered on the ROW Office claim payment maintenance screen.

If the SAP payee and/or address are not correct, the error must be corrected in SAP before proceeding.

Send a request for a SAP Vendor Record correction to VDMU by e-mail to: Ra-PSC_Supplier_Requests@state.pa.us.

Include the following information:
TO: VDMU
FROM: PennDOT District ____
Name and Telephone
SUBJ: Request for Vendor Record Correction
Accounting Vendor No. 703933
(or 703933-001, etc.)
TIN: 888-33-4044
Payee: (incorrect):
XYZ Mortgage Co.
Acct# 123459 Thompson
(correct to):
XYZ Mortgage Co.
Account# 123456 Thompson
Address: (is correct as shown)

I. Substitute TIN.


   a. If a claimant will not provide the Form W-9, check SAP to verify a vendor number doesn't already exist. If it does not exist contact the Central Office Right-of-Way Administration Unit and request a substitute TIN, comprising five nines plus four sequentially assigned numbers. Prior to contacting the Right-of-Way Administration Unit, enter a memo to file on the Claimant Contact Screen explaining claimant refuses to provide a valid Form W-9 and a request to Central Office has been made to issue a substitute TIN. For unknown owners and unlocatable owners a memo to file should still be entered stating owner unknown or unlocatable and requesting substitute TIN from Central Office. The Right-of-Way Administration Unit maintains the Substitute TIN database to issue and record assigned substitute TINs.

   b. Update the appropriate ROW Office Negotiations screens and complete Form W-9 using the substitute TIN. On the signature line, write "ROW Claimant Refuses" and date. Even though a substitute TIN is being used, be sure to enter the claimant's name and actual mailing address in ROW Office and on Form W-9.

   c. FAX the Substitute Form W-9 to VDMU at FAX number (717) 214-0140.

   d. Even though the claimant refuses to provide Form W-9 information, proceed with the acquisition in the normal manner. If possible, settle amicably. If a declaration of taking is required, pay estimated just compensation directly if possible. If not, deposit the estimated just compensation with the court. VDMU, at a later time, will request the claimant's TIN. If still not provided, the payment, if reportable, will, nevertheless, be reported by the VDMU to the IRS and to the claimant via IRS-I099 form.

   e. If, after a substitute TIN is assigned and a SAP Vendor Record created, the claimant provides a valid TIN and signed Form W-9, FAX the Form W-9 to CMVU. Provide the following information on the FAX cover sheet:

   f. CORRECTED TIN for R/W accounting vendor number __________, previous TIN 999-99-____. If questions, contact: PennDOT District ____, name, telephone number.

2. Unknown Owner.

   a. Enter the parcel owner on the ROW Office Parcel Owner Maintenance screen as "Unknown Owner."

   b. Enter the claimant name on the ROW Office Claimant Maintenance screen as "Unknown Owner."

   c. Obtain a substitute TIN from the Central Office Right-of-Way Administration Unit and create the
SAP Vendor Record Number as referenced in Section 6.03.E. Enter it on Form W-9. Complete the W-9 information as follows:

Name: Unknown Owner
Address: C/O District X-0 R/W Admin.
        District Address
        District City, PA Zip code + four
Signature: UNKNOWN OWNER and date.

d. Do not use the Office of Chief Counsel address for master vendor record number requests.

e. FAX the Substitute Form W-9 to VDMU at FAX number (717) 214-0140. Provide the following information on the FAX cover sheet:

Please create a R/W accounting vendor in SAP. NOTE SUBSTITUTE TIN. If questions, contact:
PennDOT District ____, name, telephone number.

3. Unlocatable Owner.

a. A parcel owner who has been identified, but who cannot be located, is an "unlocatable owner."

b. Obtain a substitute TIN from the Central Office Right-of-Way Administration Section and create the SAP Vendor Record Number as referenced in Section 6.03.E. Enter it on Form W-9. Complete the W-9 information as follows:

Name: Name of Claimant or Unknown Owner
Address: C/O District X-0 R/W Admin.
        District Address
        District City, PA Zip code + four
Signature: UNLOCATABLE OWNER and date.

c. FAX the Substitute Form W-9 to VDMU at FAX number (717) 214-0140. Provide the following information on the FAX cover sheet:

Please create a R/W accounting vendor in SAP. NOTE SUBSTITUTE TIN. If questions, contact:
PennDOT District ____, name, telephone number.

6.04 ROW OFFICE – RIGHT-OF-WAY CLAIM PAYMENTS

All R/W claim payments and R/W claim credits must be entered on the ROW Office Claim Payment Maintenance screen and submitted electronically from ROW Office to SAP.

A. Official Payment Record. Payments made in the R/W acquisition process are unlike most other PennDOT payments in that there is no specific contract encumbrance against which each payment is validated. Therefore, the ROW Office Claim Maintenance screen was designed and intended to be an official payment record for current and future auditing purposes and to provide IRS 1099 reporting data. This is the reason the ROW Office Claim Payment Maintenance screen locks and cannot be changed after the payment information is sent to SAP.

B. Payee Name. One data entry field (maximum 70 characters) is provided to enter the payee name.

Payee names should mirror the supporting documents to the greatest extent possible, including initials, Sr., Jr., III, etc.

Avoid punctuation; use "&" for "and."

However, if there are more than two names, separate them by commas.
If multiple names are too lengthy to fit on one line, shorten by using initials for the first name.

If a company name is too long to fit, eliminate introductory articles, such as "The." Avoid abbreviating the first parts of the name, but logically abbreviate the latter parts of the name.

If needed, use standard post office and/or VDMU abbreviations:

1. USPS - Acronyms & Abbreviations
2. Management Directive 505.9

When a county Prothonotary is a payee, list the county first, e.g., Northumberland Co Prothonotary.

For an estimated just compensation deposit into court, separate the claimant names and prothonotary by "or." Note that a title company (escrow agent) shall not be a payee for an estimated just compensation deposit.

When the payee is a mortgage company or tax collector, etc., a reference to a name and/or an account number may be made on the payee line following the payee name, e.g., for Jones acct #123456.

When the payee is a title company that is holding settlement and distributing the funds, the payee must be entered as "Title Company Escrow Agent for Claimant name." At times, it may be necessary to abbreviate. Use abbreviation when necessary, but do not abbreviate "Escrow Agent." In this situation, use only the last name of the claimant, or the last name and initials of the claimant name. Include enough of the claimant name so that it is recognizable in comparison to the payment documents.

Do not place the words "in care of," "attention" names or address components on the payee line.

C. Payee Address. Two 30 character fields are provided to enter the payee address.

One 20 character field is provided to enter the payee city.

One 9 character field is provided to enter the payee zip code + 4. ROW Office does not require a space between the first 5 and last 4 digits.

Avoid punctuation and use standard postal service abbreviations as referenced in B.7.a. above.

Do not use both a post office box and a street address. If available, a post office boxes address is preferred for mailing purposes. Whichever is used, street address or post office box, be sure that the zip code corresponds.

When a R/W payment is mailed, "in care of" the R/W Administrator or R/W Consultant, use "c/o." Do not use only a name with c/o; associate the name with PennDOT (or company) and/or title. A name is not necessary if the "c/o" is otherwise sufficient to identify the recipient by title.

Always place the c/o on the first address line of the payee address. Do not place the c/o on the payee line.

Examples:

<table>
<thead>
<tr>
<th>Payee Name:</th>
<th>Claimant Names</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payee Address:</td>
<td>c/o PennDOT District 8 R/W Adm 2140 Herr Street Harrisburg, PA17103 1699</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Payee Name:</th>
<th>Frank R Pavlick, Tax Collector For Silverman Acct. 123456789</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payee Address:</td>
<td>c/o Interstate Acq Services 209 E. King Street Shippensburg, PA17257 1426</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Payee Name:</th>
<th>Stewart Abstract of Berks Co Escrow Agent for Claimant name</th>
</tr>
</thead>
</table>
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Payee Address: Attn: Worker Title Officer
9804 Raystown Road
Huntingdon, PA 16652 6950

If the check is to be sent c/o the claimant's attorney, identify that person as "Attorney," "Attny," "Esquire," or "Esq." Ensure that the name and address is shown on the Form RW-313, in the "claimant's attorney and address" block.

When deposit of estimated just compensation is requested, use the post office box address for the Office of Chief Counsel to expedite delivery of the check. Use:

Payee Name: Claimant name or Northumberland County Prothonotary
Payee Address: c/o S Concannon, Assistant Counsel
PennDOT O of CC, PO Box 8212
Harrisburg, PA 17105 8212

Do not place information in the address fields that is not part of the mailing address, e.g., do not indicate the parcel tax number.

Payee Name: Claimant name
Payee Address: RR 2 Box 34A
(leave blank)
Derry, PA 15627

D. ROW Office Payment Errors. If a ROW Office payment error is discovered after submission to SAP, corrections/changes to the payment cannot be made in ROW Office for the following reasons: This includes errors in the Vendor Record Number, Vendor Suffix, Internal Order (Cost Function), Claim Number and Dollar Amount. Any such unilateral change in ROW Office is an unauthorized change to an official (ROW Office) payment record. Any such change also disrupts the audit trail and prevents ROW Office from acquiring further interfaced communications (such as posting dates and Treasury check dates) from SAP, which in-turn prevents generating complete IRS 1099 reporting data. There are a few instances where some changes can be made to a payment in ROW Office after it has been submitted to SAP, as long as the changes are made prior to the Payment Posting Date. This includes correcting a typo in ROW Office to match SAP (Payee Name, Address and/or Zip+4). Please contact the Central Office Right-of-Way Administration Unit (Administration Unit) to request the change in ROW Office to mirror the same information shown in SAP.

If the error is in SAP and discovered after submission to SAP, but prior to the Payment Posting Date, then it can be corrected by submitting a ‘Change Request Form’ to VDMU which can be found on the ROW Staff Home Page.

If a ROW Office payment error is discovered after submission to SAP and it is not one of the exceptions for a correction, then the ROW Office payment must be voided in ROW Office and reversed in SAP. This action is accomplished by the Central Office Right-of-Way Administration Unit (Administration Unit). As part of the void and reversal procedure, the Administration Unit will coordinate the payment reversal with the Comptroller and ensure the payment is reversed in SAP prior to voiding the payment in ROW Office. The SAP reversal number (beginning with 17*) is documented on the Claim Payment Maintenance screen when the payment is voided. This procedure maintains data consistency between ROW Office and SAP.

As part of the ROW Office design, the XML interface provides near real-time communications with SAP. Similar to the encumbrance communications referenced in Section 6.02, a separate communication message was developed for the payment component of ROW Office to enhance invoice processing.

Prior to ROW Office, payments entered via REMIS were sent to SAP via a daily "bulkload" data update resulting in at least a one day delay to process invoices. With the XML interface, the delay has been drastically reduced to minutes and provides additional conveniences to ROW Office users. If a payment errors-out in SAP because the encumbrance is exceeded, ROW Office receives the error message via the Claim Payment Status Maintenance screen. This screen serves as a useful tool to track the status of all payments submitted by the user. ROW Office will display the status as either "in progress," "accepted," or "rejected" and allows the user to troubleshoot the error and re-submit the payment until accepted.
When accepted, the XML returns a reply from SAP, populating ROW Office with the SAP Financial Document Number (a ten-digit number beginning with 22). Receipt of the SAP Financial Document Number confirms the transaction has been successfully received in SAP and is "blocked" awaiting further action. The payment record in SAP remains "blocked" until the payment package is reviewed by Central Office staff and approved by the Comptroller.

Additionally, all R/W payments, both ID-056 and ID-156 invoices SHALL NOT be entered directly into SAP (thus bypassing ROW Office) for all of the above reasons, and because this will disrupt the payment number sequence generated by ROW Office.

**E. Expedited R/W Payments.** During the R/W acquisition process, it is seldom necessary to request special handling outside normal routine payment processing procedures. However, it is understood that occasional emergency and unforeseen circumstances occur during the negotiation and acquisition of real property requiring a more timely R/W payment process.

The Comptroller's Office processes hundreds of various types of invoices in addition to R/W payments. Care should be exercised in realizing one expedited payment request impacts other payments in-line for processing at both the Comptroller and Treasury processing levels.

1. **Justification Required.** When expedited R/W payment requests are desired, justification from the District R/W Administrator overseeing the transaction is mandatory. An electronic memo stating the reasons for the request, the critical impact of the payment (i.e. mortgage interest rate expiring, property tax implications, legislative involvement, etc.) and the direct impact the payment has on obtaining R/W clearance should be provided. The memo must include the desired date of payment and whether or not payment should be distributed by other than routine mail.

   A separate memo for each request will be sent to Central Office for the Chief, Utilities and Right-of-Way Section and Chief, Right-of-Way Administration Unit. Each expedited payment request will be evaluated without prejudice in a timely manner and, if necessary, discussed with the requesting R/W Administrator for clarification.

2. **Concurrence.** If documentation is appropriate and payment can be made within the requested timeframe, the Central Office Right-of-Way Administration Unit (Administration Unit) will coordinate the necessary course of action with the Comptroller. Upon concurrence by the Comptroller, the Comptroller will release the payment and forward the required information to Treasury. When the invoice is released to Treasury for processing, the Comptroller will notify the Administration Unit via email. The Administration Unit in-turn, will notify the appropriate District Right-of-Way Administrator of payment status.

   Denied requests by the Section Chief or the Comptroller will be addressed and responded to appropriately. It is understood the Comptroller and Treasury reserves the right to assess each situation on a case-by-case basis.

Since the implementation of SAP, some of the conveniences used in the past are no longer available and are referenced below.

3. **Changes to Comptroller Requirements.** Prior to SAP implementation, the Comptroller distributed (via US Mail) checks received from Treasury. With proper notification, this method enabled checks to be forwarded to Central Office R/W Administration personnel to save mailing time due to negotiated circumstances and allowed immediate delivery to designated District representatives when warranted. Since the implementation of SAP, Treasury distributes all R/W checks.

   Currently, in order to allow a check to be intercepted from its normal course of distribution, the Comptroller must flag the payment in SAP by manually altering a process definition prior to the payment being released (cleared) to Treasury. Without the alteration in SAP, the check is sent from Treasury, by default, to the payee as indicated in the previously established SAP Vendor Record.

   The defaulted SAP payment cycle for R/W payments is set to a "Net 1530" payment cycle. The "Net 1530" cycle refers to the target date to process R/W payments based on the date payment is entered into SAP (via the XML interface connected to ROW Office). When justification for an expedited payment is received at the Central Office Right-of-Way Administration Unit, determination as to whether the payment is to be expedited...
or requires emergency action will be made prior to recommending the date of desired payment to the Comptroller. The Comptroller is only authorized to set the "Net due date" in SAP to no less than 10 business days. Upon release of payment to Treasury, the Comptroller will notify Treasury of their request for expedited payment.

When a request for expedited payment is made, the Comptroller is required to hand-carry the payment package to Treasury for special processing. This understandably requires additional time and manpower to comply with the request, justifying the need to assess each situation separately.

4. Payment Status. Actions relating to an expedited payment can be monitored in SAP transactions FB03 and FBL1N.

5. Points-of-Contact. The Central Office Administration Unit Chief will serve as point-of-contact for all expedited R/W payment issues. Comptroller personnel must not be contacted regarding an expedited R/W payment. Additionally, and most importantly, the Comptroller's office is not authorized to release telephone numbers of Treasury personnel. Contacting Treasury directly is strongly discouraged.

6.05 INTERNAL REVENUE SERVICE 1099 REPORTS

Each year PennDOT provides the Internal Revenue Service (IRS) information on payments made to vendors for 1099 reportable income. This information is reported by Taxpayer Identification Number (TIN) which serves as the basis for the SAP Vendor Record previously referenced in 6.03.

The Department is required to provide accurate IRS 1099 reporting information to the IRS and the R/W claimant payee. The IRS 1099 form and the income that is reported are determined by the internal order numbers associated with the payment as indicated below.

**IRS Form 1099-S**
Proceeds from Real Estate Transactions

<table>
<thead>
<tr>
<th>Internal Order</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>81100</td>
<td>Amicable FMV Settlement - Direct Damages</td>
</tr>
<tr>
<td>81101</td>
<td>Payment to Claimant of EJC - Direct Damages</td>
</tr>
<tr>
<td>81102</td>
<td>EJC Deposit in Court - Direct Damages</td>
</tr>
<tr>
<td>81104</td>
<td>Admin Settlement Amount in Excess FMV - Direct Damages</td>
</tr>
<tr>
<td>81106</td>
<td>Viewers Award - Amount in Excess EJC - Direct Damages</td>
</tr>
<tr>
<td>81107</td>
<td>Court Award - Amount in Excess EJC Direct Damages</td>
</tr>
<tr>
<td>81108</td>
<td>Stipulated Settlement Amount in excess EJC Direct Damages</td>
</tr>
<tr>
<td>81130</td>
<td>Uneconomic Remnant Payment</td>
</tr>
</tbody>
</table>

**IRS Form 1099-MISC**
Miscellaneous Income

<table>
<thead>
<tr>
<th>Internal Order</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>81111</td>
<td>Amount Allocated for Severance – Indirect Damages</td>
</tr>
<tr>
<td>81171</td>
<td>Legal Payment – Severance</td>
</tr>
<tr>
<td>81173</td>
<td>Admin Settlement – Severance</td>
</tr>
<tr>
<td>81181</td>
<td>EJC – Severance</td>
</tr>
<tr>
<td>81116</td>
<td>Payment for Temporary Easement</td>
</tr>
<tr>
<td>81174</td>
<td>Admin Settlement – Temporary Easement</td>
</tr>
<tr>
<td>81186</td>
<td>EJC Temporary Easement</td>
</tr>
</tbody>
</table>
A. Payments Not Reported to the IRS. Payments of less than $600 for direct right-of-way damages are not reported on IRS Form 1099-S. Payments of less than $600 for severance damages, or less than $600 for temporary easement (rentals) are not reported on IRS Form 1099-MISC. Payments less than $10.00 for delay compensation (interest) are not reported on IRS Form 1099-INT.

Payments for cost of adjustment are not considered as income, and therefore are not reported:
Internal order 81122 = cost of adjustment (amicable)
Internal order 81182 = estimated just compensation cost of adjustment.

Note that there is no internal order for administrative settlement cost of adjustment since such payment is based on an estimate to pay the adjustment. If the actual cost is more than the estimate for valid reasons, an additional payment may be made.

No other R/W payments, including relocation payments, are considered income for IRS 1099 reporting purposes.

B. Disclosure of IRS 1099 Reporting Requirements. All claimants must be informed that payments of $600 or more for right-of-way claims and payments of $10.00 or more for interest must be reported on IRS 1099 forms to them (the claimant) and the IRS.

C. ROW Office Appraisal Log and Waiver Valuation Maintenance Screens. The IRS 1099 reporting process begins with the parcel valuation that must identify the R/W damages as direct damages, severance, temporary easement, or cost of adjustment. The total approved fair market value of the parcel is entered on the ROW Office Appraisal Log Maintenance screen or Waiver Valuation Maintenance screen and then allocated as indicated by the valuation. The payment amounts and amicable or estimated just compensation internal order numbers entered on the ROW Office Claim Payment Item Maintenance screen must reflect the allocation of the fair market value entered on the ROW Office Appraisal Log Maintenance screen or the Waiver Valuation Maintenance screen.

D. Temporary Easement IRS 1099 Implications. The IRS 1099 implications are valid considerations when acquiring a temporary easement. The fair market value of the temporary easement is entered on the ROW Office Appraisal Log Maintenance screen or the Waiver Valuation Maintenance screen. Internal order 81116, payment for temporary easement, or 81186, estimated just compensation temporary easement, will reflect the entered value. IRS Form 1099-MISC, will report the payment of this "miscellaneous" income if the payment is $600.00 or more.

A value amount entered in the "Direct Damages" field on the ROW Office Appraisal Log Maintenance screen or the Waiver Valuation Maintenance screen requires a payment internal order (IO) of 81100, 81101, or 81102. Payments made using these internal order numbers will be reported as real estate transactions on IRS Form 1099-S. Therefore, when a major improvement, such as a garage, commercial or residential building, is located in the temporary easement area, it is appropriate to enter such value as "Direct Damages" on the Appraisal Log Maintenance screen or Waiver Valuation Maintenance screen. However, when minor improvements, such as sidewalks, signs, fences, trees and sheds, are located within the temporary construction area, the cost to restore the area to its previous condition should be considered as a cost of adjustment rather than direct damages. The costs of these minor improvements to replace items such as sidewalk, sign, fence, trees and sheds, should be determined and entered as "Cost of Adjustment" on the ROW Office Appraisal Log Maintenance screen or the Waiver Valuation Maintenance screen. The payment of the entered amount, using internal order 81122, cost of adjustment, is not an IRS-reportable payment.

When Form RW-341 is completed, only the amount paid using a temporary easement internal order should be shown as the consideration. Any other amount paid should be shown and described in an added sentence "$3,500.00 paid as cost of adjustment to replace fence." The entire payment amount, i.e., temporary easement plus cost of adjustment, is indicated as the settlement amount on Form RW-313.

Note that a payment for the Commonwealth's pro-rata share of realty taxes does not apply to temporary easement areas.
E. Proration of Administrative Settlement for IRS 1099 Purposes. Because severance and temporary easement payments are reported on IRS Form 1099-MISC, an administrative settlement for a parcel that includes such payments should be prorated to reflect the total approved fair market value damages. For example:

\[
\begin{align*}
20,000 & \text{ direct damages} = \text{ IO 81100} \\
6,000 & \text{ severance} = \text{ IO 81111} \\
4,000 & \text{ temporary easement} = \text{ IO 81116} \\
30,000 & \text{ total approved FMV damages} \\
\end{align*}
\]

\[
\begin{align*}
20,000 \div 30,000 & = 67\% \text{ direct damages} \\
6,000 \div 30,000 & = 20\% \text{ severance} \\
4,000 \div 30,000 & = 13\% \text{ temporary easement} \\
\end{align*}
\]

Total administrative settlement = $10,000

67% of $10,000 = $6,700 IO 81104 direct damages
20% of $10,000 = $2,000 IO 81173 severance
13% of $10,000 = $1,300 IO 81174 temporary easement

The ROW Office Claim Payment Item Maintenance screen would look like this:

<table>
<thead>
<tr>
<th>Internal Order</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>81100</td>
<td>$20,000</td>
<td>amicable settlement direct damages</td>
</tr>
<tr>
<td>81104</td>
<td>$6,700</td>
<td>admin. settlement direct damages</td>
</tr>
<tr>
<td>81111</td>
<td>$6,000</td>
<td>severance indirect damages</td>
</tr>
<tr>
<td>81116</td>
<td>$4,000</td>
<td>temporary easement</td>
</tr>
<tr>
<td>81173</td>
<td>$2,000</td>
<td>severance admin. settlement indirect damages</td>
</tr>
<tr>
<td>81174</td>
<td>$1,300</td>
<td>temporary easement admin. settlement</td>
</tr>
</tbody>
</table>

Total payment $40,000

Note that if a cost of adjustment amount is included in the total approved fair market value damages, internal order 81122 or 81182 would be used to pay the cost of adjustment amount. However, the cost of adjustment amount would be disregarded when prorating an administrative settlement payment.

F. ROW Office Administrative Settlement Claim Maintenance Screen. The total amount ($10,000) of the sample administrative settlement outlined above is entered on the Claim Maintenance screen and approved on the ROW Office Administrative Settlement Claim Maintenance screen for the specific claim number. ROW Office payment edits (system business rules) will prohibit exceeding this approved amount when any combination of internal order numbers 81104, and/or 81173, and/or 81174 are entered on the Claim Payment Item Maintenance screen.

G. Alternative Proration. If an administrative settlement for a parcel that includes severance and/or temporary easement is not prorated as above, the administrative settlement approval memo must indicate the reason and the claimant must agree, in the administrative settlement acceptance letter, to the manner of payment.

H. Elements Critical to IRS 1099 Reporting.

1. SAP Vendor Record Number. The SAP Vendor Record Number is entered on the ROW Office Claim Maintenance screen for the R/W claimant. The SAP Vendor Record Number will display in the header portion of the Claim Payment Maintenance and Claim Payment Item Maintenance screens.

2. Internal Order and Payment Amount. These items are entered on the ROW Office Claim Payment Item Maintenance screen. ROW Office contains various business edits to validate certain payment amounts.

3. Treasury Check Date. This date is imported by ROW Office from SAP via XML interface
communications. The Treasury check date represents the date the check was issued and sent from Treasury to the designated payee via US Mail.

4. Address of Property Acquired. The parcel (location) address of the acquired property is required to be included as an element of the payment to comply with IRS 1099 reporting requirements. The address of the acquired property is entered on the ROW Office Parcel Maintenance screen and automatically attaches electronically to payment information being passed to SAP via XML interface.

There are two 30-character fields for the street (location) address, in addition to a line for the city, state, and zip code fields. The zip code must be valid for the parcel location. Refer to 6.03.B for verification procedures.

The street address must be sufficient to identify the location for tax purposes. If a numbered street address is not available, the tax parcel number or deed recording reference may be used to describe the address of the property acquired.

Examples of acceptable parcel street (location) address:

- 4440 Allentown Blvd
- tax map # 1234567890
- DB 3220 page 909
- RR2 Box 20 (a PO box number is not acceptable)

Examples of non-acceptable parcel street (location) address:

- Carlisle Rd
- RR or RR2 (not acceptable without referenced box number)
- P.O. Box 100
- SR or TR number

If a township name is most appropriate to identify the location, enter the name and "TWP" in the "city" field. Remember, the zip code must be valid for the location.

Whatever is entered as the parcel address 1 on the ROW Office Parcel Maintenance screen will be submitted to SAP when the R/W payment is electronically sent from ROW Office to SAP. The interface only passes the information from parcel address 1 to SAP due to the limited number of characters SAP can accept. This parcel address must also be shown in the "Location (address) of Property" box on Form RW-313. For payment processing purposes, the parcel location address must be the same on the ROW Office Parcel Maintenance screen, Form RW-313 and will be electronically produced in SAP transaction FB03.

Note that ROW Office consists of two areas to capture address information. Unlike parcel address information previously passed from one REMIS screen to another, the address entered on the Parcel Maintenance screen will not export data to the Claimant Address Maintenance screen. Because parcel addresses and claimant addresses may or may not be the same, information in both screens is required to be entered separately.

6.06 STATE PROJECT NUMBER FOR MISCELLANEOUS RIGHT-OF-WAY CLAIMS

There may be situations when identified miscellaneous R/W claims cannot be established as part of a routine R/W acquisition project. An example is the payment for crops damaged by PennDOT personnel who have entered property pursuant to Section 409 of the Eminent Domain Code for the purpose of studies and surveys.

Each District has been provided a 100% state project for miscellaneous claims in ROW Office. Refer to Section 6.10 for more information.

To establish claims in the miscellaneous ROW Office project, a parcel number must be added to the ROW Office Parcel Maintenance screen. For this purpose, begin with Parcel number "1" and add consecutive parcel numbers as necessary. Make sure the appropriate county is entered so that ROW Office assigns the claim number with the proper county number prefix. The claim number is assigned in ROW Office on the Claim Estimate Maintenance screen.
After the parcel and claim are established, proceed in ROW Office in the usual manner.

Note: The ROW Office parcel number format consists of four characters. Parcel 1 could be entered as "1" or "0001". However, the different format can be used to identify a different parcel. ROW Office views parcels 1 and 0001 as two different parcels and will not allow two parcels with the exact same parcel number.

**6.07 NO BID PROCUREMENTS OR MISCELLANEOUS COSTS RELATED TO R/W CLAIMS (MAXIMUM $10,000.00)**

There are various acceptable methods to process and pay routine costs up to $10,000.00. The method outlined in this section is applicable to R/W costs and provides a more inclusive record of costs associated with a specific claim in ROW Office.

Miscellaneous costs up to $10,000.00 associated with a specific R/W claim (such as advertising costs, utility costs, and court reporter fees) may be paid via ROW Office by using the appropriate internal order and G/L Account (previously known as object code) 6412050.

Small, no-bid procurements up to $10,000 required for a specific R/W claim (such as DS&S fees, moving cost estimate fees, and miscellaneous property management costs) may also be paid via ROW Office using the appropriate internal order and G/L Account code.

Such small, no-bid procurement processes under delegation and authority by the Department of General Services (DGS) must meet the following criteria:

- Formal advertisement is not required.
- Selection of a MBE/WBE contractor is considered from those available according to the Department of General Services (DGS) via their website at www.dgs.state.pa.us.
- A determination is made that the vendor is responsible to the extent the purchaser has practical knowledge about the vendor and a Contractor Responsibility Program (CRP) check is not required.
- The bid process is not required.
- A best value is determined based on comparison shopping.

Procurement requirements cannot be artificially divided in order to constitute a small, no-bid procurement (DGS Field Procurement Handbook). If it is determined PennDOT artificially divided its procurement requirements so as to constitute a small procurement, DGS reserves the right to revoke such delegation.

Additionally, small procurements should not reflect a pattern of repeated procurement from the same contractor and should reflect a cost which is equal to or less than the market price. An exception to this stipulation would be if there are a limited number of contractors and utilizing others would not result in procurements at market price. If DGS finds a pattern of repeated use of the same contractor(s) without adequate justification, DGS may revoke the delegation.

The following internal order numbers, when used with G/L account 6412050, may be used for payments up to $10,000 when such payment is required for a specific R/W claim as a result of the acquisition process:

<table>
<thead>
<tr>
<th>Internal Order</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>81131</td>
<td>Appraisal Fee Misc M&amp;E and Cost of Adjustment</td>
</tr>
<tr>
<td>81139</td>
<td>Decent, Safe and Sanitary Inspection Fee</td>
</tr>
<tr>
<td>81141</td>
<td>Advertise Demolition &amp; other Property Mgt Activities</td>
</tr>
<tr>
<td>81142</td>
<td>Contractor Cost for Demolition</td>
</tr>
<tr>
<td>81148</td>
<td>Property Management Miscellaneous Costs</td>
</tr>
<tr>
<td>81153</td>
<td>Satisfaction, Recording and Filing Fees</td>
</tr>
<tr>
<td>81155</td>
<td>Court Costs – Witness Fee</td>
</tr>
<tr>
<td>81156</td>
<td>Court Costs – Court Reporter</td>
</tr>
<tr>
<td>81157</td>
<td>Court Costs – Transportation</td>
</tr>
</tbody>
</table>
Refer to ROW Office system administration table "Object Cost Function Lookup" for all cost function-object code (internal order-G/L account) combination. For more information, contact the ROW Office System Administrator to obtain access to the ROW Office tables.

Procedure to enter Miscellaneous R/W payments into ROW Office:

Under the ROW Office Appraisal header, add a claim to the specific parcel number on the Claim Estimate Maintenance screen. The last two characters on the claim number produced (a/k/a as "sub-claim") will end with 01, 02, 03, etc. Enter the applicable estimated costs on this screen.

Proceed to the ROW Office Negotiations header. Enter the appropriate claimant name information on the Claimant Maintenance screen (e.g., Ajax Movers). The claimant name in this case represents the desired payee. Be sure to check the "Primary Claimant" checkbox enable the information to populate other ROW Office screens.

Enter the claimant (desired payee) mailing address on the Claimant Address Maintenance screen. The Claimant name information will populate the header portion of the screen as long as the "Primary Claimant" box was checked on the Claimant Maintenance screen.

Check the SAP Vendor Record to determine if the payee has an established Vendor Record Number. If not, submit a W-9 to VDMU for assignment of a Vendor Record Number.

After confirming the SAP Vendor Record number, proceed to the Claim Maintenance screen to enter the six-digit SAP Vendor Number. This number will be carried forward later when payment is submitted.

Continue to the Claim Description Maintenance screen to add the miscellaneous claim description code. From the drop down menu, select "Misc Small R/W Costs."

Proceed to the Claimant Contact Maintenance screen. From the Contact Method dropdown menu, select "memo to file" and enter comments to briefly describe the reason for the miscellaneous payment. As an example: "Ajax Movers is providing PennDOT with a moving cost estimate. PennDOT is paying $175.00 for this service (internal order 81163)."

NOTE: This miscellaneous payment procedure is for services provided to PennDOT related to a R/W claim. Any moving costs for the claimant would require the appropriate internal order number applied to the claimant's claim number.

To process the miscellaneous payment, proceed to the Claim Payment Maintenance screen. If no information currently exists in the header portion of the screen, conduct a "Change Claim" to obtain the desired claim header information. Additionally, if the header portion of the screen is populated with information pertaining to a different claim, conduct a "Change Claim" to select the appropriate claim header information.

In order for the payment to be eligible for entry/submission, the header portion of the Claim Payment Maintenance screen must display the claimant name, SAP Commitment Number and the correct Vendor Record number for the payee. Additional project, parcel and claim number information will be populated by default. Enter the payee name and address. The SAP Vendor Number suffix should remain at "000" since the vendor number being used is the vendor number for the miscellaneous payee, not the parcel owner (claimant).

Proceed to the Claim Payment Item Maintenance screen to enter the appropriate cost line items. For the above example (see number 7), use internal order 81163 (moving cost estimate fee) and G/L account code 6412050. Be sure to select the correct fiscal year from the SAP Fund Line Item drop down box (information in this drop down will only reference approved funding information from the associated SAP commitment document (encumbrance). Complete the screen by entering the payment amount in the "Line Item Amount" field.
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When all line items are established with the appropriate internal order, G/L account, fiscal year selection and payment amount, return to the Claim Payment Maintenance screen. The Claim Payment Maintenance screen header will display the total amount of all line items entered on the previous Claim Line Item Maintenance screen.

Prior to submitting the payment to SAP, review the contents of the payment for accuracy. If submitted successfully, the posted payment will be referenced within minutes by the ten-digit SAP Financial Document Number.

As stated previously in 6.01.C, the Pre-REMIS Archives environment of ROW Office containing older claim numbers is no longer an active database. Claims from this era are "read only" and cannot be updated. Section 6.06 should be referenced if miscellaneous R/W costs from pre-REMIS claims are identified for payment.

6.08 RIGHT-OF-WAY CLEARANCE CERTIFICATIONS

A. Right-of-Way Clearance Certification Required. When acquisition of right-of-way is required for a highway construction project, the Program Center will not process Form D-4232 for federal construction authorization unless the Multimodal Project Management System (MPMS) shows a milestone date for either a conditional or final right-of-way clearance certification.

Likewise, the Contract Management Division will not advertise, open bids, award or advise that a notice to proceed may be issued unless the Engineering and Construction Management System (ECMS) project development checklist item detail, "Right-of-Way Clearance Certificate" reflects the status of the right-of-way clearance.

A right-of-way clearance is required on all projects whether federally funded or 100% state funded. When right-of-way is required for a Department forces project, Department forces shall not begin work on private property until after the parcel has been acquired and a final Right-of-Way Clearance Certification has been issued.

B. Existing Right-of-Way. When new construction is to be done within the existing, legal right-of-way lines, a Right-of-Way Clearance Certification must be issued by the District Right-of-Way Administrator. The District Right-of-Way Administrator must check the corresponding box for existing right-of-way and sign the certification. Central Office signature is not required for projects being constructed within existing legal right-of-way. However, the District must clearly state in the PS&E package that all new work will be within the existing right-of-way. Refer to the sample "Right-of-Way Clearance Certification" that should be included in all PS&E packages (see Appendix Figure 1). Also, the Project Manager should enter on the R/W Clearance Certificate screen in ECMS "Level: NTP" along with a comment that all work will be within existing legal right-of-way.

C. Federal Stewardship and Oversight Agreement. The Federal Stewardship and Oversight Agreement between PennDOT and the Federal Highway Administration delegates right-of-way clearance approval to PennDOT except for FHWA Type 1 and 2 certifications. Reference Publication 10X, Design Manual, Part 1X, Appendices to Design Manuals 1, 1A, 1B, and 1C, Appendix C, FHWA/PennDOT Stewardship and Oversight Agreement.

Right-of-Way Clearance Certifications are issued by the Chief, Right-of-Way Administration Unit in consultation, as necessary, with the Chief, Utilities and Right-of-Way Section.

D. Types of Right-of-Way Clearance Certifications.

1. FHWA Type 1 [Final-Notice to Proceed (NTP)]. The Final R/W Clearance Certification authorizes issuance of the notice to proceed to the highway contractor.

Final R/W Clearance will be issued when:

a. All appropriate entries are entered into ROW Office;

b. All payments for the parcels have been made directly to the owner (payment in-hand) or deposited in court;

c. All relocatees (if applicable) have vacated;

d. All demolitions have been completed or are included in the highway contract.
e. All OADs have been moved or deemed abandoned by the District Administrator.

NOTE:

- Federally Funded Projects – The Conditional Certifications below are only to be used in the public’s best interest and/or exceptional circumstances, as described below.

- 100% State Funded Projects – The Conditional Certifications below can be used at the discretion of the District Right-of-Way Administrator on projects where there are no Federal funds in any phase of the project. These clearances should not be planned for in developing a project schedule, but are available as a tool for project delivery.

A District’s authorization to use Conditional Certifications 1-3 will be revoked if the District misses a Notice to Proceed date because right-of-way is not finalized. A District’s authorization to use Conditional-4 Certifications will be revoked if clearance is not finalized within six months or in accordance with the schedule established.

2. FHWA Type 2 [Conditional-4 NTP (Right-of-Entry/Authorization to Enter) Certification]. For contract management purposes, this is a Final right-of-way clearance certification authorizing issuance of the notice to proceed. In other words, Conditional-4 NTP, when issued, will result in a Final ROW clearance date displayed in the Milestones section of MPMS.

Conditional-4 NTP under this type is based on a right-of-entry (i.e., an authorization to enter-waiver or nonwaiver of claim) signed by a parcel owner that gives PennDOT permission to enter the parcel in emergency situations even though payment for the parcel has not been made.

When a Conditional-4 NTP clearance is issued, the District must complete the acquisition process as soon as possible, and no later than six months from the date the certification was issued. When completed, the District will request a Final clearance to upgrade the ROW Office R/W project from Conditional-4 NTP to Final. This upgrade to Final is for ROW Office tracking purposes.

A right-of-entry may also be used when the R/W claimant is a governmental entity or railroad and the process for executing documents is long and unpredictable.

3. FHWA Type 3 [Conditional 1, 2, 3, and 4 NTP (Parcel Restrictions) Certification].

   a. Conditional-1 Advertise. Conditional-1 clearance certification gives authority only to advertise for highway contract bids. Bids shall not be opened until the clearance is upgraded.

   Caution: Clearance level Conditional-1 Advertise should be requested only in the public’s best interest and full justification must be provided. The District must state that after a careful analysis of all R/W issues, the R/W acquisition process will have progressed to meet the anticipated dates to let, award, and issue notice to proceed. Experience indicates this is an area of concern. If the R/W clearance cannot be upgraded when needed, serious problems are created in the contracting process.

   (1) Land Only Parcels. For projects where R/W acquisition consists of land only parcels, a Conditional-1 Advertise clearance shall not be requested until:

      (a) An agreement of sale for each parcel is in-hand and the settlement data has been entered in ROW Office.

      (b) A declaration of taking has been filed after "good faith" negotiations have failed to obtain an amicable settlement.

         i. The District file and ROW Office data must confirm the date that the condemnee received the Notice of Condemnation, Form RW-475.

         ii. If the 30-day preliminary objection period has not expired, the District request must state the reasons why a preliminary objection is not expected.
iii. Bids shall not be opened until after the preliminary objection period has expired.

iv. If preliminary objection is filed, bids shall not be opened until the preliminary objection is resolved and documented in ROW Office.

(2) Occupied Parcels. Clearance level Conditional-1 Advertise shall not be issued for projects where business or residential relocatees have not vacated the parcel, unless:

(a) The above minimum requirements for land only acquisitions have been met.

(b) Restrictions have been placed in the contract to prevent entry upon an occupied parcel until vacated and released by the Department. In this situation:

i. A copy of the parcel restriction(s) is submitted with the clearance request, or;

ii. The parcel restriction is entered into ECMS and appropriately as part of the clearance request for review and verification.

(c) Justification for the clearance request is provided along with assurances that the relocatees of any occupied parcels will be protected against inconvenience, injury, or any coercive action, and that the restrictions to be implemented will support such assurances.

(d) A detailed relocation status of each occupied parcel is provided, including a realistic date for vacation supported by projected events and dates regarding, for example, an agreement of sale, to purchase, or contract to build a replacement dwelling or business.

(e) The status of all demolitions (including outdoor advertising devices) is provided. State if the demolition(s) is to be included in the highway contract. If the demolition is to be completed by separate R/W contract, indicate the status and anticipated completion date.

(f) The status of all identified outdoor advertising devices (OAD) is provided. Specify if the OAD damages to the claimant are being paid by personal property loss or OAD moving costs.

Caution: The projected dates for vacation of occupied parcels must be prior to the anticipated date for notice to proceed. Every effort must be made to relocate occupants prior to the notice to proceed. The restrictions and assurances are required to protect the relocatees in the event that they have not vacated. Despite good planning and good intentions, if a relocatee continues to occupy a parcel after notice to proceed, contractor delay damages could result. The worst-case scenario could involve prolonged eviction proceedings causing indefinite project delay.

b. Conditional-2 Open Bids. Conditional-2 clearance certification gives authority to advertise and open bids (project letting), or upgrades a Conditional-1 to a Conditional-2 to open bids. The contract shall not be awarded until the clearance is upgraded.

All the requirements listed above which support a request for a Conditional-1 clearance apply to a Conditional-2 request. Caution: Clearance level Conditional 2 Open Bids should be requested only in exceptional circumstances and full justification must be provided. In addition, the preliminary objection (PO) period (if any) must have expired, and no preliminary objections were filed. If any of the parcels on the project were condemned, the clearance request must state the preliminary objection status. For example:

- Preliminary objection periods expired – no POs filed.
- PO for parcel 2 expired – no POs filed.
- Preliminary objection filed for parcel 2. PO denied 10/10/06 and documented in ROW Office.

c. Conditional-3 Award. Conditional-3 clearance certification gives authority to advertise, open bids, and award the contract, or upgrades a Conditional-2 clearance to award. Caution: Clearance level Conditional 3 Award should be requested only in exceptional circumstances and full justification must be
provided. Notice to proceed shall not be given to the highway contractor until the clearance is upgraded to authorize issuance of the notice to proceed.

A Conditional-3 Award clearance will be issued when:

- Title to all parcels has been acquired either amicably or by condemnation.
- FMV payments are being processed (payment entered into ROW Office at a minimum).
- Occupied parcels have been vacated or the submitted status clearly indicates vacation will occur prior to the anticipated notice to proceed date.
- Demolitions are included in the highway contract (as indicated by "H" on the ROW Office Property Management Parcel Maintenance screen), or if the demolition is by right-of-way contract (as indicated by "R"), the provided status in the request indicates that demolition is completed or will be completed prior to the notice to proceed date.

d. Conditional-4 Notice to Proceed (NTP). For contract management purposes, this is a Final right-of-way clearance certification authorizing issuance of the notice to proceed. In other words, Conditional-4 NTP, when issued, will result in a Final ROW clearance date displayed in the Milestones section of MPMS.

Conditional-4 NTP under this type is based on a parcel restriction. Restrictions have been placed in the contract to prevent entry upon an occupied parcel until vacated and released by the Department. Caution: Clearance level Conditional-4 NTP should be requested only in exceptional circumstances and full justification must be provided. In this situation:

- A copy of the parcel restriction(s) is submitted with the clearance request, or;
- The parcel restriction is entered into ECMS and appropriately as part of the clearance request for review and verification.

When completed, the District will request a Final clearance to upgrade the ROW Office R/W project from Conditional-4 NTP to Final. This upgrade to Final is for ROW Office tracking purposes.

4. Design-Build Projects. Design-Build is an alternative process by which a single entity bids to provide both the design and construction under a single contract between the Department and the design-build contractor. Publication 448, The Innovative Bidding Toolkit describes acceptable methods for innovative contract bidding. When acquiring Right-of-Way for highway construction projects using the Design-Build concept, Publication 448 appendices E and H provide adequate specifications and illustrates the steps used in the Right-of-Way acquisition process.

Prior to Right-of-Way acquisition, the Interim Approval process provides the District with the means to move forward with the Design-Build contracting process.

The selection of a single contractor selected to assume total responsibility for the project requires the Department to responsibly issue Notice to Proceed to the single entity Contractor. Land needed for construction must first be acquired, but cannot be accomplished by the single entity Contractor without a valid contract. Therefore, since no right-of-way clearance can be issued without first acquiring the land needed for highway construction, an Interim Approval shall be issued similar to, but in lieu of a clearance certification to allow the project to move forward.

a. Interim Approval. The Interim Approval request will be submitted by the District Office to the Central Office Chief, Utilities and Right-of-Way Section. The required information pertaining to an Interim Approval for Right-of-Way Design-Build projects will be provided on the Right-of-Way Design-Build Approval Request. The Right-of-Way Design-Build Interim Approval request form template is available via the ROW Office Home Page link. Use of this template is required to ensure interim approval is obtained and on record for the Design-Build project prior to Right-of-Way acquisition.

Similar to the Right-of-Way Clearance certification process, the Design-Build Interim Approval request
must contain specific information to ensure a clear understanding of project status. Interim Approval for Right-of-Way Design-Build projects will be issued by the Chief, Right-of-Way Administration Unit.

b. ROW Office Data for Design-Build Projects. It is understood that minimal Right-of-Way information will be known during the Interim Approval stage of the Design-Build project. Basic project data entry may be entered into ROW Office, but will not be a factor in the Interim Approval assessment. Issuance of an Interim Approval will be based solely on project information provided on the Interim Approval Request as well as other supporting attachments.

c. Right-of-Way Clearance for Design-Build Bridge Projects. It has been determined that projects utilizing the Design-Build concept can generally be cleared within a maximum of 12 to 36 months. Since all required right-of-way for construction will be acquired by the Department in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and Department right-of-way procedures, right-of-way clearance certification must be obtained for the project. Procedures for obtaining right-of-way clearance are referenced in 6.08E.

d. Use of Authorizations to Enter to Obtain Right-of-Way Clearance for Design-Build Bridge Projects. The use of Authorizations to Enter for Design-Build Bridge projects is permitted in non-exceptional circumstances when:

   (1) The project funding contains 100% state funds in all phases of the project.

   (2) The project is deemed acceptable as described in Chapter 3, Section 3.03.F.

Note: Authorizations to Enter are prohibited in the following situations:

   (1) Projects with federal funding in any phase.

   (2) Design-Build projects with federal funding in any phase.

   (3) 100% state funded projects that:

      (a) are not classified as a Design-Build bridge project.

      (b) do not meet exceptional circumstance criteria.

e. Final Clearance Certification for Design-Build Bridge Projects. Final Right-of-Way Clearance certification must be obtained within nine months after the final Right-of-Way plan is received by the District. A final Right-of-Way plan must be produced within six months from the foundation approval date (Foundation Guidance Report or Geotechnical Report). For bridges that do not require foundation construction, the final right-of-way plan must be produced within six months of Type, Size, and Location approval. Clearance certification will update the project status, eliminating the previous Interim Approval status.

   (1) Right-of-Way Plan Received. This date is captured in the ROW Office Project Plan Maintenance screen and is mandatory to populate MPMS milestone data and required as part of the Final Notice to Proceed and Final clearance assessment.

   (2) Foundation Approval. This date is captured in the ROW Office Project Maintenance screen.

Failure to obtain Final Right-of-Way clearance for Design-Build projects within specified timeframes may jeopardize the integrity of the Design-Build program. See Section 3.03.F.3.g. for Monitoring Guidelines.

E. Procedure to Request a Right-of-Way Clearance

1. ROW Office Project Clearance Maintenance. The ROW Office Project Clearance Maintenance screen is the official District clearance record. Current data must be entered into ROW Office so that the Project Clearance Maintenance screen will display accurate milestone dates.
a. Demolition Parcels. For demolition parcels, the demolition indicator must be set to "H" to indicate demolition will be included in the highway contract, or "R" to indicate R/W demolition on the ROW Office Property Management Parcel Maintenance screen. If the demolition indicator is set to "R" the demolition start and complete date fields must be completed.

b. District Anticipated Clearance and District Clearance dates. A realistic "District Anticipated Clearance" date or "District Clearance" date must be entered on the Claim Maintenance screen for every claim that is included in the clearance request. A Right-of-Way Clearance will not be certified without prior entry of these dates in ROW Office.

c. Claim Description Codes. Claim description codes are necessary to describe the claim as completely as possible and must be entered for all claims. Data entry of claim description codes describe the type of claim and ownership interests for a particular parcel and are helpful in managing a claim or District project. A Right-of-Way Clearance will not be certified without prior entry of claim description codes. Claim description codes are maintained in the ROW Office lookup tables by the Systems Administrator.

2. Engineering and Construction Management System (ECMS) Number. The clearance request must include the assigned ECMS number (if applicable).

a. It is helpful when the construction project has been established in ECMS, but not required. However, the ECMS number must be entered in MPMS on the Construction Phase General Information screen so that the number may be verified.

b. If there is no ECMS number because, for instance, the Department maintenance forces are assigned to do the work, state "Dept. Forces" at the ECMS number (or provide another applicable reason) on the clearance request.

3. Claim Clearance Status Report. A report entitled "Claim Clearance Status" is available within the reports section of the District Admin folder in ROW Office. The purpose of the report is to capture key claims data for clearance verification and mirror common managerial practices used in the FORMER REMIS COMPUTER DATABASE.

4. Contents of the Request. The Right-of-Way Clearance request must contain specific information to ensure a clear understanding of project status and provide effective clearance verification procedures are accomplished. The required information pertaining to a clearance request should be provided on the Right-of-Way Clearance Certification Request (Appendix Figure 2). Use of this template is recommended to ensure clearance submissions are complete and to avoid delay during the review process. The required contents of the template and helpful instructions follow:

**Right-of-Way Clearance Certification Request**

**District Clearance Memorandum**

**Date:**

**Subject:** ROW Clearance Request ROW Office Number ______

County

State Route: _____ Section: ___

Type of Request: (Cond-1, Cond-2, Cond-3, Cond-4, Final-NTP or Final).

Local Project: Y or N

Number of Parcels:

Number of Residential Relocations:

Number of Business Relocations:

**Summary:** The summary of the request should include the number of parcels, number of condemnations, number of residential relocations, number of business relocations, demolition status, etc. For example, "Conditional-3 requested for the subject state route and section. This project includes 4 LO claims."

a. If Cond-1 request, provide all the supporting documentation required as noted in D.1. above
b. If Cond-2 request, provide all the supporting documentation required in D.1 and D.2. above

c. If Cond-3 request

i. For acquisition of land only parcels, state that all parcels have either been paid or are in progress.

ii. If there are relocations, provide the current status of only the claims that do not have a vacation date entered into ROW Office.

iii. Advise the status of demolitions, if any, that are indicated in ROW Office as "ROW Contract". See D.3. above.

d. A request for a Cond-4 NTP must include the appropriate justification plus an assurance that all outstanding claims will be completed within six months. See D.4. above.

e. A request for Final Right-of-Way Clearance does not require additional information. Appropriate entries throughout ROW Office will be verified by data captured within the Claim Clearance Status report.

**MPMS Number:** _______

**ECMS Number:** _______

**Anticipated Dates:** (to advertise, let, award, or notice to proceed)

Save the completed request and submit the clearance request using Microsoft Outlook (or other compatible software application) email addressed to the Chief, Utilities and Right-of-Way Section, and the Chief, Right-of-Way Administration Unit.

5. Suspension of Clearance Request. Upon receipt, the Right-of-Way Clearance request will be reviewed for compliance with the requirements previously noted. The project will also be reviewed in ROW Office to determine if the data is current and reflected in the request. If either the request or the supporting ROW Office data is deficient, a clearance level of "suspended" will be entered into ROW Office and the District will be advised that the request has been suspended.

After the noted deficiencies are corrected, the District must resubmit the request.

**F. Procedure to Issue a Right-of-Way Clearance.** After review of the clearance request and consultation with the Chief, Utilities & Right-of-Way Section, if necessary, the Chief, Right-of-Way Administration Unit will issue the appropriate level of clearance certification as follows:

1. ROW Office Clear Claim Maintenance screen. The conditional or final clearance indicator, certification dates and specific comments are displayed on the Clear Claim Maintenance screen. This screen is maintained by the Central Office Right-of-Way Administration Unit.

The certification date will not be entered on this screen if the District has not entered an anticipated or District clear date on the Claim Maintenance screen for each claim.

The certification date will not be entered on this screen if the District has not entered Claim Description codes to completely describe the claim as referenced in 6.08 E.1.c above.

2. MPMS Information. If parcels acquired under a single ROW Office Project ID number are to be let on multiple construction projects, the District must advise in the clearance request, which parcels are to be included under a specific MPMS number.

To record such events in ROW Office, the MPMS record must be established against the appropriate District R/W project via the Project MPMS Maintenance screen. Each parcel record can then be associated with its appropriate MPMS number via the ROW Office Parcel Maintenance screen. Entering this data enables the Central Office Administration Unit to apply the appropriate clearance level to specific parcels on the Clear Claim Maintenance screen in ROW Office when the clearance is certified. Central Office Administration Unit
will also enter appropriate comments on this screen during the certification process pertaining to unique circumstances for a particular claim or parcel.

3. ROW Office Project Clearance Maintenance screen. The specific level of clearance, submission date and approval date are displayed on Project Clearance Maintenance screen. This screen is maintained by the Central Office Administration Unit. Conducting a ROW Office search query (Find) for the Project ID will display clearance information issued for the specific R/W project.

4. MPMS Milestone Dates. Upon entry of the clearance type and date on the Clear Claim Maintenance screen, ROW Office will export the conditional right-of-way clearance date to the MPMS Project Right-of-Way Phase Milestones screen. The final right-of-way clearance date is exported to the MPMS Project Construction Phase Milestones screen.

5. Right-of-Way Clearance Certification. Upon approval, the Chief, Right-of-Way Administration Unit, will issue a signed Right-of-Way Clearance Certification. The certification will be sent via Microsoft Outlook to the District distribution list provided by the District Right-of-Way Administrator. At a minimum, the certification will be sent to the District Right-of-Way Administrator, District Design Services Engineer, Assistant District Executive for Design and Construction, and the assigned Project Manager identified in ECMS. The certification is also sent to Contract Management Section personnel.

6. ECMS Project Development Checklist. It is the responsibility of the Project Manager to ensure that the Right-of-Way Clearance (when issued) is entered into the ECMS Project Development Checklist Item Detail "Right-of-Way Clearance Certificate".

G. Upgrade of Conditional Clearances. ROW Office, MPMS, ECMS and the Clearance Certification serve as official documentation of the specific type (level) of conditional clearance. The highway contracting process must not proceed beyond the level specifically authorized by the most recent conditional clearance. Violation of the requirement will jeopardize the use of conditional clearances.

It is the District's obligation to continue management of the acquisition process and to request the appropriate upgrade of a conditional clearance in a timely manner. An excessive number of requests from the Contract Management Section to upgrade the clearance, and/or the inability of the District to upgrade the clearance in timely fashion, will also jeopardize the use of conditional clearances.

H. Public Utility Commission Acquisitions.

1. Payment Required Unless Waived. All property owners (including owners of operating railroad) where property has been taken, injured or destroyed, must be compensated by virtue of the Constitution, the Public Utility Code, 66 Pa C. S. Section 2704, and the Eminent Domain Code.

Therefore, in order to avoid confusion, the Department should ensure that every order from the PUC appropriating property also directs the payment or waiver of property damages. If the PUC Order is silent regarding damages, then damages must be paid.

2. No Payment Prior to PUC Order. No right-of-way damages should be paid until the property has been appropriated by the PUC and an order entered. The property owner is not entitled to compensation until the Department has acquired the property. However, the valuation and negotiations process can be accomplished to enable payment to proceed upon receipt of the PUC Order.

3. Payment Processing. An executed Form RW-349 referencing the agreed consideration amount is required to be submitted as part of the payment PACKAGE TO PROCESS THE PAYMENT.

4. Parcel Clearance. As in all other acquisitions, payment must be made prior to issuance of a Final right-of-way clearance authorizing notice to proceed. However, if a right-of-entry can be obtained from the railroad, a Conditional-4 Notice to Proceed clearance will be issued provided that assurance can be given from the requesting District R/W Administrator that completion of the acquisition will progress in a timely manner.

I. Right-of-Way Clearance for Local Public Sponsor (LPS) and Enhancement Projects. The following procedures apply to Right-of-Way Clearance Certification for LPS projects and enhancement projects where right-of-way or other land must be acquired in order to construct the project.
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Note: If no right-of-way or other land acquisition is required for the project, processing of a D-4232 for federal approval and processing the construction contract should be handled in the same manner as highway projects constructed within the existing legal right-of-way. That is, the Right-of-Way Administrator must complete the Right-of-Way Clearance Certification by checking the "Existing Right-of-Way" box and having it signed by the LPS and the Right-of-Way Administrator.

1. Engineering Construction Management System (ECMS) Number. When an LPS or enhancement project has been assigned an ECMS number for processing of the construction by the Contract Management Section, the District must request the Utilities and Right-of-Way Section to issue a Right-of-Way Clearance Certification.

2. Exemption Agreement. The Exemption Agreement between the FHWA and PennDOT state that PennDOT will assure LPS knowledge and compliance with state and federal requirements. Therefore, when a request for a clearance certification is made for an ECMS numbered LPS or enhancement project, the District is required to submit supporting information.

3. ROW Office LPS Projects. If an LPS project has been established in ROW Office (because PennDOT is conducting the valuation process and negotiation functions), a District request for a Right-of-Way clearance certification may be made in the same manner as a PennDOT project; however a comment must be entered on the Claim Maintenance screen for each parcel, stating that the LPS either has paid the claim or will pay the claim.

4. LPS Acquisition. If the LPS is doing the acquisition for an ECMS numbered project, the District is responsible for ensuring compliance with state and federal requirements. When the District requests a Right-of-Way clearance certification for such LPS projects, the District must provide sufficient information to enable the Chief, Utilities and Right-of-Way Section to make an informed decision. The minimum information required includes:
   - The number of land only parcels.
   - The number of occupied parcels, if any.
   - If occupied parcels, provide relocation status.
   - Provide status of demolitions, if any.
   - Advise if Declarations of Taking were filed. If so, advise last date of Preliminary Objections to be filed (PO expiration date).
   - Advise if any Preliminary Objections were filed.
   - Provide the status of all payments.
   - Include a statement that the acquisitions are in compliance with State and Federal requirements.

Clearance certification for local projects must be requested by using the Right-of-Way Clearance Certification Request template referenced at Section 6.08.E.4. Along with the request template the Right-of-Way Clearance Certification signed both by the Right-of-Way Administrator and by the must be included when requesting any level of clearance.

5. Construction Contract by LPS. When the LPS is handling the construction contract (i.e. no assigned ECMS number), the District is responsible for handling the Right-of-Way Clearance certification according to the procedures provided in Publication 740, Local Project Delivery Manual, Chapter 5.

6. District LPS Right-of-Way Files. Whether the LPS or the District is responsible for the right-of-way acquisitions, the District must maintain files sufficient to document its oversight responsibilities. The Central Office Utilities and Right-of-Way Section will not retain District LPS files.

7. Construction PS&E Package. A Right-of-Way Clearance Certification must be included in every construction Plans, Specifications and Estimates (PS&E) package. The applicable statement will be checked-
off and signed by the appropriate individuals.

6.09 CLOSING RIGHT-OF-WAY PROJECTS

A. **Introduction.** Open right-of-way projects should be closed in a timely manner so that any unspent encumbered funds may be de-obligated and made available for other projects. However, a right-of-way project may be closed only after all claims have been paid and finalized.

A claim is paid and finalized (i.e. closed) when one of the following events can be documented:

The claim was amicably settled and payment completed.

If estimated just compensation has been paid or deposited and the claimant has not filed a petition for viewers within six years from the date of payment, the statute of limitations would therefore be expired.

If the claimant has filed for viewers, the "legal" claim has been settled by stipulation, viewer's award, or court award, and all payments completed.

The claim in litigation has been "closed" by transferring it to a Right-of-Way Take-Up project because it has been inactive and there is no prospect of conclusion within the foreseeable future. Refer to Section 6.10 on Take-up projects.

A process flow chart has been created for convenience and a clearer understanding of the closing procedures. The process flow chart is located on the following page.

B. **Procedures.** Amicably settled claims are considered closed after all payments are made.

After six years has elapsed from the date of deposit of EJC, court house records must be checked to determine if EJC has been withdrawn. If withdrawn, the Petition to Withdraw filed date and appropriate comments must be entered on the Declaration of Taking Claim Maintenance screen for the specific claim.

If not withdrawn, initiate procedures to withdraw the payment either for payment to the condemnee or for deposit into the Motor License Fund. The date the Petition to Withdraw EJC is filed must be entered on the ROW Office Declaration of Taking Claim Maintenance screen.

Upon expiration of the six-year statute of limitations after the direct payment or deposit of EJC for a claim, the court records will be reviewed to determine whether or not the condemnee has filed a Petition for Viewers. If not, the Statute of Limitations Expired date found on the ROW Office Declaration of Taking Claim Maintenance screen must be expired (passed) in order for the claim to be closed.

If a Petition for Viewers has been filed, the date of filing and docket number are entered on the ROW Office Declaration of Taking Claim Maintenance screen for the specific claim number. The claim (and project) cannot be closed until the litigation is settled.

After all claims have been settled (amicably or through litigation), or the statute has expired and all payments made, the project is closed in SAP.

After the project is closed in SAP, the Central Office Administration Unit is notified.

If the project consisted of federal funding, the Central Office Administration Unit will verify all claims are closed and prepare the Final Federal Voucher letter to the Comptroller. The date the Final Federal Voucher letter is prepared is documented in the ROW Office Close/Reopen Project screen.

If the project consisted of no federal funding, the Central Office Administration Unit will verify all claims are closed and will document the project closed date in the ROW Office Closed/Re-open Project screen.

C. **Pre-REMIS Archives.** As previously referenced in Section 6.01.D, data contained within the Pre-REMIS archives screens consist of historical data maintained via the former REMIS "Converted System". Access to this data is "read only" and therefore cannot be revised or updated in any way. Information pertaining to whether or not
a Pre-REMIS claim can be closed must be accomplished by reviewing data within the Pre-REMIS database (current until May 23, 2005) or by retrieval of actual hardcopy files. Documenting the closing a Pre-REMIS archived claim is not possible in ROW Office. However, closing the project is accomplished through SAP.

The Pre-REMIS Archives database is accessed through the ROW Office system by selecting the Public Folder and clicking on "Pre-REMIS Archives" on the navigation pane.
6.10 RIGHT-OF-WAY TAKE-UP PROJECTS

A. Introduction. The Utilities and Right-of-Way Section works with the District Right-of-Way Units to close right-of-way projects when all claims have been paid and finalized. However, some right-of-way claims may remain open for many years which prevents timely closing of the project.

The solution to this problem is to transfer eligible inactive right-of-way claims to a Take-Up project to maintain until final closing. Upon such transfer, the federal-aid right-of-way project will be closed in order to reduce the total number of open projects.

B. Establishing Right-of-Way Take-Up Projects. The primary purpose of a take-up project is to hold open a right-of-way claim for the Department to defend, in court, the amount of estimated just compensation previously paid on the claim.

The Program Center, Comptroller, FHWA and Bureau of Project Delivery have coordinated their activities to establish appropriate right-of-way take-up projects to ensure fiscal and audit integrity.

A minimum number of statewide right-of-way take-up projects have been established to reflect the funding structure (percentage of federal funding) of the original federal-aid project(s).

1. 100% federal.
2. 90% federal, 10% state.
3. 80% federal, 20% state.
4. 100% state.

C. Identification of Claims for Take-Up Projects. The District Right-of-Way Unit is responsible for identifying open right-of-way claims that meet the following requirements for transfer from the Phase 6 right-of-way project to the appropriate take-up project:

1. All claims on the project have been acquired either amicably or by condemnation.
2. All costs associated with the right-of-way claim have been paid, including any increase in estimated just compensation.
3. Final Right-of-Way Clearance has been issued.
4. The Construction phase has been completed and opened to traffic.
5. The claim meets one of the following eligibility criteria:
   a. Claims in Litigation.
   b. Interim Lease claims.
   c. Excess Land claims.
   d. Uneconomic Remnant claims.
   e. Claims established in existing Miscellaneous projects.
   f. Pre-REMIS (Converted System) claims.
6. Consultation with the Office of Chief Counsel indicates that a stipulated settlement is unlikely, and it is doubtful the claim will be scheduled for trial within three months.

Application of the limitations noted above will ensure that a reasonable effort has been made to settle each right-of-
way claim, and only those claims that are most resistant to closure will be transferred to a take-up project.

D. **Take-Up Projects Process and Documentation.** Determine the funding ratio and identify the corresponding Take-up Project from 6.10.B above.

Verify that the claim is a candidate for the take-up project as specified in 6.10.C.

On the "Claim Maintenance Screen" in ROW Office - enter the "Xfer To Takeup Date".

On the "Claim Maintenance Screen" in ROW Office, based on the funding percentage above, enter the correct ROW Office project number in the "Take-up Project Number" field the claim is being transferred to.

Enter a Memo to the File in the Claimant Contact Maintenance screen to summarize the reason for the transfer to take-up.

Proceed to the desired Take-Up project in ROW Office. Open the take-up project "Project Maintenance screen" to confirm the existence of the SAP Commitment number and begin establishing the "New Claim" for the take-up project.

The original right-of-way record must be documented to indicate said transfer. After the new claim number is established in the appropriate take-up project, return to the ROW Office Claim Maintenance screen for the original claim record and enter the new claim number the claim is being transferred to in the "Take Up Claim No" field.

A Take-up Project in ROW Office functions exactly like a Right-of-Way Project. The creation of claims and parcels follows the same procedure used for other Right-of-Way Acquisition Projects.

**NOTE:** Transfer of a claim to a take-up project will require data entry of all pertinent claim information into the claim file for the new take-up claim.

Add appropriate comments throughout ROW Office (Appraisal Log, Claim Contact Maintenance, Claim Maintenance, etc) to reference the claim as being transferred to the take-up project.

Complete the Notification of Transfer to Take-Up Project form and distribute as directed.

Complete the Notice to Fiscal Office of Transfer to Take-up Project – this form requests that funds be established to support the anticipated expenses.

After a claim is transferred to a take-up project the original claim should be closed in ROW office.

After all claims are closed in ROW Office notify C.O. and request a final R/W voucher for that project (refer to Section 6.09 for project close-out procedures).

Further claims identification, maintenance and filing will be accomplished under the newly assigned Take-Up project claim number.

E. **Maintaining the Take-Up Project.** When a specific right-of-way claim is transferred to a take-up project, money to be transferred from the original project to the appropriate take-up project to cover claim costs will be determined by the District Right-of-Way Administrator and District Planning and Programming Unit. In the event of a jury award or stipulated settlement associated with the right-of-way claim, any additional federal funds required for final payment will be obligated for the take-up project.

Any unexpended funds remaining in the original project must be de-obligated. After the transfer of claims to a take-up project, all encumbrances on the original Phase 6 right-of-way will be reduced to zero and the project closed by the District and Central Office in the normal manner.

All costs, such as appraisal fees, witness fees, and court report fees, will be charged to the claim and right-of-way take-up project.

Upon settlement, either by jury award or stipulation, the Office of Chief Counsel will submit the claim to the Administration Unit to process the payment referencing the newly assigned claim number from the take-up project.
If additional funds are necessary, the District Right-of-Way Administrator will coordinate with the District Fiscal Officer and Comptroller to increase the funds in the take-up project by the amount necessary to make the legal claim payment.

Subsequent to payment, the District Right-of-Way Administrator will close the claim in ROW Office as referenced in Section 6.09.

**F. Take-Up Project Lifecycle.** Once established, the statewide right-of-way take-up project will remain open as long as necessary. Additional open right-of-way claims will be selected and added as they meet the requirements detailed in paragraph C, so that regular federal-aid right-of-way projects may proceed to closing in an orderly manner.

When transferred to a right-of-way take-up project, the right-of-way claim will remain active until settled.

After settlement, the claim will be marked "closed" in ROW Office by the District Right-of-Way Administrator, but remain in the project data for reference purposes.
CHAPTER 7
EXCESS LAND

7.01 GENERAL

A. Purpose. The purpose of this Chapter is to outline the Department's policy and procedures for the disposition (sale) of excess land and for the removal of limited access control along a highway. Excess land is land which has been acquired but not needed for present or future transportation purposes. It includes the disposition of limited access rights and lesser easements such as slope easements.

B. Authority. Authority for the disposition of excess land owned in fee is contained in 71. P.S. §513 (e)(7), which states in part: "any other provisions of this act to the contrary notwithstanding, the Department may sell at public sale any land acquired by the Department if the Secretary determines that the land is not needed for present or future transportation purposes."

In addition, Section 210 of the State Highway Law allows the Department to vacate previously acquired easements. The Department is also authorized to acquire the fee underlying any previously acquired easement, thereby consolidating fee simple title in the Department.

C. Reasons for Disposition Actions. Department policy is to dispose of property not needed for present or future transportation purposes. This avoids the expenditure of public funds to maintain areas not needed for public purposes and the potential liability that accompanies land ownership. It also generates funds that can be used for other transportation purposes. As to uneconomic remnants, disposition also avoids tax liability that can be imposed by local governments. See Section 7.02.G below.

Most dispositions are initiated by the Department identifying excess land following construction of a project. Other dispositions are initiated by public or private entities, often abutting landowners. The Department should never dispose of land that may in any way be needed for present or future transportation purposes.

Land may be retained to restore, preserve, or improve the scenic beauty and environmental quality adjacent to a transportation facility. This is considered an appropriate present transportation purpose.

D. The Disposition Process. The District Excess Land Committee meets as necessary to review all projects opened to traffic during the previous quarter to determine if there are any parcels of land that are considered to be excess. The committee reviews requests from the public to purchase Department owned land and requests to remove limited access control.

The District Excess Land Committee is composed of:

- The Right-of-Way Administrator (or designee), who acts as chairman;
- The Plans Engineer; and
- One to three other staff members appointed by the District Executive.

The District Executive acts upon the recommendations of the District Excess Land Committee.

All dispositions must be coordinated among relevant District units. This includes maintenance, safety, design, planning, right-of-way, environmental, access management, and traffic operations. This requirement is taken from Federal Regulations at 23 CFR 710.403.

The Department's authority to approve the disposition of excess land or the removal of limited access control identified by the District Excess Land Committee is delegated to the Central Office Disposition Committee by the Secretary of Transportation.

The Central Office Disposition Committee is composed of:

- The Chief Counsel (or designee), who acts as chairman;
- The Deputy Secretary for Highway Administration (or designee); and
The Chief, Utilities and Right-of-Way Section (or designee).

Approval of dispositions that are valued in excess of $100,000 must be by all three members of the Committee. Dispositions that are valued at $100,000 or less may be approved by the Chief, Utilities and Right-of-Way Section and the Chief Counsel.

The Central Office Disposition Committee acts upon the recommendations of the District Executive.

The District Executive, by signing Form RW-609 must certify that:

- The property or limited access control in question is no longer needed for present or future transportation purposes;
- Disposition is in the best interest of the Department; and
- Disposition will not adversely affect traffic safety or other Departmental operations.

The District must also ensure that, within six months from the date of disposition, the recorded highway plan is revised to reflect the disposition and that, if conditions were placed on the sale, those conditions are carried out.

The Central Office Disposition Coordinator acts as liaison between the District Excess Land Committee and the Central Office Disposition Committee. All disposition actions are reviewed by the Disposition Coordinator prior to action by the Central Office Disposition Committee.

**E. Excess Land Number.** The excess land number will normally be the parcel's original claim number. In the case of an assemblage, the lowest original claim number.

**F. Federal Highway Administration Approval to Sell.** When a proposed disposition action involves an interstate facility which received federal funds in any way, prior approval of the Federal Highway Administration (FHWA) will be obtained by the Central Office Disposition Coordinator. However, no federal approval is required for the disposal of property which is located outside the limits of the right-of-way if federal funds did not participate in the acquisition costs of the property.

**G. Excess Land Inventory - District and Statewide.** The District must maintain a list of all land that was determined to be excess by the District Executive. This inventory includes all parcels of excess land whether available for sale or not. A copy of the inventory is sent to the Central Office Disposition Coordinator by the tenth of every January, April, July and October. The following information must be included for every parcel:

- District
- Route/Section
- Acquisition Claim Number
- Acquisition Claim Name
- Disposition Number, if assigned
- Acquired as a partial or total take (P/T)
- Acquired fee or easement (F/E)
- Estimated fair market value for sale
- Date the recommendation to sell sent to Central Office (Actual/Est.)
- Date approved for sale by Disposition Committee (Actual/Est.)
- Date advertised for sale (not applicable for land retained for future use)
- Sale date (Actual/Estimated)
- Sale price
- 100% State or Federal Funds (S/F)
- Percentage of State funds used to acquire
- Comments

Indicate if this is a New excess parcel (N), a Revision to an existing parcel (R) or Unchanged from the previous month (U).

The Statewide Inventory will be maintained by the Central Office Disposition Coordinator.
7.02 PROCEDURE TO OBTAIN APPROVAL TO DISPOSE

A. Environmental Assessment Requirement. Prior to the sale of excess land, an environmental assessment of the effect of the disposition must be completed. The District Right-of-Way Unit will request the District Environmental Unit to prepare the appropriate environmental documents. These documents must accompany the request to dispose.

Environmental assessments for disposals of real property which will not result in significant environmental impacts may be documented on the "Disposal of Real Property and Lease Agreement/Renewal Programmatic CE Applicability Form", which is Appendix "A" of Programmatic Agreement number 431018 between FHWA and the Department for the Disposal of Real Property and Lease Agreement/Renewals. This form can be accessed at http://www.dotdom2.state.pa.us/ceea/ceeamain.nsf?open by clicking "Help" at the upper right hand corner of the screen, then selecting "Forms".

B. Title Documentation Requirement. A request to dispose of excess land must always be accompanied by the deed or declaration of taking used to acquire it. Other specific situations are described below: If the disposition involves land acquired as an easement, a copy of the title search of the underlying fee interest from the date of our acquisition to the current date is required.

- If the disposition involves land acquired as a partial take in fee simple, a copy of the title search done at the time of acquisition must be provided.
  - Additionally a current bring-down search for the abutting owner must be provided to establish first rights of refusal.
- In certain unique situations, title searches or bringdowns will be requested only if needed by Central Office.

All title work must be completed in accordance with the procedures in Chapter 3, Acquisitions.

C. Appraisal Requirement. State and federal law and Department policy is that most dispositions be at fair market value. For this reason, an appraisal of the fair market value of the excess land must be completed by the Department in accordance with standard appraisal practices and this Chapter prior to most dispositions. Consistent with Department valuation policy for acquisitions, a waiver valuation may be used in some circumstances. See Section 7.02.C.8 below. No appraisal is required where the law mandates a sale to the former owner at the acquisition price less expenses as the result of acquisition not the condemnation (e.g. Section 710 Fees). See Section 7.02.F.1 below. Appraisals should be obtained, however, in other circumstances where a disposition at less than fair market value is being considered. See Section 7.03.

The fair market value is based upon an appraisal by a qualified Department appraiser or fee appraiser. The appraisal must be reviewed and approved by a Department review appraiser. See Section 7.02.C.4 below for requirements for appraisals completed by fee appraisers.

Fair market value is generally established before the Central Office Disposition Committee (and the Federal Highway Administration, when applicable) has given its approval to sell. However, the appraisal process may take place after the Committee's approval in limited circumstances at the discretion of the Committee.

Appraisals of excess land should be based on the following:

1. Appraising Fee Simple Parcels. When appraising the value of a parcel owned in fee simple, the appraiser should use the same appraisal principles and type of report that would be used if the property was being acquired by the Department.

2. Appraising Easements Parcels. When appraising a parcel upon which the Department has an easement for highway purposes, the appraiser should also use the same appraisal principles and type of report that would be used if the property was being acquired by the Department and it was owned in fee simple. This is appropriate since the Department has the authority to acquire the fee underlying the easement and thereby consolidate fee simple title in the Department for purposes of disposition, and Department policy is not to vacate easements unless connected with a highway construction project. The fact that the Department has not acquired the underlying fee, and therefore still owns an easement, can be considered when negotiating a
final purchase price. See 7.03.

3. Stand alone, across the fence, and enhancement approaches to value. Federal Highway Administration and Department policy is to market property in a manner that will secure the greatest net return to the state and federal government. Normally, appraisals are based on the highest and best use of the property in the general market recognizing a willing buyer and willing seller concept. However, it may be appropriate to appraise disposal properties under different concepts depending on the situation. Note that all three approaches to value need not be used in every disposition. Whether the Department has independently determined the parcel to be excess or an adjoining owner made a request to acquire the parcel is a relevant consideration.

   a. Stand alone value. All properties should be appraised under this traditional approach that considers the fair market value of the property standing alone in the market place.

   b. Across the fence approach. This approach determines the value of the property to the adjoining owner. It appraises the area being disposed using values similar to the value of the adjacent property. Note: this approach should be used in situations where the adjoining owner has made a request to acquire the parcel that is determined to be excess or there is a right of first refusal to an abutting owner, and may be used where there is no stand alone value due to the small size or shape of the parcel, e.g., a thin sliver along the highway.

   c. Enhancement value. This approach also determines the value of the property to the adjoining owner. It establishes an amount by which the value of a property is increased through assemblage of another property into the same ownership. This method is the reverse of the procedure for estimating loss in value due to a partial taking. The value of the parcel into which the parcel to be sold is to be assembled is estimated before and after the assemblage, and the difference between the two values is the enhancement value. Note: this approach should be used in situations where the adjoining owner has made a request to acquire the parcel that is determined to be excess or there is a right of first refusal to an abutting owner.

4. Appraisals by Fee Appraisers. Appraisals must be completed on PennDOT’s approved forms by fee appraisers approved under the appropriate category of the Department’s current Appraisal ITQ contract. The appraiser must be provided with an Appraisal Problem Analysis (APA) completed and approved by the Department, and the APA must be included as an exhibit in the Addendum to the appraisal report. If the appraiser is hired by someone other than the Department, the appraisal report must identify PennDOT as an "intended user" of the report.

5. Appraisal Review. Where more than one of these approaches to value is used, each value should be reviewed for purposes of pre-approval. Each pre-approval will be noted as a fair market value of the parcel for disposition purposes. The highest value will be used for advertising a public sale or making an offer of first refusal. Each value developed can be considered when negotiating a final purchase price when a public sale is not involved. See Section 7.03.

6. Uneconomic remnants. If recent, the appraisal used to acquire an uneconomic remnant will generally be sufficient to establish the value for disposition. An exception is the large uneconomic remnant or an assemblage of uneconomic remnants that may have an independent use. In such cases an appraisal should be completed in accordance with the policy and procedures outlined in Chapter 2, Appraisals, and above.

7. Access Control Rights. Access control rights can be quite valuable and may have cost the Department a great deal originally. The value of the disposition of access control rights must therefore be determined by the use of a "before" and "after" appraisal. The difference in value between the property unencumbered by access control and the property encumbered by access control is the value of the access control rights. This is the enhancement value noted above.

8. Waiver Valuation. Subject to the restrictions set forth in Chapter 2, Section 2.12, the waiver valuation form may be used to establish fair market value of a disposition using the "across the fence" or "stand alone" approaches. Use of the waiver valuation for dispositions is subject to the additional conditions below:

   a. The "stand alone" or "enhancement" approaches would not result in a higher value estimate. This statement must be on the Form RW-260 (typed inside the third picture box) or on a separate
memorandum signed by the appraiser and District Chief Appraiser.

b. The District Chief Appraiser must either sign the Form RW-260 as the appraiser or indicate approval of the value estimate by writing their initials in the signature box.

D. Right of First Refusal for Public Agencies. The Sale of Transportation Lands Act requires the Department to offer to sell fee owned land to public agencies at fair market value prior to selling it to others, provided that the public agency can demonstrate a public purpose for the land. Many different uses would qualify as a public purpose, including, the preservation of open space.

This right of first refusal applies only to land owned by the Department in fee. An advertisement in the Pennsylvania Bulletin (See below) is considered to be sufficient notification to public agencies of the lands' availability and fulfills the Department's obligation under this Section.

If a public agency expresses, in writing, an interest to purchase land for sale at the fair market value and demonstrates a public purpose prior to the notice in the bulletin, that agency will be given priority and the notice does not need to be run.

After the notice has run, the priority regarding public agencies will initially be based upon the timing of the responses to the notice. The first public agency to express, in writing, its willingness to purchase the land at the fair market value and which demonstrates a public purpose will have priority to purchase the land.

If more than one public agency expresses an interest to purchase the land at the fair market value at the same time, either before or after the notice, and all have demonstrated a public purpose, the following order of priority will be used:

- State Agencies, Boards and Commissions
- County Governments
- City, Borough, Incorporated Town or Township Governments
- School and Vocational School Districts
- County Institutional Districts
- Municipal Authorities
- Local Authorities

In the case of multiple agencies, the District should rank the agencies in the District's recommended order and submit their recommendation to the Central Office Disposition Coordinator. The Coordinator will present the recommendations to the Disposition Committee for final determination.

Any questions relating to whether an entity is a public agency or whether it has demonstrated a public purpose for the land should be submitted to the Central Office Disposition Coordinator for a determination.

E. Notice in the Pennsylvania Bulletin. Requests for a notice in the Notice Section of the Bulletin must refer to the Sale of Transportation Lands Act authorizing the Department of Transportation to sell both improved and unimproved land to other public agencies.

Requests should give the return address of the District Office where one copy of the actual notice and the publication date can be sent.

Requests are sent to:

Director, (insert Director's name - currently Mary Jane Phelps)
Pennsylvania Code and Bulletin
Legislative Reference Bureau
Legislative Services
641 Main Capitol Building
Harrisburg, PA 17120
**SAMPLE NOTICE:**

DEPARTMENT OF TRANSPORTATION

Contemplated Sale of Land No Longer Needed for Transportation Purposes.

Notice is hereby given that the Department of Transportation, pursuant to the Sale of Transportation Lands Act, 71 P.S. § 1381.1 et seq., intends to sell certain land owned by it.

The following is a list of the properties available for sale by the Department.

1. __ Township, __ County. The parcel contains __ square feet of improved/unimproved land situated at <address>. Estimated fair market value is $_______ (If Known).

Interested public agencies are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice to: <District Address>

Notices should not be requested until after approval to dispose has been given by the Central Office Disposition Committee.

**F. Subsequent Rights of Refusal.** Series 600 Offer Letters should be delivered by certified mail or by personal delivery. The recipient has 120 days from receipt to accept our offer. See Section 7.07 for forms. Although the right of first refusal afforded public agencies applies to all types of land, subsequent rights of refusal depend on whether the property is improved or unimproved. The determination of whether land is improved or unimproved is based on the condition of the parcel at the time of disposition, not acquisition.

1. Improved Property Owned by the Department in Fee. Improved property is any land to which there has been made a valuable addition, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes. This would include buildings, trade fixtures, and other improvements to the land. A parking lot improved with buildings for lot attendants, bumper blocks, ticket spitters, peripheral boundaries (concrete walls and blocks), and macadam is an improved property.

   If no public agency is interested in purchasing improved property and it is occupied by a tenant that is the person from whom the Department acquired the land (i.e., the former owner), it must be offered to the former owner at the acquisition price, less costs, expenses and reasonable attorneys’ fees incurred by the person as a result of the acquisition of the land by the Department. Use Form RW-601.

   If no public agency is interested in purchasing improved property and it is occupied by a tenant who is not the prior owner, it must be offered to the tenant at the current fair market value as determined by the Department. Use Form RW-603.

   If no public agency is interested in purchasing improved property, there is no tenant, and the person from whom the Department acquired the land did not receive a replacement housing payment, it must be offered to the prior owner at the acquisition price, less costs, expenses and reasonable attorney's fees incurred by the person as a result of the acquisition of the land by the Department. Use Form RW-601.

   See Form RW-608IMP for a flow chart of the above rights of first refusal on improved properties owned in fee.

   If all the above steps are completed and there are no rights of refusal remaining, the land will be offered for public sale.

2. Unimproved Property Owned by the Department in Fee. Unimproved property is that land which is not improved, i.e., vacant land.

   a. If the unimproved land was acquired as a total take and no public agency is interested in purchasing the property, the property will be offered for public sale.
b. If unimproved land was acquired as a partial take, the entire remainder (not acquired by the Department) is separated by a legal right-of-way from the area to be sold, and no public agency is interested in purchasing the property, the property will be offered for public sale.

c. If the unimproved land was acquired as a partial take, at least part of the remainder (not acquired by the Department) abuts the land to be sold, and no public agency is interested in purchasing the property, it must be offered to the abutting property owner.

   (1) If the abutting property owner is the person from whom the land was acquired, it must be offered at the acquisition price, less costs, expenses and reasonable attorney's fees incurred by the person as a result of the acquisition of the land by the Department. Use Form RW-601.

   (2) If the abutting property owner is a successor in interest to the person from whom the land was acquired (i.e. the abutting land has been conveyed to another person), it must be offered at current fair market value as determined by the Department. Use Form RW-602.

See Form RW-608UN for a flow chart of the above rights of refusal on unimproved properties owned in fee.

If all the above steps are completed, and there are no rights of first refusal remaining, the property will be offered for public sale.

G. Disposal of Land Acquired as an Uneconomic Remnant. The Sale of Transportation Lands Act applies to uneconomic remnants. The Secretary of Transportation is required to make payments in lieu of real estate taxes on land located outside of the right-of-way. If an uneconomic remnant is incorporated within the required right-of-way, it loses its identity and becomes a part of the right-of-way and cannot be sold as an uneconomic remnant at a later date. For this reason, the District should begin the process to dispose of uneconomic remnants as soon as possible following acquisition.

It is not necessary to obtain the approval of the Central Office Disposition Committee or the Federal Highway Administration to dispose of land acquired as an uneconomic remnant. Be careful to ensure that this procedure is applied only to land acquired as an uneconomic remnant. Land that was not acquired as an uneconomic remnant cannot later be classified as an uneconomic remnant to avoid obtaining the approval of the Disposition Committee or the FHWA.

The sale of an uneconomic remnant must be completed in accordance with standard procedures found in Sections 7.02 and 7.03 with the following modifications:

The appraisal used to acquire the uneconomic remnant, if recent, will generally be sufficient to establish its value for disposition. An exception is the large uneconomic remnant or an assemblage of uneconomic remnants that may have an independent use. In such cases an appraisal should be completed in accordance with the policy and procedures outlined in Chapter 2 Appraisals.

Since these lands are usually portions of total takes that are unimproved at the time of disposition, uneconomic remnant sales will normally be by public sale.

When transmitting the sale documents to the Disposition Coordinator, include a transmittal letter that approves acceptance of the bid, and all documents as required under 7.02 and 7.03. Also include a Form RW-609 signed by the District Executive.

H. Disposal of Land Acquired as an Easement. Public highway easements may not be transferred to private entities. They may, however, be vacated, the result of which is to eliminate the easement and allow the underlying fee interest of the private owner to blossom into full fee simple ownership.

   1. Highway Easement Policy. Easements for State highway purposes are not vacated by the Department except when approved in writing by the Secretary of Transportation and in the manner required by law. This is usually done in connection with the relocation or deviation of an existing state highway through the signing and filing of a plan pursuant to Section 210 of the State Highway Law. It is also done through the signing and filing of a plan pursuant to Section 210 following the grant of a quit claim deed in disposition actions relating to easements.
2. Reasons for Policy. The Department pays fee simple value for the acquisition of easements for state highway purposes. Historically, however, no compensation has been received if they are vacated. The Sale of Transportation Lands Act-2010, however, authorizes the Department to acquire the fee underlying previously acquired easements, thereby consolidating fee title in Department.

It is in the best interest of the Commonwealth, as established by the Sale of Transportation Lands Act-2010, to be compensated for the sale of its property because Motor License Funds were expended to acquire the property and the Department may acquire the fee underlying previously acquired easements.

Property acquired for a transportation project that is later discontinued may be held for other or future transportation purposes. That is, the discontinuance of a project is not a vacation of any easements acquired for that project.

3. Former Claimant/Underlying Fee Owner. When the Department acquires an easement for highway purposes, the former owner retains title to the underlying fee interest. The Department may be willing to eliminate its interest to the former claimant, by quit claim deed, if the former owner is willing to reimburse the Department its acquisition costs; use Form RW-605. A quit claim deed must be executed, followed by an appropriate revision to the highway plan noting the area vacated. If an amicable disposition cannot be achieved, the Department can acquire the fee underlying the easement under the Sale of Transportation Lands Act-2010 and dispose of the parcel in accordance with the Sale of Transportation Lands Act. See below.

4. Subsequent Owner/Underlying Fee Interest. If the claimant from whom the Department acquired the easement for highway purposes transfers the underlying fee interest to a subsequent owner, the Department may eliminate the easement to the owner, by quit claim deed, for its current fair market value. In such cases use Form RW-604. A quit claim deed must be executed, followed by an appropriate revision to the highway plan noting the area vacated. If an amicable disposition cannot be achieved, the Department can acquire the fee underlying the easement under the Sale of Transportation Lands Act-2010 and dispose of the parcel in accordance with the Sale of Transportation Lands Act. See below.

5. Acquisition of the Underlying Fee by the Department. The Department may acquire the fee interest underlying previously acquired easements and thereby vest fee simple title in the Commonwealth. The vacation of easements for highway purposes without compensation is not required. The basic reason to acquire the underlying fee interest is to perfect the Department's title in order to protect the public investment in the previously acquired right-of-way and provide less restrictive use of the property. There are several situations where this may be desirable:

   a. If the owner of the underlying fee is not locatable or does not wish to repurchase the excess property from the Department, and the property has sufficient size and value to justify public sale by the Department, the Negotiator may offer the underlying fee owner the alternative of receiving from the Department a payment to sell the underlying fee interest.

   b. There may be circumstances where the prudent method of disposing of excess right-of-way would be the sale of one large parcel of unimproved land as opposed to the sale of several small, low value parcels. This situation will usually arise where the Department has acquired a number of small parcels as total takes by a mixture of fee title and easements and such assemblages are vacant.

When the decision is made to form an assemblage for sale, the owner of an underlying fee interest will be offered a payment to sell it to the Department. Every effort will be made to acquire the underlying fee interest amicably. If an amicable settlement cannot be completed, the District should determine if condemnation is practical based on the following factors:

   a. The number of underlying fee interests previously acquired for the project.

   b. The number of underlying fee interests remaining to acquire.

   c. The estimated cost of condemnation.

   d. The estimated sale value of the assemblage.

Valuation of an underlying fee interest should be completed in accordance with Chapter 2, Appraisals. The
policy and procedures outlined in Chapter 3, Acquisitions, apply to condemnations of underlying fee interests.

The Right-of-way Plan may require revision, reauthorization and recording to authorize the underlying fee taking.

Form RW-600 should be used to acquire the underlying fee. The policies and procedures in Chapter 3, Acquisitions, regarding negotiations apply.

Upon acceptance of the offer to purchase the underlying fee interest, the District will complete and process Forms RW-317AF and RW-317F in the same manner as any other fee simple acquisition. A statement will be added to both the Agreement and Deed that, "The purpose herein is the acquisition, by the Commonwealth, of the fee interest underlying the previously acquired public easement."

I. Disposal of Limited Access Control. Access control is a property right considered to be part of the highway right-of-way. These rights were often costly to acquire and in many cases have considerable disposition value. The offer for disposition is to be based on the enhanced value as discussed in Section 7.02.C.6 above. This is in accordance with 23 CFR § 710.403(d) requiring that current fair market value generally be charged when disposing access control. When a disposition involves the lifting of limited access, the beginning and ending station numbers and offsets must be shown on the highway plan. The disposal of access control is further discussed in Sections 7.03 (Disposition at Less than Fair Market Value) and 7.04 (Negotiation of Dispositions).

J. District Request to Dispose. After the District Excess Land Committee meets and recommends disposition and the District Executive agrees and certifies the disposition with his signature on the Form RW-609, the District Right-of-Way Unit will prepare the disposition package to be submitted to the Central Office Disposition Committee for approval. The basis for the submission will be the information required by Form RW-608. The following information is required:

1. If the request to dispose of excess land is part of an assemblage of parcels, complete Form RW-608 for each acquisition parcel included in the assemblage.
2. Acquisition cost of parcel - include the total amount paid to purchase the property or indicate unknown.
3. Replacement Housing or Down Payment Supplement paid - indicate if replacement housing payments were made to a displaced residential occupant of the parcel being disposed.
4. Date of Acquisition and method of acquisition, i.e., amicably by deed or by declaration of taking.
5. Type of interest acquired - enter fee simple or easement. If acquired by easement, enter the name of the current owner of the underlying fee interest.
6. Type of take - enter total, partial, or uneconomic remnant.
7. Area acquired - enter square feet or acres.
8. Area available for disposition - if the parcel is part of a disposition assemblage, enter the amount of land for this parcel and the total area as assembled.
9. Excess land is improved - if yes, briefly describe the improvements and list the current occupants, if any.
10. Estimated fair market value of the excess land - include the approved appraisal and appraisal review if they are available.
11. State the reason the land is no longer needed for transportation purposes.
12. Were federal funds used in any way on the project? If yes, indicate whether or not the excess land has potential use for parks, conservation, scenic beauty and environmental quality adjacent to the highway. Indicate if the project is an Interstate highway. The person or entity to which the land is intended to be disposed, if known. For land to be sold at public sale, state: "Unknown, public sale." If the land must first be offered to public agencies (which is typically the case), state the name of the person or entity to which the land is to be disposed if no public agency expresses interest followed with the statement: ", unless a public agency
expresses interest and purchases the property."

Attach supporting documentation - include a copy of Form RW-609, a half-size Highway Plan with excess area cross-hatched and size labeled, a reviewed appraisal if required as per Section 7.02.C, the environmental assessment, a listing of any groups supporting or opposed to the sale of the excess land, a statement of the public purpose if a public agency has expressed an interest, photographs, declaration of taking or deed of acquisition, title search and/or bring down if appropriate as per Section 7.02.B, Form RW-608UN or RW-608IMP highlighted to show the proposed progression of potential purchasers for fee owned properties, and any other pertinent documents or correspondence.

If more than one excess land parcel is included in the disposition property, all required information that applies to the individual acquisition parcels must be provided on separate requests. It is not necessary to send more than one copy of information that applies to the assemblage (i.e. appraisal, highway plan, environmental documents).

If the request to dispose includes numerous parcels because of a plan change or because it appears that a project will not be constructed, the detailed parcel information will not be necessary in the initial request to dispose.

Considering the likelihood of acquisitions over several decades, the District should provide as part of its submission, a memo to the Central Office Disposition Committee summarizing the request to approve the disposition of excess land or the removal of limited access control as identified by the District Excess Land Committee. The memo improves initial understanding and reduces research regarding the nuances that can occur with older transactions. For example, the summary should disclose the intended use of the property and type of appraisal approach used to determine the value; if there is a desired buyer, any restrictions on the sale; if selling to a public entity, state the proposed public use, etc.

### 7.03 DISPOSITIONS AT LESS THAN FAIR MARKET VALUE

The only dispositions at less than fair market value allowed by the Sale of Transportation Lands Act are those to former owners with specific rights of first refusal as explained in Section 7.02.F. However, the disposition procedures of the Sale of Transportation Lands Act only apply to land owned by the Department in fee simple and not to parcels owned by the Department only in easement or to disposition of limited access rights. For this reason, easement parcels and limited access rights may also be sold at less than fair market value in view of the more limited nature of the title held. Of course, the Department has the right to purchase the fee underlying previously acquired easements under the acquisition procedures of the Sale of Transportation Lands Act-2010 and is thus justified in requiring payment for the disposition of easement parcels. See Section 7.02.H above. Once the fee underlying the easement held by the Department is acquired, the disposition procedures of the Sale of Transportation Lands Act apply to a subsequent sale of the land that the Department now owns in fee simple. Likewise, limited access rights are a property interest acquired by the Department which it is justified in requiring payment for when the rights are removed to the benefit of an abutting property owner.

The only other situation where state law allows a sale at less than market value is when the conveyance of title to land owned in fee simple is authorized or directed by a specific act of the General Assembly. Such a specific act will supersede the provisions of the Sale of Transportation Lands Act. The procedures set forth herein must be followed even when there is a legislative bill or a proposed bill to authorize or direct a sale of Department lands at less than market value. The Department will not agree to a legislative bill without approval of the sale by the Central Office Disposition Committee.

Abandonment of right-of-way to a local municipality for continued transportation purposes does not require compensation under state law; nor does a transfer of jurisdiction from the Department to another Commonwealth agency. In these situations, title to the land is not being conveyed because title stays with the Commonwealth of Pennsylvania. Only jurisdiction over control of the land is being transferred to another entity of the Commonwealth.

Federal statutory law and regulations require that fair market value be obtained for the sale of any real property interests, including access control, acquired with Federal assistance, with limited exceptions. This Federal requirement applies even where prior approval of the Federal Highway Administration (FHWA) is not required for a disposition by Federal regulations or due to the existence of agreement with the FHWA, i.e., non-interstate projects. The limited exceptions to this guiding principle of receiving fair market value are as follows:
1. With the approval of the FHWA, when the Department clearly shows that a sale at less than market value is in the overall public interest for social, environmental, or economic purposes; nonproprietary governmental use; or public transit purposes. The Department must submit requests for such an exception to the FHWA in writing.

2. When the disposition is for use by a public utility in connection with certain transportation projects.

3. When the disposition is for use by a railroad in connection with certain transportation projects.

4. When the disposition is for a bikeway or pedestrian walkway in connection with certain transportation projects.

5. When the disposition is for a transportation project itself eligible for Federal assistance.

Federal law also allows the relinquishment of highway right-of-way to another governmental agency for continued highway use without compensation.

State law is applicable to all Department dispositions. That is, FHWA allowance and, when necessary, approval of a sale at less than market value does not supersede the need to follow applicable state law. Likewise, the Department must abide by Federal law when applicable. That is, the Department cannot approve a sale at less than market value if Federal law requires fair market value and no exception exists or, when necessary, no approval has been granted by the FHWA.

7.04 NEGOTIATION OF DISPOSITIONS

A. Parcels Owned in Fee Simple. Where the Sale of Transportation Lands Act requires a sale at the acquisition price less costs incurred for the acquisition, negotiation is not necessary or appropriate since the amounts are finite. Where the Sale of Transportation Lands Act requires a sale at fair market value, the fair market value is that "as determined by the Department." Department policy is that its determination of fair market value be based on an approved appraisal. See Section 7.02.C above. However, there are situations where the negotiation of a sales price is appropriate. In no event can negotiations occur on a property that has been sold at public sale. The bid price is definite. The allowance of negotiations under this policy does not supersede Federal law or regulations requiring that fair market value be obtained where an exception is not justified under Federal law or regulations or, when necessary, Federal approval has not been obtained.

1. Fee Simple Parcels Not Being Sold to an Abutting Owner. Where a parcel owned in fee simple is being sold to someone other than an abutting owner, Department policy is not to negotiate the sales price. The approved appraisal establishes fair market value as determined by the Department. In unusual situations when fully justified by the District, approval for a sale at less than the approved appraisal amount may be granted by the Central Office Disposition Committee.

2. Fee Simple Parcels Being Sold to an Abutting Property Owner. Where a parcel owned in fee simple is being sold to an abutting owner, the Department may have one or more approved appraisal amounts based on different approaches to value. See Section 7.02.C. In this situation, negotiations may be appropriate.

The amount included in the initial offer letter should be the highest of the appraisal amounts, most likely the enhancement value. Where the abutting owner initiated the disposition, the enhancement value should be the starting point for any negotiations. The stand-alone value establishes an absolute minimum for fair market value as determined by the Department. Where the Department initiated the disposition, a sales price closer to the stand-alone value may be more appropriate. The District must obtain approval from the Central Office Disposition Committee for any sale at an amount less than 80% of the highest approved appraisal.

B. Easement Held Parcels. The Department is not required to obtain compensation for vacating parcels held in easement. However, Department policy is to obtain compensation for the disposition of easement parcels because highway funds were expended to acquire the land and the fee underlying previously acquired easements may be acquired to consolidate fee title in the Department. See Section 7.02.H above. In view of the more limited nature of the title held and the cost of pursuing the acquisition of the underlying fee, negotiations may be appropriate.

Where the parcel is being offered to a former owner at the acquisition price less costs incurred for the acquisition,
negotiations are not necessary or appropriate. Where the parcel is being offered to a subsequent purchaser of the underlying fee, the amount in the initial offer letter should be the approved appraisal amount, but negotiations may be appropriate. If the underlying fee owner is not an abutting owner, the only consideration should be the cost of pursuing acquisition of the underlying fee. If the underlying fee owner is an abutting owner, consideration should also be given to the same factors considered in the sale of a fee simple parcel to an abutting owner. See Section 7.04.A.2 above. The District must obtain approval from the Central Office Disposition Committee for any sale at an amount less than 70% of the highest approved appraisal amount.

C. **Limited Access Controls.** Negotiations are appropriate when disposing of limited access rights in view of the limited nature of the title held by the Department, the method of appraisal used to determine the amount of the offer, and the limited market for such rights. The amount originally paid for limiting the access can be considered, especially when the disposition is to the person who owned the abutting property at the time of acquisition. The District must obtain approval from the Central Office Disposition Committee for any sale at an amount less than 70% of the approved appraisal.

7.05 **PUBLIC SALE - SETTLEMENT - PAYMENT PROCEDURES**

**A. Public Sale Procedures.**

1. **General.** Except for "rights-of-first-refusal," excess land owned by the Department in fee simple title will be sold at public sale.

   Once approval to sell is given by the Central Office Disposition Committee, a current fair market value appraisal for the excess parcel must be completed and approved, if not already done.

2. **Marketing Excess Parcels.** In order for the Department to obtain the best possible sales price, an appropriate effort to market each excess property must be made by the District. The District should tailor their marketing effort to the specific parcel being sold.

   Marketing methods include:

   a. **Contacting neighbors.** This is recommended for most parcels.

   b. **Placing a "FOR SALE" sign on the property.** This should always be done. The "FOR SALE" sign represents the best value for the advertising cost. The size of the sign and the duration of having the sign on the property are determined by the size and value of the parcel. For example:

      - For a small nominal value parcel, including most uneconomic remnants, a small sign with a phone number on a stake for a couple of weeks is probably adequate.

      - A more valuable parcel may require a 3' x 6' painted sign in place for 6 to 8 weeks.

      - A large commercial or industrial parcel might rate two painted 3' x 6' plywood signs in place for 6 months.

   Signs should give sufficient detail to inform prospective buyers; for example, "For Sale by sealed bid on (date), call PennDOT (telephone), zoned (commercial), (number) acres, brokers invited."

   c. **Using newspaper advertisements (placed in the real estate section) depending upon the specific parcel, its value, desirability and market area.** That is, a single advertisement placed one time in a local paper may be sufficient to market the parcel. On the other hand, an advertisement running for several weeks in a regional newspaper may be appropriate to market a valuable parcel.

   d. **Having a public inspection of the property.** The duration of the time allowed for public inspection would depend upon the size and value of the parcel and whether or not the parcel is improved with a dwelling or other structure. Small, unimproved parcels of nominal value need not be made available for inspection, but may be at the discretion of the District. Larger, more valuable parcels of unimproved land should be made available for inspection for at least one day. Improved and/or valuable parcels should be made available for inspection for an amount of time to reasonably allow all interested parties an
3. Pre-Sale Procedures. The date for the bid opening or auction should be scheduled to give sufficient time after the marketing effort (e.g., advertisement, inspection) to allow persons who may be interested in making a bid to make the financial arrangements necessary to allow them to purchase the property. A period lasting several weeks is usually sufficient.

A list of everyone who expresses an interest in purchasing the property being marketed (or property in general) should be maintained in the District. Those persons should be notified of the date and time of the scheduled bid opening or auction. A bid package should be sent to everyone who has expressed an interest in the property. In the case of an auction, a notice of the auction should be sent to everyone who has expressed an interest.

4. Sealed Bid for the Purchase of Excess Land. Standard Department Sealed Bid Procedures will be used. Under no circumstances should a Department employee deviate from these procedures.

Form RW-685 is the only acceptable bid form. The District must include a copy of the form in every bid package. It is the responsibility of the District to fill out the top portion of the form dealing with the identification of the property (address, land area and description of any improvements) and Section 2 of the form dealing with the time and place of the bids.

In addition to the Form RW-685, a plot plan or deed description, and bid envelope must be included in every bid package.

As the bids are opened and read, Form RW-660 will be filled out in ink.

5. Public Auction. In lieu of the sealed bid procedure, the District may elect to offer the property by auction. The marketing and pre-sale procedures should be followed. See 7.05.A.2 and 3. above.

The District should provide all interested parties with a fully completed copy of Form RW-686.

The use of a professional auctioneer is not required; however, if the District chooses to secure the services of an auctioneer, standard Department procedures for contracting services must be followed.

It is the responsibility of the District to keep auction sale records, including: a list of all bidders, a list of property sold (in the case of multiple sales), the amount of the high bids received, and the name of the high bidder for each item offered.

6. Bid Acceptance and Deposit Procedures. If the high bid is at least 80% of, equal to, or greater than the fair market value of the excess parcel, the bid will be accepted by the District. All deposits received from unsuccessful bidders will be returned. The following should be submitted to Central Office Disposition Coordinator for processing:

a. Form RW-318 signed by the high bidder. (See Section 7.05.B.1.)

b. Form RW-318QC (See Section 7.05.B.2.)

c. A deposit check in the amount of at least 10% of the bid price. Certified checks, cashier's checks or money orders made payable to "PA Department of Transportation" or "The Commonwealth of Pennsylvania" may be accepted. Checks should be marked on the back with "Commonwealth of Pennsylvania" "for deposit only", and the "RT #______". Personal checks will only be accepted with the prior, written approval of the District Right-of-Way Administrator (copy to the Central Office Disposition Coordinator).

d. A print out of the Deposit Transit Slip. Refer to codes in Section 7.05.C.4. Change the FB50 document type field from "SA" to "SQ".

e. Original Form RW-660 and the original of all bids received for sealed bids or the auction sale records, including: a list of all bidders, and a list of property sold at auction.
f. A cover letter recommending acceptance of the bid.

g. If the sale is that of an uneconomic remnant, also include Form RW-609, signed by the District Executive.

7. Procedures if the Bid (Sealed or Auction) is less than 80% of the Fair Market Value. If the high bid is less than 80% of the fair market value but the District recommends acceptance, all deposits received from unsuccessful bidders will be returned. The apparent high bidder should be informed that a recommendation for acceptance of the bid is being forwarded to the Central Office Disposition Coordinator, but that all bids may be rejected.

The District should send the following to the Central Office Disposition Coordinator for processing:

a. The original Form RW-660 and the original of all bids, successful and unsuccessful, or the District auction record for property offered at auction.

b. A cover letter recommending acceptance of the bid and giving specific reasons why it is in the best interest of the Department to accept the bid.

The Central Office Disposition Coordinator will submit the District's recommendation to the Disposition Committee and, if the Committee approves, will notify the District to process the sale as outlined in 6.a. through g. above.

8. Procedures if Bids are Rejected by the District or the Central Office Disposition Committee. If the District cannot recommend acceptance of the high bid (Sealed or Auction), because of the amount or otherwise, the District will proceed as follows. The District will send a photocopy of the bids, the Bid Opening Record, or the District auction record for property offered at auction, and a cover letter explaining the reasons for the recommendation to reject the bid to the Central Office Disposition Coordinator. Upon approval of the recommendation by the Central Office Disposition Committee or if a District's recommendation to sell is rejected by the Central Office Disposition Committee, the District will send notice to all bidders that all bids have been rejected. All deposits still in possession of the District will be returned to bidders. The District and Central Office will confer on the time and conditions for another public sale.

B. Procedures for Completing the Agreement of Sale and Deed.

1. Agreement of Sale, Form RW-318. Upon obtaining a buyer for a parcel of excess land, the District will prepare Form RW-318. The Agreement shall not be dated when the buyer signs it. It will be dated when fully executed by the Commonwealth.

The buyer must be fully identified. Individuals should be identified by municipality, county, and state. A corporation should be identified along with the state in which it is incorporated. A partnership should have each partner named, followed by "copartners trading as" and the firm's name.

If the box for "premises described in Exhibit A" is marked, it usually refers to a metes and bounds description, which, in addition to being marked "Exhibit A", should also indicate the same data shown in the I.D. block of the Agreement.

Mark the second box if a plot plan is used. If the plot plan only shows the parcel being transferred, the phrase "by hatching" may be crossed out; otherwise the parcel must be cross-hatched. The I.D. block data must be shown on the plot plan.

The total amount of sales price, deposit amount, and balance due amount must be provided in both words and numerals.

If the buyer is the former owner and a credit is given for previously unreimbursed costs, the sales price shall be the acquisition price, less costs, expenses and reasonable attorney's fees incurred by the person as a result of the acquisition of the land by the Department which are approved by the District Right-of-Way Administrator, for example:

"The price or consideration shall be thirteen thousand ($13,000.00) dollars"
"Acquisition cost of $14,000 less $1,000 previously unreimbursed cost equals $13,000."

Examples of unreimbursed costs include:

a. Attorney, appraisal, or engineering fees (i.e., fees in excess of any previously reimbursed)

b. Court costs

c. Unreimbursed settlement expenses

Where only a portion of the land acquired is being disposed of, the credit should be based on a pro rata share of the unreimbursed costs of the acquisition.

All previously unreimbursed costs credited shall be fully documented in the file.

The buyer is required to sign the original Agreement of Sale which is not dated as described above.

2. Quit Claim Deed, Form RW-318QC. The District will prepare Form RW-318QC, which shall not be dated by the District. The buyer must be fully identified. The consideration will be in words and numerals. The same instructions regarding Exhibit "A" and plot plan for the Agreement apply to the Deed. See Section 7.05.B.

If only a portion of the acquired parcel is to be transferred, mark the box for "a portion of." If the total acquired parcel is to be transferred, mark the box for "the premises heretofore."

Insert the appropriate recital (BEING) clause, as follows:

BEING the premises heretofore

(1) property conveyed in fee to the GRANTOR by (name) by INDENTURE dated ________ and recorded in the Office for Recording of Deeds in and for the County of __________ in the Deed Book _____ Vol. ______ page ______.

(2) acquired by the GRANTOR from (name) in fee by Declaration of Taking filed in the Court of Common Pleas of __________ County on __ (date)____ at Docket No. ______. Notice of Condemnation was recorded in Deed Book ______ Vol. ______ page ______.

(3) acquired by the GRANTOR from (name) by Deed of Easement dated ________ and recorded in the Office of the Recorder of Deeds for ____________ County in Deed Book ________ Vol. ______ page ______.

(4) acquired by the GRANTOR from (name) in Easement by Declaration of Taking filed in the Court of Common Pleas of ____________ County on __ (date)____ at Docket No. ______. Notice of Condemnation was recorded in Deed Book ______ Vol. ______ page ______.

(5) acquired by the GRANTOR from (name) in Easement by condemnation on (date) by signature of the Governor of Right-of-Way Plan of L.R. ________ filed in ____________ County in Book _______ page ______ on (date).

(6) appropriated for the GRANTOR from (name) by Public Utility Commission Order filed in the Office of Recorder of Deeds for __________ County on (date) in Book ______ page ______.

Additionally, when the property was originally acquired by easement and the underlying fee interest was subsequently acquired, one of the following statements should be used:

(1) ALSO BEING the premises for which the underlying fee interest was conveyed to the GRANTOR by (name) by INDENTURE dated ________ and recorded in the Office for Recording of Deeds in and for the County of __________ in the Deed Book _____ Vol. ______ page ______.

(2) ALSO BEING the premises for which the underlying fee interest was acquired by the GRANTOR from (name) by Declaration of Taking filed in the Court of Common Pleas of __________ County on (date)____ at
Docket No. _____. Notice of Condemnation was recorded in Deed Book _______ Vol. ______ page ________.

The Pennsylvania Realty Transfer Tax Act and Regulations state that the Commonwealth is not taxable. The buyer may be required to pay a tax unless the transaction is between exempt parties. The buyer will be responsible for the payment of transfer taxes, if any, when the deed is recorded.

C. Settlement and Final Payment Procedure. After all required reviews and signatures are obtained, the original fully executed Quit Claim Deed plus one photocopy, and two photocopies of the Agreement of Sale will be returned to the District for settlement. Unless a closing is held by a title or mortgage company, arrangements should be made to meet the buyer at the county courthouse so that the Quit Claim Deed can be recorded.

After settlement and recordation of the Deed, the following material is sent to the Central Office Disposition Coordinator:

1. A copy of Forms RW-318 and RW-318QC including recording information.

2. A certified check, cashier's check or money order for the total amount due for the sale of the property made payable to "PA Department of Transportation" or "The Commonwealth of Pennsylvania". Checks should be marked on the back with "Commonwealth of PA, "for Deposit Only" and the "RT # ______". Personal checks will only be accepted with the prior, written approval of the District Right-of-Way Administrator (copy to the Central Office Disposition Coordinator).

3. A print out of the Deposit Transit Slip. Change the FB50 document type field from "SA" to "SQ".


<table>
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<th>Cmmt item</th>
<th>Fund</th>
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Payments received are deposited in the Motor License Fund.

D. Preparation of Vacation and Confirmation of Disposition Plan or Revisions to the Right-of-Way Plan. The District Right-of-Way Unit will advise the District Plans Unit in writing that the Department's interest in the land was extinguished or sold so that a vacation and confirmation of disposition plan can be prepared or the right-of-way plan revised to eliminate the transferred parcel. The former method of documenting dispositions is preferred. If more than one right-of-way parcel is eliminated from the same plan, the plan or revision can usually wait until disposition of all the parcels is finalized. A vacation and confirmation of disposition plan or a revision to the right-of-way plan must be prepared and recorded in a timely manner to reflect all dispositions of right-of-way. See also Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3.

7.06 TEXT OF THE SALE OF TRANSPORTATION LANDS ACT, 71 P.S. §1381.1 et seq.

§ 1381.1. Short title

This act shall be known and may be cited as the Sale of Transportation Lands Act.

§ 1381.2. Definitions

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"DEPARTMENT." The Department of Transportation of the Commonwealth.

"FUND." The Motor License Fund.

"PRESERVATION OF OPEN SPACE." Includes the following:

(1) Protection and conservation of water resources and watersheds.

(2) Protection and conservation of forests and land being used to produce timber crops.

(3) Protection and conservation of farmland.

(4) Protection of existing or planned park, trail, greenway, recreation or conservation sites.

(5) Protection and conservation of natural or scenic resources, including beaches, streams, flood plains, steep slopes and marshes.

(6) Protection of scenic areas for public visual enjoyment from public rights-of-way.

(7) Preservation of sites of historic, geologic or botanic interest.

(8) Promotion of sound, cohesive and efficient land development by preserving open spaces between communities.

"PUBLIC AGENCY." Includes an authority and a political subdivision.

"SECRETARY." The Secretary of Transportation of the Commonwealth.

§ 1381.3. Sale of land

(a) AUTHORIZATION. --Notwithstanding the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, the department, in accordance with appropriations and grants of funds from Federal, State, regional, local or private agencies and subject to subsection (b), in the exercise of its powers and duties, may sell at public sale land acquired by the department if the secretary determines that the land is not needed for present or future transportation purposes.

(b) CONDITIONS. --The following apply to a sale under subsection (a):

(1) If the land is improved, all of the following subparagraphs apply:

(i) The land must first be offered at its fair market value as determined by the department to other public agencies which demonstrate a public purpose for the land, including, but not limited to, the preservation of open space.

(ii) If the land is not transferred to a public agency, all of the following clauses apply:

(A) If the land is occupied by a tenant, the land must first be offered to the tenant:

(I) except as set forth in subclause (II), at its fair market value as determined by the department; or

(II) if the tenant is the person from whom the department acquired the land, at the acquisition price, less costs, expenses and reasonable attorney fees incurred by the person as a result of the acquisition of the land by the department.

(B) If the land is not occupied by a tenant and the person from whom the department acquired the land did not receive a replacement housing payment under 26 Pa.C.S. § 903 (relating to replacement housing for homeowners) or under former section 304.3 of the act of June 1, 1945 (P.L. 1242, No. 428), known as the State Highway Law, the land must first be offered to that person at the acquisition price, less costs, expenses and reasonable attorney fees incurred by the person as a result of the acquisition of the land by the department.
(2) If the land is unimproved, all of the following subparagraphs apply:

(i) The land must be offered at its fair market value as determined by the department to other public agencies which demonstrate a public purpose for the land, including, but not limited to, the preservation of open space.

(ii) If the land is not transferred to a public agency, the following apply:

(A) Except as set forth in clause (B), the land must be offered to the person from whom it was acquired at its acquisition price, less costs, expenses and reasonable attorney fees incurred by the person as a result of the acquisition of the land by the department if the person still retains title to land abutting the land to be sold.

(B) If the land abutting the land to be sold has been conveyed to another person, the land to be sold must be offered to that person at its fair market value as determined by the department.

(3) For an offer under paragraph (1) or (2), all of the following apply:

(i) except as set forth in subparagraph (ii), notice must be sent by certified mail;

(ii) if notice cannot be effected under subparagraph (i), notice must be effected in the manner required for an "in rem" proceeding; or

(iii) the offeree must have 120 days after receipt of notice to accept the offer in writing.

(c) PROCEEDS. --Proceeds from a sale of land acquired with money from the fund shall be deposited into the fund.

7.07 EXCESS LAND FORMS

RW-318 Agreement of Sale (Disposition)
RW-318QC Quit Claim Deed
RW-600 Offer to Acquire Underlying Fee Interest
RW-601 Offer to Sell Fee Simple Interest - former owner
RW-602 Offer to Sell Fee Simple Interest - subsequent owner
RW-603 Offer to Sell Excess Land - current subsequent tenant
RW-604 Offer to Eliminate Easement Interest - subsequent underlying fee owner
RW-605 Offer to Eliminate Easement Interest - prior owner
RW-608 Request to Dispose of Excess Right-of-Way
RW-608IMP Disposition Flow Chart for Improved Land Owned in Fee Simple
RW-608UN Disposition Flow Chart for Unimproved Land Owned in Fee Simple
RW-609 Determination of Excess Land and Recommendation to Sell
RW-610 Determination of Excess Land and Recommendation to Retain
RW-611 Request to Retain Excess Right-of-Way
RW-660 Excess Land Bid Record
RW-685 Excess Land Bid Package
RW-686 Notice of Auction of Excess Real Estate
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APPENDIX A

APPRAISAL GUIDE

A.01 FOREWORD

This Appraisal Guide is to be used in conjunction with Chapter 2, Appraisals and the Appraisal Form RW-270 series. These guidelines deal with specific problems encountered in eminent domain appraising. The subjects discussed are the issues most often encountered by appraisers. Appraisers are encouraged to discuss any issues with the District Chief Appraiser, the Central Office Review Appraiser or the consultant review appraiser assigned to the project.

These guidelines clarify the principles and requirements necessary in the preparation of all appraisal reports by and for the Pennsylvania Department of Transportation, Bureau of Project Delivery, Utilities and Right-of-Way Section. The Department expects appraisers working on an assignment to understand the principles and techniques of appraising. The contents of these guidelines are meant to supplement and direct the knowledge already possessed by the appraiser. These guidelines are the standards by which the Department will review all eminent domain appraisals.

The information, explanations, suggestions and principles found in the guidelines follow the sequence of information required in the Department's Appraisal Form RW-270A. Appraisers must follow this sequence of presentation when using other forms in the RW-270 series.

The Pennsylvania Department of Transportation, Utilities and Right-of-Way Section offers its cooperation to all individuals and agencies using these guidelines.

A.02 PROFESSIONAL CONDUCT

When contacting property owners, all representatives of the Department must be aware of the importance of their impression upon others. A professional appearance and a pleasant attitude are important when dealing with the public. Department representatives should be thorough in their work and diplomatic in all contacts. Controversies, arguments and situations that in any way appear arbitrary should be avoided.

The appraisal report is the property of the Department. Appraisers must not discuss opinions of value regarding land, buildings or other improvements with owners or any other persons not employed by or acting as agents of the Department of Transportation. The appraiser must not disclose the appraisal report or its contents to any person not an employee or agent of the Department. The appraisal report is to be regarded as a confidential communication within the District Right-of-Way Unit and the Utilities and Right-of-Way Section and, in the case of litigation, by the Office of Chief Counsel. See Section A.06.BB.

Contractors who perform unacceptable work, do not provide services on time, or engage in other unacceptable conduct may be entered into the Commonwealth's Contractor Responsibility Program. The purpose of the program is to ensure that contractors are competent and responsible, to identify and sanction contractors who perform deficiently, and ensure that contractors are current in their payment of taxes and other obligations to the Commonwealth. Contractors/appraisers may be removed from eligibility or restricted from performing a specific category of assignment in the engineering district in which poor performance occurs. Severe or repeated occurrences of poor performance may result in termination of the appraiser's ITQ contract. See Chapter 2, Section 2.13.

A.03 APPRAISER ROLES AND RESPONSIBILITIES

The appraiser must observe the highest standards of professional ethics and have the knowledge and experience to complete assignments competently as provided by the Uniform Standards of Professional Appraisal Practice (USPAP). The appraiser must also comply with Chapter 2, Appraisals and this Appendix. See Chapter 2, Sections 2.02, 2.04, and 2.17.
A.04 CONTRACTING PROCEDURES

When a qualified appraiser expresses interest in an assignment, the appraiser will be supplied a bid package. The appraiser will have the opportunity to see the right-of-way plans and the subject property. The appraiser may submit a quote to the District Chief Appraiser in accordance with the ITQ contract. Upon authorization from the District, the successful appraiser will be given notice to proceed. See the Chapter 2, Sections 2.11 and 2.13.

A.05 COMPLETING APPRAISAL REPORTS

The Department has developed appraisal forms approved by legal counsel and the Federal Highway Administration (FHWA) that must be used for all appraisals for eminent domain in transportation projects funded with state or federal funds. These forms may also be used by other agencies involved in eminent domain projects. In making appraisal assignments, the District Chief Appraiser will determine the proper form to be used, as governed by Chapter 2, Section 2.10. Each form is designed so that the appraisal report flows from description to conclusion in a concise, understandable manner. The forms are available from all District Offices.

The following specialized forms are used for different types of appraisal assignments:

- Form RW-270, Strip Appraisal – Partial Take, is the property damage estimate for a partial taking with no severance.
- Form RW-270A, Appraisal Report-Before & After, is an appraisal report format for a partial taking where there may be severance.
- Form RW-270B, Appraisal Report-TOTAL TAKES ONLY, is an appraisal report format for a total taking of the property.

The Department will make the appraisal forms available in various media: hardcopy, disk, or by way of electronic mail (e-mail). The appraiser must use the approved form as indicated on the Appraisal Problem Analysis (APA) to complete the assignment. Substantive changes to an approved form are not permitted. All appraisal reports must be submitted to the District Office in hardcopy with the name of the appraiser below the signature. If the space provided on a given page is not adequate, additional pages may be added, with the designations -A, -B, and so on following that page number. The appraiser must submit an original and three copies (including color photographs) of the appraisal report to the District Office.

Hardcopies of reports should be submitted in a form that allows revisions to be inserted easily. Spiral bound reports will not be accepted. Any revisions to previously submitted reports, such as updated or corrected pages, should be marked "Revised (Date)" in the upper right-hand corner of each updated page.

The appraiser must proofread and correct the entire report prior to submission.

For all Department appraisal forms and reports, boilerplate information is not desired. Only relevant information related to the property being appraised is to be included.

This Appraisal Guide is written for the Form RW-270A because it is the most detailed of the appraisal forms. Guidance is provided in certain areas to clarify what the Department requires. Forms RW-270 and RW-270B are variations of Form RW-270A.

A. Use of Electronic Department Appraisal Forms. The Department's pre-approved appraisal forms have been developed using Microsoft Word. While the Department does not endorse the exclusive use of any specific appraisal or word processing software, the pre-approved appraisal forms function best when utilized in the Word format.

The appraisal forms have been designed and then protected so that users may "tab" from section to section when entering data. While the protection of the forms eases maneuverability within the forms, it also limits the amount of data and the number of pages that can easily be added to the report. The forms may be "unprotected" by users selecting "Tools" in the Word Toolbar and for expanded edit capability. In order to "unprotect" the form, the user should first ensure that the "Forms" toolbar has been enabled. Users can enable this toolbar by selecting "Tools" from the "Word" toolbar and then selecting "Customize". The "Customize" Window is displayed with all potential toolbars that may be enabled. Users should select the "Toolbars" tab and place a checkmark in the "Forms" box.
Once this has been completed, the "Forms" toolbar will be displayed and enabled. The "Padlock" option of the "Forms" toolbar should be used to "protect" and "unprotect" the appraisal forms. The document should then be saved as a renamed "file. Unprotect Document". After "unprotecting" the document, all fields in the appraisal form are unlocked and subject to change. In this scenario, additional comparable sale and/or rental sheets can be entered, addenda pages can be inserted, data fields can be expanded, page numbers can be revised, photos can be inserted, etc. Users should be aware however that changes to the context or the pre-printed language presented on the forms and/or changes to the format or sequence of the, required data on the pre-approved appraisal forms are not permitted. The appraisal forms can be supplemented with additional data however elimination of required data is not permitted.

If not previously supplied, the appraiser should obtain the most recent versions of the Department's pre-approved appraisal forms prior to beginning any appraisal assignment. Additionally, the appraiser should direct questions pertaining to the completion of the appraisal report form, as soon as possible, to the District Chief Appraiser or the Review Appraiser assigned to the project.

A.06 FORM RW-270A

A. Page 1—Parcel Summary Sheet. Page 1 of the appraisal report requires information necessary for claim identification, location and filing. Information on this page summarizes the identity and the value conclusions of the property being appraised.

ROW Office Project ID Number – The number is generated by the ROW Office system and is found on the APA form.

S. R. – A four-digit state route number found on the APA form and the right-of-way plans.

Section – A three-character designation for a specific section of the S.R. found on the APA form and the right-of-way plans.

Parcel or Plat Number – Parcel number may be found on the right-of-way plan sheets; a plat number may be found on an individual plat. This information can also be found on the APA form.

If there is no state project number, federal project number, or parcel number, enter "N/A" in the appropriate blocks.

Claim Number – Found on the APA form, or by contacting the District.

Before Area – The effective area; the appraiser must use the information provided on the plat or plans. Inconsistencies between the plan and the deed will be identified on page 2, "Site Features."

After Area – The area remaining after the acquisition as provided on the plan.

Areas to be Acquired – Found on the right-of-way plans or the plat.

The area before the acquisition, area after the acquisition, and area to be acquired (computed by the Department or its designees), is to be considered factual information by the appraiser. These areas are supplied to the appraiser with the appraisal assignment. The areas indicated in the area blocks should agree with the areas listed on the plans. The "Other" block is for areas such as temporary easements for construction or aerial easements.

Stations – The beginning and ending subject property limits relative to centerline stations.

Owner's Name(s) – Name(s) identical to the deed and APA.

Mailing Address – Refers to the mailing address of the claimant (owner).

Location of Subject Property – Provide sufficient information on this line to show the exact location of the property. Must contain the street address and the political subdivision (e.g. township, borough, municipality) in which the property is located.

It is the appraiser's responsibility to call to the attention of the District Chief Appraiser any changes in ownership,
changes in the property or apparent errors in the plan immediately upon discovery.

Previous Sales Data – All transfers of subject property within the last five years must be listed. If no transfer has occurred in the last five years, list the last transfer. This information must be verified with a reliable source or courthouse records. Family sales or other known factors that may have affected consideration should be explained.

Before Value, After Value, Damages – These values must agree exactly with those on the Appraiser Certification, which is the certificate of appraiser report.

The appraiser and any assistant appraisers must date, sign, and type or print their names and include their Pennsylvania certification numbers.

B. Page 2—Detailed Comments on Subject Property (Before).

Property Type – Check appropriate type.

Plot Dimensions – Provide the plot dimensions as shown on the right-of-way plans, plat, deed or legal description.

Site and Site Features – Provide a narrative description to give the reader of the report a visual image of the site and site features of the property. Identify differences between the deed area and effective area. Effective area is to be used in the Before Value. See Section A.10.L on Hazardous Materials.

Site Improvements – List and describe all site improvements including above and below ground features.

As per the 2005 revision to the Uniform Act, additional attention must be paid in describing real and personal property. 49 CFR Part 24.103 and 24.103(a)(i) "An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property…" Therefore, the appraiser must identify what is real and what is personal property in the appraisal report. It is suggested that the relocation specialist meet with the appraiser and property owner to identify personal property to be relocated to avoid duplicate payments. This pertains to residential displacements as well as business displacements. For more information on gathering this information please refer to Chapter 4, Section 4.02.E.3.

C. Page 3—Main Buildings and Descriptions of Other Buildings. Describe the main building by size, type of construction, condition, number of rooms, type of walls, floors, fixtures, and equipment. Also describe all other buildings, structures and improvements.

D. Page 4—General Economic Conditions, Zoning, Highest and Best Use.

Summarize General Economic Condition of Area – Provide concise narrative to describe the general economic condition of the immediate and surrounding area as directly related to valuation of the subject property. Such an analysis would explain increasing or decreasing property values, and whether economic conditions would or would not stimulate buyer demand.

Zoning – State zoning classification for the subject property on the effective date of valuation. Include conforming uses, setbacks, construction density, and all other relevant requirements. Only the relevant portions of the zoning ordinance should be included. Any non-conformity should be discussed under Highest and Best Use.

Highest and Best Use (BEFORE) – The four criteria of Highest and Best Use must be considered: physically possible, legally permissible, financially feasible, and maximally productive. It is unnecessary to define Highest and Best Use and the four criteria in the report, but a development of Highest and Best Use is required according to the steps outlined in A-D on the report form. See Section A.10.D.

Does the Assembled Economic Unit Doctrine (AEUD) apply? Yes or No – Indicate whether the AEUD applies in this case. This entry is found on the APA Form RW-275A. See Chapter 2, Section 2.20.

E. Page 5—Diagram of Buildings.

Diagram of Buildings with Exterior Dimensions – All buildings, regardless of contributory value, must be diagrammed and their exterior dimensions must be indicated. This sketch need not be to scale but must accurately
depict the shape of each improvement and show all exterior dimensions for each building level, including basements, subbasements, lofts, and mezzanines.

Interior dimensions are not required unless the appraiser needs them to clarify some part of the report.

**Sketch of Property** – Attach a half-sized copy of the plan sheet or property plat folded to conform to the size of the appraisal report and attached in the Addenda Section of the report. Further reduction in plan size will not be acceptable. In the rare instance that a plan sheet or plat is not available or does not adequately show the property, include a sketch. This sketch must provide an adequately detailed drawing showing property dimensions, major improvements and any features that affect value. The sketch need not be to scale.

**F. Page 6—Land Sale Data Sheet (BEFORE).** An analysis of the before land value is required regardless of the approaches developed. It should be used in determining Highest and Best Use (unimproved versus improved), land value in a Cost Approach, valuation of vacant land by the Sales Comparison Approach, and in determining direct damages in the appraiser's breakdown of damages for tax purposes.

Selection of data must be comparable to the subject property.


**G. Page 7—Land Sales Analysis (BEFORE).** The appraiser may use either dollar amounts or percentages when making adjustments, but consistent use of one or the other is required. Comparable sales are adjusted to the subject property. Consider specific differences between the subject and the comparable, such as the type and capacity of utilities. Using sales of improved properties to estimate land value requires a full explanation by the appraiser. A Before Land Sales Analysis is required for all partial take appraisals (Form RW-270A).

**H. Page 8—Improved Sales Comparison Approach (BEFORE).** This portion of the report is applicable whenever the appraiser uses the Sales Comparison Approach for improved properties.

**Improved Sale Data Sheet** – The sales used for comparison must be verified and include the verifying party's name, telephone number and relationship to the transaction. The physical, functional, and economic characteristics of the sales used must be as similar as possible to the property being appraised. Time of sale, specific location, and description of the comparable sales must be noted and explained, with a location map showing the relationship of subject and comparable properties. The appraiser must use a minimum of three comparables but should use as many sales as necessary to show the actual market activity as it pertains to the subject property. If the subject itself has been sold recently in an arms-length transaction, it should be part of the appraiser's analysis. See Section A.10.G on Sales Comparison Approach.

**Photo** – Photographs are to be a minimum of 3"x5" color, color xerographic, or quality color digital images (no black and white xerographic reproductions of photographs are acceptable).

**Address of Sale and Location of Sale in Relation to Subject** – Plot the location of sale by on an existing map. If no map is available, provide a sketch with sufficient detail to allow the review appraiser of the report to locate the sale property in the field. Ideally, indicate locations of sales with reference to known landmarks. Provide detailed directions to the comparable from the subject.

The use of general zoning terms is unacceptable. Zoning classifications must be clearly defined. For instance, the general term “residential” is not acceptable unless the specifics of the classification, such as allowable density, setbacks, and minimum lot size are clearly explained.

Such details as actual age of improvements, remaining economic life of buildings, deferred maintenance, functional inutility, type of construction, condition, area and/or room count must be included. In rental properties, it is necessary to include usable or net rentable area as well as gross area of each building. Land characteristics of comparable sales must also be used in the descriptive material, including frontage and depth, area, topography, relationship to street corners, zoning, access, shape of lot, utilities, site improvements, and any other information that would have a bearing on the value of the land and site improvements.

**I. Page 9 and 10—Improved Sales Analysis (BEFORE).**

**Improved Sales Analysis** – The analysis grid must be completed when the Sales Comparison Approach is used. The
The appraiser may use either dollar amounts or percentages when making adjustments, but consistent use of one or the other is required. Comparable sales are adjusted to the subject property. For example, if the comparable is superior to the subject in some attribute, a negative adjustment is applied to the comparable. If the comparable is inferior to the subject in some attribute, a positive adjustment is applied to the comparable.

The first four adjustments must be made in the order indicated on the Improved Sales Analysis. Any additional adjustments should be made in a logical order and shown on lines 5-11 of the grid.

Do not round figures prior to the final Estimated Value. It is recommended for the final Estimated Value to be rounded up to the nearest increment of value consistent with the dollar amount but in no case less than the nearest $100.00.

Explain Adjustments in Detail – Provide a narrative explanation of each line item adjustment.

J. Page 10—Estimated Value of Subject (BEFORE) by the Sales Comparison Approach. Reconcile the indications of value in the Improved Sales Analysis. State the estimated value Before by the Sales Comparison Approach.

K. Page 11—Cost Approach (BEFORE). When adequate market and/or income information is available, the Cost Approach is usually unnecessary. The Cost Approach may be used effectively in the following situations:

- Properties with newly built improvements.
- Special purpose properties, unique properties, or properties for which an inadequate number of comparable sales can be found.
- Properties for which an income analysis is inappropriate or where inadequate income information is available.

In following the format of the appraisal report, the appraiser is required to show all calculations used in the Cost Approach with support of the conclusions clearly explained.

Reproduction Cost Estimate – Cite actual costs, a contractor's estimate, or published cost manual. For cost manuals, indicate section and page number and date of publication, update or revision. Work shown in the appraisal report must be in sufficient detail to be reviewed and for calculations to be checked.

Accrued Depreciation – Use an appropriate method to develop and support accrued depreciation from all sources.

Add Estimated Land Value – Add the Estimated Land Value to the Depreciated Cost of the Improvements to derive Before Value by the Cost Approach.

L. Pages 12 and 13—Income Approach (BEFORE). This portion of the report is applicable whenever the appraiser uses the Income Approach. If the Income Approach is not applicable and/or necessary to produce a credible appraisal report, state the reasons.

The appraiser should make all efforts to obtain factual information concerning subject and comparable leases.

The use of computer programs is acceptable only when proper documentation and detail is included that enables the review appraiser to check all factors and computations.

See Section A.10.F, especially as to use of the discounted cash-flow analysis.

M. Page 14—Reconciliation of Before Value.

Explanation of Reconciliation – Explain the reasoning and correlation of approaches into a final estimate of Before Value.

The appraiser must analyze the results of each approach and estimate the final conclusion of value. This conclusion must derive from the relative strengths of each approach. A wide difference in values indicates a weakness in one or more of the approaches. In such cases, the appraiser should re-examine the report for possible errors, omissions, or
misjudgment.

After all approaches have been properly documented and explained, an analysis of the results must be made and a final conclusion drawn.

This procedure requires more analysis from the appraiser than the mere selection of one of the approaches. The written analysis must include how and why the appraiser arrived at the final valuation.

N. Page 15—Description of Property to be Acquired. When describing the property to be acquired, the appraiser must realize that this description is the basis of direct damages for property taken. All items taken must be described in detail and areas of the land taken must be given. Machinery and Equipment (M&E) considered part of the real estate and other specialty items may be described by reference to a separate report.

O. Page 16—Description of Remainder. The description of the remainder must provide the areas of the land remaining with emphasis on road frontage, depth, shape and access. Any change in building setback, grade, traffic patterns, drainage, access or other elements that affects value must be noted. The description of the remainder must be in such detail that all effects of the taking on the remainder are clearly indicated.

Description of Effects – Describe in detail the effects of the acquisition, such as changes in size, shape, drainage, access, utility, grade, zoning compliance and parking.

P. Page 17—After Value. Estimating the After Value for a partial acquisition is the principal difference between appraising for eminent domain and other purposes. The Before and After Valuations are essentially two separate appraisals. The After Valuation process requires the same level of detail and analysis as the Before Valuation.

The After Valuation must be based on current right-of-way plans, profiles and cross-sections. The appraiser must visualize any anticipated changes in the physical, functional and economic characteristics of the property that will result from the acquisition. Any pertinent factual data that exists should be used. The appraiser must fully explain the estimate of After Value.

An estimate of severance and/or depreciation, or special benefits, must be fully explained and should be supported by market information.

Easement Valuation – In addition to required right-of-way for roadway or bridge projects and substitute utility rights-of-way, which are valued on a fee simple unit land value, there are a variety of easements that are valued according to the effect and duration of the encumbrance. See Section A.10 for a summary of the valuation considerations for the various types of easements that the appraiser may encounter.

Zoning (AFTER) – State zoning classification for the subject property on the effective date of valuation. Include conforming uses, setbacks, construction density, and all other relevant requirements. Only the relevant portions of the zoning ordinance should be included. Any non-conformity should be discussed under Highest and Best Use.

Highest and Best Use of the Remainder(s) (AFTER) – An important factor that may have an effect on damages is the Highest and Best Use of the property after the taking. This requires experience and skill since it is an opinion based on future projection. The four criteria of Highest and Best Use must be considered: physically possible, legally permissible, financially feasible, and maximally productive. It is unnecessary to define Highest and Best Use and the four criteria in the report, but a development of Highest and Best Use is required according to the steps outlined in A-D on the report form. Refer to Section A.10.

The taking may cause a conforming property to become non-conforming. Also, the non-conforming status of a property may be extinguished by condemnation.

Q. Page 18—Land Sale Data Sheet (AFTER). An analysis of the after land value is required regardless of the approaches developed. It should be used in determining Highest and Best Use (unimproved versus improved), land value in a cost approach, valuation of vacant land by the Sales Comparison Approach, and in determining damages in the arbitrary breakdown of values.

If the remainder has a different use potential or other significant differences than in the Before situation, different sales should be analyzed in the After Valuation.
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R.  **Page 19—Land Sales Analysis (AFTER).** The appraiser may use either dollar amounts or percentages when making adjustments, but consistent use of one or the other is required. Comparable sales are adjusted to the subject property. Consider specific differences between the subject and the comparable, such as the type and capacity of utilities. The Department discourages the appraiser from simply applying a size adjustment to the same land sales analyzed in the Before Valuation based on the assumption that smaller tracts of land sell for more than larger ones. This may cause an unfair increase in the After Value and unfairly reduce Total Damages. The Remainder Unit Land Value should not be higher than the Before Unit Land Value unless there is a change in Highest and Best Use, other unusual circumstances or the appraiser has analyzed different land sales. Using sales of improved properties to estimate vacant land value requires a full explanation by the appraiser.

S.  **Page 20—Improved Sales Comparison Approach (AFTER).** If an exhaustive search for factual data to support the After Valuation is unsuccessful, the appraiser must logically and clearly explain the reasoning process leading to the conclusion of After Value.

The Department discourages the appraiser from simply applying a land size adjustment to the improved sales analyzed in the Before Valuation on the assumption that smaller tracts of land sell for more than larger ones. This may cause an unfair increase in the After Value and unfairly reduce Total Damages. The Remainder Value should not be higher than the Before Value unless there is a change in Highest and Best Use, some other unusual circumstance, or the appraiser has analyzed different improved sales with smaller land areas.

Because of the changes in the physical, functional and/or economic characteristics of the affected property, it is possible that more or different adjustments will be necessary in the After situation. This emphasizes the importance of a data search to find sales that reflect the characteristics of the remainder.

T.  **Page 21 and 22—Improved Sales Analysis (AFTER)**

**Improved Sales Analysis -** The analysis grid must be completed when the Sales Comparison Approach is used. The appraiser may use either dollar amounts or percentages when making adjustments, but consistent use of one or the other is required. Comparable sales are adjusted to the subject property. For example, if the comparable is superior to the subject in some attribute, a negative adjustment is applied to the comparable. If the comparable is inferior to the subject in some attribute, a positive adjustment is applied to the comparable. The first four adjustments must be made in the order indicated on the Improved Sales Analysis. Any additional adjustments should be made in a logical order and shown on lines 5-11 of the grid.

Do not round figures prior to the Estimated Value. The appraiser will use discretion to round to the nearest increment that is in the best interest of the claimant but in no case less than the nearest $100.00.

**Explain Adjustments in Detail -** Provide a narrative explanation of each line item adjustment.

U.  **Page 23—Cost Approach (AFTER).** When adequate market and/or income information is available, the Cost Approach is usually unnecessary. The Cost Approach may be used effectively in the following situations:

- Newly built properties
- Special purpose properties, unique properties, or properties for which an inadequate number of comparable sales can be found
- Properties for which an income analysis is inappropriate or where inadequate income information is available

In following the format of the appraisal report, the appraiser is required to show all calculations used in the Cost Approach with support of the conclusions clearly explained.

**Reproduction Cost Estimate –** Cite actual costs, a contractor's estimate, or published cost manual. For cost manuals, indicate section and page number and date of publication, update, or revision. Work shown in the appraisal report must be in sufficient detail to be reviewed and for calculations to be checked.

**Accrued Depreciation –** Use an appropriate method to develop and support accrued depreciation from all sources.

**Add Estimated Land Value –** Add the Estimated Land Value to the Depreciated Cost of the Improvements to derive
After Value by the Cost Approach.

V. Pages 24 and 25—Income Approach (AFTER). This portion of the report is applicable whenever the appraiser uses the Income Approach. If the Income Approach is not applicable and/or necessary to produce a credible appraisal report, state the reasons.

The appraiser should make all efforts to obtain factual information concerning subject and comparable leases.

The use of the Income Approach in estimating After Value must follow the same principles used to estimate the Before Value. However, the After Valuation will be based on projected changes in the property not yet tested in the market. Factual data that can be accumulated for support of After Value based on an Income Approach is perhaps more limited than any other Approach because the After Value is not only affected by the physical changes, but emphasis may shift due to functional and economic changes. It is important to fully analyze the use of the subject property after the taking and as affected thereby. The appraiser must enumerate and explain any changes in gross rent potential, vacancy rate, expenses, capitalization rate, remaining economic life and other details that would have a bearing on the income stream.

An After Value based on the Income Approach should be tested by the projection of the stabilized income and expenses over the remaining economic life of the remaining improvements.

The use of computer programs is acceptable only if proper documentation and detail is included to enable the review appraiser to check all factors and computations.

See Section A.10.F, especially as to use of the discounted cash-flow analysis.

W. Page 26—Reconciliation of After Value.

Explanation of Reconciliation – Explain the reasoning and correlation of approaches into a final estimate of After Value.

The appraiser must analyze the results of each approach and estimate the final conclusion of value. This conclusion must derive from the relative strengths of each approach. A wide difference in values indicates a weakness in one or more of the approaches. In such cases, the appraiser should re-examine the report for possible errors, omissions, or misjudgment.

After all approaches have been properly documented and explained, an analysis of the results must be made and a final conclusion drawn.

This procedure requires more analysis from the appraiser than the mere selection of one of the approaches. The written analysis must include how and why the appraiser arrived at the final valuation.

X. Page 27—Summarize Elements of Damages and Special Benefits that Affect the After Value. This important part of the appraisal report is devoted to a narrative explanation of each element of damages.

This is a summary of the appraiser's analysis of damages to the property and must be clear, concise, logical and reasonable. Every element of damage should be explained. The analysis shown here, when coordinated with the explanation of Before Value and After Value, should leave no doubt as to the appraiser's understanding of the appraisal problem.

The appraiser must separate the elements of Total Damages into Direct and Indirect Damages. These should be narrative statements only. See the Unit Rule, Section A.10.B.

For tax purposes only, the appraiser will be required to complete Appraiser's Breakdown of Damages Form RW-271, assigning individual amounts for Direct and Indirect Damages. This form is to accompany the Form RW-270A submission separately and is not to be attached to the report.

Y. Page 28—Apportionment of Damages. This section is applicable when there is more than one legal interest in the subject property. Typically, this is a landlord/tenant situation. It could also include such situations as a life estate, tenants in common, or a trust. There may also be tenant owned improvements, which must be apportioned.
After a conclusion of total damages has been estimated for the claim, damages must be apportioned among the various legal interests. See Section A.10.B on Unit Rule.

Z. **Page 29—Summary of the Process of Collecting, Confirming and Reporting Data Consistent with the Scope of Work as developed by the Appraiser.** Provide sources of sale and rental data for the subject property and all comparables analyzed in the report. Indicate how and with whom confirmation of facts surrounding the data collected was accomplished.

AA. **Page 30—Certificate of Appraiser.** The appraiser must read the certification and understand all provisions of this statement before signing and dating the document. The certification provided in the appraisal forms by the Department is a required document. Any additional certifications or documents required by an appraisal organization with which the appraiser is affiliated are not required or desired. However, if the appraiser is required by the organization to include such documents, they must be inserted in the Addenda Section of the report.

The signature of the appraiser on the certification verifies their acceptance of the responsibilities and adherence to the governing procedures of the appraisal process for assignments made by the Department. The estimate of damages for the appraised property must represent the total difference between the Before and After Values. Dates of inspection of both the subject property and the comparable properties are required. An opportunity must be afforded to the property owner and/or persons specifically identified as representing the property owner to be present during an inspection of the subject property.

BB. **Page 31—Addendum.** The appraiser should include in this section all additional pertinent information such as maps, deeds, leases and organizational certifications. A table or list of contents of the addenda should be included.

CC. **Page 32—Photographs.** Properly identified photographs of the appraised property must be included in the appraisal regardless of the appraisal form used. The Department will accept only color photographs, quality color digital images, or color xerographic reproductions. All photographs must include the following: county, route, right-of-way claim number, photographer's name, date taken, station location, direction photographer was facing, and identification of the photograph's contents. All copies of the appraisal report will contain color photographs, quality color digital images, or color xerographic reproductions.

All features of the property should be photographed, including the area of taking and the remainder, if any. It is important to photograph site features such as driveways, trees, shrubs, drainage, fences and walls.

Interior photos must show any items of deferred maintenance referred to in the report or any special attributes of the property that would enhance its value. These photos are extremely important when support of an item is required for litigation, if a long period of time has passed since the date of the appraisal, or if an improvement must be removed. All photos must be properly identified as indicated above.

Appraisers are encouraged to use any other technology available, including video, for documentation.

**A.07 APPRAISER'S BREAKDOWN OF DAMAGES (FORM RW-271)**

The appraiser's breakdown of damages is based on the final estimates of value in the appraisal report. This form must be completed regardless of the approach used to value the property.

The main reason for the breakdown is related to income tax. Direct damages for land and improvements actually taken are subject to immediate taxation as capital gains.

Indirect damages, such as severance and depreciation, are not immediately taxable. They will be considered in determining capital gains only if the remaining property is sold. See **Chapter 2, Section 2.06.**

The breakdown also presents an opportunity for the appraiser and review appraiser to ensure that the unit values from the various methods of valuation are incorporated in the report and are reasonable.
A.08 THE REVIEW PROCESS

Appraisals are subject to a technical review process. See Chapter 2, Section 2.17.

A.09 REVISING AND UPDATING APPRAISAL REPORTS

Appraisals may need to be updated or revised for various reasons. See Chapter 2, Section 2.11.N.

A.10 LEGAL AND RELATED APPRAISAL ISSUES

A. Appraising for Condemnation Purposes. Appraising property for condemnation purposes is different than appraising property for financial institutions or other purposes. There are at least four circumstances that differentiate appraising in condemnation situations for the Department from other appraisal assignments.

Most significantly, there are usually two values involved in an appraisal assignment for condemnation purposes—the fair market value of the property before condemnation and the fair market value after condemnation. The difference is the measure of damages in eminent domain. See Chapter 2, Sections 2.02 – 2.08 discussing in general the measure of damages in a condemnation case. In most appraisal situations, the appraiser is merely concerned with a single value of the property on a certain date. This single value situation is only involved in a condemnation case where an entire property is being taken, in which case the After Value of the property is zero. Determining the After Condemnation Value of a property can be very difficult since the project is usually not constructed at the time of valuation.

A second circumstance that differentiates condemnation appraising from other appraisal assignments is the fact that, under Pennsylvania law, certain elements of damage and other factors are either not permitted to be considered or the way in which they can be considered is limited. The most frequent issues considered regard the unit rule of valuation, what is the larger parcel, interference with access, business-related damages and costs of adjustment. These and other legal considerations in appraising property under the eminent domain laws of Pennsylvania will be discussed below.

A third circumstance that differentiates condemnation appraising for the Department from other appraisal assignments is the fact that the Jurisdictional Exception Rule to USPAP requirements often applies, due to the pre-eminence of governmental law and regulations. Requirements of the state Eminent Domain Code and case law thereunder and the federal Uniform Real Property Acquisition and Relocation Assistance Act and regulations thereunder supersede the requirements of USPAP to the extent that they may be inconsistent. However, this Manual, incorporates all of these requirements and is an assignment condition under the USPAP Scope of Work Rule. See Chapter 2, Sections 2.02 and 2.04.

A fourth circumstance that differentiates condemnation appraising for the Department from other appraisal assignments is the fact all appraisals submitted to the Department are reviewed. This is a requirement of federal law and Department policy in view of the Department's duty to ensure the proper expenditure of the public funds entrusted to it. See Chapter 2, Section 2.19 on the appraisal review function. This review is not intended to undercut the independent judgment of Department staff or fee appraisers. See Chapter 2, Sections 2.17 and 2.18 which sets forth the roles and responsibilities of appraisers and review appraisers.

The intent of obtaining appraisals and reviewing them is to pay property owners affected by Department projects just compensation for general damages under applicable law. Issues of valuation should be determined in favor of the property owner when doubt exists, being careful not to improperly provide windfalls contrary to the laws of Pennsylvania. The information in this guide will assist in properly performing this function.

B. Unit Rule of Valuation.

1. Unit Rule of Valuation in General. The most basic principle of the Eminent Domain Code is that general damages for real estate are the difference between the fair market value of the condemnee's entire property interest immediately prior to the condemnation and as unaffected thereby and the fair market value of the condemnee's entire property interest immediately after the condemnation and as affected thereby. This standard reflects the unit rule of valuation requiring that in both the before and after situation, the property must be considered as a whole for valuation purposes and that a single amount for the applicable fair market
value be determined. There are several aspects of the unit rule that are discussed below. In general, the unit rule prohibits the simple addition of separate values for component parts to reach the value of the property as a whole, and excludes most testimony on the specific value of component parts of a property and the value of specific items of damage.

The rationale for the unit rule is that the value of the parts of a property does not necessarily equal the value of the whole. Moreover, allowing testimony on the separate values of specific items is speculative and misleading, since the separately valued parts are usually not separated from the property as a whole at the time of the valuation. The unit rule requires that there be only one fair market value of the property before and after the taking despite the method used to calculate that value. The difference in the two fair market values is the amount of general damages due the claimant as just compensation for real estate.

The unit rule should not be confused with the unity of title and unity of use rules applicable when determining the larger parcel for valuation purposes. See Section A.10.C below on what constitutes the larger parcel.

2. Fair Market Values as if Owned by One Owner, then Allocation of Damages Between Owners. Pennsylvania law requires that the claims of all the owners of the condemned property, including joint tenants, tenants in common, life tenants, remaindermen, owners of easements or ground rents, and all others having an interest in the property, shall be heard together. The award of the viewers or verdict on appeal shall first fix the total amount of damages for the property, and second, apportion the total amount of damages between or among the several claimants entitled thereto. (Section 507 of the Eminent Domain Code). The viewers are specifically directed to include in their reports a statement of the total amount of damages and the distribution thereof between or among the several claimants therefore where there are several interests in the condemned property. (Section 512 (7) of the Eminent Domain Code).

This "as if owned by one owner" principle is part of the unit rule of valuation. It requires the appraiser to determine the fair market value before and after as if the property was owned by one owner even if there are multiple owners of the fee simple interest, or there are tenants, easement owners or other interest holders. After the general damage figure is determined by finding the difference between the before and after fair market values as if owned by one owner, the appraiser must allocate the damages between or among the several claimants entitled to the damages.

As odd as it may seem, this "as if owned by one owner" principle applies even when amicable settlements are reached with one or more of the interest holders. That is, the case is still to proceed as if all the owners were part of the case. Total damages are to be determined on the difference between the fair market value of the property before and after the taking, and then those total damages allocated between and among the various interest holders. The owners that have not settled will be paid the amount allocated to them, while the owners that settled are paid the amount of the settlement no matter what the amount allocated to them by the viewers or the court or jury on appeal.

3. One Fair Market Value even if Valuation is Composed of Separate Parts. An appraiser does not violate the unit rule by considering the property as divided into component parts for valuation purposes, as long as the appraiser ultimately determines a single amount for the fair market value of the entire property. In some circumstances, the appraiser may even state the value of the parts; again, however, provided a single fair market value of the whole is ultimately stated.

a. Minerals, Trees, etc. Although an appraiser may certainly consider the existence of minerals, topsoil, nursery stock, etc. to the extent they contribute value to a property, the appraiser may not assign a separate value to such items. For example, an appraiser may not state that there are so many tons of recoverable coal in the property, multiply that by the price paid for coal removed from the ground, and then add that to some other value for the surface use of the property. This would violate the unit rule as well as be contrary to the fact that the coal is still in the ground and not removed. The appraiser can consider the amount of coal as an element potentially contributing value to the property as a whole, but may not state the separate value of the coal.

b. Subdivided Lots. One of the most common examples of a unit rule violation is testimony offered on the value of individual lots into which a property could be or is subdivided. Although the existence or possibility of subdividing a property is a proper consideration in most circumstances (see Section A.10.D. on Highest and Best Use), an appraiser is not permitted to simply multiply the number of lots by the price
per lot. This is an impermissible attempt to assign a separate, specific value to one of the constituent elements used to decide the fair market value of the property as a whole. However, see also Section A.10.1 on the limited acceptable use of the Development Cost Approach.

c. Differing Highest and Best Uses. The unit rule also applies when different parts of a property have different Highest and Best Uses. Appraisers may state that they arrived at the valuation of the whole property by determining that it had different Highest and Best Uses and employed different comparable sales to arrive at the value of the different parts. However, appraisers may not testify to a breakdown of the dollar amount assigned to each Highest and Best Use and may not simply add up the separate valuations. The appraiser may testify that they considered the value of the property as separate parcels in their own mind, but must make a conscious determination that the sum of the parts does in fact equal the whole if the value does indeed equal the sum of the parts. The appraiser may only give values for the whole property before and after the taking. Opposing counsel can test the strength of the appraiser's approach through cross-examination and the fact finder can determine the weight to give the evidence.

d. Machinery, Equipment and Fixtures and the Reproduction Cost Approach. The unit rule is applied in a relaxed manner where an appraiser utilizes the Reproduction Cost Approach to value. In this situation, an appraiser may testify to the specific value allocated to the land, the improvements, and the machinery, equipment and fixtures. The courts have even allowed the specific value of a special feature of a building, i.e., a terra cotta façade. As is always the case under the unit rule, even when it is relaxed, the appraiser is ultimately required to fix a value of the property as a whole before and after the taking.

Although not addressed yet by the courts, this relaxation of the unit rule for the Reproduction Cost Approach to value would also apply to other situations where machinery, equipment and fixtures are part of the valuation. That is, even if the sales comparison or income approach to value are used, if separate values have been assigned to machinery, equipment and fixtures, those specific values would also be permitted into testimony. As always, however, those separate values would be admissible only in relation to a determination of the value of the property as a whole and not as distinct items of damage or as independent components of the property that can simply be added up to determine the value of the whole.

4. Units of Valuations Allowed. The unit rule is not violated when an appraiser determines fair market value on the basis of unit valuations. That is, an appraiser may determine that a buyer would purchase property on the basis of the number of housing units that could be constructed on a property, and use comparable sales to develop a price per unit. The courts have allowed the appraiser in this situation to testify to the number of units and the price per unit used to reach the value of the property as a whole. The court reasoned that the appraiser did not simply add up the total number of units but rather examined the potential number of buildable units as part of the valuation process for the property as a whole. Cross-examination was afforded to test the approach and the jury was free to determine the credibility of the appraiser and the weight to give his or her testimony.

Although somewhat inconsistent, this ruling is not contrary to those supporting the issues discussed above. Contrary to the typical testimony on building lots, the appraiser's theory presupposed a sale of the entire property to one buyer rather than to multiple unit buyers. Similarly, the appraiser's theory did not presuppose that a component of value, e.g., minerals, was sold separate from the remainder of the property.

This ruling would support the traditional approach of valuing property based on a unit of comparison (e.g., price per hectare (acre), price per square meter (square foot) or price per linear frontage). As long as the appraiser ultimately determines a value of the property as a whole, testimony on the price per unit and the number of those units within the property would be admissible. Again, this is not contrary to other approaches that violate the unit rule since it presupposes a sale of the whole to one buyer and does not presuppose the separation of a component of the property from the property.

5. No Separate Value for Elements of Damage Except Costs of Adjustment. An appraiser is clearly permitted to state particular items of damage sustained through a condemnation. However, it is equally clear that an appraiser may not assign a specific value to a particular item of damage except in regard to cost of adjustment items. Even under the exception for costs of adjustment, the value of the item is not considered separate and apart from the general decrease in market value to the property as a whole. The general rule was recently applied to disallow testimony on a specific value for licenses and contracts held by a towing business. See generally Section A.10.F on the value of licenses and contracts.
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a. Costs of Adjustment. Cost of adjustment testimony has always been allowed as an exception to the rule that a specific value may not be assigned to particular items of damage. The courts permit testimony regarding specific costs of actual outlays and estimates of construction work made necessary by a condemnation. However, the cost is not admitted as an independent and distinct item of damage, but only as an element bearing on the After Value of the property as a whole. The unit rule still requires that there be only one fair market value of the property before and after the taking despite the method used to calculate the value.

b. Temporary Easements for Construction. The concept that specific items of damage cannot be set apart from the value of the property as a whole applies to the acquisition of temporary easements for construction. That is, the specific damage amount attributed to the acquisition of a temporary easement cannot simply be added to the damages determined by use of the before and after rule. Acquisition of the temporary easement is merely an element to be considered in determining the After Value of the property as a whole. See generally Section A.10.D.8 on valuing temporary easements for construction.

C. Larger Parcel Defined

1. General Rules. Pennsylvania law requires that where all or a part of several contiguous tracts in substantially identical ownership is condemned or a part of several non-contiguous tracts owned by one owner which are used together for a unified purpose is condemned, damages shall be assessed as if such tracts were one parcel. (Section 705 of the Eminent Domain Code). This law reflects what is sometimes called "the issue of what is the larger parcel" for condemnation valuation purposes.

The law in this area concerns two principles: unity of title and unity of use. Both will be discussed in detail below. Preliminarily, however, it is noted that the two concepts are different but interrelated. To be combined, two tracts must have unity of title. If there is no unity of title, it does not matter that they are used together such that the unity of use principle would apply. Similarly, in some situations it does not matter that the two tracts are not used together as long as there is unity of title between the two.

The application of the unity of title and unity of use principles is dependent upon whether the tracts in question are contiguous or non-contiguous. Tracts are contiguous when they are adjacent to each other. Tracts separated by a highway, railroad, river, or other physical feature, are considered non-contiguous even if these public or quasi-public areas are only held in easement title. It does not matter whether the tracts are on the same deed or not. Even if on the same deed two tracts are non-contiguous if they do not touch each other; on separate deeds two tracts are contiguous if they touch each other.

Please note that the unity of title and unity of use principles can apply to more than two tracts, but for simplification purposes, all references will be to two tracts if in relation to each other. Also, the discussion below will address the situation where there is one tract which is being taken in whole and in part and the issue is whether the other tract should be included as part of the "larger parcel" for purposes of valuation. The same principles as discussed, however, apply where both tracts are being taken in whole or in part and the issue is whether they should be combined into one claim.

A principle related to unity of use that has potential application in this area is the integrated use doctrine. It is also discussed below.

2. Unity of Title.

a. Change in Requirement. The previous requirement that tracts be "owned by one owner" has been superseded by a requirement that the tracts be "in substantially identical ownership." Identical record ownership is no longer required. The ownership need only be substantially identical. In view of this change, there is no current difference in application of the unity of title concept based on whether the tracts are non-contiguous or contiguous.

b. Substantially Identical Ownership. The new requirement is based on the standard found in the Uniform Eminent Domain Code and adopted by a New Jersey case involving a partnership and a corporation composed of the same individuals. It is intended to specifically reverse a Pennsylvania case that held two tracts could not be combined where one was owned by a partnership and the other by a corporation, even though the same individuals composed both entities.
There is little case law nationally on what substantially identical ownership means. A common individual or individuals in the two tracts seems to be key. Common management is also recognized as a factor in some cases, as well as common use.

The following two circumstances clearly meet the new requirement:

1. Tracts owned in some combination by a husband and wife.
2. Tracts owned by a partnership and a corporation where a common individual or individuals comprise both entities, i.e. common partners and organizers/officers/managers of the corporation.

The following circumstances have also been recognized as being sufficient unity of title in other states:

1. Tracts owned by partnerships with common partners.
2. A tract owned by individuals and a tract owned by a corporation in which the individuals were stockholders.
3. A tract owned by an entity that had close control over the entity owning the other tract.
4. Tracts owned by an individual alone, in joint ownership with his brother, and in joint ownership with his wife.
5. Tracts owned by corporations, all three of which were organized by the same individual.

Others factors that may show substantially identical ownership would be if a corporation owning one tract owned substantial stock in a corporation owning another tract along with a common stockholder in both corporations, or a parent-subsidiary relationship between two entities owning tracts.

Unless one of the two clear circumstances first identified exist, the District should contact the Central Office Acquisitions Unit prior to determining what tracts should be included in the larger parcel. The Acquisitions Unit will coordinate with the Office of Chief Counsel.

This guidance will be updated as the courts in Pennsylvania decide what substantially identical ownership means.

3. Unity of Use.

a. Contiguous Tracts. A contiguous tract that is in substantially identical ownership must be included as part of the larger parcel whether or not there is unity of use. That is, when there is unity of title and the tracts are contiguous, there is no need to inquire whether there is unity of use. The contiguous tract should be included in the claim.

b. Non-Contiguous Tracts. Unity of use must apply for a non-contiguous tract to be included as part of the larger parcel. More must be shown than that the tracts are actually used together. They must be so inseparably connected by the use to which they are applied that injury to one will necessarily and permanently injure the other. As one court has stated, both parcels must be so completely, inseparable and interdependent so as to make the operation of one impossible without the operation of the other. Although two parcels may form a business unit for the moment, if either could, with some adjustment, go on functioning without the other unity of use is not present.

Unity of use only applies when there are substantially identical users. The same concepts as discussed in relation to substantially identical ownership apply to determining whether the users are substantially identical.

To invoke unity of use, the tracts must be in at least close proximity to one another. Tracts that are miles apart will not generally be considered sufficiently unified.

Unity of use is predicated on the present use of the property as a whole. Unity of use does not apply where the property is not being used at the time of condemnation. There can be no unity of use when
there is no use. Highest and Best Use is not the issue; actual use is. However, the requisite use can be established by showing that a seemingly unused area is part of a larger tract by having been considered a required open space in connection with development of the non-contiguous tract.

The tract that must be considered most in the inquiry is that which is sought to be added to the claim. Although the inquiry cannot be made without consideration of the main tract being taken, the dominant inquiry is whether the other tract is so integrated with that tract taken that it cannot operate independently.

Legal opinions are often sought on whether unity of use applies. See Chapter 2, Section 2.20 on seeking legal opinions in this area. Based on previous case law, five situations have been identified as not requiring legal opinions:

(1) All of the non-contiguous tracts are being used as part of a single farm operation, in which case unity of use is present.

(2) The one tract is being used as a residence and all other non-contiguous tracts are being used for recreational or other purposes in connection therewith, in which case unity of use is present.

(3) One tract is used for some purposes, be it commercial, industrial or residential, and the non-contiguous tract is used for parking in connection with the use of the first tract, in which case unity of use is present.

(4) All of the non-contiguous tracts are vacant land not being put to any present use, in which case unity of use is not present.

(5) The one tract is being used for some purpose and the other non-contiguous tracts are vacant land not being put to any present use, in which case unity of use if not present.

4. Administrative Determinations to Combine Tracts into One Claim. In certain circumstances it makes common sense to combine two or more tracts in the same claim even though strict unity of use or unity of title does not apply. In these cases, the Department may combine the tracts for administrative purposes.

Combining tracts for administrative purposes is only permitted when there are takes from both tracts in question. The typical situation is where unity of use does not apply to non-contiguous tracts in substantially identical ownership, but it makes sense to treat the two tracts in the same claim because there are takes from both. Unity of title must exist in all situations.

If a claimant questions the combination of tracts into a single claim, the Department must separate the parcels. This will involve reappraisals and treating the takes as separate claims for all purposes. The plan would also need to be revised.

5. Integrated Use Doctrine. In limited circumstances, an appraiser must consider the existence of other tracts of land in the appraisal even though those other tracts are not considered part of the larger parcel for establishing the before and after areas of the property. This is done under the Integrated Use, or Porter, Doctrine. Although the other tracts are not part of the before and after areas, they are considered to the extent they enhance the value of the property being appraised.

This Integrated Use Doctrine has been applied only where the interest of the person in the condemned property is less than a fee interest. In fact, all cases involved lessees of land used in mining operations. Under the doctrine, the other tracts owned in some manner by the lessee were permitted to be considered to enhance the value of the leasehold, since that other property was used at the time of condemnation along with the condemned property for a unified purpose such that injury to one tract would permanently damage the other. Although a case from the 1970's indicates the doctrine may be applicable in other situations, a more recent case indicates that it only applies when the ownership in the land taken is less than fee title.

D. Highest and Best Use.

1. General Concept. Perhaps the most important decision to be made in determining fair market value is the Highest and Best Use of the property. Please note, however, that Pennsylvania law requires an appraiser to also consider the present use of a property in determining fair market value. Both the Highest and Best Use
and present use must be considered. In some circumstances, there may be an interim use pending utilization of the property for its Highest and Best Use. The ultimate goal, of course, is to ascertain what a willing and informed buyer would pay for the property.

To support a Highest and Best Use other than the present use, an appraiser must show that the land is physically adaptable to such use and that there is a need for such use in the area that is reflected in the market existing at the time of valuation. The use must also be legally permissible, subject to the exception for possible zoning changes discussed below. Stated another way, it must be shown that the use is reasonably available after considering the existing improvements, the demand in the market, the supply of competitive property for such use, the zoning and all other reasonably pertinent factors. These requirements are not unlike those used in the general appraisal industry requiring that a Highest and Best Use be physically possible, legally permissible, financially feasible and maximally productive.

Pennsylvania case law establishes that a property owner may expect compensation for reasonable certainties inherent in the present but may not recover for remote chances or future possibilities, nor may a property owner submit evidence based on a speculative contingency. A speculative or remote use that is neither reasonably probable nor likely to occur cannot be considered a Highest and Best Use. Market value cannot be determined on a non-existing use based upon remote chances or future possibilities. For instance, where the proposed use required the construction of an extensive road system to access the property, the use was determined to be speculative and not grounded in the current fair market value of the property.

A professional feasibility study is not a legal requirement necessary to establish Highest and Best Use. Such evidence is usually admissible, however, to show such a use. For example, even though a formal economic feasibility study was not conducted, an appraiser was allowed to testify that he conducted an informal study taking into account such factors as zoning, demographics, employment statistics, road systems, transportation facilities and public utilities to support a Highest and Best Use of industrial land currently used for residential and agricultural purposes.

There is no legal requirement that a determination of Highest and Best Use be either general or specific. Within the appraiser's discretion, a Highest and Best Use may be either specific or general. For example, a determination that a Highest and Best Use is for commercial use (general) is as legally acceptable as one of a mini-market (specific).

2. Land Use Regulations. Zoning and land development ordinances have a direct impact on use and thus a direct and immediate impact on fair market value. All zoning ordinances divide land in the municipality into zoning districts and will be accompanied by a zoning map. Each zoning district will have a range of permitted uses and corresponding requirements, most commonly dimensional restrictions, for those uses. Uses not permitted in a given district may be allowed nonetheless upon application and approval with conditions. Conditions may be accompanied by waivers, variances and special exceptions, all of which require formal government action.

Not all restrictions on the use of land are found in a formal zoning or land development ordinance for the applicable municipality. Many municipalities in Pennsylvania have formal zoning but many still do not. Even in the absence of formal zoning, an appraiser must be aware that building codes, environmental laws and regulations—and sometimes even land development and subdivision ordinances at the county level—can impact the legally permissible analysis. Even if a municipality does not have a zoning ordinance the appraisal problem implies that a detailed analysis of other applicable land use regulations from other sources will be required.

Variances can be granted to land development requirements. The criteria for granting variances can be summarized as follows: (1) the property must possess unique physical circumstances; (2) those circumstances, in combination with the regulations, must cause unnecessary hardship - an unreasonable inhibition of usefulness of the property; (3) the hardship must not be self-inflicted; (4) the granting of a variance must not have an adverse impact on the health, safety and welfare of the general public; and (5) the variance sought must be the minimum variance that will afford relief. An unnecessary hardship may be shown by proving (1) that the property's physical characteristics preclude its use for any permitted purpose or that the property's use for such purposes would result in a prohibitive expense, or (2) that the characteristics of the property are such that the property has either no value or only a distress value for any permitted purpose. The commercially impracticable cost of demolition and reconstruction work necessary for strict compliance with a zoning...
ordinance can be sufficient to establish unnecessary hardship.

There is an important distinction between use variances and dimensional variances. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulation in order to utilize the property in a manner consistent with the applicable regulations. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Multiple factors are to be considered, including the economic detriment to the applicant if the variance is denied, the financial hardship created by any work necessary to bring the building into strict compliance, and the characteristics of the neighborhood.

3. Highest and Best Use Other than as Allowed by Zoning Requirements. Under limited circumstances, the Highest and Best Use of a property may be a use that is not permitted by existing zoning as of the date of the taking. This is only allowed where the appraiser can show that there is a reasonable probability of a zoning change allowing the higher use that is reflected in market price of similarly zoned properties. The possibility of the change must be in the reasonably near future and may not be remote or speculative.

Where the probability of a zoning change can be sufficiently shown, the property is not to be appraised as if it has already been rezoned. Rather, the property is to be appraised under the restrictions of the current zoning with consideration given to the impact upon market value of the likelihood of a change in zoning.

This concept arose from the Pennsylvania Supreme Court's decision in Snyder v. Commonwealth, 192 A.2d 650 (Pa. 1963). Therein the Court, reiterating the prohibition against speculation, held that a higher or more valuable land use cannot be predicated upon an anticipated change in zoning unless "the prospect of such repeal or amendment is sufficiently likely as to have an appreciable influence upon present market value." 192 A.2d at 652. As with all matters relevant to the development and reporting of an opinion of value, the appraiser must support all conclusions in this regard with sufficient facts and data.

This same concept is applicable to variances, special exceptions and other related principles. That is, an appraiser may consider the possibility of obtaining such permission in determining the Highest and Best Use of a property if there is a reasonable probability that the required permission would be granted. Again, however, the property is not to be appraised as if the special permission was already granted, but only to the extent the likelihood of obtaining the permission affects the current market value of the property.

4. Nonconforming Uses. Zoning law is dynamic and changes over time. No zoning ordinance can possibly capture all land uses throughout the municipality at the time of its enactment or amendment. There will always be land uses that do not present any danger to public health and safety yet exist within a zoning district that would otherwise not permit that given use. The common terminology for the continuation of this use is that it is "grandfathered". A more accurate term is that the use represents a pre-existing, legal non-conforming use (non-conforming use).

A non-conforming use runs with the land and represents a substantial and often-times valuable legal right. The non-conformity may relate to some general use, e.g. a commercial use in a residential zone, or to some more limited aspect of use, e.g. the violation of setback requirements or parking space ratios.

Local ordinances often require the registration of non-conforming uses and structures. Such a registry would provide a means for determining whether a property is legally nonconforming. If they fail to avail themselves of such an available administrative means of establishing that their nonconforming use is lawful, a landowner may be barred from asserting nonconforming status.

In 1996, the Commonwealth Court held in Amoco v. Department of Transportation, 679 A.2d 1369 (Pa. Cmwlth. 1996), that the lawful non-conforming use of a property is extinguished by eminent domain when a partial taking results in a change in the dimensional non-conformity of the property. This case was the subject of two Real Property Division Directives, RPPD 01-01-97 and RPPD 07-10-98. Recent legislative changes have been made to reverse the effect of this decision.

5. Non-extinguishment of Nonconforming Uses. Section 706 of the new Eminent Domain Code, entitled "Effect of Condemnation Use on After Value," now provides: "A partial taking shall not extinguish a nonconforming use unless all or a substantial portion of the improvements on the property are within the area of the property taken."
This language is straightforward. If the taking does not include all or a substantial portion of the improvements on the property, the non-conforming status of the property is not affected and the after value of the property should be determined based on the continued validity of the nonconforming use.

Improvements are any valuable addition made to the property intended to enhance its value, beauty or utility or to adapt it for new or further purposes. For example, macadam placed for parking purposes is an improvement on the property.

Substantial in this context means considerable. Considerable in turn means rather large in extent and amount. Therefore, a substantial portion of the improvements would be a considerable or rather large portion. This is by its nature a judgment call, but the appraiser should be guided by whether the impact of the taking is merely to increase an existing dimensional nonconformity or rather to severely impact continuation of the use nonconformity itself. The former would typically not be substantial, while the latter would.

If there is any question as to the non-extinguishment of a nonconforming use, the District should seek legal advice from the Office of Chief Counsel, Real Property Division, through the Utilities and Right-of-Way Section.

6. Extinguishment of Nonconforming Uses. If the taking includes all or a substantial portion of the improvements, then the nonconforming status of the property is extinguished and the analysis addressed in the RPPDs applies. That is, an analysis of the likelihood that a variance would be required and granted for the continued use of the property as nonconforming and its affect on the after value must be made.

The issue is the impact on the after value of the property due to the fact that local zoning officials could require the landowner to obtain a variance to continue the current use of the property. This is an appraisal issue that must be addressed in view of the law regarding variances and with the consultation of local zoning officials. The first inquiry should be to determine whether the local zoning ordinance includes a provision directly addressing the situation. That is, the ordinance may specifically provide that condemnations or transfers in lieu of condemnation do not cause the loss of nonconforming status or that variances will be granted in such circumstances under certain conditions. If such a provision exists, it applies and the following discussion must be considered in view of the specific language of the applicable ordinance.

Because the inquiry is one of fair market value, whether the local zoning officials would enforce the legal loss of the nonconforming status is relevant. This is a factor that informed sellers and buyers would consider. The possibility that a neighborhood group would lobby or bring action to require enforcement would also be relevant. And even if the existing officials would not enforce the ruling or be forced to enforce it, consideration must be given to the possibility of enforcement in the future.

If there is a reasonable probability that the loss of status would not be enforced, or, if enforced, a variance would be granted, the appraiser can consider that circumstance in valuing the property after condemnation. If there is a reasonable probability that the ruling would be enforced, and the chance of obtaining a variance is remote, speculative and not reasonably probable, the appraiser cannot consider the existing use in valuing the property after condemnation. If the existing use is properly considered, either because there is no reasonable probability of enforcement or the grant of a variance is reasonably probable, the property is not to be valued as if a variance has already been granted, but as impacted by the probability that there will be no enforcement or a variance will be granted.

To determine the impact of the loss of nonconforming status on the after value of a property, an appraiser will need to consult with local zoning officials on whether they will enforce the effect of the ruling and, if so, whether a variance would be granted. The opinion of the local solicitor may be helpful, but may not be given much weight by the courts because the solicitor does not make the actual decisions on enforcement and applications for variances. Past history in the municipality on the granting or denying of variances is a very valuable resource for making the decision.

Guided by the rule prohibiting a speculative contingency, the appraiser should also consider whether the impact to the nonconforming use by reason of the condemnation can be cured. If a physical adjustment to the remaining property sufficient to "save" a dimensional nonconformity can be made, a use variance may be granted because the property can continue to be used in conformity with the dimensional requirements of the municipality.
The appraiser must consider the criteria for establishing a right to a variance discussed above and remember that dimensional variances are held to a lesser standard than use variances. Although the analysis would need to be done on a case by case basis, the involuntary nature of the partial taking by condemnation would arguably make the after-condemnation property uniquely different from others in the zoning district and be an important factor in determining hardship for the granting of a variance. A specialty report may be appropriate on variance history or other land use issues or on possible cures.

The nonconforming use within an area taken cannot be transferred to land remaining after condemnation if the use is extinguished. That is, if all or a substantial portion of the improvements are within the area of the taking, the nonconforming use is totally extinguished and the remaining property cannot be put to that use unless it meets zoning requirements or a variance is granted.

7. Takings that Cause Properties to Become Nonconforming. The special language in Section 706 relates only to properties that are nonconforming prior to the taking. Where a property is conforming prior to acquisition, but is made nonconforming by the acquisition, an analysis similar to that discussed in the RPPDs and in subsection 6 above would apply. That is, an analysis of the likelihood that a variance would be required and granted for the continued use of the property in its now nonconforming state and its affect on the after value must be made.

The variances under consideration in this situation would always be dimensional in nature because the use itself was conforming before acquisition and would remain so after acquisition. Therefore, the lesser standard for the granting of dimensional variances would also apply when a property is made nonconforming by the acquisition. That is, although the analysis would need to be done on a case by case basis, the involuntary nature of the partial taking by condemnation would arguably make the after-condemnation property uniquely different from others in the zoning district and be an important factor in determining hardship for the granting of a variance.

8. Impact of Temporary Construction Easements (TCE) on Highest and Best Use. It is possible for a temporary construction easement (TCE) to have an impact on the highest and best use of property outside the TCE during the period the TCE is in effect, with the recovery of the highest and best use when the TCE expires. The appraiser must document and support this impact with a detailed highest and best use analysis.

When present, the economic impact is in the nature of a temporary rental loss not only to the area of the TCE itself, but also to property outside the TCE. The loss in value can be determined by ascertaining the difference between the property's fair rental value before the taking and as an unaffected thereby and the property's fair rental value during the TCE and as affected thereby. An estimated period of impact (the reasonable duration of the TCE) is then used to calculate the difference in fair rental value caused by the property's temporary change in highest and best use. The calculation must then be discounted to present value.

Damages calculated in this manner are not to be paid as a separate item of damage but, instead, are to be used as an adjustment to the property's value after the taking and as affected thereby, and in consideration of all other damages and benefits that may be present. Similar to any other impact, consideration must be given to reasonable mitigation measures, in the nature of a cost of adjustment, during the period of the TCE that could be implemented in order to maintain the property's highest and best use during the TCE. If reasonable mitigation measures can be accomplished, then damages for the TCE need only be calculated as an occupancy (short-term rental) of the affected land for the duration of the TCE.

Finally, care must be taken to distinguish damages calculated in this manner due to a change in the property's highest and best use during the TCE from impacts due solely to temporary interference with access during construction. Temporary interference with access—where reasonable access to the public road system is maintained through the construction zone during construction—is generally not a compensable item of damage in Pennsylvania. This same rule of no compensability applies to circuity of access situations based on the total distance of additional travel due to the construction zone impacts.

If there is any question as to whether a temporary impact is compensable due to a temporary impact on highest and best use, the District should seek legal advice from the Office of Chief Counsel, Real Property Division, through the Utilities and Right-of-Way Section.
E. Valuation of Machinery, Equipment and Fixtures.

1. Partial Takings that Do Not Dislocate or Shut Down a Claimant's Business (Traditional Fixture Law). When a taking does not displace or shut down a claimant's business, machinery, equipment and fixtures are considered part of the realty if they are installed such that they cannot be removed without significant injury to them or the real estate. The ordinary law of fixtures applies here, and traditionally, courts look to the following circumstances:

- Whether the item is actually annexed to the real estate;
- Whether the item is appropriate to the use of that part of the real estate with which it is connected; and,
- Whether the party making the annexation intended to make the item a permanent installation.

In other words, it might be said that machinery, equipment and fixtures are part of the realty when those items would ordinarily be expected to pass to a buyer upon sale of the real estate, unless otherwise provided by the parties.

When the machinery, equipment and fixtures are incorporated into the real estate appraisal, consideration must be given to the extent to which they contribute to the value of the property as a whole. See Section A.10.B.

2. Partial or Total Takings that Displace or Shut Down a Business or Farm Operation but the AEUD is Not Applicable (Modified Traditional Fixture Law). When a taking displaces or shuts down a claimant's business, but the Assembled Economic Unit Doctrine (AEUD) is determined not to apply, machinery, equipment and fixtures are considered part of the realty only if they are installed such that they cannot be removed without significant injury to them. This standard is unlike traditional fixture law since injury to the building in which the item is located is not considered. Whether the machinery, equipment or fixtures is part of the realty is contingent upon only whether it can be moved without significant injury to the item itself.

For removable machinery, equipment and fixtures where the AEUD does not apply, the claimant is entitled to reimbursement for the reasonable expenses in removing and installing the items at a new location. Or, the claimant may elect to abandon the items to the Department and be paid the greater of the cost to move the item or its fair market value in place. See Chapter 4, Relocation Assistance on relocation assistance benefits.

3. Partial or Total Takings that Displace or Shut Down a Business or Farm Operation and the AEUD Applies. The AEUD is a legal principle whereby all machinery, equipment and fixtures in a property, whether loose or attached, which are vital to the economic unit and a permanent installation therein are considered to form part of the real estate taken for purposes of determining general damages. This principle is an adaptation of the Assembled Plant Doctrine taken from mortgage foreclosure law, and basically requires that items which would otherwise be personal property subject to separate relocation assistance benefits must be treated as part of the real estate appraisal.

   a. When the AEUD Applies. The AEUD is applicable only in limited circumstances tied to the public policy that a business owner should not be forced to keep personal property where he cannot maintain his economic position by moving his existing machinery, equipment and fixtures to a new location. Thus, the doctrine applies in the following situations:

   - Where the portion of the machinery, equipment and fixtures which are removable from the condemned property will not constitute a comparable economic unit in the new location; or
   - Where the nature of the business requires a unique building or site for its operation such that no other building within a reasonable distance is adaptable to the functioning of the business.

   (1) Cannot Relocate as an Economic Unit. If the machinery, equipment and fixtures that can be removed from a property without significant injury will not constitute a comparable economic unit in a new location, the AEUD is applicable.

In determining what machinery, equipment and fixtures are removable for purposes of determining application of the AEUD, the important circumstance is whether the item is removable without
injury to it. Unlike under traditional fixture law, injury to the building in which the item is located is not considered since the building will be demolished as part of the condemnation in any event. In one case, for example, a walk-in cooler was among 41 items of machinery, equipment and fixtures in a retail grocery store that was held to be removable and capable of being adapted and installed in another location as a comparable economic unit. This does not mean that every walk-in cooler is removable without injury to it. However, simply because an item is large and bulky and surely not removable without tearing down a wall or two does not mean that the item is non-removable for purposes of determining whether the AEUD applies.

Following are other examples where the economic unit test for application of the AEUD was litigated:

The condemnee manufactured and sold ice cream and candy. The subject building contained custom-made and installed facilities, including specialized cooling and air-treatment equipment. The condemnee established that many of the special features of the building, such as the cooling and air-treatment facilities, could not be removed without injury. Since the condemnee could not relocate the business intact, the AEUD applied.

The condemnee had a shoe store that contained wood shelving and two 7,620 kg (16,799 lb) air conditioners. The condemnee failed to establish that these fixtures were not removable without injury, so the AEUD did not apply.

The condemnee operated a coal breaker on his property. In addition to traditional machinery and equipment, the property contained a culm pile more than 377,712 cubic meters (13,338,772 cubic feet) in size. It was agreed that much of the machinery and equipment was not removable without significant injury, but the condemnor characterized the culm as inventory and thus personality not part of the economic unit. Since the cost of removal and processing elsewhere exceeded its value, the culm was ruled to be a non-removable fixture to be included as part of the realty under the AEUD.

The condemnee's property included a bakery, which at the time of condemnation had not operated for more than six years. The AEUD was held inapplicable as a matter of law because the condemnee did not have a functioning economic unit.

If the cost to remove, transport and reinstall an item equals or exceeds the cost new of such item, the item will be considered non-removable for determining whether the AEUD applies. If the AEUD does not apply, however, and the owner chooses to move the item, it may be necessary for the Department to pay more than the fair market value in place to remove, transport, and reinstall it at a new location.

(2) 2. No Relocation Site Available. If the nature of the claimant's business requires a unique building and there is no other building within a reasonable distance adaptable to the business, the AEUD applies.

In these situations, the building itself is considered an essential part of the economic unit. Since no new site is available, the condemnees cannot maintain their economic position by relocating even though all or most of the machinery, equipment and fixtures are removable without significant injury to them.

The uniqueness requirement in this test has been applied rather liberally over the years. For example, a condemnee has even argued that a specially renovated dairy barn was unique such that the AEUD should be applied. It can fairly be said that the courts will consider a building unique any time where there is no building within a reasonable distance to which a business can relocate.

Whether the AEUD applies under the uniqueness test requires consideration of not only the building itself, but also the client base from which the business draws its customers, as well as any special restrictions limiting the ability to relocate the business such as zoning prohibitions. For example, the AEUD was applied to a laundry which could not relocate because it served customers in its immediate vicinity; to a restaurant/tavern because no building was available within a reasonable
distance from which it drew its customers; and to a car garage because its main contract for towing services required that it be able to respond to disabled vehicles on the Turnpike within 30 minutes. Junkyards and other businesses that are difficult to locate due to zoning restrictions may qualify as unique for application of the doctrine due to the unavailability of a replacement location within a reasonable distance from their customer base.

The AEUD was applied to the candy and ice cream manufacturing business noted above not only because of the many unique custom-made features within the building, but also because applicable zoning prevented the operation of such a business in those buildings available in the area.

Reasonable distance for purposes of a business' client base will vary with the type of business. For example, a locally owned and managed pipe fabricating company located in the heart of Pennsylvania oil fields could not reasonably be located 80 km (50 miles) away. On the other hand, a branch plant of a national manufacturer could reasonably be relocated such a distance or farther, because the plant is not dependent on locally produced raw materials and manufactures a product for nationwide distribution.

The doctrine can be applicable to displaced tenants as well as fee owners. As previously explained, the AEUD also does not require that the entire property of that condemnee be taken, as long as the business portion is dislocated or shut down.

The courts have also found that the financial inability of the condemnee to purchase the buildings on the market that are suitable for relocation of the business is not a factor for consideration. This is a harsh ruling that may not be upheld in the future. Therefore, at least some consideration should thus be given to this element when assessing whether the doctrine applies in a specific situation.

b. When the AEUD Does Not Apply. As set forth above, the AEUD does not apply where the business on the property condemned is not dislocated or shut down. Even if the business is dislocated or shut down, the AEUD does not apply if:

- All or most of the machinery, equipment and fixtures are removable without significant injury to them so that the economic unit can be continued as a comparable economic unit at a new location; and
- The nature of the business does not require a unique building such that there is no building on the market adaptable to the business within a reasonable distance.

In other words, if most of the machinery, equipment and fixtures can be removed and there is a building available on the market into which the business can move, the AEUD does not apply.

As previously noted, although the courts have found that the financial inability of the condemnee to purchase the buildings on the market that are suitable for relocation of the business is not a factor for consideration, this is a harsh result that may not be upheld in the future. At least some consideration should be given to this element when assessing whether the doctrine applies in a specific situation.

When a business owner elects to construct a new building even though a replacement building is unavailable, the AEUD would apply absent a waiver by the owner. In this circumstance, the owner should be advised that a waiver may be appropriate. See Chapter 2, Section 2.20.H on waiver of the AEUD.

c. What Items are Included as Part of the Realty When the AEUD Applies. By law, all items vital to the business and a permanent installation therein, whether loose or attached, are included when the AEUD applies. It does not matter whether the items are located within or outside the area taken. The Department interprets this requirement broadly.

Office equipment, furniture and office supplies are part of the economic unit under the AEUD since they are vital to and a permanent installation in the business. Likewise, both licensed and unlicensed vehicles used by a business are typically vital to the economic unit and a permanent installation in the business.

Goods held for sale (sometimes referred to as inventory) will not be included in the appraisal since these
items of personal property are not a permanent installation in the business. Rather, they are intended to be turned over and kept only temporarily. Compensation based on the greater of the moving cost or the in-place value of these items would be payable as a dislocation benefit relating to losses with reference to personal property in the event the AEUD applies.

The requirement that machinery, equipment and fixtures be vital to the economic unit and a permanent installation therein would also preclude consideration of unused, obsolete machinery as part of the economic unit for purposes of valuation under the AEUD. On the other hand, small items hand tools and machines on wheels, even though easily movable, which are a necessary part of, and permanently integrated into, the operation of the economic unit will be considered part of the realty.

4. Integration of M&E Values into the Appraisal. Where items in an M&E report are to be incorporated into the appraisal because they form part of the realty due to application of the AEUD or otherwise, the appraiser is responsible for reviewing the M&E report for the purpose of integrating the M&E items with the real estate to obtain a final estimate of value of the whole. The appraiser is also responsible for ensuring that items valued in any separate M&E report are not duplicated in the appraisal. The appraiser must also ensure that items of personal property included in any M&E report, but not part of the real estate by application of the AEUD or otherwise, are not included in the appraisal.

Machinery, equipment and fixture values, whether set forth in a separate report or not, must be integrated into the appraisal to develop a fair market value for the real property as a whole. The appraiser should not arbitrarily add the M&E values to the valuation of the other realty, notwithstanding the fact any M&E report has been checked for duplication and personal property. The M&E must be considered to the extent of its contributory value to the whole property. See Section A.10.B above on the unit rule.

Contributory value is determined in the context of whether or not the M&E is consistent with the real estate's Highest and Best Use and whether the appraiser has significant market information that would support the conclusions made in the M&E report. The real estate appraiser is ultimately responsible for the valuation of the entire property.

5. Format for M&E Reports.

a. Machinery, equipment and fixtures appraised as part of the realty, whether on the basis of physical attachment or through application of the AEUD, will be listed under the following headings:

(1) Item or lot number.
(2) Description of item or lot.
(3) Cost new in place.
(4) Fair market value in place (amount of offer).
(5) Fair market value severed (salvage).
(6) Offer if item retained (d. minus e.).
(7) Plant layout sketch showing location of each item or lot by number.

b. Machinery, equipment and fixtures (ME&F) that are not a part of the realty will be listed under the following headings:

(1) Item or lot number.
(2) Description of item or lot.
(3) Cost new in place.
(4) Fair market value in place.
(5) Estimated cost of removal, transportation and reinstallation (moving costs).

(6) Plant layout sketch showing location of each item or lot by number.

F. Valuing Real Estate versus Business Conducted Thereon.

1. Valuation is of Property and Not the Business Conducted Thereon. A condemnor does not condemn an owner's business acumen or its results expressed in value. It condemns property, which one owner may use exceedingly well, another not well, and a third not at all. The use of one's talents is a private, not public, matter. Payment in condemnation is made on the basis of fair market value, not the value to a particular owner.

This concept that a condemnor condemns property, not the business conducted thereon, is well established in Pennsylvania law and has been recently affirmed. It leads to the conclusion that income flow evidence is inadmissible in determining just compensation for property subject to condemnation. For instance, fair market value cannot be reached by taking the gross income of the business conducted on a property and calculating what someone would pay for the property assuming a certain economic life for the business.

2. Income Approach to Value. Having said the above, Pennsylvania law does allow consideration of the income approach to value. An appraiser may determine fair market value by capitalizing the net rental or reasonable net rental value of the condemned property. Reasonable net rental value can even be based on a percentage or other measurable portion of gross sales or gross income of a business that may reasonably be conducted on the premises if this is how rental is customarily determined for the type of property in question. However, income or profits attributable to any business conducted on the property cannot be capitalized to determine value. (Section 705(2) of the Eminent Domain Code).

As can be seen, this provision allows consideration of the traditional capitalization of income approach to value without violating the concept that a condemnor condemns property, not the business conducted thereon. Reasonable net rental value, not income or profits, are what may be capitalized. The rental to be capitalized is not the actual rent, whether based on a percentage of gross sales or not, but rather the market rent. A percentage or other measurable portion of gross sales can only be used where that is the customary manner of determining rent for the type of property involved.

The net rental income that is capitalized under the income approach is, as stated, based on the economic or market rent that prevails in the area for similar properties. The comparison of similar characteristics, such as building services, date, type and length of leases, location, access, rentable areas, functional utility, type of tenants, supply and demand in the area and any other factors that affect value, determine economic rent. The use of comparable properties for the determination of economic rent is very similar to the use of comparable sales when employing the market sales approach to value. The same selectivity of data and objective analysis is required when economic rent is calculated.

Direct or yield capitalization methods can be used. Indeed, the best approach to valuing a property encumbered by long-term leases, especially when the leases are not at market rates, is the discounted cash flow analysis.

There is a difference in valuing land with a Highest and Best Use of advertising sign placement and valuing the leasehold interest and other interest of a lessee having a sign on land to be acquired. See also Section A.10.O on the valuation of advertising signs.

3. Value in Use/License, Franchises and Contracts. There are cases indicating that an appraiser can consider the value in use of a property. Consideration may be given to the enhanced value attributable to the going business that is being conducted on the property. This is tied to the fact that fair market value includes consideration of the present use of the property. On the other hand, the cases recognize that this does not allow testimony on the value of the business being conducted on the property by the use of income data.

The cases in which use value is recognized all involve the total taking of a business property, and most involve restaurant/bars that have liquor license and are being acquired under the Assembled Economic Unit Doctrine. The concept is applied to consideration of the licenses that are destroyed because the entire property has been taken and the owner cannot relocate. More recently, the courts have clarified this concept in allowing
testimony on certain licenses and contracts held by a garage and towing business on a property taken in its entirety under the AEUD.

The existence of licenses, franchises and contracts can be considered to the extent they enhance the value of the premises if it is likely a potential buyer would consider the possibility of obtaining the licenses, franchises and contracts in a purchase. However, the appraiser may not assign a specific dollar figure to the licenses, franchises and contracts, and may not value them using income flow as a basis.

The licenses discussed above are liquor and similar government-issued licenses. Where the license in question is a private agreement with another landowner, Pennsylvania law provides that a mere license is not something that can be considered in a condemnation case since the privilege can be terminated at any time. There are situations, however, where a private license becomes coupled with an interest due to substantial expenditures by the licensee in reliance of the license. In this event, the license would be a valid consideration in determining fair market value. A legal opinion may be required in these situations.

4. Discounted Cash Flow Analysis of Non-Rental Income. Under the discounted cash flow analysis to value, operating expenses and business profit on a property are deducted from gross income to obtain a net income attributable to real estate. This figure is then capitalized to determine the fair market value of the property. This value would typically include the contributory value of the machinery, equipment and fixtures used in the business operated on the property.

There are no cases in Pennsylvania ruling on whether the discounted cash flow approach to value is permissible under the Eminent Domain Code. A very good argument can be made that the approach is not permissible since it involves the capitalization of business income. The Eminent Domain Code only allows capitalization based on percentage or other portion of gross sales or gross income only where rental value is customarily determined on this basis. Although acceptable in the appraisal industry, the discounted cash flow analysis of non-rental income is improper in condemnation since it includes speculative elements and values the business on the property rather than the real estate itself.

In view of the above, the discounted cash flow analysis of non-rental income may be used as the primary approach to value with the approval of the Department where it can be demonstrated that there is no other means of determining value. With the approval of the Department, it can be used in any case as a secondary approach to confirm value reached by some other method. A discounted cash flow analysis is especially pertinent when the AEUD is applicable and the courts may be more receptive to valuation approaches connected to the business being conducted on the property condemned. Care must be taken, however, that the value reached reflects the fair market value of the real estate being appraised and not the business conducted thereon.

G. Sales Comparison Approach.

1. Sales Comparison Approach in General. Pennsylvania law specifically allows an appraiser to consider the comparable market sales approach to value. In this regard, an appraiser may consider the price and other terms of any sale or contract to sell the condemned property or comparable property made within a reasonable time before or after condemnation. (Section 705(2) of the Eminent Domain Code). This approach to value is the most straightforward and easiest to explain, and is therefore preferable.

2. Comparable Sales. Comparable properties means properties of a similar nature to the property being appraised which have been sold recently. The sale properties need not be identical in order to be comparable. "To compare" means to examine the characteristics or qualities of one or more properties for the purpose of discovering their resemblances or differences. The aim is to show relative values by bringing out characteristic qualities, whether similar or divergent. Thus, comparisons based on sales may be made according to location, age and condition of improvements, zoning, income and expense, use, size, type of construction and in numerous other ways.

Although Section 705 is general in nature and only mentions that a comparable sale must be within a reasonable time of the valuation date, the courts retain jurisdiction over whether a property is judicially comparable such that it can be admitted into evidence. This discretion is broad and most courts are reluctant to exclude sales that an appraiser has determined are comparable. However, sales have been excluded when they are many miles away from the subject (e.g., 40 miles), very remote in time (e.g., over six years), and when the
sale was not an arm's length transaction for some reason. For example, sales to a condemnor may not be used as comparable sales since they are not between willing and informed buyers and sellers.

Please note that sales after the date of condemnation are specifically allowed to be used as comparables by law. Care must be taken, however, to ensure that such sales are not influenced by construction of the project and then used to support a before value that is not to be influenced by the project for which the property is being acquired. See Section A.10.J on the influence of imminence of condemnation.

3. Purchase Price of Subject Property. The purchase price of the subject property is often the best comparable sale available. The purchase price of a property can generally be considered subject to the following four-part test on whether it is an appropriate comparable sale: 1) the circumstances of the sale or other occurrence involved (e.g., whether the sale was voluntary between a willing buyer and seller or whether it was made with condemnation in mind or due to bankruptcy); 2) whether the sale was remote in time from the date of valuation; 3) what changes had occurred in real estate values in the area or in the general character of the neighborhood in the interim; and 4) what changes occurred to the subject property.

Evidence of purchase prices have been allowed where the transaction took place from between three to seven years prior to condemnation, while purchase prices from sales nine and more years before condemnation have not been allowed. More important than the mere lapse of time is whether there have been substantial changes in the market or to the property itself. In one case, a sale only four years old was not allowed since the property had been substantially renovated after a hurricane. In another case, however, a sale five years old was allowed even though the sale did not include a small, improved portion of the property being condemned that was owned prior to the vacant land purchase in question. The market had remained constant, the difference in size was not substantial, and the both the condemnor and condemnee argued that the Highest and Best Use of the land was as vacant land for development. As with other comparable sales, the area subject to the purchase price need not be identical.


1. General Rule—Reproduction Cost Not Allowed Without Depreciation. Under Pennsylvania law, an appraiser is specifically allowed to consider the reproduction cost approach to value. That is, the appraiser may testify to the value of the land together with the cost of replacing or reproducing the existing improvements thereon less depreciation or obsolescence. (Section 705(2) of the Eminent Domain Code). A comment to this section of the code notes that the reproduction cost approach is particularly helpful in valuing special use properties, such as churches, which often have no normal market price.

When adequate market and/or income information is available, the reproduction cost should be avoided. It is generally considered the weakest of the three basic approaches to value. To be used properly, the cost approach should be confined to the following situations: newly built properties (five years or less as a general rule); special purpose properties for which no comparable sales can be found; and properties for which an income analysis is inappropriate. When used, the appraiser is required to show all calculations in the cost approach, with support of the conclusions clearly explained.

The inherent weaknesses of the cost approach are compounded when used for determining the after value of a property. The use of subjective factors in the application of costs of adjustment, severance damages, depreciation, loss of amenities and other factors must be clearly defined and fully explained and supported. Too often, estimated severance and/or depreciation are based only on the appraiser's opinion, with weak or no explanation.

An appraiser may not simply value a property on the basis of the cost to replace that property which was taken, with limited exceptions as set forth below. For instance, an appraiser may not testify that the condemnee could purchase land and build improvements thereon to replace that which was condemned and claim the purchase price and costs to build as the damages due. This would be appraising damages in violation of the unit rule and other eminent domain concepts.

This prohibition of considering replacement costs does not preclude the use of cost of adjustment testimony where appropriate and in an appropriate manner. See Section A.10.B.5.a on costs of adjustment. Where a reproduction cost approach is being used, however, depreciation must be considered. Depreciation may be physical or functional.
2. Substitute Facilities Doctrine. In very limited circumstances, the law of Pennsylvania requires the Department to pay compensation on the basis of replacement costs without consideration of depreciation under the reproduction cost approach to value. This is called the substitute facilities or functional replacement doctrine.

The substitute facilities doctrine only applies to the taking of land and improvements from public or quasi-public entities. It also only applies where there is no market value for the facility being acquired. Where there is an adequate means to determine fair market value through normal appraisal techniques, the doctrine does not apply even if the landowner is a public or quasi-public entity. For instance, the substitute facilities doctrine has been applied to the taking of a bridge from a city and the taking of a reservoir site from a public utility. The doctrine was not applied, however, to an apartment building for low-income residents since the market value of the building could be determined by use of the market approach.

An appraiser should never consider the substitute facilities or functional replacement doctrine unless directed to do so in the appraisal problem analysis.

I. Development Approach to Value.

1. The Development Approach in General. The land development cost approach to value, also known as the development approach, is a land residual or extraction technique applied to land with a Highest and Best Use for subdivision purposes (see Real Estate Valuation in Litigation, Chapter 12, Development Approach). The usual application is to deduct direct expenses from the estimated gross selling price. Direct expenses would include the cost of streets, utilities, sales, advertising and overhead such as taxes, carrying charges, inspection and legal fees. Profit and time lag (expressed as interest on the money invested for the time needed to complete the project) are also deducted, after which the land value is indicated. The appraisal profession has generally recognized that the development approach has been too often applied under the wrong circumstances or in the wrong way.

The development cost approach is permitted under Pennsylvania law, but there are still substantial legal issues surrounding its use in general as well as how it may be presented in a particular instance. It is highly speculative in nature and contrary to eminent domain principles such as the unit rule, the prohibition against compensation for specific items of damage, and the prohibition against compensation based on profits or income. For these reasons, use of the approach will be objectionable in most cases and Department policy is to accept its use in only limited situations based on the individual circumstances present.

2. General Guidelines for Use of the Development Approach. As a general rule, the development approach should not be used as the primary method of valuation since it is overly speculative. Other methods of valuation, such as the market sales approach, are more appropriate when sufficient data is available. Although the development approach could be used as a check on value or a secondary approach in appropriate circumstances, the merits of doing so are questionable where good information for the primary approach is available.

In exceptional circumstances, the development approach is permissible with the approval of the Department. Those exceptional circumstances are where the property is smaller in size, is definitely ready for development and has an anticipated short sell-out period, and comparable sales are lacking. It is especially appropriate where the infrastructure is partially or completely in place.

Even if appropriate under the specific circumstances, however, much care must be taken that the approach is properly executed. The appraiser must conclude through proper market analysis that the property does, in fact, have a Highest and Best Use for subdivision purposes and that adequate market and/or technical data is available with which to reliably estimate the value of the property being appraised. Care must be given to the determination of the potential number of buildable lots, the anticipated sell-out period and the development costs. The appraiser should have information that the development costs are finite (i.e., fixed and certain), that the costs are readily ascertainable from either a source that is a standard in the industry or from the local or regional construction market, and that the costs are generally appropriate to all developers of similar type developments as of the date of valuation.

Relevant factors to determine whether the development approach is speculative in a given situation include, but are not limited to, the following:
a. Applicable zoning and/or whether an approved development plan exists as of the date of valuation. The use of the development approach is most consistent with a parcel that has received final approval for a specific use as of the date of valuation. If zoning changes and variances are needed or there are no approvals or permits in place, then the approach is very susceptible to being overly speculative. In addition, vacant land sales of similar size and zoning will likely exist in this situation such that adjustments can be made to reach an accurate estimate of value.

b. The size of the development and its projected sell-out period. The use of the development approach is most consistent with smaller developments that logically have less infrastructure needs and shorter sell-out periods. Determining the elements of the development approach is thus not necessarily speculative. However, larger developments will involve more physical improvements as well as sell-outs in phases over many years. This leads to more speculation on the anticipated future market for lots and the development cost projections. At some point, these elements become too speculative upon which to base a valid opinion of value.

c. Whether any improvements are in place as of the date of valuation. The use of the development approach is most consistent with a partially completed development that already has improvements in place. The fact of the approval all but determines Highest and Best Use, providing there is some evidence of demand. The extent to which the development is completed helps to establish both the existence of a market and a finite cost analysis from which a raw-land value can be extracted. The partial completion will also likely preclude the use of the market value approach.

J. Imminence of Condemnation. Pennsylvania law requires that any change in market value prior to the date of condemnation that is substantially due to the general knowledge of the imminence of condemnation, other than that due to physical deterioration of the property within the reasonable control of the condemnee, shall be disregarded in determining fair market value. (Section 704 of the Eminent Domain Code). This requirement applies to both increases and decreases in value, and is consistent with a similar provision in the Federal Uniform Act. 49 CFR §24.103(b).

The prohibition on considering changes in value due to imminence of condemnation recognizes that a property may become economically deteriorated during the planning of a public project by such things as the loss of tenants and reduced rents. On the other hand, sometimes the planning of a project will inflate the value of properties in the project area. It is not fair for such increases or decreases to be considered in determining the Before Value of the property because that value is to be as unaffected by the condemnation.

The prohibition may even preclude the consideration of a zoning change. This would be the case where a zoning change was enacted in anticipation of a pending project. Before disregarding an actual zoning requirement, there must be adequate proof that the change was indeed made due to the imminence of the public project.

As to decreases in value, appraisers are advised to note physical deterioration of improvements over which the condemnee has control that may take place prior to the actual date of condemnation, but during its imminence. Pennsylvania courts have held that a condemning agency may consider such a decrease in value under Section 704 because the physical deterioration is not due to the imminence of the condemnation, but rather the condemnee's decision not to maintain the property. As to increases in value, see the discussion of the Project Enhancement Rule below.

K. The Project Enhancement Rule. The Project Enhancement Rule, as it is known, is derived from the decision of the United States Supreme Court in United States v. Miller, 317 U.S. 369 (1942). Known as the famous "Boomtown Case" it involved the taking of land to relocate a railroad line impacted by the U.S. Army Corp of Engineers' project for construction of the Shasta Dam on the Sacramento River in California in the 1930's. As a part of the project, approximately thirty miles of railroad line required relocation due to anticipated flooding and the condemnee's land was acquired in part for this purpose.

The condemnee had previously subdivided what was described as "uncleared brushland" with the intention of establishing a settlement, called "Boomtown", in anticipation of the publicly announced Shasta Dam project. In the course of a jury trial in federal court for just compensation, the condemnee requested a jury instruction under then-California law that provided that fair market value is as of the date of the taking "without elimination of any increment attributable to the action of the taker." Miller, 317 U.S. at 379 (emphasis added). In other words, if the condemnor's project enhances the value of the subject property, California law provided that the condemnor must
pay as damages the project-enhanced value.

In rejecting this rule, the Supreme Court held instead that just compensation for land condemned does not include increases in value resulting from the announcement of a public project or the condemnor's necessity for the land:

If, in the instant case, the [condemnees] lands were, at the date of the authorizing Act, clearly within the confines of the project, the [condemnees] were entitled to no enhancement in value due to the fact that their lands would be taken. *Id.*

The Supreme Court rejected the argument that the individual states—as California had done in this case—could provide a different rule holding instead that its interpretation was binding on all the States as it impacted the substantive right of just compensation, "grounded in the Constitution of the United States." *Miller*, 317 U.S. at 380.

The *Project Enhancement Rule*, also known as the *Miller Rule*, is universally applied in just compensation appraisals under both federal and state law. PennDOT recognizes, however, that the Uniform Standards of Appraisal Practice (USPAP) may provide a contrary result:

When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions. USPAP, Standards Rule 1-4(f)(2012-2013).

Appraisers are advised that the USPAP *Jurisdictional Exception Rule* applies and is invoked to the extent that PennDOT requires that an appraiser follow the Uniform Act and Section 704 of the Eminent Code in disregarding any increases or decreases in fair market value derived from this analysis. An appraiser that disregards the guidance herein and, instead, insists that SR 1-4(f) requires that the valuation before condemnation reflect project enhancement in the market risks both violating the USPAP *Competency Rule* and failing to properly complete the scope of work in the Appraisal Problem Analysis.

L. Contaminated Properties.

1. Scope of Work—Appraisal Problem Analysis. In assignments where the appraiser is required to value real estate with identified or potential environmental contamination the Appraisal Problem Analysis (APA) [Form RW-275P (partial take) or RW-275T (total take)] must document the issue and provide guidance regarding the nature of the contamination and, if appropriate, consideration of available remediation/cost-of-adjustment measures in order for the appraiser to assess its impact on market value. The APA should also provide whether a specialty report is to be obtained and, if so, by whom.

In assignments where this is not a part of the original APA, and in the event that the appraiser's physical inspection and factual analysis uncovers the presence of contamination the appraiser must immediately notify the District Chief Appraiser. The District Chief Appraiser and the assigned Review Appraiser will prepare a Notice of Revision (Form RW-275A) to appropriately adjust the scope of work. Although the appraiser is recognized as not having the expertise to detect and identify contamination, the appraiser should be aware that certain types of properties present a greater risk of contamination than others. The following list is by no means exhaustive but should be helpful:

- Agricultural-Use Structures
- Automotive/Vehicle Repair Shops
- Chemical/Fertilizer Operations
- Dry Cleaning
- Gas/Fuel Stations
- Junkyards & Landfills
- Leather Tanning Operations
- Machine Shops/General Manufacturing
2. Impact on Property Value. Environmental contamination is a relevant characteristic of real estate in determining fair market value under Pennsylvania law. The Eminent Domain Code specifically provides that fair market value shall be the price which would be agreed to by a willing and informed buyer and seller. The concept of an informed buyer and seller contemplates that both are in possession of all the facts necessary to make an intelligent judgment on the price (value) of the property. Knowledge of contamination on the subject property constitutes such a necessary fact. The following general guidance is provided:

a. Determine the Property's Highest & Best Use. After assembling the facts and data necessary on the contamination issue, the most critical step is to determine the subject's highest and best use. The Eminent Domain Code requires an appraiser to consider not only the present use of the property but any reasonably available use as well. The appraiser must identify the highest and best use and determine if the presence of contamination in any way impacts the ability to maximize that use in the market. Whether the material is contained or in an open and volatile condition will have an impact on this analysis, as will determining if the highest and best use is consistent with the presence of such hazardous substances. That is, the presence of the contamination may preclude an otherwise appropriate highest and best use.

Note that just compensation is measured by what is taken from the condemnee and not by the purpose for which the condemnor acquired the property. As a result, PennDOT's clean-up costs in order to construct its project are not a consideration. Instead, the focus is on the impact of the contamination on the property's present and highest and best use and the value in the market for those uses. If the landowner would not have been required to address a condition to continue using or to change the use of the property for a given purpose, reduction of the fair market value for that condition is inappropriate if its presence does not impact market value.

b. Determine an Approach to Value. The best treatment of the subject of valuation of properties impacted by contamination is contained in Nichols on Eminent Domain, Volume 7A, Chapter 13B, §13B.04, which discusses all three principle approaches to value in the context of the affect of contamination on value. A brief discussion follows:

(1) Comparable Sales Approach. Ideally, sales of similar property affected by contamination will be found. This would result in the most reliable adjusted value. However, it is not likely that a sufficient number of such comparable sales will be available. Thus, sales of similar properties that are not contaminated may be used with the contamination becoming a variable for adjustment. The degree of adjustment (if the uncontaminated comparable sale is superior, value is generally subtracted) must be supported by tangible facts and data.

Remediation costs, cost of adjustment reports and similar specialized data should be obtained to support adjustments. The appraiser may find that the adjustments are so severe that they have altered the property's highest and best use completely, changing the field of available comparable sales.

General stigma resulting from the fear of a hazard, standing alone, is inadequate for a negative adjustment because Pennsylvania law prohibits evidence based upon remote possibilities or speculative contingencies. Stigma may only be considered if it is objectively reflected in the market
(2) Income or Capitalization Approach. The basic presumption in employing an income approach technique is that the subject property will maintain a valuable commercial use notwithstanding the contamination.

Appraisers have several ways under this approach to account for the contamination when adjusting the income stream. For example, if finite remediation costs are available—and clean-up would take a certain period of time such as several years—these can be discounted to present value and deducted from the income stream. Alternatively, they may be amortized as an anticipated expense. Another approach is to limit the capitalization rate to the equity yield rate, only, thereby accounting for the risk factor occasioned by a contaminated property.

Reducing clean up costs to present value or amortizing it as an anticipated expense is especially appropriate where there would have been no pressing cleanup obligation had PennDOT not forced the transfer, or where the property taken is only mildly or moderately contaminated. Adjusting the capitalization rate is more appropriate where the contamination is severe in its extent and impact on highest and best use.

(3) Cost Approach. It is generally accepted that the cost approach is a reliable method of valuing special-purpose properties, which may make it particularly useful in valuing contaminated properties that can be put to a use in their contaminated condition. A special-purpose property is one having a limited market with unique physical design and characteristics, special construction materials or layout that would otherwise restrict its use for purposes other than for which it was built. In struggling with the various approaches to valuing contaminated properties, jurisdictions other than Pennsylvania have recognized that contamination may render the property "special-purpose" as long as there remains a viable use available in the market as contaminated. In reviewing these cases, there is nothing in Pennsylvania law that would prohibit this same type of analysis under the right set of factual circumstances.

Since land values are obtained from comparable sales of land through the market approach, the same issues relevant to contamination present if this approach is utilized for improved land would apply when analyzing the land value as vacant under the cost approach. If the appraiser does not account for the possibility that the property can continue with a given present or highest and best use notwithstanding the contamination, the proceeding under the cost approach could produce a misleading result.

The USPAP View. The above guidance is consistent with Advisory Opinion 9 (AO-9) of the Uniform Standards of Professional Appraisal Practice (USPAP), concerning the appraisal of real property that may be impacted by environmental contamination. AO-9 was originally adopted in 1992, and was revised and updated in 2002. Of particular note is the fact that USPAP recognizes that fair market value of contaminated property may not be measurable by simply deducting the remediation or compliance cost estimates from the opinion of value as unaffected by the contamination. USPAP advises the appraiser to account for three (3) distinct considerations:

1. Cost effects—the costs to remediate or contain the contamination.
2. Use effects—the impacts on utility due to the contamination.
3. Risk effects—the impacts due to the real estate market's perception of increased environmental risk and uncertainties. [Similar to the advice contained above, USPAP also advises that these types of effects must be based upon market data as opposed to unsupported opinion or judgment.]

M. Leasehold Damages.

1. In General. A leasehold is a property interest for which compensation is sometimes payable. Different rules apply depending on whether the entire property or only part of the property is acquired. The terms of the lease also may have an impact on whether compensation is payable for the leasehold.

As explained in Section A.10.B above, the unit rule applicable in Pennsylvania requires that the claims of all
owners of the condemned property, including those of lessees, shall be considered together. This requires the appraiser to first determine the fair market value of the property before and after condemnation as if owned by one owner. After the total general damage amount is determined, the appraiser then must allocate the damages between or among the several claimants entitled to compensation. In short, leasehold damages are the apportionment of estimated just compensation that is attributed to the respective interest of the lessor and lessee of a property under a long-term lease of a year or longer.

This section only addresses general damages for the leasehold itself. A lessee may also be entitled to compensation in relation to buildings and improvements if they are tenant owned. See Section A.10.N below.

2. Contract Language. Leases often contain condemnation clauses setting forth the respective rights of the parties in the event of condemnation. These clauses often provide the lessee is not entitled to any portion of the general damages in the event of condemnation. The reason for this is because amounts apportioned to the lessee reduce the amount of compensation payable to the landowner – there is only one pie; the size of the tenant's piece reduces the amount left for the landowner.

Even if precluded from receiving a portion of most general damages, the tenant may retain rights to compensation for tenant-owned improvements. They also usually retain rights to receive any applicable special damages for displacement. The lease may also provide for a reduction or abatement of rent in the event of a partial taking.

The terms of a condemnation clause are legally applicable to the apportionment of damages in an acquisition. If the lease provides the lessee is not entitled to any apportionment of general damages, there is no need to determine the value of the leasehold; the lessee's apportionment of just compensation damages is zero. These clauses typically impact total takings, but can impact partial takings as well.

If the condemnation clause addresses an abatement of rent, this means that an adjustment will be made to the contract rent. For example, if the contract rent is based on square footage, the property's remaining area is reduced accordingly and the lessee's damages are zero. If the condemnation clause states that the contract rent will be renegotiated, the appraiser will need guidance from the Office of Chief Counsel. Abatement clauses impact partial takings only.

The language of the lease must be clear. If there are any doubts about the validity, remaining life, or a condemnation or abatement clause, a legal opinion should be sought from the Office of Chief Counsel through the Chief, Utilities and Right-of-Way Section.

3. Length of Lease and Renewals. Whether the taking is total or partial, the purpose of a leasehold evaluation is to determine the amount that would be paid for the lease if sold on the open market. If the remaining term of the lease is not long enough such that, if the property were placed on the market, a potential purchaser would recognize the lease and be willing to pay more or less for the property because of its existence, then it can be assumed the leasehold has no value. One year is an acceptable length for application of this concept.

The length of a lease must be determined by the written terms of the lease. The fact that there is a possibility of renewal or even a long history of occupancy is no sure indicator of renewal. Whether or not a lease will be renewed for another term is sheer speculation and damages cannot be determined by speculation. Therefore, only the length of the lease as set forth in the lease can be considered in determining the value of a leasehold.

4. Total takes – Bonus Value. Where the entire property being leased is acquired, the lessee is not damaged if there is no bonus value. Bonus value means the leasehold interest has a value greater in the open market than what the lessee is paying in rent; i.e. it is the difference between market rent and contract rent. The term derives from the fact the lessee is receiving a bonus under the terms of the lease.

If the lease has no bonus value, the lessee is not entitled to any apportionment of the general damages. If there is a bonus value, the lessee is entitled to the difference between the fair rental value of the premises and the rent actually reserved in the lease, projected over the life of the lease, and discounted to present worth. This amount is deducted from the total general damages payable and the remainder paid to the landowner.

A lessee cannot be paid based on the loss of business income flow. The standard of compensation in
Pennsylvania is whether the lessee has lost a bonus value. If not, no compensation is due for loss of the leasehold.

The landowner would receive all damages to the exclusion of the lessee if:

- a. Terms of lease exclude the lessee from damages;
- b. The leasehold period is of very short duration (less than one year remaining) and thus not computable; or
- c. The contract rent exceeds economic rent; i.e. no bonus value.

5. Partial Takes – Before and After Values. Where only part of the property being leased is acquired, the lessee may be entitled to compensation even if the lease does not reflect any bonus value. If there is an abatement clause in the lease whereby the rent after acquisition is reduced in accordance with the reduction in size of the leased property, the lessee is not entitled to compensation because the abatement of rent makes him whole. If there is no abatement clause, however, the lessee is entitled to an apportionment of the damages.

The amount payable to a lessee without an abatement clause is the difference between the fair market value of the leasehold interest immediately before the partial taking and the fair market value of the leasehold interest remaining immediately after the taking, projected over the remaining term of the lease and discounted to present worth. The fair market value of the lease is the amount a willing and informed buyer would pay for the leasehold interest, and the sum for which a willing and informed seller would sell the leasehold interest. Evidence regarding costs necessary to cure impacts of the acquisition can be considered as elements of damage insofar as they affect the fair rental value of the property after condemnation.


- a. Prepare a study of the comparison of the contract rent with the economic rent in the area of similar leased space and/or facilities. In the event of a partial taking, a comparison of the contract and economic rent in both the before and after situations must be prepared, in order to properly apportion damages.
- b. Prepare an estimate of the remaining economic and physical life of the structure under lease. The valuation of the lease is based only on the estimate of economic life which cannot exceed the remaining physical life.
- c. Analyze the economic trends of the area for at least the time period of the current lease. If the remaining term of the existing lease falls short of the economic life of the building, a further analysis will be required to carry the valuation process to its conclusion, which includes the value of any reversion.

Care must be exercised when comparing contract rent with the economic rent developed by market analysis. Comparing between the subject and the comparable must include such factors as time, location, amount of usable space, utilities, physical and functional condition, and specific language in the lease that would affect rental value. Each comparable must include detailed information and must be described in order to make a comparison.

7. Example for Total Acquisition. If the economic (market) rent is greater than contract rent, compute the present worth of the difference over the remaining life of the lease.

Use a financial calculator or a table for present worth of one per period, compound interest factors.

The discount rate should be based on current market activity. On the appraisal report, the appraiser should enter the total damages, the lessee's interest, and then subtract the lessees' interest from the total damages. The difference is the landowner or lessor's interest.

There is no need to compute the lessor's present value of remaining contract rent plus reversion value of the property. The analysis and result will be sound if the estimated fair market value of the property and the economic rent are well supported by an income approach or a sales comparison approach.

When contract rent is greater than economic rent, no computations are needed because the lessee has no bonus
value and is not entitled to any compensation for its leasehold interest. Likewise, when contract and economic
rents are the same, the lessee's interest is zero and all damages go to the lessor.

8. Examples for Partial Acquisition. The appraiser will need to estimate a supported economic rent for both
the before and after situations to arrive at the difference between the value of the leasehold before and after
acquisition. The leasehold may have a bonus value before and a lesser bonus value after (Example No. 1), or
the leasehold may have no bonus value before and an economic rent after that is less than the contract rent
(Example No. 2).

Example No. 1

| Before Fair Market Value of Property | $90,000 |
| After Fair Market Value of Property  | $77,000 |
| Damages                              | $13,000 |

Remaining Life 5 Years, Discount Rate 10%

| Economic Rent for the Before          | $10,000/yr. |
| Contract Rent                        | $8,000/yr.  |
| Difference                           | $ 2,000/yr. |

Present Value of $2,000 Discounted at 10%      | $ 7,600 |

Before Value Breakdown:
- Total Before Value: $90,000
- Lessee's Interest: $ 7,600
- Lessor's Interest (Difference): $82,400

Economic Rent for the After: $8,500/yr.
Contract Rent: $8,000/yr.
Difference: $ 500/yr.

Present Value of $500 Discounted at 10%      | $ 2,000 |

After Value Breakdown:
- Total After Value: $77,000
- Lessee's Interest: $ 2,000
- Lessor's Interest (Difference): $75,000

Lessor's Interest would be
- Before: $82,400
- After: $75,000
- Damages: $ 7,400

Lessee's Interest would be
- Before: $ 7,600
- After: $ 2,000
- Damages: $ 5,600

Page 28 in the Appraisal Report would show:
- Total Damages: $13,000
- Landowner (Lessor): $ 7,400
- Leaseholder (Lessee): $ 5,600
Example No. 2a

Before Fair Market Value of Property $90,000
After Fair Market Value of Property $77,000
Damage $13,000

Remaining Life 5 Years, Discount Rate 10%

Economic Rent for the Before $9,000/yr.
Contract Rent $9,000/yr.
Difference $0/yr.

Present Value of Leasehold (no bonus value) $0

Economic Rent for the After $8,500/yr.
Contract Rent $9,000/yr.
Difference $500/yr.

Present Value of $500 Discounted at 10% (this is the lessee's apportionment) $2,000

Page 28 in the Appraisal Report would show
Total Damages $13,000
Leaseholder (Lessee) $2,000
Landowner (Lessor) $11,000

N. Tenant Owned Improvements. Tenants may own buildings, structures and/or machinery and equipment that form part of the realty. Tenants are entitled to compensation in relation to the improvements that they own, even though considered part of the realty. Outdoor advertising devices may be tenant-owned improvements, but do not form part of the realty. They are considered personal property and treated accordingly. See Chapter 4, Section 4.05.

In view of the unit rule, the property must first be appraised taking into consideration the contributory value of all improvements, whether owned by the lessor or the lessee. That is, fair market value will include all rights, title, and interest to the property as if owned by one owner - land and all improvements, fee-owned and tenant-owned as an entirety. The appraiser must then make an allocation of damages between the property owner and the tenant based upon the ownership of the affected improvements. This allocation will typically be done on a cost approach basis. The amount payable to the tenant for the contributory value of its improvements will be deducted from the total damages paid to determine the amount payable to the landowner.

Where the salvage value of the improvement is greater than the contributory value of the improvement, the tenant is entitled to the greater value. This will not impact the allocations in the appraisal, which should be based on contributory value. The Department will simply make an offer to the tenant based on the greater amount. Unless directed to do so in the Appraisal Problem Analysis, the appraiser need not determine salvage value.

This policy is consistent with Section 24.105 of the Uniform Relocation Assistance and Real Property Acquisition Act, 49 CFR §24.105, providing that 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, shall be considered to be real property for compensation purposes. 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. Salvage value is defined as the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

O. OADs and Land with a Highest and Best Use of OAD Placement.

1. In General. There are fundamental differences between valuation of land having a highest and best use of OAD placement, valuation of the leasehold if there is a lease for an OAD, and valuation of OADs themselves.
2. Leasehold Interest to be Valued on Bonus Value Basis. When a tenant owns the OAD, there are two elements for consideration: the leasehold interest of the OAD owner in the land taken and the OAD itself. OAD leases are no different than other leases. That is, where a leasehold is taken in its entirety, just compensation is the difference between the fair rental value of the leased premises and the rent actually reserved in the lease. The value of this differential is referred to as the "bonus value" of the lease. Id.

No matter how the OAD itself is treated (personalty or realty), the owner of an OAD lease may be entitled to compensation for the taking of the leasehold based on bonus value. This is a real property interest to be dealt with as part of the real estate claim like any other leasehold interest. That is, the property is to be valued as if owned by one owner, and then the value of the leasehold interest allocated to the tenant and the remainder of the damages to the landlord.

3. OADs are Presumed to be Personal Property and Valued by the Cost Approach. OADs themselves are presumed to be personal property (a trade fixture) under Pennsylvania law. Therefore, their value is not to be included in the fair market value determination for the property. Rather, the OAD owner is entitled to moving and related expenses. However, because the owner may elect to receive actual direct losses with reference to personal property, an appraiser may be directed to determine the value in place of an OAD. If this is part of an assignment, the Appraisal Problem Analysis will so indicate.

The following concepts on the value in place of an OAD apply whether the OAD is owned by the landowner or a tenant. They also apply even if the OAD owner is not able to find a suitable replacement site due to zoning restrictions.

Consistent with general eminent domain law, income flow evidence is inadmissible in determining the value of either the leasehold interest of an OAD owner or the value of the OAD itself. Approaches to value based on the income derived from the sale of advertising on an OAD are thus not permissible. They must be valued on the basis of their fair market value as severed from the real estate. The reproduction cost approach to value is the only acceptable method of appraisal for the OAD in accordance with Pennsylvania law. This is true even if an OAD would be considered realty.

4. Land with a Highest and Best Use of OAD Placement. Valuing land upon which an OAD is or could be located is different than valuing the leasehold interest of a tenant or the OAD itself. A traditional income approach is permissible when valuing land with a highest and best use of OAD placement. That is, an appraiser may capitalize the net rental or reasonable net rental value of the condemned property. Of course, even in this situation, the rent being capitalized may not be based on the income or profits from the sale of space on the OAD itself, but is the rent paid (or economic rent that would be payable) by a sign company for renting the land.

As with other types of property, the fact that the traditional income approach is permissible does not preclude use of a sales comparison approach or mean that the income approach is required or appropriate in any given situation. The exception permitted by the Eminent Domain Code allowing capitalization of reasonable net rental values customarily determined by a percentage or other measurable portion of gross sales or gross income of a business which may be reasonably conducted on the condemned property is not applicable to land having a highest and best use of OAD placement. There is insufficient evidence that net rental values for OAD land are customarily determined in this manner.

P. Condominiums. The Uniform Condominium Act specifically directs the method of treating condominium property in the event of condemnation. The act applies to all condominiums created after October 30, 1980, and most of those created before then. Under a condominium, individual units, whether commercial or residential, are owned in fee simple by the individual, while common areas such as parking lots and lawns are owned jointly by all members of the condominium association.

The act treats the taking of common areas differently than that of individual units. If part of the common element is acquired, the compensation must be paid to the condominium association. The association must then divide the compensation according to an established method.

If an entire unit or so much of a unit that it cannot be used for its intended purpose is acquired, the compensation is to be paid to the unit owner. The compensation must be for the loss of the unit as well as the loss of the common element interest of the unit owner, whether or not any of the common elements are acquired. Where such an
acquisition occurs, the interests of the unit owner are reallocated according to an established method and any remnant of a unit remaining becomes a common element.

If part of a unit is acquired, but its use is not destroyed, the compensation is again to be paid to the unit owner. The compensation must be for the reduction in value of the unit as well as the reduction in value of the common element interest of the unit owner, again, whether or not any of the common elements are acquired. Where such an acquisition occurs, the interests of the unit owner are reduced and reallocated according to an established method.

SUMMARY

These guidelines are issued for the aid of all persons associated with right-of-way acquisition under jurisdiction of the Commonwealth. Their purpose is to demonstrate the level of competency expected and the procedures that must be followed before appraisals are accepted by the Department.

GLOSSARY

Abandonment – Transfer of a state highway facility for continued use by a lesser public authority.

Abutter's Rights – The right of one owner in the property of another by virtue of sharing a common property line; as an example: right of access.

Accepted Appraisal Report – this means that the appraisal report meets the Federal and State requirements (including the Uniform Standards of Professional Appraisal Practice "USPAP") and may be the basis for the establishment of the amount believed to be just compensation.

Access – The way or means to approach, to enter and to leave a privately owned tract of land from a public way without trespassing on other privately owned property.

Accrued Depreciation – The difference between reproduction cost new or replacement cost new of the improvements and the present worth of those improvements, both measured as of the effective date of valuation. In measuring accrued depreciation, the appraiser is interested in identifying and measuring the loss in utility experienced by the subject structure in its present condition, as compared to the utility it would have as a new improvement representing the Highest and Best Use of the site. Accrued depreciation is sometimes referred to as diminished utility.

Acquisition – All property or property rights that the condemnor will acquire either in fee or by easement, either permanently or temporarily. (See Take)

Actual Age (Chronological) – The period of time elapsed since the construction of a building or improvement. (see also Remaining Economic Life and Effective Age)

Adverse Possession – A claim made against the lands of another by virtue of actual, exclusive, open, notorious, hostile and continuous possession and occupation of real property over a 21-year period.

Aerial Easement – The rights to construct and maintain overhead bridges or elevated roadway sections where all surface rights to the underlying land are not required. The easement includes surface and support rights for any piers within the easement area as well as entry rights for inspection, maintenance, reconstruction and repair and limitations on the use of the surface by the fee owner.

Aesthetic Value – The intangible enhancement of the value of a property due to such factors as a site offering an unusually pleasing view, location, or design which is exceptionally attractive.

After Value – The value of a property immediately after the date of acquisition and as affected by that acquisition.

Agency – The term Agency mean the Federal Agency, State, State Agency, or person that acquires real property or displaces a person.

Air Rights – The right to undisturbed use and control of a designated air space within the perimeter of a stated land
Amortization – The process of retiring debt or recovering a capital investment through scheduled, systematic repayments of principal; a program of periodic contributions to a sinking funding or debt retirement fund; that portion of a fixed mortgage payment applied to reduction of the principal amount owed.

Annuity – An annual income; the return from an investment of capital in a series of periodic payments that comprise both interest and a partial return of capital; a series of periodic payments, usually, although not necessarily, equal in amount and made at equal intervals of time.

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.

Appraisal Problem Analysis - (See Scope of Work)

Appraisal Report – Usually a written statement of the market value as of a specific date. A conclusion that results from an analysis of facts.

Appreciation – The increase in cost, price, or value resulting from improved economic conditions, increasing price levels, reversal of depreciating environmental trends, and other factors.

Appurtenance – A feature of a property accessory to, or an adjunct of, a more important property, title to which usually passes with the title to-the principal property. Something that passes as an incident to land, such as a right-of-way.

Assemblage – Putting together two or more lots to form a large parcel. To be distinguished from Plottage, which is the result of assemblage. (See Plottage)

Assembled Economic Unit Doctrine (AEUD) – States that under certain conditions M&E may be treated and valued as a part of the Realty. Upon acquisition of the property, compensation may be required for injury to such M&E either because the M&E has been incorporated into the Real Estate or because the M&E has been deemed as Realty through the application of the AEUD. Whether the AEUD applies or not will be determined by the Department and will be noted in the APA. The AEUD is a fairly complicated concept. Further discussion can be found in Chapter 2, Section 2.20.

Attachments – Additional and/or ancillary equipment of the main item or the way in which the item is annexed to the realty.

Balance, Principle of – Holds that value is created and maintained in proportion to the equilibrium (balance) attained in the amount and location of essential uses of real estate. Maximum value is created at that point where the four factors of production (land, labor, capital and management) are in equilibrium (balance).

Before Value – The fair market value of a property immediately before the date of acquisition and as unaffected by that acquisition.

Bench Mark – A point of known location and elevation usually marked by stone or concrete posts.

Benefit, General – Advantage accruing from a given public improvement to a community as a whole, applying to all property similarly situated not to be considered by the appraiser.

Benefit, Special – Advantage occurring from a given public improvement to a specific property and not to others to be considered by the appraiser.

Berm – The earthen or paved extension of the roadway, sometimes called a shoulder.

Betterment – An improvement that adds to the capital cost or value of the structure, item or asset. A capital expenditure that increases the utility or market desirability of the property. It is distinguished from repairs or replacements in that the original character is improved and the capital investment is increased. A physical change in an existing property or equipment that increases its value and usefulness, and is not a mere restoration. It is
reflected in accounting by an equivalent increase in book value. It does not result from an acquisition of new property or enlargement of an old one; also may arise from a physical change external to the property such as street improvements or improved drainage facilities. Measure of value is not in actual cost, but in enhanced value imparted to the property.

**Blight** – A reduction in the productivity or usefulness of real estate caused by destructive economic forces, such as encroachment of inharmonious property uses and/or rapid depreciation of buildings.

**Bonus Value** – The value of any rental in excess of the rent reserved in the lease that the tenant could obtain if the premises are 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 space in the vicinity of the subject lease (economic or warranted or market rent).

**Book Value** – The capital amount at which property or an item is shown on the books of the business. Usually it is the original cost, less reserves for depreciation, plus additions to capital.

**Building Line** – A line established by ordinance or statute between which line and the street a structure is not permitted. Synonymous with "set back line."

**Bundle of Rights Theory** – ownership of a parcel of real estate may embrace a great many rights, such as the right to its occupancy and use; the right to sell it in whole or in part; the right to bequeath; the right to transfer, by contract, for specified periods of time, the benefits to be derived by occupancy and use of the real estate. These rights of occupancy and use are called beneficial interests.

**Business Entity** – A business entity represents the tangible and intangible assets of an operating business that would include real estate, M&E, inventory and goodwill. It is noted that under Pennsylvania Law, goodwill is not compensable. Inventory may be compensable under purchase of personal property. Business income and the income stream are not compensable.

**Capitalization** – The process of converting into present value (obtaining the present worth of) a series of anticipated future payments.

**Capitalization Rate** – The sum of a Discount Rate and a Capital Recapture Rate. It is applied to any income stream with a finite term over which the invested principal is to be returned to the investor or lender.

**Capitalize** – To convert future payments into current value; to discount future incomes into present value.

**Change, Principle of** – Holds that it is the future, not the past, that is of prime importance in estimating value; and that because economic, and social forces are constantly at work to modify real property, the appraiser must always view real property and its environment in the light of its transition, not its permanence. This is fundamentally the law of cause and effect.

**Chattel** – Personal property, such as household goods, movable fixtures, and vehicles.

**Chattel, Real** – All interests in real estate that do not constitute a freehold or fee estate in land. Such chattels include leasehold estates and other interests issuing out of or annexed to real estate.

**Circuity of Travel** – Governmental changes in traffic patterns, street closures, the relocation of streets, or changes in roadway widths which have an adverse effect on access to or from a property, making access more roundabout or indirect than it was prior to the government action.

**Clear Title** – A title that is not encumbered or burdened with defects.

**Clouded Title** – An encumbered title; examples are judgments and liens.

**Common Property** – Land generally, or a tract of land, considered as the property of the public in which all persons enjoy equal rights.

**Comparables** – An abbreviation for comparable properties, sales, rentals, etc., used for comparative purposes in the appraisal process.
Compensable Damages – Those damages for which compensation must be paid under condemnation law.

Compensable Interest – A property right which, if acquired for public purposes, would entitle the owner to receive just compensation.

Condemnation – The process by which property is acquired for public purposes through legal proceedings under the power of eminent domain.

Condemnation, Inverse – A legal process by which an owner may claim damages for loss in value or taking of property and receive compensation when formal condemnation action has not been instituted by a condemning body.

Consequential Damage – Damage to a property arising as a consequence of a taking, construction, or action on lands other than the subject property. A property may sustain consequential damage when there is no physical or legal taking, such as a consequence of a change in grade of a street that adversely affects ingress to and egress from the affected property. (See Section 612 of the Eminent Domain Code)

Contour – A line connecting points on a land surface or map that have the same elevation.

Contract Rent – The amount of rent provided for under the terms of a lease. The actual rent being paid.

Contributory Value – This is based on the concept that the individual components of real estate including land, buildings, structures, M&E, above and below ground, contribute to the value of the whole. This applies to all types of property. Contributory value does not include goodwill or the value of a business carried out on the real estate.

Control of Access – The total or partial control by a public authority of the rights of others to ingress, egress, air, light or view in connection with a public improvement.

Cost of Adjustment – The cost of adjustments and alterations to any remaining property made necessary or reasonably required by the acquisition. Cost of adjustment includes –

a. The cost to replace specific items, such as landscaping, sidewalk or driveway adjustments, or other improvements (fencing, mailboxes, lamp posts, etc.), that have been taken or injured;

b. The costs associated with mitigating severance and/or depreciation damages to the remainder in order to return the property, in as much as possible, to its highest and best use. The costs associated with mitigating severance and/or depreciation damages must never exceed damages. In order to prove that the costs do not exceed damages, the appraiser must estimate the after value without the adjustments, which should establish the validity of the analysis. This method can be used in situations where a property has suffered a damage which can be physically and economically corrected. If the correction of the damages requires action outside of the remaining property the adjustment cannot be considered.

Cost New (CN) – Current cost of replacing the item described with a new identical model or its nearest equivalent. (See Replacement Cost New and Reproduction Cost New)

Cost New in Place (CNIP) – Transportation and installation costs plus the Cost New of the item. Installation allowances incorporate the cost of placement, wiring and connections to existing hookups, special assembling, millwright requirements, as well as engineering fee for layout and reasonable administrative costs as applicable. (See Replacement Cost New and Reproduction Cost New)

Cubic Content or Capacity – The front dimension of a building or room, multiplied by depth of a building or room, multiplied by height. Referred to also as "cubage," not to be confused with usable area.

Culvert – Any structure not classified as a bridge that provides an opening under a roadway.

Curable Depreciation – Parts of a building that are usually repaired or replaced because the cost of repair or replacement is equal to or exceeded by the enhancement of value to the property. (See Incurable Depreciation)

Damages – Payments required to be made for compensable losses as a result of property acquisition. They include the following types:
Direct – The amount of just compensation for land and/or improvements actually taken. Ordinarily subject to Capital Gains Tax or Ordinary Income Tax.

Indirect – The amount of just compensation for the estimated loss in value to the remainder (consisting of land and/or improvements) in a partial acquisition including costs of adjustment, if any. Also known as severance damages. Ordinarily not subject to Capital Gains Tax or Ordinary Income Tax.

Date of Taking – The date the declaration of taking is filed in the prothonotary’s office of the county where the condemned property is located. Date of Condemnation is synonymous with Date of Taking.

Dedication – The transfer of property without compensation from a property owner to a public authority for use by the public. In accordance with statute or contract law, there must be an offer and an acceptance of Fair Market Value.

Deed, Quitclaim – A written instrument (deed) transferring without warranty, any interest, title or claim the grantor may have in the estate conveyed.

Deed, Warranty – The conveyance of an estate by deed containing a covenant by the grantor to the grantee to warrant and defend the title.

Deferred Maintenance – Necessary repairs and rehabilitation that exists at time of appraisal; does not necessarily mean that past maintenance has been faulty or inadequate. This can be found in every property to some extent.

Depreciation – A reduction of an improvement’s value resulting from physical deterioration, functional obsolescence or economic (external) obsolescence. Does not apply to land. Depreciation is due to various causes, including any one or a combination of physical, functional and external (economic).

  Physical (Deterioration) – loss of value or usefulness of an item or property brought about by wear and tear, deterioration, exposure to the elements, in-service use, physical stresses and similar factors.

  Functional Obsolescence – loss of value or usefulness of an item or property caused by ineffectiveness or inadequacies of the property itself when compared to a more efficient or less costly replacement property that new technology has developed. (e.g. capacity, super-adequacies, or deficiencies).

  External (Economic) Obsolescence – loss of value or usefulness of an item or property caused by factors external to the property, such as increased cost of raw materials, labor or utilities (without an off-setting increase in product price), reduced demand for the product, changes in technology, governmental, environmental or other regulations, or similar factors.

Displacing Agency – The term displaced Agency means any Federal Agency carrying out a program or project, and any State, State Agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be displaced.

Divided Highway – A highway with separate roadways for traffic flow in opposite directions.

Donations – The voluntary conveyance by a private owner of property to public ownership and use. No compensation is included in the transaction. The Agency is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

Drainage Ditch – Any open watercourse constructed beyond the limits of cuts and fills. The collection of surface drainage in a depressed area within the right-of-way.

Drainage Easement – An easement required for directing or retention of the flow of water.

Easement – An interest held by one party in land of another whereby the first party is accorded partial use of such land for a specific purpose. An easement restricts but does not abridge the rights of the fee owner to the use and enjoyment of land. Different types of easements include temporary, scenic, agricultural, drainage, channel, slope and underground.

Economic Life – The anticipated period of time that a property may be profitably utilized or until the property is
renovated or its use and/or occupancy dramatically changes. Usually an estimate by an appraiser.

**Economic Rent** – As distinguished from contract rent, economic rent is the rent being paid for similar properties (Market Rent).

**Economic Unit** – The functional unit of the real estate and M&E. In order to have an economic unit, there must be a substantial difference in the value of the real estate with the machinery as contrasted to the value of the real estate without the machinery or other improvements. Does not include goodwill.

**Effective Age** – As applied to a structure, distinct from chronological age, it is the age indicated by the condition and utility of the structure. If a building has had better than average maintenance, its effective age may be less than actual age. If there has been inadequate maintenance, effective age may be greater. For example, a 40-year old building may have an effective age of 20 years due to rehabilitation or modernization.

**Effective Date** – The date at which the analyses, opinions, and advice in an appraisal, review, or consulting service apply.

**Effective Gross Income** – The result of the subtraction of an allowance for vacancy and rent losses from the estimated gross rental income.

**Egress** – Refers to access; the right to leave a tract of land.

**Eminent Domain** – The right or authority of public or quasi-public agencies to take private property for public use without the property owner's consent upon payment of just compensation. (See Police Power & Escheat)

**Encroachment** – An improvement such as a building, wall, fence or other structure that intrudes on another owner's property or a public right-of-way.

**Encumbrance** – A restriction or limitation of the fee simple title to a property, such as easements, liens, or mortgages.

**Equity** – The interest or value that an owner has in real estate over and above any mortgages or liens that may be against it.

**Escalator Clause** – That part of a lease which will allow for the rise or fall of rents, due to changing economic conditions. (See Graduated Lease)

**Escheat** – The reversion of title to real property to the county or due to an owner's failure to pay taxes or intestate demise. (See Eminent Domain & Police Power)

**Estate** – A right in property. An estate in land is the degree, nature or extent of interest that a person has in it.

**Estate for Years** – A lease that allows an interest in real property for a defined and limited period of time.

**Estimate** – An opinion developed from analysis of adequate data by one qualified to develop such an opinion.

**Exception** – That portion of land to be deleted or excluded in a legal description; an objection to title or encumbrance on title.

**Expressway** – A divided arterial highway for through traffic, with full or partial control of access and generally with grade separation of intersections.

**Facts & Data Book** – A collection of comparable sales data, listings, zoning codes and pertinent information about the project area. Sometimes referred to as a compendium.

**Factors in Production** – The factors in the production of wealth, income or services that can be sold for money in the market such as labor, management, capital and land (including natural resources).

**Fair Market Value** – See Chapter 2, Section 2.03.B for definition.

**Fair Rental Value** – The monetary amount reasonably expected for the right to the agreed use of real estate. It may
be expressed as an amount for one month or other period of time, or per room, per front foot, per square foot, or other units of property. Same as economic rent or market rent.

**Fee Simple** – The largest and most extensive estate, or full ownership in property.

**Fixture** – An item of personal property or otherwise movable chattel that by reason of its annexation to real property and adaptation to continuing use with the realty is considered a part of the realty.

**Flood Plain** – The areas along the courses of streams that are subject to overflow, as shown by Army Corps of Engineers maps.

**Fractional Interest** – Divided or undivided rights in real estate that represent less than the whole. A partition is the legal separation of undivided fractional interests such as co-ownership in real estate. This division of real property into separately owned parcels according to the owners' proportionate shares, which is usually pursuant to a judicial decree, severs the unity of possession, but does not create or transfer a new title or interest in property.

**Fractional Interest Analysis** – To estimate the Market Value of the portion of the Subject Property being acquired, ONLY. The value of the land being acquired or affected shall be based on the contributory unit land value of the entire site. The total value shall also include the contributory value of any site improvements located upon the land areas being acquired or affected, including, but not limited to, paving, fencing, trees, and shrubbery.

**Frontage Road (or Service Road)** – An auxiliary road on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

**Functional Utility** – The sum of the attractiveness and usefulness of the property. It is the ability of the property to perform the function for which it is intended, in terms of current market tastes and standards. Elements of functional utility in a residence include architecture, design and layout, traffic pattern, sizes and types of rooms, and performance standards.

**Gentrification** – A relatively recent neighborhood phenomenon, whereby middle and upper-income families and single persons purchase properties and renovate or rehabilitate them and existing residents become displaced.

**Goods Held for Sale** – Any item of tangible personal property not classified as machinery, equipment or fixtures, acquired, purchased or manufactured by the acquired business for sale to the general public or a specific customer base. Items classified as inventory are not goods held for sale.

**Goodwill** – The capitalized value of the excess of net earnings over and above a fair return on tangible assets. Goodwill is not compensable under Pennsylvania Law.

**Graduated Lease** – A lease that provides for certain rental adjustments, often based on future determination. Sometimes rent is based on results of periodical appraisals; used largely in long-term leases.

**Gross Income** – The total potential economic (market) rental income a property could earn before any expenses are deducted.

**Gross Lease** – A lease under which the lessor pays all the expenses of operation of the property in addition to capital charges.

**Gross Living Area** – The area of finished, above grade residential space excluding unheated areas such as porches and balconies; the standard measure for determining the amount of space in residential properties.

**Ground Rent** – Rent paid for the right to use and occupy land.

**Hereditaments** – Every sort of inheritable property, real and personal, tangible and intangible.

**Highest and Best Use** – The most probable use which is legally permissible, physically possible, economically feasible, and in demand which will yield the highest return on investment.

**Income Approach** – The income approach to value is a method to measure the present value of a property's expected future returns. The approach is based on the property's net earning power that is then capitalized to arrive at an
indication of value. The income approach is typically not applicable to Department M&E appraisals. (See Income Property)

**Income Property** – In appraisal, a type of property primarily owned by investors to produce rental income.

**Incurable Depreciation** – Loss in value resulting from elements of physical deterioration and functional obsolescence that either cannot be corrected or would not produce an increase in value sufficient to warrant the cost of correction. (See Curable Depreciation)

**Ingress** – Refers to access. The right to enter a tract of land.

**Integrated Use** – That degree of relationship sufficient under condemnation law for valuation purposes the ownership of other tracts to a claim by a person having a less than fee ownership in the tract condemned. This doctrine applies only if the other property is used at the time of condemnation along with the condemned property for a unified purpose such that the injury to one tract would permanently damage the other.

**Inventory** – When related to the manufacturing process, inventory includes raw materials; work in process (WIP), and dead stock. Inventory does not include goods held for sale.

**Investment Value** – Value to a particular investor based upon individual investment requirements, as distinguished from the concept of market value, which is impersonal and detached.

**Just Compensation** – That payment required by law for the loss sustained by the owner as a result of taking or damaging of private property for public purposes.

**Landlocked Remainder** – A parcel of land without access to any type of road or highway usually associated with the partial taking of land for highway purposes.

**Larger Parcel**

1. In condemnation, that tract or tracts of land which are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

2. In condemnation, the portion of a property that has unity of ownership, contiguity, and unity of use, the three conditions that establish the larger parcel for the consideration of severance damages in most states. In federal and some state cases, however, contiguity is sometimes subordinated to unitary use.

**Lease** – A written or oral contract by which possession of land and/or building is given by the owner (the lessor) to another person (the lessee) for a specific period of time and a specified amount of rent.

**Leased Fee** – A property held in fee with the right of use and occupancy conveyed under lease to another party.

**Leasehold** – Property interest held by a lessee.

**Leasehold Improvement** – An improvement typically of a fixed, non-removable nature made by a tenant to the leased property. Improvements may include partition walls, flooring, electrical additions, painting and other items. These improvements often revert ownership to the property owner at lease end. May be considered as Special Built in Fixtures (SBIF's) and a part of the M&E appraisal.

**Leasehold Value** – The worth of a leasehold interest; the right of use, enjoyment and profit existing by virtue of the rights granted under a lease; the present (discounted) worth of the rent saving when the contractual rent at date of appraisal is less than the current economic (market) rent. (see Bonus Value)

**Legal Access** – A right that an owner of land that abuts a highway has to use the highway for ingress and egress.

**Lessee** – The one to whom the lease is granted or the property is rented under the lease.

**Lessor** – The one who rents real property to another or leases the right of use of real estate to another (the landlord).
License – A formal agreement from a lawful source that allows a business or profession to be conducted.

Limited Access – A highway facility with access allowed only at specific locations.

Liquidation Value – The most probable price a specified interest in property is likely to bring when: consummation of the sale will occur within a limited marketing period, marketing conditions are those current, the buyer is acting prudently and knowledgeably and the seller is under extreme compulsion to sell. A price obtained without reasonable market exposure to find a purchaser.

Machinery & Equipment – For the purpose of the Department, an all encompassing term to include all tangible personal property, machinery, equipment, fixtures, plant and office furniture, equipment and machines, rolling stock, vehicles, inventories and other items as may be directed by the APA. (See Personal Property, Fixture)

Marginal Land – Land that returns little or no profit when the costs of labor, management, and capital approximately equal the gross income.

Marketability – A term used to denote the ready transferability of the benefits of ownership to a new owner. Also relates to the general acceptability of a property on the current market.

Metes and Bounds – The limits and boundaries of a tract of land. A type of legal description related to the bearings and distances between monuments (corners) of a property.

Mobile Home – The term mobile home includes manufactured homes and recreational vehicles used as residences.

Moveable and Non-Moveable – (M&E, furniture & fixtures) The appraisal separates M & E in to two categories, that which is easily moveable and that which is fixed and attached or non-moveable. The department recognizes that generally speaking all things are moveable. The test here is whether an item was installed and meant to be a permanent part of the reality, fixed and attached in such a manner as to logically become part of the reality, or if it is economically feasible to remove, relocate and reinstall the asset. This considers the economics, not just the physical conditions.

Consider the three tests of fixtures: Intent, Adaptability, and Annexation. (See Fixture, SBIF) The tests will ultimately determine if the removal of said item(s), from the condemned property, will lose substantially all of their value.

Note: Typically, due to zoning restrictions, size, lighting requirements, posted address and or phone numbers, most signs are considered as Non-moveable.

Net Lease – When a tenant (lessee) assumes responsibility for all or part of expenses such as insurance, taxes, operating expenses and repairs. This is widely misunderstood—the appraiser must ascertain exactly which party is responsible for which expenses.

Net Operating Income – Annual net income remaining after deducting all fixed and operating expenses but before deducting charges such as recapture and debt service.

Non-Conforming Building – Any building that does not meet the current existing standards of a zoning ordinance.

Non-Conforming Use – A use of property that does not conform to the use regulations of the zoning area in which it is located.

Not Accepted Appraisal Report – this means that the appraisal report does not meet Federal and State requirements or USPAP and will not be used as the basis for the acquiring agencies offer.

Observed Depreciation – Used to denote the loss in value and utility of a property compared to a new property or one capable of rendering maximum benefits. Based on the direct observation of the appraiser with a detailed description of the physical and functional deficiencies affecting the desirability of the property included in the report.

Operating Expenses – All Fixed and Operating Expenses necessary to maintain the production of rental income from a property.
Operating Statement – An account in writing of the income, expenses and profits of a property during a specific period of time.

Original Cost of Personal Property to the Displaced Person – The amount paid by the displaced person for the personal property, as amount paid by the displaced person for the personal property, as indicated in his business records. In the event of personal property, the replacement cost of equivalent property at the time of sale shall be used. (See definition for replacement cost). 37 PA. Code, Chapter 151, Section 151.1.

Overall Rate – The direct ratio between Annual Net Operating Income and Value or Sale Price.

Over-Improvement – An improvement that is not the Highest and Best Use for the land site because its size, cost or other factors are detrimental to the maximum possible land value. (See Under-Improvement)

Partial Taking – The taking of only part of a property for public use under the power of eminent domain for which compensation must be paid, taking into consideration the damages and/or special benefits to the remainder property.

Party Wall – A wall that is erected on a line separating two properties where both owners have common rights of use.

Percent Good – The reciprocal of all estimated accrued depreciation. It is the remainder good that is representative of FMVIP as utilized in the cost approach.

Personal Property – A tangible not considered to be real property for purposes of general damages under the laws of the Commonwealth. 37 PA. Code, Chapter 151, Section 151.1.

Physical Life – An estimated period of time which a building or improvement may be capable of existing if normally maintained. Physical life must not to be confused with economic life. (See Economic Life)

Plot Plan – A map or plan of a single parcel or tract showing a property in its entirety.

Plotage – The increment in value realized from assembling two or more sites under a single ownership, creating a greater utility and value of the larger tract. (See Assemblage)

Project – means an undertaking which is planned, designed, and intended to operate as a unit.

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. Just Compensation is not required in the exercise of Police Power. (See Eminent Domain & Escheat)

Power Source (P/S) – Notes source and type of power, i.e. 440/220v, 3 phase, single phase, plug-in, steam, oil or gas fired and others.

Pretrial Conference – A conference preceding a Board of View hearing or trial by jury held by legal counsel to discuss with appraisers and/or others the details of the case to be presented; a conference before a trial attended by the judge and counsels to simplify and expedite a case by clarifying the issues.

Property, Personal – Generally, movable items; those not permanently affixed to and a part of real estate. In deciding whether or not an item is personal property or real estate, usually there must be considered: (1) the manner in which it is annexed; (2) the intention of the party who made the annexation (that is, to leave permanently or to remove at some time); and (3) the purpose for which the premises are used. Generally, and with exceptions, items remain personal property if they can be removed without serious injury either to the real estate or to the item itself.

Property, Real – The interests, benefits, and rights inherent in the ownership of the physical real estate. It is the bundle of rights with which the ownership of real estate is endowed.

Proximity Damage – The loss in market value of a property resulting from encroachment and/or proximity of a highway or other type of construction.

Recommended Appraisal Report – this means that the appraisal report meets the Federal and State requirements (including USPAP) and is the basis for the establishment of the amount believed to be just compensation.
Reconciliation – The process by which the appraiser evaluates, chooses and selects from among two or more alternative conclusions or indications to reach a single answer (final value estimate).

Remainder – The portion of a tract or parcel that is retained by the owner after a part of such tract or parcel has been acquired through Eminent Domain Proceedings.

Remaining Economic Life – The number of years remaining in the economic life of a structure or structural component as of the date of the appraisal. In part, this is a function of the attitudes and reactions of typical buyers in the market, and in part, a function of market reactions to competitive properties on the market. This is an estimate based on the appraiser's estimate of the Total Economic Life Expectancy and the Effective Age of the building, structure or improvement being appraised (Economic Life Expectancy minus Effective Age = Remaining Economic Life).

Replacement Cost – The cost of constructing (at current prices) a building having utility equivalent to the building being appraised, but built with modern materials and according to current standards, design and layout. The use of the replacement cost concept presumably eliminates all functional obsolescence, and the only depreciation to be measured is physical deterioration and economic obsolescence.

Replacement Cost of Equivalent Property at the Time of Sale – The current market cost, including delivery and installation costs, of similar personal property, considering such factors as physical and economic depreciation and functional obsolescence. 37 PA. Code, Chapter 151, Section 151.1.

Reproduction Cost – The cost of constructing (at current prices) an exact duplicate or replica building using the same materials, construction standards, design, layout and quality of workmanship, embodying all the deficiencies, super-adequacies and obsolescence of the subject building.

Reversion – The return of rights in real estate to the grantor, such as the return of the full use of real estate to a lessor at the expiration of a lease; the estate returned or due to be returned. In mortgage-equity analysis, synonymous with proceeds of resale at end of the ownership projection period.

Right of Access – The right of an abutting property owner to enter or exit from a public road.

Right-of-Way – The right to pass across the land of another; land, property, or interest therein, usually in a strip, taken by acquisition procedures under Eminent Domain for road purposes.

Sandwich Lease – A lease in which the "sandwiched party" is the lessee to one party and the lessor to another. Usually the owner of the sandwich lessee 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.

Scope of Work – the type and extent of research and analyses in an assignment. Also known as an Appraisal Problem Analysis.

Scrap Value – The value of real or personal property or parts thereof, based upon the value of material alone and not its function. The price expected for a part of real or personal property removed for the reclamation of the basic material value.

Severance Damages – Generally used to mean those damages to a remainder property that are compensable.

Sightline Easement – An easement for maintaining or improving the sight distance on a highway.

Slope Easement – An easement for cuts, fills and drainage facilities. Slope is usually referred to as the inclined graded area extending from the shoulder of a road to the natural and undisturbed surface of the land. This easement is not taken in Fee Simple Title. The landowner retains the right to use the slope area for those purposes consistent with the support and protection of the improvement.

Special Built in Fixture (SBIF) – A non-moveable item that may be additional to the original construction. The additional items may be laboratory cabinets, exhaust hoods, sinks and other similar items. (See Fixture, Personal Property)
Special Purpose Property – A property devoted to or available for utilization for a special purpose, such as a clubhouse, a church property, a public museum, or a public school. It also includes other buildings having value, such as hospitals, theatres, or breweries, which cannot be converted to other uses without large capital investment.

Stations – Measurements found along centerline of road plans, usually 100m (100 feet) apart. Used for area identification and locations. The distance between stations should always be scaled to avoid an error from a point of equality.

Strip Appraisal – Partial Take Report – The purpose of this appraisal report is to estimate the Market Value of the portion of the Subject Property being acquired, ONLY. The value of the land being acquired or affected shall be based on the contributory unit land value of the entire site. The total value shall also include the contributory value of any site improvements located upon the land areas being acquired or affected, including, but not limited to, paving, fencing, trees, shrubbery, etc.

Subdivision – A tract of land which has been divided into blocks or plots with suitable streets, roadways, open areas, and other appropriate facilities for development as residential, commercial, or industrial sites.

Substitution – A valuation principle that states that a prudent purchaser would pay no more for real property than the cost of acquiring an equally desirable substitute on the open market. The Principle of Substitution presumes that the purchaser will consider the alternatives available and will act rationally or prudently on the basis of the information about those alternatives, and that reasonable time is available for the decision. Substitution may assume the form of the purchase of an existing property, with the same utility, or of acquiring an investment which will produce an income stream of the same size with the same risk as that involved in the property in question.

Subsurface Easement – The right to use the land at a designated distance below ground level.

Surface Easement – The right to use only the surface of the land for access, flowage, or rights-of-way.

Take – All property or property rights that the condemnor will acquire either in fee or by easement, either permanently or temporarily. (See Acquisition)

Temporary Easement – An easement required for a relatively short period of time, often for purposes of construction or demolition. Land so taken reverts back to ownership and use of original owner upon expiration of the easement. Damages are generally computed as rent for the land for the stated period of time.

Under-Improvement – An improvement that is inadequate to develop the Highest and Best Use of a site; usually a structure that is of lesser cost, quality and size than typical neighborhood properties. (See Over-improvement)

Uneconomic Remnant – means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Agency has determined has little or no value or utility to the owner.


Unit Rule – In condemnation appraisal, a valuation rule with two aspects, the first dealing with ownership interests and the second dealing with physical components. The first aspect of the rule, also referred to as the undivided fee rule, requires that property be valued as a whole rather than by the sum of the values of various interests into which it may have been carved (such as lessor and lessee, life tenant and remainder-man, and the mortgagor and mortgagee, etc.) This is an application of the principle that it is the property, not the interests, that is being acquired. The second aspect of the rule is that different physical elements or components of a tract of land (such as the value of timber and the value of minerals on the same land, irrigated cropland and dry cropland on the same parcel, etc/) are not to be separately valued and added together.

Unity of Title – That similarity of ownership sufficient under condemnation law to combine separate tracts of land into a single parcel for valuation purposes. Section 705 of the Eminent Domain Code requires substantially identical ownership to establish unity of title; contiguous tracts need only have unity of title, not unity of use, to be combined.

Unity of Use – That degree of relationship sufficient under condemnation law to combine noncontiguous tracts into a single parcel for valuation purposes. This doctrine applies only if the noncontiguous tracts are so interconnected in
the use to which they are presently applied, that the injury to one will permanently damage the other (see Larger Parcel).

Utility – In general economic theory, the capacity of an economic good to satisfy human desires or needs.

Vacation – A term used to show that a state road is no longer in use, with the land used as right-of-way reverting to the original ownership or abutting owners.

Value In Use – A value concept that is based upon the productivity of an economic good to its owner-user. Value in use may be a valid substitute for market value when the current use is so specialized that it has no demonstrable market and when the use is economic and likely to continue.

Waiver Valuation – The term that replaces the former term "Appraisal Waiver" as used within the Uniform Act at 49 CFR §24.102(c)(2). A Waiver Valuation is the valuation process used and the product produced when the Agency determines that an appraisal is not required. An appraisal is not required if: (i) the owner is donating the property and releases the Agency from its obligation to appraise the property; or (ii) the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated to fall below the current allowable dollar thresholds as set forth by the Federal Highway Administration, based on a review of available data.

Type I Waiver Valuation. Where use of a waiver valuation is approved, Type I describes a WV where damages are between the minimum payment and $10,000.

Type II Waiver Valuation. Where use of a waiver valuation is approved, Type II describes a WV where damages are greater than $10,000 but less than or equal to $25,000.
APPENDIX B
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# Appendix B Right-of-Way Manual Forms Index

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APPENDIX C

LEGAL ISSUES AND GUIDANCE

C.01 ACQUISITION ISSUES

A. Interest to be Acquired.

1. Power of condemnation and title in general. The Department has the power and authority to acquire, by gift, purchase, condemnation or otherwise, land in fee simple or such lesser estate or interest as it shall determine, in the name of the Commonwealth, for all transportation purposes (Section 2003(e)(1) of the Administrative Code, as amended by Act 1979-100, 71 P.S. §513(e)(1)). This authority has been given a broad interpretation by the courts to include transportation-related activities designed as an integral part of a highway project and necessary for the proper completion of the project.

Examples of condemnations upheld by the courts include that for a municipal parking garage intended to mitigate the loss of existing surface parking and minimize traffic congestion; that for township road right-of-way in order to provide continuous curbing around the intersection of the local road and the State highway; and those for environmental mitigation (wetlands and terrestrial) required by the environmental document of the project and necessary for the receipt of Federal funds.

In addition to acquiring land for transportation purposes, the Department also has the power and authority to acquire:

a. land abutting a highway or other transportation facility if it is required for the purpose of mitigating adverse effects on other land adversely affected by its proximity to such highway or other facility;

b. land abutting a highway or other transportation facility if it determines that such land has been or is likely to be adversely affected by reason of its proximity to such highway or facility;

c. the fee underlying any easement previously acquired by the Department; and

d. landlocked parcels and other remainders, except that remainders can only be condemned if Department appraisals indicate that no substantial savings can be effected by acquiring only the land required for right-of-way purposes (Section 2003(e)(2) of the Administrative Code, as amended by Act 1979-100, 71 P.S. §513(e)(2)).

The first of these provisions has been upheld by the courts as permitting environmental mitigation takings for wetland and terrestrial habitat. See Section C.01.C. This provision is also used as additional authority to acquire land for private access to mitigate the access impacts of a project to the property for which access is being acquired. See Section C.01.L discussing acquisitions for others.

A fee simple estate is one in which the owner is entitled to the entire property with unconditional power of disposition during his lifetime, and descending to his heirs and legal representatives upon his death. It is title which is unlimited in its duration, disposition and descendability. An easement, on the other hand, is generally defined as an interest in land owned by another person, consisting of the right to use or control the land for a specific limited purpose. As will be discussed below, the Department acquires various types of easements under its authority to acquire such lesser estate or interest as it shall determine.

2. Design Manual. The Department's policy on the interest to be acquired for its projects and the plan presentation in that regard is more fully set forth in Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3. The plan notes defining the easements acquired by the Department are also set forth in Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3.

The only interests that may be acquired are those set forth and defined in Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3 unless otherwise approved by the Highway Quality Assurance Division and the Office of Chief Counsel. Right-of-way personnel should not facilitate the development of plans with
acquisitions for interests other than those designated and as defined in Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3 without coordination with the Highway Quality Assurance Division and the Office of Chief Counsel.

The various interests that may be acquired and are more fully addressed in Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3 are: fee simple or easement for highway purposes as to required right-of-way; aerial easement; slope easement; drainage easement; channel easement; temporary construction easement; occasional flowage easement; wetland mitigation easement; stream mitigation easement; terrestrial mitigation easement; sound barrier easement; structural support easement; sidewalk easement; substitute right-of-way for utility; and fee simple or easement for parkland replacement.

3. Required right-of-way or lesser interest. The general policy is to include all highway features within required right-of-way. That is, required right-of-way should be acquired rather than a lesser estate or interest such as aerial easement, slope easement, etc.

When deemed appropriate, the Department may acquire a lesser estate or interest as discussed below and in Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3. Some lesser estates or interests are more commonly acquired, e.g. aerial easements, slope easements and drainage easements. Others should only be acquired in very limited circumstances as discussed in Publication 14M Design Manual, Part 3, Plans Presentation, Chapter 3, e.g. sound barrier easement; structural support easement and sidewalk easement.

There are two basic reasons for these policies. First, the compensation the Department pays for lesser interests is often not noticeably different from that it would pay for fee simple title. And secondly, acquisition of required right-of-way rather than a lesser interest provides the Department more flexibility on the future use of the land acquired. For example, the cartway of a highway cannot be expanded into a slope easement or a drainage easement, but could be if the area had been initially acquired as required right-of-way. In short, the Department obtains better value for required right-of-way acquisitions.

4. Acquisition of required right-of-way in fee simple or easement. The general policy is that required right-of-way is acquired in fee simple. That is, required right-of-way should not be acquired as an easement for highway purposes except in limited circumstances. The reason for this policy is that compensation for an easement for highway purposes is paid in the same exact manner as for fee simple title, but the rights of the Department are greater in land owned in fee simple.

Whether it acquires a fee title or a highway easement, the Department has full use of the land for transportation purposes. The dominant differences between a fee simple acquisition and that of an easement for highway purposes are the ability to lease the property when not needed for the free movement of traffic and to dispose of it if not needed for present or future transportation purposes. An easement for highway purposes is defined as follows:

While not a fee, a highway easement is not a mere easement or right-of-way. It is more. It is the right to the actual and exclusive possession of the property at all times and for all purposes, and includes the right to build on the land, fence it in, and exclude other uses. It is comparable to a fee in the surface and so much beneath as may be necessary for support. This estate, taken from an owner under the right of eminent domain, has no further practical value to the owner in view of the rights of the state in it, unless the easement is formally abandoned.

Because it is limited to highway purposes, a highway easement can only be leased for highway purposes unless the lease is with the owner of the fee title underlying the easement. Right-of-way held in fee simple can be leased for any purpose not inconsistent with the adjacent highway. See Chapter 5, Sections 5.02 and 5.03 relating to leasing right-of-way. Also, the Department cannot transfer its title to private individuals when the land is no longer needed, but may only vacate the highway easement and allow the underlying fee owner to have full title without the burden of the easement. But see Chapter 7, Section 7.02.H setting forth the Department's policy on disposition of highway easements.

When the area to be acquired as required right-of-way is a minor strip taking of unimproved land, such as an area abutting a previously acquired easement, the required right-of-way may be taken as an easement for highway purposes with approval of the District Right-of-Way Administrator.
When the Department knows that land being acquired is contaminated, an easement for highway purposes only should be acquired. This may help reduce the Department's liability. Condemning the land rather than acquiring it amicably in lieu of condemnation will also help reduce the Department's liability.

When the highway facility is located on land which is being or likely to be deep-mined, including removal of gas and oil by means of wells located off the right-of-way, the required right-of-way may be taken as an easement for highway purposes with approval of the Chief, Utilities and Right-of-Way Section. The depth of support necessary should be determined and shown on the plan. The depth of 300 feet may, but need not, be used.

When the highway facility is on structure and crosses over a railroad, the Pennsylvania Turnpike, or any other property in which substantial right-of-way saving can be affected, an aerial easement only should be acquired.

Acquisitions designated on prior highway plans as required for areas, e.g. required ditch area, were acquired as easements for the designated use. Likewise, land acquired as limit of slope was acquired as a slope easement.

5. Ultimate Right of Way. This is a designation sometimes seen on old Department plans that was to work in the nature of a setback. It designated areas that may be needed in the future for highway purposes. When land was so designated, the owner ostensibly could not erect buildings or other improvements within the area and if they did, they would not be paid for them when the Department did acquire the ultimate area as required right of way. However, the Pennsylvania Supreme Court has ruled that such an ultimate right of way line on a plan is meaningless – it is not a taking of any property right now and the landowner is free to build in the area and will be paid for any improvements in the area if the Department does acquire it. In short, ultimate right of ways shown on old Department plans should be ignored. If such a designation is on a local subdivision or other plan, then local ordinances must be consulted and interpreted to determine the effect of the designation.

B. Acquisitions from Other Government Entities.

1. General Overview. The document and procedures used to acquire land from other government entities varies according to the nature of the other entity. Although condemnation can be used against some other government entities under certain circumstances, this should be an alternative of last resort and not done without consultation with the Office of Chief Counsel, Real Property Division.

There is no prohibition to the payment of compensation for acquisitions from other government entities. In some circumstances it is not required or not done as a matter of practice. The better practice is to obtain the right-of-way without compensation.

If environmentally sensitive lands are involved, replacement lands are usually acquired for the other government entity. This could apply to all types of governments – Federal, State executive agencies, State non-executive entities or local. See Section C.01.C relating to the acquisition for environmental mitigation.

This topic is discussed in RPDD 01-12-96, entitled "Memorandums of Understanding, Interagency Agreements and Intergovernmental Agreements." Sample documents are attached to that directive. Please note, however, that Form RW-393 (9-81) (Agreement – Inter-Departmental) attached to the directive is no longer in print.

2. Federally-Owned Lands. The Department has limited options when acquiring land from a Federal agency for a highway project. In accordance with 23 CFR §710.601, the Department may file an application with the FHWA, or can make application directly to the land-owning agency if the land-owning agency has its own authority for granting interests in land. For example, the Department of Defense agencies such as the Army and the Navy have their own authority. Many Federal agencies, e.g. the National Park Service, the National Forest Service, etc., do not have their own authority; consequently, filing an application with the FHWA is the more common situation. The application must be submitted to the Chief of the Utilities and Right-of-Way Section for coordination with the FHWA.

The application must include specific information as set forth in the regulation. The deed of conveyance is prepared by the Department and submitted to FHWA for review and execution. Following execution, the deed is recorded by the Department and notice of the recording provided to FHWA and the concerned agency.

Just compensation is normally not paid for Federal acquisitions. Rather, replacement lands are acquired for the Federal agency. See Section C.01.L discussing acquisitions for others.
When property is needed by the Department which is under the control of the United States Army Corps of Engineers (ACOE), all property acquisition and temporary construction easements must be obtained from the ACOE. The ACOE is a review agency for purposes of obtaining clearances and permits along with property acquisition. The ACOE generally requires that an easement document be executed and acknowledged. A multiple step Corps of Engineer Acquisition Procedures checklist has been established. Contact the Administrative Unit, Utilities and Right of Way Section, for further guidance when one of these acquisitions is necessary.

3. Lands Under the Jurisdiction of Other Executive Agencies. Title to all lands of the Commonwealth resides in the Commonwealth. Jurisdiction over such lands, however, lies with the entity having control over it. That is why Department acquisitions are by the Commonwealth of Pennsylvania, Department of Transportation: title to the land lies in the Commonwealth; jurisdiction over the land in the Department.

A memorandum of understanding (MOU) is a cooperative agreement between executive agencies of the Commonwealth such as the Department of Transportation, the Department of Conservation and Natural Resources, the Department of Corrections, the Department of General Services, etc. MOUs can be used for a variety of interactions between executive agencies, including the transfer of jurisdiction over lands owned by the Commonwealth. MOUs do not create any contractual rights or obligations between the signatory agencies; it is a cooperative agreement indicating the intention of the parties and any dispute is subject to resolution by the Office of General Counsel. All MOUs are subject to review and approval as to legality and form.

The Office of Chief Counsel, Real Property Division, should be contacted when an MOU is required for the transfer of jurisdiction. There are certain standard clauses that must be included in all MOUs and there is a standard format. An MOU involving the transfer of land does not require an acknowledgement and is not recorded because title remains vested in the Commonwealth. There is simply a transfer of jurisdiction between Commonwealth entities taking place. MOUs regarding land transfers are executed on behalf of the Department by the Director of the Bureau of Project Delivery or a deputy secretary of transportation.

If an acknowledgement is desired for recording purposes or the other agency would like a quit claim deed filed to confirm the transfer of jurisdiction over the land, an interagency agreement must be used to document the transfer. An interagency agreement is a binding legal contract relating to independent agencies of the Commonwealth.

Some executive agencies will transfer lands to the Department at no cost, especially if the tract is small. In other situations, executive agencies have agreed to accept the Federal share of damages determined by the Department. There is no prohibition, however, to paying the full amount of damages as in any other acquisition.

There have been situations where the other executive agency requested that the Department condemn their land; for example where the other agency is concerned it would need to file for local subdivision approval in the event an amicable transfer under an MOU was completed. If such a request to condemn another executive agency is made, the reason for the request must appear in the remarks section of the declaration of taking request (Form RW-400DTR).

4. Lands Under the Jurisdiction of Independent Agencies. An interagency agreement is the typical format used for the transfer of jurisdiction over land held by non-executive Commonwealth agencies. Such independent agencies include the Turnpike Commission, the Fish and Boat Commission and the Game Commission.

An interagency agreement is a binding legal contract subject to review and approval as to form and legality like all other contracts entered into by the Department. The Office of Chief Counsel, Real Property Division, should be contacted when an interagency agreement for the transfer of land is required. There are certain clauses that must be in the agreement and a certain format used.

If there is a desire that the document be recorded, that should be brought to the attention of the Office of Chief Counsel. In that case, an acknowledgment can be included. As an alternative, the agreement could provide that a quit claim deed confirming the transfer of jurisdiction be recorded after full execution and approval of the interagency agreement. The district would then need to request such a quit claim following execution and approval of the interagency agreement.
An MOU can also be used for transfers from a non-executive agency with their consent. Such consent is rarely granted. As far as processing is concerned, an MOU is only subject to one less step than an interagency agreement. MOUs need not be approved by the Office of Attorney General; interagency agreements must.

The Turnpike Commission has independent authority to deed its land to others. For this reason, acquisitions from the Turnpike can be accomplished by accepting a deed. The transaction can be documented through an interagency agreement that refers to a deed that is subsequently filed or a deed can be accepted without an interagency agreement. A deed should also be obtained from the Turnpike when it acquires State highway right-of-way on behalf of the Department. In this instance, a plan should also be generated that can be filed with the Department to document the right-of-way acquired.

Other independent agencies may also have authority to deed its land or interests in its land to others. For example, the Game Commission can grant rights of way in certain circumstances and prefers use of the deed of easement to document transfers of jurisdiction to the Department. If the other agency is willing to grant a deed, the Department can accomplish the transfer of jurisdiction by accepting a deed. The transaction can be documented through an interagency agreement that refers to a deed that is subsequently filed or a deed can be accepted without an interagency agreement.

The Department has entered into a State Game Land Banking Agreement to streamline transportation development projects impacting state game lands by allowing Districts to establish state game land banks. This agreement provides an expedited mitigation process where impacts under 5 acres can be debited from existing banks instead of being addressed on a project-by-project basis. A Cooperative Interagency Agreement between FHWA, the Game Commission and the Department establishes the mechanism for Interdepartmental Land Transfers and establishment of state game land banks. Special deed language is required in such transactions to indicate that compensation for the transfer will be provided from an appropriate state game land bank.

5. Lands Owned by County or Municipal Governments. Acquisitions from local governments that do not involve existing road right-of-way are normally treated like any other acquisition. That is, regular right-of-way acquisition documents are used and just compensation is paid on the basis of fair market value.

In rare circumstances, compensation based on fair market value is insufficient when acquiring land and improvements from a local government or other public entity. That is, compensation on a functional replacement basis may be appropriate where there is no ascertainable fair market value for the property in question and replacement of the facility is reasonably necessary to enable the local government to serve its constituents or customers as adequately as it would have had the condemnation not occurred. If the function is not being replaced, then no compensation is due where there is no ascertainable fair market value or the fair market value is zero.

The Department has recognized the possibility that payment would be required on a functional replacement basis when amicably acquiring a police station from a local government and fire stations from a local government and a volunteer fire company. That is, the functional replacement cost is considered as part of an administrative settlement in view of the fact the local government may be successful in forcing full payment for a replacement facility. Such administrative settlements may not include the costs of increases in capacity or betterments to a replacement facility, except those necessary to replace utilities and meet legal or other reasonable prevailing standards. A requirement that the replacement facility actually be constructed is also included in such settlements. An administrative settlement considering functional replacement costs must be approved by the Utilities and Right of Way Section.

Federal regulations allow the Department to provide compensation by functionally replacing a publicly owned property with another facility which will provide equivalent utility under certain circumstances set forth at 23 CFR §710.509. Among the requirements are that Pennsylvania law permits functional replacement and the Department elects to provide it; the property is in public ownership and use; the replacement facility will continue to be publicly owned and used; and the FHWA concurs that functional replacement is in the public interest. The Department has never implemented functional replacement under this provision and Department policy is not to do so in the future.

Where local road right-of-way is overtaken by Department required right of way, the Department does not pay compensation. Rather, the Department merely shows the area as legal right-of-way and it becomes part of the
State highway right-of-way. This is permitted because the right-of-way is either not replaced by the local municipality or its function is replaced by the Department when it constructs a re-routed local road or State highway segment as part of the project. This approach is also grounded in the concept that municipalities are part of the Commonwealth just like the Department.

6. Project 70 Lands. Special requirements apply to park and other public lands acquired under the Project 70 Land Acquisition and Borrowing Act of 1964, as amended. 72 Pa. C.S. §3946.1 et seq. Project 70 funds were used to acquire lands for recreational, historical and conservation purposes. No lands acquired with Project 70 funds can be disposed of or used for purposes other than recreational, historical and conservation purposes without the express approval of the General Assembly. 72 Pa. C.S. §3946.20.

In view of the language in the statute, a special act of the legislature is normally required to acquire Project 70 lands for highway purposes. However, counsel for the Department of Conservation and Natural Resources (DCNR) has decided that a land transfer from DCNR to the Department would be appropriate as to Project 70 lands where one purpose of the Department's highway project is to maintain or improve access to the State Park and to insure continued use of the State Park through which the highway is located; that is, the highway serves the park. Other state and local governments have not accepted this position. DCNR has also allowed transfers of State parklands to the Department without legislative approval when other land is being vacated to them as part of the project. This is based on the idea that the vacated land will be subject to the Project 70 restrictions, thereby providing no net loss of protected lands if the land converted to highway use is equivalent or smaller in size. The Game Commission has accepted this reasoning.

Special legislation authorizing the sale of Project 70 lands to the Department is usually made contingent upon the Department acquiring replacement lands that will be subject to the Project 70 restrictions. The normal plans presentation for park replacement lands can be used when acquiring the replacement Project 70 lands. The Department can include a specific reference to the Project 70 restrictions in a quit claim deed to the government entity for which the lands were acquired. The local government could also record a declaration of restrictive covenants to document the Project 70 restrictions.

Because of the possible need for special legislation, planning the acquisition of Project 70 lands should be considered early during the development of a project. Each district must determine which unit will be responsible for obtaining the special legislation.

C. Acquisition for Environmental Mitigation.

1. General Overview. The Department is often required to mitigate damages to environmental sensitive lands through the acquisition of other lands. This includes the acquisition of replacement local, state and federal park lands and game lands, as well as private lands that are wetlands or sensitive stream and terrestrial habitat areas for protected species. Sometimes construction must occur on these lands to create or enhance their environmental value; other times they are merely acquired to retain their natural condition.

The Department is authorized to acquire these lands under the Administrative Code as needed for transportation purposes and to mitigate impacts on other lands acquired. Because there is additional authority for acquisition of the land if it abuts the highway project, that is the preferred situation; however, abutment to the highway project is not absolutely required. See Section C.01.A.

When replacing public lands, title to the replacement land is acquired for the public entity. When mitigating impacts to private lands, title to the land is typically retained by the Department.

The need to acquire land for environmental mitigation must be included in the environmental document to allow acquisition for these purposes. Otherwise, the Department is subject to challenge by preliminary objections to a condemnation. The need for such acquisitions is often established by the United States Army Corps of Engineers in issuing a Section 404 permit under the Clean Water Act or by the PA Department of Environmental Protection in issuing a water encroachment permit, but may be required to satisfy other environmental requirements.

The Department's policy on the acquisition of replacement lands and lands for environmental mitigation and the plan presentation in those regards will be more fully set forth in Publication 14M, Design Manual, Part 3, Plans Presentation, Chapter 3, Right-of-Way Plans, when it is revised. The plan notes defining these takings
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will also be set forth in the Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3.

Guidance on acquisitions for wetland and stream mitigation is located in Publication 325, Wetland Resources Handbook, Appendix AA. This document includes the standard Declaration of Restrictive Covenants for Conservation to be used when fee title is acquired for a conservation area and the standard plan note to be used when acquiring a stream mitigation easement. It also includes specific guidance on plan requirements for these type of acquisitions and instructions for proper coordination.

Extensive coordination is necessary between the district environmental manager and plans unit in these types of takings due to their complexity.


2. Replacement Park and Game Lands. The Department's ability to deed land to other public entities is restricted. For this reason, the best practice when the Department is required to replace lands acquired from a public entity (for example public parklands or Game Commission lands) is to acquire the land for the benefit of the public entity from which lands are being acquired. This allows the Department to possess the lands if necessary for construction purposes, but provide that title is being acquired for the benefit of the other public entity. The Department may, upon request, provide the public entity with a confirmatory quit claim deed reflecting that title to the land vested in the public entity upon acquisition as set forth in the plan authorizing the acquisition. See Section C.01.L on requesting confirmatory deeds.

Replacement lands should normally be taken in fee simple. This provides the government entity for which the lands are being acquired full control over the area acquired and eliminates any responsibility of the property owner from whom it is acquired. It is also consistent with the nature of the title normally acquired for parks and game lands. If, however, the entity for which the lands are being acquired requests that only an easement be acquired, then an easement for parklands or an easement for game lands should be acquired. This may be appropriate, for example, if existing parklands of the government entity are held only in easement.

3. Wetland Mitigation. Lands taken for wetland mitigation should normally be acquired in fee simple. This simplifies the acquisition and provides the Department maximum control over the land. Landowners often also do not want to retain title to the land upon which wetlands are created or enhanced.

When the Department acquires fee title, a declaration of restrictions placing restrictive covenants on the land must be recorded following acquisition. These restrictions as approved by the Corps of Engineers will run with the land in perpetuity, allowing the Department, the Department of Environmental Resources, and the Corps to enforce the restrictions if necessary. The form of the declaration of restrictions has been negotiated with the Corps. See Publication 325, Wetland Resources Handbook, Appendix AA.

Time is of the essence in this submission because there is often a time limit in the permit relating to recording the restrictions.

The submission should include a draft declaration, a plan sheet for use as an exhibit, and a copy of any 404 permit conditions relating to the acquisition. Once the Real Property Division is satisfied with the declaration, a draft of the declaration will need to be submitted to the Corps for approval prior to execution. When the Corps' approval of the declaration is received, the District Executive or Assistant District Executive should send the declaration to the Deputy Chief Counsel, Real Property Division for execution with a copy of the Corps' approval attached. The declaration will be executed by the Deputy Secretary for Highway Administration. Following execution and approval as to form and legality, the declaration will be forwarded to the district for recording in the chain of title.

If deemed appropriate by the District Executive, a wetland mitigation easement can be acquired for a wetland mitigation site. The restrictions of the wetland mitigation easement have also been negotiated with the Corps of Engineers and should be defined on the plan as set forth in Publication 14M, Design Manual, Part 3, Plans Presentation. The easement also restricts use of the land in perpetuity and allows the Department and the Corps to enforce the restrictions if necessary. Acquisition of an easement only and the specific language of the easement will need to be approved by the Corps during the 404 permitting process. The review of the easement is the same as the process detailed above for declarations. A draft declaration of restrictions should
be provided to the Deputy Chief Counsel, Real Property Division for review.

4. Stream Mitigation. Land acquired for stream mitigation should normally be acquired in easement. This is because a fee simple acquisition would often bisect the remaining lands of the condemnee and increase damages.

The restrictions of the stream mitigation easements have been negotiated with the Corps of Engineers and should be defined on the plan as set forth in Publication 14M, Design Manual, Part 3, Plans Presentation. As with the wetland easement, the stream easement restricts use of the land in perpetuity and allows the Department, the Department of Environmental Resources and the Corps to enforce the restrictions if necessary. A draft of the easement language and plan should be provided to the Deputy Chief Counsel, Real Property Division for review. The submission should include a plan sheet with the easement language included and a copy of any 404 permit conditions relating to the acquisition. Once the Real Property Division is satisfied with the easement, acquisition of such an easement and the specific language of the easement will need to be approved by the Corps.

If deemed appropriate by the District Executive or required by the 404 permit, the Department may acquire a stream mitigation site in fee simple. As with a wetland mitigation site acquired in fee, a restrictive covenant in the form approved by the Corps of Engineers will need to be recorded following acquisition. The same procedures as set forth above for a wetland site acquired in fee simple should be followed.

5. Terrestrial Mitigation. Land acquired for terrestrial mitigation can be acquired in fee simple or easement, depending on the circumstances. Fee acquisition may bisect the remaining lands of the condemnee and increase damages, but may be appropriate if acquired on behalf of another state agency.

As with a wetland mitigation site acquired in fee, a restrictive covenant in the form approved by the Corps of Engineers will need to be recorded following acquisition if required by the 404 permit. The same procedures as set forth above for a wetland site acquired in fee simple should be followed.

The restrictions of the terrestrial mitigation easements should be defined on the plan as set forth in Publication 14M, Design Manual, Part 3, Plans Presentation. As with the wetland easement, the terrestrial easement restricts use of the land in perpetuity and allows enforcement if necessary. The same procedures as set forth above for a stream mitigation easement should be followed. Acquisition of such an easement and the specific language of the easement will need to be approved by the Corps if required by the 404 permit.

6. Conservation Easements. The Department has used the term conservation easement in the past to designate acquisitions for wetland, stream and terrestrial mitigation purposes. This term is correct under Pennsylvania law. See Memo to File, dated February 15, 2006, entitled "Takings for Environmental Mitigation." However, the Corps of Engineers is reluctant to use this designation because it views conservation easement as a term applicable when a non-profit conservancy-type organization holds the easement. For this reason, the Department is ceasing use of the term conservation easement, using instead wetland mitigation easement, stream mitigation easement, and terrestrial mitigation easement. Forms RW-317ACE (Agreement of Sale, Conservation Easement) and RW-317CE (Conservation Easement) should thus no longer be used.

D. Acquisitions from Railroads.

The content of this article is now located in Chapter 3, Section 3.03.R, which supersedes in its entirety the article previously set forth here.

E. Acquisition of Cemetery Land.

1. General Overview. The Act of April 5, 1849, P.L. 397, 9 P.S. §8 provides: "It shall not be lawful to open any street, lane, alley or public road through any burial ground or cemetery within this Commonwealth, any laws heretofore passed to the contrary notwithstanding: Provided, that this section shall not extend to the city or county of Philadelphia." This law applies to the Department and evidences a strong policy against any disturbance of cemeteries or burial grounds for road construction.

There are very few cases applying the cemetery law. The Office of Chief Counsel, Real Property Division should be consulted if there is any question on whether an acquisition falls within the prohibition of the law.
2. Opening v. Widening. The cemetery law only applies to the opening of a new highway. Widening and straightening of an existing road is not an opening of a road within the meaning of the law. When a road is relocated, making a new highway segment, the law would in all likelihood apply because the new segment is being opened.

3. Burial Ground or Cemetery. Mere ownership of the land by a cemetery association or church is insufficient to trigger the prohibition. For example, a cemetery parking lot is not considered a burial ground or cemetery. On the other hand, it is not necessary that the required area be used for actual burial. It is sufficient that the area be divided, and laid out and plotted into graves and lots. Also, if the owner of a cemetery acquired vast tracts of unnecessary land to unjustly interfere with future highway construction, a court would in all likelihood consider this in determining application of the law.

4. Agreement to Allow Condemnation. If the cemetery law definitely applies or may apply, the best course of action is to negotiate an agreement with the cemetery owner. Under such an agreement, the owner would agree not to object to a condemnation in the event an amicable resolution on just compensation cannot be reached. The Department may need to make concessions in design of the project or the compensation payable to achieve agreement. To be legally binding, the agreement would need to be reviewed and approved as to form and legality by the Office of Chief Counsel and other appropriate legal offices.

Formally addressing the issue early in the design process is prudent. Not doing so may lead to major problems. It may be costly to redesign the project later to avoid the cemetery or burial ground or to meet the owner's monetary demands.

5. Federal Condemnation. In very isolated circumstances, the Federal Highway Administration may coordinate a Federal condemnation for the required cemetery lands. The Federal government is not subject to the prohibition of the cemetery law. FHWA will only consider doing so when the right-of-way is required for an interstate highway.

6. Exhumation and Reinterment of Human Remains. The disinterment and reburial of human remains is controlled by laws at 9 P.S. §41, et. seq. Although a court order is not required in some circumstances, the Department normally seeks a court order to disinter and rebury human remains. A funeral director is usually involved in this process to obtain the necessary permit after a court order has been obtained.

The Act of June 25, 1913, P.L. 551, as amended by the Act of August 11, 1959, 9 P.S. §48.1, allows the county courts of common pleas to grant permission for the exhumation and reinterment of unidentified human remains in a suitable cemetery or burial grounds location. A court order granting such permission would be necessary to disturb actual graves sites whether the Department is aware of the circumstances beforehand or the grave sites are discovered during construction without advance knowledge.

The Office of Chief Counsel, Real Property Division, should be contacted for preparation and presentation of the appropriate petition for the transfer of human remains. The Department will be required to provide public notice of its actions and provide a contact for any reputed heirs who wish to remove the remains at their expense. At the expiration of the period of notice, provided there is no objection, the Department will be required to inventory the remains; box each gravesite individually under supervision of the county coroner; and appropriately reinter the remains.

A court hearing will likely be required. In the case of unknown graves, after appropriate notice of the intention to reinter, the cemetery association, if any, should be asked to present testimony at the court hearing indicating that there is no objection to the proposal.

F. Acquisitions for Drainage Maintenance.

1. General Overview. This section is directed mainly to situations where drainage work is performed outside the context of a highway project involving right-of-way acquisition. Where a property interest is required for the placement of drainage facilities as part of a project involving other acquisitions, normal acquisition procedures apply.

Highway drainage facilities are typically placed within required right-of-way acquired in fee simple or as a highway easement. However, ditches and pipes can be placed within slope easements and drainage easements.
See generally Section C.01.A discussing interests to be acquired.

At one time the Department acquired ditch easements and underground drainpipe easements. This practice was discontinued in favor of the more general drainage easement because a ditch easement can only be used for a ditch and an underground drainpipe only for a pipe. A drainage easement can be used for either a ditch or a pipe.

See also "Overview of Highway Drainage Acquisition and Maintenance", Papers Prepared by the Drainage Task Force, issued by the Office of Chief Counsel in April, 1987, located on the intranet at P:\Real Property Division Guidance. The Overview contains articles on Interests in Land for Drainage Purposes; Acquisitions for New Drainage Facilities; Acquisitions for Curbing and Sidewalks; Department Responsibility Beyond Curblines (Circular Letter No. E-2205); Legal Responsibility on S.R.'s; Maintenance Responsibility for Drainage Facilities on Bridges; Drainage Maintenance and Compensable Injuries; Placement of Structures and Pipes and Increasing of Pipe Size in Existing Drainage Systems; Procedures for Opening Blocked Drainage Facilities; and Entering Lands of Another to Correct Drainage Problems during Emergencies and Reconstruction Projects. See also Publication 23, Maintenance Manual, Chapter 8.

2. Opening Blocked Ditches and Pipes. The Ditch and Drainage Act (Section 417 of the State Highway Law, 36 P.S. §670-417) grants the Department authority to enter upon any lands to cut, open, maintain, and repair such drains, ditches, inlets or outlets as are necessary to carry waters from State highways. Although it provides broad authority for the Department to enter lands beyond the highway right-of-way to protect State highways, the Act does not allow entry without payment where existing drainage rights do not exist. Indeed, the Act specifically states that any damages sustained by the owner of the land entered shall be paid in the same manner as provided for in the construction of State highways.

If the Department is re-establishing or maintaining an existing drainage facility, then the property owner is not entitled to compensation. However, if the Department substantially alters the natural flow of water in the area by creating a new facility, compensation is due. See "Overview of Highway Drainage Acquisition and Maintenance," Drainage Maintenance and Compensable Injuries; Interests in Land for Drainage Purposes; Acquisitions for New Drainage Facilities; and Placement of Structures and Pipes and Increasing of Pipe Size in Existing Drainage Systems.

Procedures for entering private property to correct drainage problems can be found at Publication 23, Maintenance Manual, Chapter 8. The chapter includes draft letters, deeds of easement and releases that can be used to help resolve drainage problems. See also Form RW-319, which is only to be used when monetary consideration is paid or work is done in lieu thereof.

3. Cleaning out Blocked Watercourses and Stream Rechanneling. The Department is authorized to enter upon private property adjacent to or in the vicinity of State highways and bridges to change or protect existing stream channels in order to protect the highway or bridge. Acquisitions by the Department for the purpose of rechanneling streams are to be similar to those for drainage or ditch easements. That is, channel change easements grant the Department a continuing easement to re-enter the area acquired to maintain the flow of water in the channel to protect the State highway or bridge.

4. Relocating Drainage Facilities. When the Department plans to maintain an existing drainage facility but the landowner requests the existing drainpipe be relocated to another location on his property, there are three non-right-of-way form documents that can be used. They are attached to the article entitled Procedures for Opening Blocked Drainage Facilities in the "Overview of Highway Drainage Acquisition and Maintenance." Two are deeds of easement (Attachments 5 and 6 to the article) and one a deed of release and quitclaim.

The only material difference between the two deeds of easement is that Attachment 6 makes reference to the Ditch and Drainage Act. The deed of release and quit claim releases the Department from liability in relation to construction and maintenance of the new facility; it does not transfer title or any definite property interest. The deeds of easement, which do transfer a definite property interest, are therefore preferred.

If an existing drainage facility is abandoned in favor of a new one using these documents, the highway plan should be revised to show the new location. If there is no existing highway plan, a new one should be created for filing with the Department and at the courthouse to document the location of the Department's relocated drainage facility.
These documents should not be used where new drainage facilities are being installed by the Department without a request for relocation by the landowner. In this situation, normal acquisition procedures are applicable. Such procedures are also not required for opening blocked ditches and pipes in view of the Department's pre-existing property rights and the Ditch and Drainage Act.

5. Authorizations to Enter. Forms RW-397 and RW-397A can be used to authorize entry onto private lands for drainage-related matters. They do not, however, grant the Department property rights in the area and are not recorded in the courthouse. They only allow entry for the duration of the work. The waiver of claim requires no follow-up, while the non-waiver of claim would require a subsequent acquisition of a property interest. See generally Chapter 3, Section 3.03.F discussing authorizations to enter.

6. Defining Legal Drainage Easements. Existing drainage easements can be shown when developing right-of-way plans. The extent of the existing easement may be difficult to ascertain because the procedures used by the Department to show drainage features have not always been consistent. Many old plans merely show arrows leading from the highway where the water would flow in or to a natural drainage course. Other old plans do not even show the arrows, although it is apparent water must have drained from a pipe outlet.

Where a defined area was acquired, that area can easily be designated as legal drainage easement, ditch easement or underground drainpipe easement, as the case may be. Where the area was not defined, a legal easement can still be designated based on an existing plan, field observation, aerial photography, and/or engineering expertise. For example, the extent of a ditch required to outflow a pipe can be ascertained based on the invert of the pipe and the topography of the land. Old aerial photography is also often very helpful in demonstrating the extent of ditches that led from pipe outlets.

Determination of the extent of ditches and pipe outflows in the past is important because there is a legal presumption that a public facility existing for 20 years was established by the government in accordance with the law and that payment was made. Moreover, the person entitled to compensation for the taking of a legal interest is the owner at the time of the entry, not a subsequent owner. These principles have been specifically applied to Department drainage facilities. See "Overview of Highway Drainage Acquisition and Maintenance," Drainage Maintenance and Compensable Injuries.

G. Acquisitions for Local Project Sponsor Projects.

1. General Overview. Local Project Sponsor (LPS) projects concern improvements to local roads or features by local governments. The Department is involved because it administers Federal funds for such projects; it is required to oversee the project, ensure that Federal procedures are properly followed and issue a clearance certificate. At times, an LPS project may involve acquisition of right-of-way for a State highway, e.g. where the project concerns a county bridge on a State highway or where an intersecting State highway is impacted by improvements to a local road.

The general procedures for LPS projects are set forth in Publication 740, Local Project Delivery Manual, Chapter 5. An agreement is executed with the local government relative to such projects. The agreement sets forth procedures relating to the acquisition of right-of-way. There are two agreement formats in relation to right-of-way acquisition: one in which the LPS performs all acquisition and another where the Department performs certain functions.

Normally, the local government should perform all acquisition functions relating to the project, including appraisal, appraisal review, negotiations, document preparation and condemnation if necessary. In limited circumstances, the Department agrees to perform acquisition functions in relation to LPS projects. When it assumes acquisition functions, the Department will not agree to file condemnations unless the right-of-way is required for a State highway. Although it can assist the LPS in developing condemnation documents, any declarations of taking for local road acquisitions must be filed by the LPS under their authority to condemn for local roads.

Under no circumstances should the Department perform acquisition functions when the agreement provides the LPS is to do so. If a decision is made to change courses on who is performing acquisition, the LPS agreement must be revised in coordination with the Office of Chief Counsel, General Law Division, Legal Contracts and Legal Advice Section.
The district has responsibility to ensure the right-of-way acquisition plan is completed in conformance with Publication 14M, Design Manual, Part 3, Plans Presentation, even when the LPS is performing the acquisition function. The district must also ensure that all acquisitions are completed as required by the plan.

2. Uniform Act and this Manual. The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Act) applies to LPS projects because they are federally funded. Publication 740, Local Project Delivery Manual, Chapter 5 is designed to ensure compliance with the Uniform Act and reflects the procedures applied by the Department under this Manual. A list of basic acquisition forms available electronically is included within Publication 740, Local Project Delivery Manual, Chapter 5.

3. Interest to be Acquired. The LPS determines the interests to be acquired for the project where the acquisition is for a local road. If for a State highway, the interest to be acquired should be in accordance with Department policy in that regard.

4. Review of Documents. The Department provides assistance in the preparation of acquisition documents by the LPS in accordance with Publication 740, Local Project Delivery Manual, Chapter 5. In addition, acquisition and other title documents will need to be reviewed to insure the LPS has appropriate title to move forward with the project in connection with clearing the right-of-way.

Acquisition documents are not, however, submitted to central office and subject to review and approval as to form and legality because the acquisitions are not for State highway right-of-way and the documents are not being executed by the Department. Reimbursements for acquisitions are made in accordance with the LPS agreement rather than the acquisition documents executed by the LPS.

In the limited situations where the LPS acquires right-of-way for a State highway, the LPS must transfer the title it acquires to the Department. This can be done in a single deed for the entire project. The M-950D1 and M-950D2, developed for transfers to the Department in a highway occupancy permit project, can be modified for this purpose. These deeds also do not need to be submitted to central office for review and approval as to form and legality because they are not being executed by the Department. A plan showing right-of-way transferred to the Department should be developed and filed in the district plans room to document the new extent of the Department's right-of-way. The plan should also be filed in the county courthouse.

5. R/W Clearance. The District must clear the right-of-way for LPS projects in coordination with the LPS and the Utilities and Right-of-Way Section. Where the project is being let by the Department, the Utilities and Right-of-Way Section issues the clearance. See Chapter 6, Section 6.08.I, relating to R/W clearance for LPS projects.

See Chapter 1, Section 1.09 for further information.

H. Acquisitions for Transportation Enhancement Projects.

1. General Overview. Transportation Enhancement (TE) projects concern transportation-related matters normally outside State highway right-of-way. The Department is involved because it administers Federal funds for such projects; it is required to oversee the project and ensure that Federal procedures are properly followed. Examples of TE projects outside State highway right-of-way are rails to trails projects and improvements to old rail stations. An example of a TE project within State highway right-of-way would be a streetscapes project.

The general procedures for TE projects are set forth in the Transportation Enhancement Manual. An agreement is executed with the sponsor, which may or may not be a public entity, relative to such projects. LPS agreements are coordinated through the Programming Center and the Office of Chief Counsel's General Law Division, Legal Contracts and Legal Advice Section.

The LPS agreement sets forth procedures relating to the acquisition of property rights if that is part of the project. The sponsor is required to complete property acquisition for TE projects. The Department does not perform acquisition functions or condemn for TE projects.

See generally the Transportation Enhancement Manual, Chapter 7 entitled "Right-of-Way Acquisition and Clearance."
2. Uniform Act and this Manual. The Federal Uniform Real Property Acquisition and Relocation Assistance Policies Act (the Uniform Act) applies to TE projects because they are Federally-funded. Where the Uniform Act applies, Publication 740, *Local Project Delivery Manual*, Chapter 5 or this Manual is an appropriate source to supply the sponsor as reflecting the requirements of the Uniform Act.

There are instances, however, where the Uniform Act requirements may not apply even though the TE project involves Federal funds. These instances are set forth in 49 CFR Section 24.101(1) through (5). A few of the most common are discussed here. Note that where tenants are required to move, even in the event the acquisition is otherwise exempt from the application of the Uniform Act, Federal regulations provide that the tenants are displaced persons and the relocation assistance provisions of the Uniform Act apply.

One of the instances in which the Uniform Act requirements would not apply is when real property is acquired for a TE project by a qualified conservation organization who is not acting on behalf of the agency receiving the Federal funds and Federal approval for property acquisition did not take place prior to the involvement of the qualified conservation organization. If the acquisition occurs subsequent to Federal approval of property acquisition, the normal procedures set forth below apply. See *Transportation Enhancement Manual*, Chapter 7 for more on this topic, including the definition of Federal approval of acquisition and involvement of a conservation organization.

Additionally, where the sponsor does not have the power of eminent domain, the Uniform Act is satisfied if the sponsor informs the landowner that it does not have the power of condemnation and will thus only be able to purchase the land amicably. That is, the appraisal and other requirements of the Uniform Act do not apply.

Even where the sponsor has the power of eminent domain or is acting on behalf of an organization having the power of eminent domain, and all procedures of the Uniform Act would otherwise apply, the sponsor can decide that it will not exercise the power of condemnation for the project and informs the landowner of this in writing. In that case, the appraisal and other requirements of the Uniform Act do not apply.

3. Review and Approval of Acquisition Documents. The Department does not normally provide assistance in the preparation of acquisition documents by TE sponsors. Nor are these documents submitted to central office for review and approval as to form and legality because the acquisitions are not for State highway right-of-way and the documents are not being executed by the Department. Reimbursements for TE acquisitions are made in accordance with the TE agreement rather than the acquisition documents executed by the sponsor. Acquisition and other title documents will need to be reviewed by the district, however, to insure the sponsor has appropriate title to move forward with the project in connection with clearing the right-of-way.

4. R/W Clearance. The District must clear the right-of-way for LPS projects in coordination with the LPS and the Utilities and Right-of-Way Section. See Chapter 6, Section 6.08.1, relating to R/W clearance for LPS projects. See also the *Transportation Enhancement Manual*, Chapter 7. Right-of-way clearance is necessary even if no acquisition is being funded under the TE agreement because the Department must insure the sponsor has sufficient property rights in the area where construction will take place with Federal funds.

Special procedures apply to rails to trails projects where the right-of-way was quit claimed to the sponsor from a railroad company or a successor to a railroad company. A package must be submitted to the Office of Chief Counsel, Real Property Division, in these situations before a request for clearance is submitted. As reflected in the following paragraph, the package must contain a plan delineating each parcel involved in the project, a description of the property interest supporting the sponsor's rights to construct on each parcel, a copy of all documents supporting that property interest, and any required certifications.

The special procedures for rails to trails involve certification from the sponsor that the railroad easement has not been abandoned and that no takings will occur by occupancy of the right-of-way for the trail. The district should also require development of a plan showing the parcels involved. The document reflecting the title of the railroad to each parcel must be reviewed to determine the nature of the title obtained by the sponsor. The circumstances surrounding the abandonment of service on the line and possible abandonment of the railroad easements must also be explored.

There is a formal Federal procedure for railbanking railroad easements for future rail use when service is abandoned on a line and the line is converted to recreational trail use. The title issue is greatly reduced if this procedure was followed. In addition, however, recent Pennsylvania caselaw is favorable to the survival of
railroad easements following the abandonment of service on the railroad line even where the formal procedures were not followed if there was no demonstrated intent to abandon the railroad easements. Even in view of this caselaw, however, the suggested approach is for the sponsor to obtain releases or rights of ways from abutting owners where the sponsor has acquired title through a quit claim deed and the railroad only held an easement. If the railroad held fee simple title there is no possible abandonment issue.

Please note that railroad right-of-way obtained through a quit claim deed is not the equivalent of legal right-of-way for a street or road. That is, a TE project to be built on quit claimed railroad right-of-way is not exempt from right-of-way clearance like highway projects constructed within the existing legal right-of-way of a highway or local road are. The procedures outlined above apply in view of the abandonment issues surrounding railroad right-of-way no longer used for rail purposes.

Right-of-way clearance for a TE project can be granted on the basis of any document that assures the sponsor can offer the project to use by the public for a period of time sufficient to recoup the public investment. That document can be a lease or a limited right-of-way if otherwise appropriate to protect the public investment. Fifteen years is normally considered sufficient to protect the public investment in a TE project. A lesser period of time may be appropriate depending on the amount of the TE grant. The Office of Chief Counsel, Real Property Division, should be consulted where the document offered is something other than fee simple title or an easement.

See Chapter 1, Section 1.10 for further information.

I. Vacations and Abandonments.

1. General Overview. Abandonment of a State Highway is the transfer by the Department of the jurisdiction and maintenance of an existing State highway to a municipality. Vacation is the return of a portion of any existing State highway to the private property owner whose abutting property originally contained that portion of State highway vacated. Whether a roadway should be abandoned or vacated is dependent on many factors, including safety, convenience of access to property owners (Sections 210 and 214 of the 1945 State Highway Law, 36 P.S. §§670-210 and 670-214), and possible damage claims under Section 715 of the Eminent Domain Code. Abandonment and vacation decisions are made by the District Executive in consultation with the Department's Right-of-Way Administrator and the Municipal Services office.

Please note that abandonments are different from turnbacks. As long as legal requirements are met, a road segment may be abandoned to a municipality without its consent. Turnbacks, on the other hand, are purely voluntary agreements between the Department and the municipality transferring jurisdiction of a road segment back to the local government. Turnbacks are affected by legal agreement under the provisions of the Vehicle Code. They are addressed in the Municipal Services Manual.

Please also note that only easements can be vacated. Land owned by the Department in fee must be sold in accordance with the provisions of 71 P.S. §513(e)(7). See Chapter 7, Excess Land. However, highway segments held in fee or as easements may be abandoned to the local government.

Plan presentation and certain policies relating to the vacation and abandonment of Department right-of-way are set forth in Publication 14M, Design Manual, Part 3, Plans Presentation, Chapter 3, Right-of-Way Plans. Abandonments and vacations are typically started by showing the appropriate areas as "to be abandoned" or "to be vacated" on a right-of-way acquisition plan. The actual abandonment or vacation of the right-of-way does not take place until after the project is completed, as discussed below.

There was an erroneous note in Publication 14M, Design Manual, Part 3, Plans Presentation, indicating that both abandonments and vacations are effective after construction when the appropriate local government or abutting owner is notified. The correct notes now included in Publication 14M, Design Manual, Part 3, Plans Presentation, are as follows:
ABANDONMENTS AS SHOWN ON THIS PLAN ARE EFFECTIVE ONLY AFTER THE ROAD HAS BEEN OPENED TO TRAFFIC AND PROPER WRITTEN NOTICE HAS BEEN GIVEN TO THE LOCAL AUTHORITIES.

VACATIONS AS SHOWN ON THIS PLAN ARE EFFECTIVE ONLY AFTER AN ORDER OF VACATION HAS BEEN EXECUTED BY THE DEPARTMENT AND FILED IN THE APPROPRIATE COUNTY COURTHOUSE.

2. Abandonments. Inclusion of an abandonment on a plan approved by, or on behalf of, the Governor is the first step in affecting abandonment (36 P.S. Section 670-210). When properly completed, the local government must maintain the road segment as a local road. Roads are abandoned because they are no longer necessary as part of the State highway system, but are still necessary as part of the public highway system.

The road segment must be in first class condition before abandoned to the local municipality (36 P.S. Section 670-214). Form M-4226 (entitled "Inspection of Roads to be Abandoned as State Highways") should be used to document that the local municipality agrees the road is in first class condition. Although not legally required, this consent avoids issues in the future and is good policy.

Abandonment is not effective until written notice is provided to the local municipality following construction of the project (36 P.S. Section 670-210). A copy of the letter providing this notice must be maintained by the district in the event the local municipality denies responsibility for the road segment in the future.

Coordination is required with Municipal Services to insure the road segment is added to the local government's liquid fuels allocation.

3. Vacations. Inclusion of a vacation on a plan approved by, or on behalf of, the Governor is also the first step in affecting vacation (36 P.S. Section 670-210). When properly completed, there is no public ownership in the area vacated: the owner of the fee underlying the highway easement vacated owns the land unburdened by the highway easement. Road segments are vacated because they are no longer necessary as part of the State highway system or to provide public access to abutting properties.

Public highway easements are not vacated through non-use or because they are used for a difference purpose than envisioned when acquired. There must be a formal vacation of the easement in the manner required by law. This is normally by the filing of an order of vacation, but in very limited circumstances can be affected by the widening or shifting of right-of-way lines. Both require the execution of a plan.

Widening or shifting right-of-way lines can cause vacations. Where the width, lines or location of a State Highway shall be or has been changed, altered or established, according to law, in a manner which does not create an entirely new highway, the section, sections or portions of the right-of-way of the highway, as previously established, which are not included within the changed, altered or established widths shall be considered vacated, if such portions or sections are not the full width of the highway, as previously established (36 P.S. Section 670-214). The portion of State Highway to be vacated is shown on the plan as existing legal right-of-way, and should be marked as to be vacated.

Highway segments less than two miles in length can also be vacated if determined to be unnecessary for public use and travel, or burdensome or dangerous, having due regard for the convenience of access to the highway system by owners of property abutting the highway segment (36 P.S. Section 670-210). As with the vacation of strips along a highway, the portion of State Highway to be vacated shall be shown as an existing legal right-of-way and marked as to be vacated.

Individual parcels can also be vacated by the Department. This is typically applicable when parcels have been acquired for a project, but the project is not constructed. See Section C.01.I.4 on Vacation and Confirmation Plans.

When an easement is vacated, the underlying fee owner's title is released from the burden of the public easement. A section of the General Road Law (36 P.S. §2131) provides that the adjoining owner or owners are authorized to reclaim the highway or street to the centre thereof; unless the ground was originally taken in unequal proportions from the then owners thereof, in which case the adjoining owners shall reclaim in the
proportion contributed by such owners or their predecessors in title. This is consistent with case law establishing a presumption that the adjoining owner has title to the middle of the abutting highway or street. This presumption can be overcome with evidence that underlying fee owner is some other party.

Form RW-376 should be executed by each landowner to whom land will be vacated. Although not legally required, this release avoids issues in the future and is good policy. It prevents the abutting owner from making a claim for interference with access due to vacation of the right-of-way. The best practice is to record these releases even though they do not transfer title.

Vacation is not effective until an order of vacation is executed by, or on behalf of, the Secretary of Transportation. Requests for orders of vacation are made to the Bureau of Municipal Service. The submission should indicate the section of highway or parcels being vacated and include a sketch showing the areas vacated and the names of underlying fee owners. These submissions are often made by the district municipal services unit, but may be made by the District Right-of-Way Unit.

When received by the district, the order of vacation with attached sketch should be filed with the recorder of deeds or other office as directed by the court. Thereafter, the part of the highway so vacated shall be closed to public use and travel, and shall no longer be a public road (36 P.S. Section 670-210).

Vacations cannot be made subject to the rights of existing public utility facilities to remain unadjusted within the area vacated if the utilities occupy the right-of-way by permit only. The Department cannot unilaterally reserve easements for other parties as against the land owner when it vacates public right-of-way.

4. Vacation and Confirmation of Disposition Plans. A vacation and confirmation of disposition plan should be created following the disposition of rights of ways owned in easement and fee simple. Such a plan for a highway section is the preferred method to affect formal vacations of highway easements and confirm the sale of fee-owned parcels that have been the subject of quit claim deeds in the disposition process. See generally Chapter 7, Excess Land. The less preferred method to document dispositions is to merely revise the right-of-way lines on the existing right-of-way acquisition plan.

A general note specifying that the vacation is made subject to the rights of existing public utility facilities to remain unadjusted within the area vacated is not appropriate if the utilities occupy the right-of-way by permit only. The Department cannot unilaterally reserve easements for a utility when it vacates public right-of-way. The method of doing so in the disposition process is to require the buyer to grant an easement to the utility as a condition of the agreement of sale.

When a plan is filed to vacate right-of-way and confirm the disposition of rights of way after the disposition process, the following General Note is included:

**THIS PLAN SHALL CONSTITUTE A WRITTEN ORDER AND DECLARATION UNDER SECTION 210 OF THE STATE HIGHWAY LAW, 36 P.S. SECTION 670-210, THAT THE RIGHT OF WAY SHOWN AS VACATED IS VACATED IMMEDIATELY UPON THE RECORDING OF THE PLAN.**

The easement areas on such plans are not designated as areas "to be vacated," but rather as areas "vacated."

This type of plan is only appropriate after disposition of right-of-way under this Manual procedures. The typical procedure for vacating road segments (i.e. execution and filing of a plan designating the segment as "to be vacated," followed by execution and filing of an order of vacation) is not altered by the availability of this procedure which is applicable only to situations where the right-of-way disposition process has been used. The procedure is appropriate in this limited situation because quit claim deeds are provided to the landowner during the disposition process.

J. Dedications and Ordainments.

1. General Overview. A dedication is defined as an appropriation of land to some public use, made by the owner, and accepted for such use by or on behalf of the public. An ordainment, on the other hand, is an act of the governing body establishing a street or right-of-way by passage of an ordinance.

2. General Principles of Dedication Law. A dedication is the effect of an offer by the owner of land to dedicate it to public use without compensation, and the acceptance of the land by the public. It is akin to the
contract situation since there must be both an offer of dedication and an acceptance of the offer, just as there
must be an offer to enter into a contract and an acceptance of the terms offered.

Acceptance of an offer of dedication by either a local entity or the Commonwealth may be expressed or
implied, and may be by conduct as well as by ordinance or formal act. The burden is upon the party attempting
to support the existence of a public right-of-way to show by clear and convincing evidence that there has been
an acceptance of the dedication offer.

Acceptance of dedicated ways must be established by some definitive authoritative act of the governing body,
or a long continued use by the public, or by a combination of acts and public uses. Formal expressions of
acceptance, unaccompanied by actual opening or use, are not ordinarily sufficient to constitute an acceptance
of a dedication offer. Also, neither municipal approval of subdivision plans nor completion of the streets
included in such plans obligates the municipality to accept such areas for public use, unless the plans or some
other agreement specifically states otherwise.

An implied acceptance must be by unequivocal acts, continued during a long time, showing beyond question
the intention on the part of the governing body to accept the proposed right-of-way as a public highway. Mere
occasional use, or inconsequential acts for the convenience of the governing body, will not be sufficient to
convert a dedication into a public way. The acts must not only be continuous and for a long period, but must
be open and notorious, showing beyond a doubt that the governing body intended to accept the proposed right-
of-way for public use.

Use of a portion of an area dedicated to public use may, but does not necessarily, constitute an acceptance of
the entire area dedicated. There must be a clear and unequivocal manifestation of an intention to accept the
entire area as a public way.

Offers of dedication to local municipalities lapse after 21 years, i.e. the offer can no longer be accepted by the
municipality without a new offer being made. Offers of dedication to the Commonwealth, however, do not
lapse after 21 years. An offer of dedication can be withdrawn before acceptance unless the offer has been
made irrevocable for special reasons. In circumstances where injustice would otherwise result, an offer cannot
be accepted after an unreasonable delay even though it has not been revoked.

3. Acceptance of Dedications through an Acquisition Plan. The Department does not generally accept
dedications by any formal act unless or until there is a reconstruction project in the area in question. Dedicated
areas are then shown as within the legal right-of-way on the appropriate plans. This is a proper method of
accepting areas that are either dedicated to the Commonwealth or dedicated to public use in general. There is
no known prohibition to formally accepting only a portion of an area dedicated to public use. Areas that are
specifically dedicated to a municipality cannot be accepted by the Department. They would need to be
accepted by the municipality and deeded by the municipality to the Department.

The general note for accepting dedications through a highway acquisition plan is set forth in Publication 14M,

4. Acceptance of Dedications by Deed of Dedication.

a. General. The following outlines the Department's policy on accepting title to land that is being
offered to the Department by a local government body not in connection with a Department highway
project or an improvement related to a highway occupancy permit.

Usually this land comes into the local government's possession from developers who give them the land
during the normal subdivision process. Real property obtained by a local government in this manner is
not subject to normal acquisition procedures because they are obtained through an exercise of police
power.

b. Policy. Districts are encouraged to accept the dedication of right-of-way through the local land
development process when it is in the best interest of the Department.

c. Guidelines. Acceptance of dedications is at the option of the District, and if accepted, the District
will determine the width of the dedication.
Prior to acceptance, all environmental issues such as hazardous materials or wetlands should be thoroughly investigated and evaluated.

A plan, including a title page and an index map sufficient to identify the area to be dedicated, must be completed by the dedicating agency. Refer to Publication 14M, Design Manual, Part 3, Plans Presentation, for a discussion of Plans Presentation.

Special consideration should be given to accepting dedications on highways included on the National Highway System and projects on the twelve-year plan.

The acceptance of dedications does not commit the Department to future improvements.

Districts may accept dedications along existing state-owned right-of-way without prior approval. Other dedications may only be accepted by the District with the prior approval of the Chief, Utilities and Right of Way Section or a Deputy Secretary.

d. Processing Procedures. Following the decision to accept, a plan is completed by the dedicating agency. The plan is reviewed and approved by the Department and placed on file in the District Office.

A deed of dedication, including title certification, is prepared and executed by the dedicating agency.

The deed is submitted to the Office of Chief Counsel for approval. The plan should accompany the deed.

After approval, the deed is returned to the District for recording at the county courthouse.

5. General Principles of Ordainment Law. A direct ordinance is the usual and proper form for establishing a street. However, the street is not usually regarded as actually established until it is opened for public use; the mere plotting of streets without proceedings to open is not sufficient to make such proposed streets a public highway or to confer any right of use on the public. Indeed, the landowner's right to seek damages does not normally exist until the street is actually opened for public use even though previously ordained as public right-of-way.

An ordainment can cause a cloud on the title to the land because it represents an intention to open a public street on the land and may limit the recovery of damages for improvements constructed on the area. However, the area is not a public street until actually opened for public use.

Proving a completed ordainment is similar to proving a completed dedication. There must be more than an ordinance or a dedication; there must be an actual opening and use of the street. The requirement of an actual opening could, of course, be obviated by proof that the landowner was paid for the right-of-way or some other evidence (such as a deed) that some interest in land was transferred following the ordainment.

6. Verification of Ordainments. Old plans showing an area as "to be ordained" do not automatically mean that the area is now legal right-of-way. First, an ordinance would need to have been passed and then the area would need to have been opened to public travel. At that time the landowner could have sought compensation from the municipality that passed the ordinance.

A "to be ordained" designation is not unlike a "to be abandoned" or a "to be vacated" designation on a Department plan. These do not mean that the areas were actually abandoned or vacated, but only that this was the Department's intention. Acts subsequent to the filing of the plan are necessary for there to have been a completed abandonment or vacation. See Section C.01.1 on vacations and abandonments.

If a plan shows an area as to be ordained and it has been opened to public travel, a logical presumption can be made that an ordinance was passed. If there is no evidence of an ordinance, compensation to the landowner, a subsequent title document, or public use, however, it cannot be presumed that the area is legal right-of-way.

K. License Agreements.

1. Maintenance Sites v. Highway Right-of-Way. The procedures for allowing others to use maintenance sites are different from those applicable to highway right-of-way.
Two main provisions relate to occupancies of State highway right-of-way: Section 420 of the State Highway Law (36 P.S. §670-420), which empowers the Department to make reasonable rules and regulations governing the use of all State highways; and Section 2002 of the Administrative Code (71 P.S. §512(a)(10)), which grants the Department exclusive authority and jurisdiction over all State designated highways. Section 420 is the authority for highway occupancy permits relating to utilities, driveways and locals roads. Most highway occupancies are allowed under the regulations relating to these types of occupancies. Other miscellaneous occupancies of highway right-of-way are allowed under Section 2002 by individual legal agreements processed through the Office of Chief Counsel's General Law Division, Contract and Legal Services Section.

Maintenance sites that are not within State highway right-of-way are not subject to the stated provisions. They are subject to Section 514 of the Administrative Code (71 P.S. §194), which prohibits Commonwealth agencies from granting any easement, right-of-way or other interest over or in its real estate without specific authority of the General Assembly, with one stated exception. This provisions also applies to highway right-of-way to the extent it prohibits the grant of any easement, right-of-way or other interest. A permit under Section 420 or a temporary right of entry or other agreement allowing entry onto highway right-of-way under Section 512(a)(10) is not an easement, right-of-way or other property interest. The exception under Section 514 for occupying Department land that is not highway right-of-way allows the Department to grant a license to any public service corporation for the placement of any public service line necessary for service of the public. Public service corporations include municipalities and municipal authorities.

2. Terms of License. Every license granted under Section 514 shall be revocable upon six months' written notice by the Commonwealth and after like notice for any violation of its terms. Unless the line is primarily for the benefit of the State property, the license shall provide for payment to the Commonwealth of compensation for the use of the property in such amount as the Department prescribes. Such other terms and conditions shall be included in the license as prescribed by the Department, with the approval of the Governor.

3. Procedures. Requests for licenses shall be made in writing to the Chief Counsel, Office of Chief Counsel. The Chief Counsel will assign drafting of the license. Sample license agreements can be found on the intranet at P:\Real Property Division Guidance. Under no circumstances should a license be drafted and presented to a potential licensee without input from the Office of Chief Counsel.

The submission to the Chief Counsel must include the following: the location and name of the maintenance site; the nature of the Department's property interest in the maintenance site (fee ownership or leasehold); the name of the proposed licensee; the nature of the proposed occupancy; a plan showing the proposed occupancy that can be used as an exhibit; the name and telephone number of the Department contact person; and the amount of compensation to be charged if the facility will not benefit the maintenance site. If the Department is occupying the land under a lease, the consent of the landowner should be sought before granting a license.

There are two basic approaches to determining the amount of compensation to be charged. One is to charge an annual fee; the other is to develop a lump sum fee based on the fair market value of a utility easement. Although not an easement, a license is akin to one.

A logical means for determining an annual fee is to look at what others, such as railroads, charge for license agreements across their lands. These are often based on the nature and number or length of the occupancy, with a minimum fee applicable to all occupancies. The Office of Chief Counsel, Real Property Division, has such a fee schedule. The drawback with this approach is that the fee must be tracked each year.

Determining a lump sum amount would require an appraisal or waiver valuation based on amounts paid by utilities in the area to occupy a private person's land for utility line purposes, or some other market value-type analysis. Values for easements over private land are also sometimes established by linear foot of occupancy. The licensee may be able to supply useful data in this regard. The appraisal analysis is not for highway acquisition and is thus not subject to the procedures set forth in Chapter 2, Appraisals relating to appraisals for highway projects.

Once the language of the license has been finalized by the Office of Chief Counsel, the district will be responsible for having it executed by the licensee. Thereafter, the license will be returned to the Office of Chief Counsel for further execution and approvals. The license will be executed by a Deputy Secretary of Transportation and must be reviewed and approved by the Office of Chief Counsel, the Office of the Comptroller, the Office of General Counsel, and the Office of Attorney General.
L. Acquisitions for others and confirmatory deeds

1. General. There are certain limited situations where the Department may acquire title for others. The most common is substitute rights of ways for utilities under Section 412 of the State Highway Law (36 P.S. §670-412). There are specific forms and procedures established for transferring title to the utilities in these substitute taking situations. See Chapter 3, Section 3.03.A.7. Other situations have arisen, however, where the Department provides for the acquisition and transfer under the plan itself.

There is no authority for unilaterally acquiring land for others in certain situations. For example, sidewalk or traffic signal easements may not be acquired for local governments along State highways. The needed land should be acquired as required right-of-way, or a lesser sidewalk or traffic signal easement, for the Department, with maintenance responsibility passed on to the local government through a legal agreement. See Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3.

2. Service Roads. A local service road is defined under the Limited Access Highway Act as a public highway, either existing, or new, or combination thereof, parallel or approximately parallel to a limited access highway which will provide ingress and egress to or from highways or areas which would otherwise be isolated by the construction or establishment of a limited access highway. 36 P.S. §2391.1. Upon the completion of construction, local service highways shall be maintained by and at the expense of the political subdivision in which they are located. 36 P.S. §2391.12.

The Department may designate such service roads in connection with a limited access project and the local government must assume responsibility for it following construction. Jurisdiction and title to the service road go to the local government along with maintenance responsibility. A note on the plan reflects this law and interpretation. See Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3.

3. Acquisitions for Local Roadways. Section 210 of the State Highway Law empowers the Department to change, alter or establish the width and location of local roads intersecting State highways in order to correct danger or inconvenience to the traveling public or lessen the cost of construction, reconstruction or maintenance. 36 P.S. §670-210. Section 2003 of the Administrative Code, in turn, authorizes the Department to acquire, by gift, purchase, condemnation or otherwise, right-of-way for local roads if in furtherance of providing a fast, safe and efficient transportation system in the Commonwealth and incidental to the reconstruction, repair or maintenance of a State highway.

Acquisitions for local roadways are one of the most common combined acquisitions for and transfer to another by plan. Doing so is limited, however, to situations where a project relating to a State highway impacts a local road. Examples would be where an intersection improvement requires acquisition for a better turning radius or for a turning lane on the intersecting local roadway, or where a limited access project cuts off a local roadway that must be relocated to a nearby overpass. These takings are for the direct transportation purpose of mitigating the impacts of the State highway project on the local road.

The right-of-way in these situations is acquired for the local government. Thus, title transfers to the local government upon acquisition, with a construction easement reserved for the Department. A note on the plan reflects the nature of these acquisitions. See Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3.

4. Acquisitions for Private Access. The Department acquires land for private access when required to mitigate interference with access to another property. These takings are for both transportation and mitigation purposes. A note on the plan reflects the nature of these acquisitions. See Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3. See also Chapter 3, Sections 3.03.A.4 and 3.08.B.2 further addressing acquisition for private access.

5. Acquisitions for Environmental Mitigation. In certain circumstances, the Department acquires land for other public entities to mitigate takings on special lands, e.g. replacement parklands. A note on the plan reflects the nature of these acquisitions. See Publication 14M, Design Manual Part 3, Plans Presentation, Chapter 3. See also Section C.01.C. Further guidance in this regard is also now included in Publication 689, Cultural Resources Handbook.

6. Confirmatory Deeds. When the Department acquires land for service roads, local roadways, private
access and replacement lands, the plan authorizing the acquisition specifically provides that title lies with the
other party upon acquisition or the completion of construction. When deemed appropriate or requested by the
other party, the Department may provide a confirmatory quit claim deed to the other party confirming that title
has indeed transferred. This will provide a more traditional title document for the chain of title.

Requests for confirmatory deeds should be made directly to the Office of Chief Counsel, Real Property
Division. They will draft or assist the district in drafting a deed using the general form of the Form RW-
318QC.

Note that confirmatory deeds will not be provided when local roads are abandoned or turned back to local
governments, or where right-of-way is vacated as part of a highway project. See generally Section C.01.I.
Turnbacks are affected under the Vehicle Code by Municipal Services units. See generally Publication 310,

If there is any question on the propriety of acquiring land on behalf of another by plan note and the ability to
provide a quit claim deed confirming such an acquisition, contact the Office of Chief Counsel, Real Property
Division. The Department would be in an awkward position if it acquires land on behalf of another but a quit
claim deed confirming the acquisition is not feasible.

M. Unity of Title/Unity of Use.

1. General. Section 705 of the Eminent Domain Code provides that contiguous tracts with substantially
identical ownership must be combined for valuation purposes. Substantially identical ownership only is
required to establish unity of title, not identical ownership.

Section 705 also provides that noncontiguous tracts must be combined for valuation purposes where they are in
substantially identical ownership and are used together for a unified purpose. This additional unity of use
doctrine applies only if the noncontiguous tracts are so interconnected in their use that injury to one will
permanently damage the other.

More complete discussions of and procedures relating to unity of title and unity of use can be found in Chapter
3, Acquisitions, Section 3.08.B.3.h (predominantly addressing unity of title) and Appendix A, Section A.10.C
(predominantly addressing unity of use).

2. Plans presentation. Where tracts having different record owners are combined into one parcel, it would
be appropriate to designate the various tracts by letters and indicate the record owner. For example, Parcel No.
23 may consist of Tracts A, B and C, with some indication on the plan that Tract A is owned by ABC, Inc.;
Tract B by ABC Partnership; and Tract C by Robert Able and James Bender. If the tracts are contiguous, a Z
designation would be appropriate.

Where tracts having different record owners are combined into one parcel, the claim must be identified using
all record names. That is, all record owners of the various tracts must be included in the claim information
block. For example, the name would be ABC, Inc., ABC Partnership, and Robert Able and James Bender; not
simply ABC, Inc. because it owns the largest tract. Similarly, the deed information must be listed for each
tract. Due to space considerations within the claim information block, it may be necessary to list ownership
and deed information for each tract beside the claim information block.

Where tracts having different record owners are combined into one parcel, the areas in the claim information
block must be combined, reflecting all data relating to the parcel. This is no different than the historic
presentation where different tracts are combined into a single parcel due to unity of title or unity of use.

N. Taxation Issues Following Acquisition.

1. General Overview. The general rule is that land purchased by the Department for highway projects is not
taxable. 72 P.S. §5020-204(a)(7)(relating to public property used for public purposes).

2. Statutory Exceptions. There are two statutory exceptions to the general rule. One relates to excess
remainders, landlocked parcels and other land or improvements acquired as part of a highway project but
located outside the highway right-of-way, and the other relates to land leased to private entities.
The Department must make payments in lieu of real estate taxes to the county, municipality and school district on excess remainders, landlocked parcels and any other land or improvements located outside of the right-of-way until such land shall be used for highway or other transportation purposes, or conveyed. 71 P.S. §513(e)(4). This requirement applies only to land outside the right-of-way lines that is not being used for transportation purpose. The most common example would be uneconomic remnants.

Where land not needed for the free movement of traffic is leased to a private entity, that private entity shall make payments in lieu of taxes to the political subdivisions in which such leased property is located in an amount equal to the annual taxes that would normally be due on such property, if taxable. However, prior to requiring a payment in lieu of taxes, the political subdivision shall have the leased property reassessed to reflect any change in value caused by the construction of the highway or other transportation facility. 71 P.S. §512(c)(1). The Department provides in its joint use and interim leases that the lessee is responsible for any in lieu of taxes. Indeed, the law provides that the assessment must be made against the lessee, not the Department.

3. SEPTA Case Exception Not Applicable. In a 2003 decision, the Supreme Court found that SEPTA property leased to commercial tenants was not immune from taxation. Although a statute specifically authorizes SEPTA to raise additional revenue through rental income by entering into commercial leases with commercial entities, the statute did not provide a basis for concluding that SEPTA was absolved or exempted from its responsibility for paying real estate tax on the portion of the property that was leased to commercial tenants.

At least one taxing authority has argued the SEPTA case is applicable to the Department when it leases land to a private entity for private purposes. However, the Department's leasing statute explicitly provides that a private lessee can be assessed in lieu of taxes by local taxing authorities in an amount equal to the amount of taxes that would be due on the property if it was taxable. 71 P.S. §512(c)(1). This is a specific indication that the Department cannot be taxed even if the land is leased for private purposes. Thus, the general rule applies that property owned by the Commonwealth is immune from taxation absent a specific grant of authority to tax it.

4. Realty Transfer Tax Exclusion. Realty transfer tax shall not be imposed upon a transfer to the Commonwealth or to any of its instrumentalities, agencies or political subdivisions by gift, dedication or deed in lieu of condemnation or deed of confirmation in connection with condemnation proceedings. 72 P.S. §8102-C.3(1). This exclusion is not limited to the Commonwealth, but rather includes the entire transaction if the transfer of title is to the Commonwealth.

On occasion, a recorder of deeds will insist that just because the Commonwealth is exempt from taxation, the exemption does not relieve the other party to the transaction from liability for the tax. Should this issue arise involving a transfer to the Commonwealth, reference should be made to 72 P.S. §8102-C.3(1), which makes clear that no party to the transaction is subject to paying the realty transfer tax, not simply because the Commonwealth is exempt from taxation, but rather because the transaction in its entirety is excluded from the tax.

O. Navigable Waters.

1. General Overview. There are thousands of miles of streams and hundreds of lakes in Pennsylvania. Many of the streams are considered navigable; few of the lakes are.

The beds of non-navigable waterways in Pennsylvania are privately owned by those who own the land beneath the water's surface and the lands abutting it. Streambeds of navigable waterways, on the other hand, are publicly owned by the Commonwealth and held in trust for the public by operation of the common law and the Pennsylvania Constitution. The ownership of the Commonwealth to these submerged lands extends to the ordinary low water mark (rivers and streams) or water's edge (lakes). Low water mark, as used in this connection, means the height of the water at ordinary stage of low water unaffected by drought and unchanged by artificial means.

The absolute title of the abutting owner along navigable waters is fixed at the high water line. The area between the high and low water line is a conditional title in favor of the public. That is, while the landowner has unlimited rights to the high water line, both the public and the private landowner have rights in the area
between the high and low line. In this gray area, the private owner may perform acts of ownership but may be ousted or limited at the pleasure of the Commonwealth. This area is like legal highway right of way; it is subject to a public servitude. In some states (but not Pennsylvania), the public's unlimited ownership extends to the high water mark. The public right in navigable waterways entitles the public generally to use navigable waters for any reasonable and legitimate purpose.

Where a body of water is not navigable, the submerged lands remain in private ownership. If abutting deeds call to certain points, those points control. However, deeds calling to the edge of a non-navigable waterway are presumed to go to the center (or thread) of the waterway. That is, the title of a landowner abutting a non-navigable waterway extends to the middle of the waterway unless contrary evidence exists.

There are several categories of navigable waters in Pennsylvania. First, there is a class of waters that have been judicially determined to be principal rivers or lakes. See subsection b. Second, there are rivers and streams that have been declared to be public highways by Acts of Assembly before a land grant was made by the Commonwealth for the lands. See subsection c(i). Third, there are rivers/streams that have been declared to be public highways by Acts of Assembly after the land was granted by the Commonwealth, but which are navigable in fact. See subsection c(ii). And finally, there are bodies of water that have been declared navigable by the United States Corps of Engineers or the United States Coast Guard. See subsection d.

There are lists available for the various categories of navigable bodies as will be identified below. None of these lists are definitive or foolproof. The most comprehensive, however, have been developed by the Department of Environmental Protection. See subsection e. The plans presentation is dependent upon whether the body of water is navigable or non-navigable, regardless of which category gives rise to the determination. See subsection f.

2. Principal Rivers and Lakes. In 1826, the Pennsylvania Supreme Court declared that it was already well-settled that the principal rivers of the Commonwealth are navigable as a matter of law. Finding it unnecessary to enumerate them all, the Court said it was safe to give the name principal to the Ohio, Monongahela, Allegheny, Susquehanna and its north and west branches, Juniata, Schuylkill and Delaware. The Lehigh River has also been recognized as such.

Some sources call these principal rivers navigable in fact. There is some logic in this as will be seen by what navigable in fact means. See subsection c(iv). Whether considered navigable by law or navigable in fact, the end result is the same — the principal rivers and lakes of the Commonwealth are considered navigable.

Lake Erie and Conneaut Lake have also been recognized as navigable by law under this same principle. Small lakes and ponds, however, are generally not navigable by law or fact in Pennsylvania. In fact, the 27th largest lake in Pennsylvania, Sandy Lake in Mercer County, has been ruled non-navigable. See generally subsection c(iv).


   a. In general. In the 18th and 19th centuries, the Pennsylvania Legislature passed numerous acts declaring certain rivers, creeks and streams, or parts thereof, to be public streams or highways. The purpose of these acts was to allow public fishing, navigation and other uses. In these early days of the Commonwealth, even small and seasonal waterways played a major role in the movement of logs, sawn timber and lumber, as well as commodities such as furs, salt and grains, manufactured goods, and even people.

In 1890, Frederick J. Geiger, Esquire, of the Philadelphia Bar, prepared for the Pennsylvania Fish Protective Association, a list of the various acts declaring streams, etc. to be public highways. It lists the acts alphabetically by stream name. That list can be found on the P Drive under Real Property Division Guidance, Navigable Waters Folder, Public Highway Declaration Acts. See subsection e below on DEP's more simplified list of Public Highway Declaration Acts.

Please note that a memorandum was issued by the Office of Chief Counsel on August 16, 1965, entitled "Streambeds," which had the Geiger list of Public Highway Declaration Acts appended thereto. To the extent it indicated that the list was of navigable streams in Pennsylvania, that memorandum must be interpreted in view of the distinctions discussed below. It is only a list of the streams which have been
Appendix C - Legal Issues and Guidance

the subject of a Public Highway Declaration Act.

b. Deeded after designation. If a Public Highway Declaration Act was passed before the land abutting the waters was initially granted from the Commonwealth to private ownership, the public ownership of the waterway is considered a reservation from the grant. The private owner understood when title was obtained that the waterway was navigable by law. There is no constitutional issue because the initial grantee never obtained ownership of the navigable waterway. All subsequent owners obtained their title also subject to the public ownership in the submerged lands.

c. Deeded before designation. Where title to the land abutting a waterway was granted to private ownership before a Public Highway Declaration Act was passed for the waterway, there is no reservation of public ownership of the submerged land to the Commonwealth. For this reason, the constitutional prohibition against taking property without just compensation comes into play. The courts have determined that in this situation, the waterway is in public ownership only if it is navigable in fact.

In view of the distinction based on when the land was granted in relation to passage of the applicable Public Highway Designation Act, a historic title search is required if the navigable status of the waterway is based on a Public Highway Designation Act. If the Act predates the grant, the waterway is navigable. If the grant predates the Act, an analysis must be made to determine whether the waterway is navigable in fact.

The specific analysis does not apply if a principal river is involved. Nor is it required if the stream is on the DEP list discussed below.

d. Navigable in Fact. Navigable in fact means that the waterway is used, or capable of being used, in its ordinary condition, as a highway for commerce, over which trade and travel are or may be conducted in the ordinary modes of trade and travel on water. The size of the body of water and its capacity to float a boat are not alone sufficient or limiting. It must be used or have been used for commercial transportation. It must have been used as a "public road" for the transportation of goods between centers of commerce and not just as a source of recreation. The basic difference is that between a trade-route and a point of interest. The first is a public use and the second private. This is why only large lakes are considered navigable.

The waterway need not now be used for public commerce. If it met the navigability test at any point in its history, the waterway remains a legally navigable waterway subject to the public trust doctrine.

The determination of navigability depends on many factors in the history of the waterway. One cannot necessarily tell that a waterway is or is not navigable in fact by just looking at it today. Among the evidence considered by the courts is the history of its commercial use, whether it has been declared a public highway by the legislature, its size and flow, whether the submerged lands have been treated by the public and riparian owners as a Commonwealth resource, and the like. No one factor is determinative. A county court has recently declared the Little Juniata River in Huntingdon County navigable in fact under these parameters.

4. Corps of Engineers and Coast Guard Designations. Both the United States Corps of Engineers and United States Coast Guard have regulatory authority over "Navigable Waters of the United States." This topic is addressed in Publication 13M, Design Manual Part 2, Highway Design, Chapter 10.

Navigable Waters of the United States are defined as those waters of the United States, including territorial seas adjacent thereto, the general character of which is navigable, and which, either by themselves or by uniting with other waters, form a continuous waterway on which boats or vessels may navigate or travel between two or more States or to or from foreign nations. A stream which otherwise conforms to this definition would not change its navigable character because of the existence of natural or artificial obstructions such as falls, shallows, rapids, dams or bridges.

A body of water which is a Navigable Waters of the United States can generally be considered navigable under Pennsylvania law. The Publication 13M, Design Manual, Part 2, Highway Design, includes a listing of bodies of water in Pennsylvania over which the Corps of Engineers and Coast Guard exercise jurisdiction. These lists can be found on the P Drive under Real Property Division Guidance, Navigable Waters Folder, Design Manual
Corps of Engineers and Coast Guard Lists.

5. Department of Environmental Protection Lists. Under the Dam Safety and Encroachments Act, the Department of Environmental Protection (DEP) is charged with administering the Submerged Lands License Agreement (SLLA) program. This program sets out a system for obtaining licenses to occupy submerged lands of the Commonwealth. 32 P.S. §693.15.

DEP uses three lists in administering the SLLA program.

One is the list of Public Highway Declaration Acts prepared by Frederick J. Geiger and another is a list of Streams Declared Navigable by the Corps of Engineers. Both are on the P Drive under Real Property Division Guidance, Navigable Waters Folder, DEP Subfolder, 1995 DEP List of Navigable Waters of Pennsylvania. The list of Public Highway Declaration Acts included here is simplified from the original and lists the streams by county. Caution is given that the locations provided in the laws may be vague and municipal boundaries may have changed since enactment. Also included on the P Drive under Real Property Division Guidance, Navigable Waters Folder, DEP Subfolder, is a 2003 DEP List of Streams Declared Navigable by the Corps of Engineers. It includes information on Lake Erie and its tributaries not included in DEP's 1995 list. The DEP Corp of Engineers lists, of course, are very similar to the Corps of Engineers list in Publication 13M, Design Manual, Part 2, *Highway Design*.

A third list used by DEP is entitled "Stream Beds Owned by the Commonwealth." It is commonly referred to as the Oberdorfer list because it was compiled by Wilson Oberdorfer, former Bureau Director for the then-Department of Environmental Resource's Legal Services. It was created in November, 2003, and is an alphabetical list of waterways, the beds of which have been found through legal analysis, historical research and/or Pennsylvania court decisions to be submerged lands of the Commonwealth. It is a very comprehensive and straightforward list and can be found on the P Drive under Real Property Division Guidance, Navigable Waters Folder, DEP Subfolder, Oberdorfer List of Streambeds Owned by the Commonwealth.

DEP cautions that these lists should be treated as a starting point for determining their regulatory control and are not a final determination of the legally navigable streams in Pennsylvania. However, they have been compiled over time from various sources and are based upon what DEP considers to be reliable and persuasive evidence of Commonwealth ownership of the submerged lands associated with the streams listed. There may be streams not listed which are navigable in fact and therefore subject to a claim of ownership by the Commonwealth of the associated submerged lands. DEP's cautionary statement is included in its entirety on the P Drive under Real Property Division Guidance, Navigable Waters Folder, DEP Subfolder, DEP Introduction to Its Lists of Streams Subject to the Submerged Lands License Program. This caution is supported and applies to all lists included within the Navigable Waters Folder.

6. Plans Presentation. Publication 14M, Design Manual, Part 3, *Plans Presentation*, Chapter 3, addresses plans presentation for bodies of water. A general note is to be provided indicating which streams within the project are classified as "Navigable Streams" because as such, they are public highways. If no streams are classified as navigable, a general note should so state. Publication 14M, Design Manual Part 3, *Plans Presentation*, Chapter 3.

For navigable streams, the stream bed shall be considered as legal right of way and shall not be cross-hatched or included in the calculated required right of way area. The high water mark shall be used to determine the area of legal right of way for navigable streams. Publication 14M, Design Manual, Part 3, *Plans Presentation*, Chapter 3.

If the abutting owner's deed calls to the center of a navigable stream or otherwise falls between the low water marks, the property line should only be shown at the low water mark. This is because the Commonwealth's absolute ownership of a navigable stream goes to the low water mark. The legal right of way line will be the high water mark, however, because the Commonwealth has public rights to that point. Any areas below the high water mark should be excluded from the deeded area to determine the effective area of the deed.

The bed of any non-navigable stream belongs to the abutting property owner and shall be included in the area of take. Publication 14M, Design Manual, Part 3, *Plans Presentation*, Chapter 3. If the deeds demonstrate unequal ownership of the stream by abutting owners, however, the deeds control. If a deed calls to the edge of the stream, ownership to the middle (or thread) is presumed. This presumption of ownership to the middle
controls unless the deed on the other side of the stream demonstrates unequal ownership.

The determination of whether a body of water is navigable should be made based on the guidance set forth above.

**P. Environmental Covenants on Land Acquired.** The Uniform Environmental Covenants Act, 27 Pa.C.S. §6501 et seq. (effective February 19, 2008), provides certain protections to land for which environmental covenants have been filed. Environmental covenants impose activity and use restrictions on land after an environmental remediation, closure of a solid or hazardous waste management unit, or a voluntary cleanup.

An environmental covenant is perpetual unless certain conditions apply, two of which are relevant to the Department. The terms of the covenant itself can limit its duration or provide that it terminates upon the occurrence of a specific event. Environmental covenants can also be terminated or modified by judicial decree in an eminent domain proceedings if (1) the agency that signed the covenant consents to the judicial action; (2) those connected with the covenant are notified of the pending eminent domain proceeding; and (3) the court determines, after a hearing, that the termination or modification will not adversely affect human health or the environment.

The Department will normally want to have any environmental covenant amended or terminated which encumbers land that it acquires for highway purposes. Without a specific term in the covenant, this will require the Department to obtain a court order after obtaining the consent of the Department of Environmental Protection (DEP) and notifying interested parties.

Regulations promulgated by DEP in 2010 provide that environmental covenants shall include a clause that the covenant may be amended or terminated as to any portion of the real property subject to the covenant that is acquired for use as highway right of way by the Commonwealth. The inclusion of this clause will relieve the Department from needing a court order to terminate covenants, although the consent of DEP and notice to interested parties by DEP will still be required.

A memorandum of understanding is being negotiated by the Department with DEP to provide the necessary coordination during preliminary design to address properties with environmental covenants. DEP maintains a data base of properties that have covenants on their website (www.DEP.state.pa.us) under Community Revitalization & Brownfields/OCRLGS/Brownfield Redevelopment/Land Recycling Program/Uniform Environmental Covenants Act/List of Land Recycling Program Sites with Environmental Covenants. The covenants will also be in the chain of title at the county courthouse.

Environmental covenants moving forward should include the clause that will eliminate the need for court action. Covenants executed between 2008 and now, however, will require a court decree if the Department wishes to have them terminated or modified. Requests to terminate an environmental covenant by court decree should be made to the Office of Chief Counsel, Real Property Division.
APPENDIX D
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**Appendix D - Business Dislocation Flowchart**

**Business Dislocation Flow Chart - Tasks & Responsibilities**

- **Obtain M&E Report**
- **M&E Usage**
  - Relocation Assistance function
- **Appraisal function**

**Decision Points**

- **If FMVIP <= 100K - Reasonableness review**
  - If FMVIP > 100K or complex consult C.O. to determine if an independent review is necessary

**Decision Pathways**

- **Yes**
  - Determine Personal Property Loss Payment (4.05.E - Personal Property Loss Payment)
- **No**
  - Make offer
  - Dist. RW Admin.

**Abbreviation of Responsible Position**

- **Position Full Description**
  - **Dist. RW Admin.**
    - District Right-of-Way Administrator
  - **Dist. Chf Negot.**
    - District Chief Negotiator
  - **Dist. Chf Appr.**
    - District Chief Appraiser
  - **Dist. Negot.**
    - District Negotiator
  - **C.O. Chf Appr.**
    - Central Office Chief Appraiser
  - **C.O.R.A.**
    - Central Office Review Appraiser
  - **C.O. Chf Acq./Reloc.**
    - Central Office Chief of Acquisition and Relocation
  - **Counsel**
    - Office of Chief Counsel

**Abbreviation of Responsible Position**

- **Dist. RW Admin.**
  - District Right-of-Way Administrator
- **Dist. Chf Negot.**
  - District Chief Negotiator
- **Dist. Chf Appr.**
  - District Chief Appraiser
- **Dist. Negot.**
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- **C.O. Chf Appr.**
  - Central Office Chief Appraiser
- **C.O.R.A.**
  - Central Office Review Appraiser
- **C.O. Chf Acq./Reloc.**
  - Central Office Chief of Acquisition and Relocation
- **Counsel**
  - Office of Chief Counsel
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County searches and/or advertises for available property to be used for Stockpile Site (County Maintenance)

- Potential Stockpile Site Identified (County Maint.)
- County Completes Stockpile Checklist (County Maint. & Mgr.)

Request Appraisal & Title Search for subject property (County Maintenance Manager/ADE Maint.)

Review site information, review options of the District to pursue purchase or lease of property (ADE Maint. & County Maint. Mgr.)

Start Process Over

Site rejected

Complete Appraisal & Title Search of subject property and forward to County Maint. Mgr. (District R/W)

Complete CE and submit to County Maint. Mgr. (Environmental Unit)

Complete Survey & Plot Plan and submit to County Maint. Mgr. (Design/Plans Unit)

Start Process Over

Site rejected

Request CE evaluation of property (County Mgr/ADE Maint.)

Request Survey & Plot Plan for subject property (County Mgr./ADE Maint.)

Complete Conceptual Design and return to District Maint. (BOMO)

Request Conceptual Design to BOMO (ADE Maint.)

Complete Conceptual Design and return to District Maint. (BOMO)

Prepare and submit Lease Package to District R/W Unit. See Section 5.13.A.6 of Pub 378(County Maint. Mgr.)

Start Process Over

Site rejected

Review Lease Package for submission to Central Office (District R/W Property Mgr.)

Submit Lease Package to C.O. for processing (District R/W Property Mgr.)

Review Lease Package for fiscal responsibility and form and legality and execution (C.O. R/W, Chief Counsel, Attorney General, Comptroller)

Review Lease Package for submission to Central Office (District R/W Property Mgr.)

Submit Lease Package to C.O. for processing (District R/W Property Mgr.)

Review Lease Package for fiscal responsibility and form and legality and execution (C.O. R/W, Chief Counsel, Attorney General, Comptroller)

Forward Executed Lease to District Office (C.O. R/W)

Forward executed copy of Lease to County Maint. Office (District R/W Property Mgr.)

- Forward executed copy of Lease to Lessor, Comptroller, and Treasury.
- Process SAP invoice for rental payment (County Maint.)

Decide if lease will be renewed for another term at a minimum of 9 months prior to lease expiration (County Maint. Mgr./ADE Maint.)

Return to beginning of Process Map and start process over (County Maint.)

Note: This will require a minimum of at least 9 months lead time depending on workload, funding, and available sites.

Have Lessor execute a new Lease at least 6 months prior to Lease expiration (County Maint. Mgr.)

Yes

Return to beginning of Process Map and start process over (County Maint.)

No

Prepare and submit Lease Package to District R/W Unit. See Section 5.13.A.6 of Pub 378(County Maint. Mgr.)

Start Process Over

Site rejected

Review Lease Package for submission to Central Office (District R/W Property Mgr.)

Submit Lease Package to C.O. for processing (District R/W Property Mgr.)

Review Lease Package for fiscal responsibility and form and legality and execution (C.O. R/W, Chief Counsel, Attorney General, Comptroller)

Forward Executed Lease to District Office (C.O. R/W)
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Signature Authority Guide

Right-of-Way Acquisition Forms

Form and Legality Review

Office of Chief Counsel, PennDOT
February 2013
PRELIMINARY NOTICE

The *Signature Authority Guide, Right-of-Way Acquisition Forms, Form and Legality Review* is intended to provide general guidance and is sufficient to address the majority of questions pertaining to documents requiring approval as to form and legality by the Office of Chief Counsel. However, there will always be instances where factual peculiarities will take a case outside of the provisions of the *Signature Authority Guide*. In those instances, you are strongly urged to contact the Office of Chief Counsel, Real Property Division, Right-of-Way Section, before completing the transaction.

Moreover, it is important to remember that **any time** you rely on documentation from the grantor to determine the proper grantor and signatory, e.g., corporate resolution, death certificate, corporate by-laws, etc., you must provide a copy of that documentation to Central Office along with the acquisition documents.

Also, transactions involving purchasers under installment sales contracts as well as life estates, while not as commonplace as the transactions covered in-depth here, warrant special attention. For these types of transactions, **ALL** interested parties must be listed in the deed as grantors. Who is required to sign will depend on the status of the grantor(s).
CHAPTER 1
INDIVIDUALS

1.01 MARRIED INDIVIDUALS

A tenancy by the entirety exists when property, either real or personal, is held jointly by a husband and wife. Neither spouse, acting independently, may sever the estate by conveying part of the property away. Therefore, if the subject property is held jointly by husband and wife, both of them must sign PennDOT documents.

A tenancy by the entirety includes the right of survivorship. Upon the death of one spouse the survivor becomes the sole owner of the entirety property. You must provide proof of death of the deceased spouse.

EXAMPLE: John Doggett and Barbara Doggett jointly own real property. John Doggett dies. Barbara Doggett becomes the sole owner of the real property.


INCORRECT: Made on January 1, 2007, by John Doggett, deceased, and Barbara Doggett, widow.

EXAMPLE: John Doggett and Barbara Doggett owned real property as tenants in common with Monica Reyes. John and Barbara held a 50% interest and Monica held a 50% interest. John died. Barbara became the sole owner of the 50% interests that she held as tenancies by the entireties with John. Barbara and Monica now each hold a 50% interest in the real property as tenants in common.

If the record owner is married but his or her spouse is not a record owner, the spouse is not required to sign PennDOT documents. It is also not necessary to name the spouse in the acquisition documents.

1.02 DIVORCED INDIVIDUALS

If the record owners have divorced since acquiring the property and have not entered into a property settlement agreement, they are now tenants in common. Both ex-spouses must sign PennDOT documents.

If the divorced record owners entered into a property settlement agreement in which one person conveyed all of his or her interest in the property to the other, the person to whom the interest was conveyed may execute PennDOT documents alone, even if there is no new deed reflecting the transfer.

The being clause should be written as follows: "Being a portion of the property conveyed or devised to the SELLER by a Property Settlement Agreement dated __________, recorded in n/a."

1.03 MULTIPLE INDIVIDUAL OWNERS

Unmarried individuals may own property as tenants in common or as joint tenants with the right of survivorship. All record owners must execute PennDOT documents.

If a tenant in common dies, his or her interest in the property passes to that person's devisees (if there was a will) or heirs (if there was no will). If two or more persons own the property as tenants in common and one of them dies, the deceased's interest in the property does not automatically vest in the remaining owners. The deceased's share is devised by his or her will or passes to his or her heirs according to the intestacy statute.

If a joint tenant with the right of survivorship dies, all of his or her interest in the property automatically vests in the person who holds the right of survivorship.

--See Chapter 6 for specific rules in dealing with decedents' estates.
1.04 NAME CHANGES
If the record owner's name was legally changed from what is shown on the base deed, that person is not required to sign his or her former name.

EXAMPLE: Mary Jones is named on a deed as the owner of the subject property. After acquiring the property, Mary married and changed her name to Mary Smith. Mary can sign her name as "Mary Smith" and the signature line should be prepared as follows:

___________________________
Mary Smith, f/k/a Mary Jones

It is appropriate to add a sentence after the "being all or a portion sentence" stating that Mary Jones was married on ___________ and changed her name to Mary Smith.

1.05 MINORS AND INCAPACITATED PERSONS
If the real estate being acquired has a net value of $25,000 or less, the minor or incapacitated person, a parent, or other person maintaining the minor or incapacitated person may execute the settlement documents after getting the approval of the court.

If the real estate being acquired has a net value greater than $25,000, the court must appoint a legal guardian to act on behalf of the minor or incapacitated person. That legal guardian can only sell real property owned by the minor or incapacitated person after getting the approval of the court.

1.06 CLAIMANTS WHO CANNOT WRITE
The purpose of a signature is to verify that the document is authentic. If a claimant cannot write his or her name, the claimant may mark "X," provided the claimant intends it as his or her signature and it is acknowledged by at least two witnesses.
CHAPTER 2
BUSINESS ENTITIES

There are several types of business entities recognized by the laws of the Commonwealth of Pennsylvania. They include corporations (for business and nonprofit); partnerships (general, limited, limited liability); limited liability companies; business trusts; and, sole proprietorships. 8

Each type of business entity is obliged to adhere to signature authority requirements and will be addressed separately below.

If the business entity was formed in another state, it may be necessary to look at that state's laws to determine proper signature authority.

2.01 CORPORATIONS

The Commonwealth of Pennsylvania (Pennsylvania) recognizes Pennsylvania corporations organized for profit (business corporations) and nonprofit corporations. Both business and nonprofit corporations can organize as a cooperative corporation or elect to be an S Corporation. Because the statutory signature requirements for contracts are the same for business corporations 9 and nonprofit corporations 10, they will be addressed together. While this was not always the case, it is no longer necessary to have a corporate seal affixed to any document. 11

There are three different situations in which a corporation can be bound by one or more of its members.

1. Apparent authority of senior corporate officers—the signature of one senior corporate officer is sufficient to bind the corporation in its dealings with PennDOT. A "senior corporate officer" is defined as one of the following: chairman; president; vice-president (any type—e.g., senior vice-president, executive vice-president, assistant vice-president, etc.); chief executive officer; and, chief operating officer.

2. Traditional Rule of Two—contracts are properly executed for and on behalf of a corporation if signed by two duly authorized officers. One of the officers signing the document must be either the president or the vice president. The other officer signing the document must be one of the following: the treasurer, the assistant treasurer, the secretary or the assistant secretary. While the signature of only the president or vice president would be sufficient, having the secretary/assistant secretary or treasurer/assistant treasurer sign the documents as well does not void the agreement.

3. Actual Authority—if the corporation provides sufficient evidence (such as: a resolution by the Board of Directors; corporate by-laws; a letter from the president or vice-president on corporate letterhead; or, a letter from corporate counsel) that signature authority has been delegated to another officer or person, that officer or other person may sign instead of the ones listed above.

A. Closely-Held Corporations. In small or closely-held corporations it is not uncommon for one individual to hold two or more corporate offices. The individual signing may indicate that he or she holds all the offices. In this situation, the individual can execute a document in more than one capacity and his or her signature is treated as that of both offices held. 12

2.02 PARTNERSHIPS

Partnerships in Pennsylvania are either general or limited. In addition, general and limited partnerships can register with the Department of State as a Pennsylvania limited partnership. Each type of partnership is addressed separately below.
A. **General Partnerships.** A partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." The existence of a partnership depends upon the intentions of the parties as to being partners and no formal or written agreement need be executed in order for a valid partnership to exist. Unlike limited partnerships, there is no legal requirement that a general partnership register with the Department of State. In determining whether a partnership exists, the receipt of a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business.

If title to the property is in the partnership name, **any partner** may convey title to the property.

A partner can be a person:

ENTITIES

Seller:

**Millennium Group**
(Name of Entity)

BY: ____________________
Frank Black, Partner

Or a business entity:

ENTITIES

Seller:

**Millennium Group**
(Name of Entity)

BY: ____________________
Frank Black, General Partner

**2000 Corporation, General Partner**

BY: ____________________
Frank Black, Member

**2000 Group, LLC, General Partner**

BY: ____________________
Stan Black, Secretary

2000 Corporation, General Partner

B. **Limited Partnerships.** In order to form a Pennsylvania limited partnership, a Certificate of Limited Partnership must be executed and filed with the Pennsylvania Department of State. The Certificate must set forth the names of the general partners.

General partners in a limited partnership have the same powers as a partner in a general partnership. Limited partners are granted no such power. Therefore, only general partners may convey property owned by the partnership.

A general partner can be a person:

ENTITIES

Seller:

**Millennium Group**
(Name of Entity)

BY: ____________________
Frank Black, General Partner
Or a business entity:

ENTITIES

Seller:

Millennium Group  
(Name of Entity)

BY: ____________________

Frank Black, President  
2000 Corporation, General Partner

BY: ____________________

Stan Black, Secretary  
2000 Corporation, General Partner

ENTITIES

Seller:

Millennium Group  
(Name of Entity)

BY: ____________________

Frank Black, Member  
2000 Group, LLC, General Partner

C. Limited Liability Partnerships. Pennsylvania Limited Liability Partnerships (LLP) are either general or limited partnerships registered with the Department of State as a LLP. If the LLP is a general partnership, follow the signature authority rules for general partnerships. If the LLP is a limited partnership, follow the signature authority rules for limited partnerships.

2.03 LIMITED LIABILITY COMPANIES (LLCS)

A Limited Liability Company (LLC) combines features of a partnership and a corporation. The management and business affairs of a LLC is vested in members, unless the certificate of organization filed with the Department of State provides that management is vested in one or more managers.

If the LLC is run by members, any member can convey property. If the LLC is run by managers, any manager can convey property. Members cannot.

ENTITIES

Seller:

The Donut Shack, LLC  
(Name of Entity)

BY: ____________________

Amy Shack, Member

ENTITIES

Seller:

The Donut Shack, LLC  
(Name of Entity)

BY: ____________________

Linus Shack, Manager
2.04 FICTITIOUS NAMES/SOLE PROPRIETORSHIP

If a person or persons is operating a business under a fictitious name, but has not organized that business as a corporation, partnership or LLC, a Fictitious Name Registration must occur. The fictitious name is any chosen or assumed name, style or designation other than the proper name of the entity using the name. Registration must be made with the Department of State.

ENTITIES

Seller:

Beans Galore
(Name of Entity)

BY: ________________________

Beanie McGee, d/b/a Beans Galore
CHAPTER 3
GOVERNMENT ENTITIES

Counties, cities, boroughs, townships and municipal authorities are examples of government entities or political subdivisions of the Commonwealth of Pennsylvania (Commonwealth) from which PennDOT may acquire real property. Each is separately addressed below.

Important Note: There are certain situations where special documentation will supercede the general rules that follow. One such instance is when the government entity passes an official resolution delegating authority to a specific person or persons to deal with the property in question or property transfers in general. Another instance would be where a delegation letter is provided by a solicitor or official for the government entity reflecting authorization to a specific person or persons to sign. In these cases, a copy of the document evidencing the delegation must be presented to the Office of Chief Counsel.

3.01 COUNTIES

The corporate power of each county is vested in the board of county commissioners. The board of commissioners is authorized to make and acknowledge deeds of any real estate belonging to the county which they are authorized to sell. The seal of the county must be affixed to the deed. PennDOT acquisition documents must be signed by all of the county commissioners OR by the person granted the authority to sign by resolution of the board of commissioners.

ENTITIES

Seller:

The County of Berks
(Name of Entity)

BY:
John Byers, County Commissioner

BY:
Melvin Frohike, County Commissioner

BY:
Richard Langly, County Commissioner

3.02 CITIES

Signature authority questions for cities will be addressed on an as-needed basis for the reasons set forth below.

A. First Class Cities. Philadelphia is the only first-class city in the Commonwealth. It is governed by the Philadelphia City Charter. Pursuant to the Philadelphia City Charter, only the Commissioner of Public Property is authorized to transfer property held in the name of the City. Therefore, only that person's signature is required on PennDOT acquisition documents.

B. Second Class Cities. Pittsburgh is the only second class city in the Commonwealth. It is governed by the Pittsburgh City Charter. The Pittsburgh City Charter requires three signatures: the Mayor executing the document; the Mayor's executive secretary attesting to the Mayor's signature; and the City Solicitor as to form.

C. Second Class A Cities. The City of Scranton is the only Second Class A City. Pursuant to Scranton's Home Rule Charter, PennDOT acquisition documents must be signed by the Mayor, the City Clerk, the City Controller, and the City Solicitor, and be approved by City Council.
D. **Third Class Cities.** Signature authority for third class cities will vary, depending on whether the city is operating under the third class city code or one of the forms of government under the optional Third Class City Charter Law. If you are unable to obtain a resolution from the city council delegating signature authority to a responsible individual or individuals, please contact the Office of Chief Counsel for further assistance.

3.03 **BOROUGHS**

The governing body of a borough is the **borough council.**

Whenever any action by the council results in a specific written contract or agreement, such contract or agreement must be signed by the president of the borough council. Execution of the document(s) by the borough council president is sufficient without further documentation. The borough council may delegate this authority to the borough manager by ordinance. You must present evidence of the delegation to the borough manager to Central Office along with the acquisition documents.

**ENTITIES**

**Seller:**

The Borough of West Reading

(Name of Entity)

**BY:**

Stephanie J. Murray, President

Borough Council

3.04 **TOWNSHIPS**

A. **First class townships.** The corporate power of a township of the first class is vested in the board of township commissioners. Every board of township commissioners has a president and a vice-president. The First Class Township Code does not specify the manner in which contracts, deeds or other instruments are to be executed on behalf of the township. Therefore, PennDOT acquisition documents must be signed by all of the township commissioners OR by the person granted the authority to sign by resolution of the board of commissioners.

B. **Second class townships.** The corporate powers of second class townships are exercised by the board of supervisors. Every board of township supervisors has a chairman and a vice-chairman. The Second Class Township Code does not specify the manner in which contracts, deeds or other instruments are to be executed on behalf of the township. Therefore, PennDOT acquisition documents must be signed by all of the township supervisors OR by the person granted the authority to sign by resolution of the board of supervisors.

3.05 **MUNICIPAL AUTHORITIES**

The corporate powers of municipal authorities are exercised by a board of members. The Municipal Authorities Act does not specify the manner in which contracts, deeds or other instruments are to be executed on behalf of the authority. Therefore, PennDOT acquisition documents must be signed by all members of the authority board OR by the person granted the authority to sign by resolution of the board of members.
CHAPTER 4
SCHOOL DISTRICTS

The board of school directors for each school district is vested with the power to sell unused and unnecessary lands belonging to the school district. The president and secretary of the board of school directors must execute any and all deeds and contracts.

ENTITIES

Seller:

The West Shore School District
(Name of Entity)

BY: _____________________

Kris L. Mailey, President
Board of School Directors

BY: _____________________

Louis V. Stephens, Secretary
Board of School Directors
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CHAPTER 5
RELIGIOUS SOCIETIES

Pennsylvania law dictates that real property owned for a church, congregation or religious society is held subject to the control and disposition of its officers or authorities. The control and disposition of the property must be exercised in accordance with and subject to the rules, regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation or religious society belongs.

Signature authority is governed by the particular rules and regulations of the church that owns the property.

For example, the Roman Catholic Church is governed by the Canons. The Canons dictate that the diocesan bishop owns real property in trust for the parish and that he alone may dispose of it.

ENTITIES

Seller:

The Diocese of Harrisburg
(Name of Entity)

BY: ____________________________
Most Reverend Kevin C. Rhoades
Bishop of Harrisburg
Dealing with a claim in which the owner or owners of the subject property is deceased can be extremely complicated. This is because there are a variety of ways in which the assets of a decedent's estate can be distributed.

If the owner or owners of the subject property are deceased, you must first determine whether or not the decedent had a will.

6.01 WHERE THE DECEDENT HAD A WILL

In the typical situation, a family member of the deceased will bring the will to the Register of Wills and offer it for probate. "Probate" is the judicial act whereby an instrument is adjudged a valid will and ordered to be recorded. The will must be probated in the county where the deceased had his last family or principal residence.39

After (or at the same time as) the will is probated, the person(s) named in the will as the executor(s) will file a Petition for Grant of Letters. If the Petition is in order, the Register will grant letters testamentary to the executor.

The Petition itself can be a valuable resource, as the petitioner typically lists all real estate located in the Commonwealth.

The executor will file a statement of proposed distribution. After the Court approves the proposed distribution, the executor can distribute the real estate in accordance with the decree.40

The executor bears the responsibility to preserve and protect the decedent's property for distribution to the proper persons within a reasonable time.41 Conversely, the executor may sell any real property that is not specifically devised by will.42

If the decedent had a will, but the will did not specifically devise the real property in question, the executor alone may sign the acquisition documents.

If the real property in question is specifically devised in the will, the executor AND the devisee may jointly sell the property.43 Therefore, the signatures of both the executor and the specific devisee(s) are required.

ENTITIES

Seller:

The Estate of John Smith
(Name of Entity)

BY: _____________________
Betty Smith, Executor

BY: _____________________
John Smith, Jr., Devisee

Once distribution of the decedent's real property is approved by the court, legal title to the real property in question is in the person to whom the real property was awarded.

Important Note: If the decedent divorced after making the will, the ex-spouse does not get what was devised to him or her in the will.44 In such an instance, the executor alone may sign the acquisition documents.
The above rules apply even if the decedent had a will that has not yet been probated. Pennsylvania law states that unless a contrary intent appears, a will is effective or "speaks" as of the date of the decedent's death. Please contact the Office of Chief Counsel, Real Property Division, Right-of-Way Section for further guidance.

6.02 WHERE THE DECEDENT DIED INTESTATE (WITHOUT A WILL)

Any real property not disposed of by will passes to the decedent's heirs as set forth in the Probate, Estates and Fiduciaries Code.

Since an executor can sell any real property that is not specifically devised, a personal representative (if one exists) can sell the real property in question when there is no will:

ENTITIES

Seller:

The Estate of John Smith
(Name of Entity)

BY: Betty Smith, Administrator

If there is no personal representative, the heirs all must sign the acquisition documents. If some of the heirs are unknown or cannot be located, you must condemn.

Once distribution of the decedent's real property is approved by the court, legal title to the real property in question is in the person to whom the real property was awarded.
CHAPTER 7
POWER OF ATTORNEY

All powers of attorney must be in writing and must be signed and dated by the principal. The following notice must appear at the beginning of all powers of attorney made on or after April 12, 2000:

NOTICE

The purpose of this power of attorney is to give the person you designate (your "agent) broad powers to handle your property, which may include powers to sell or otherwise dispose of any real or personal property without advance notice to you or approval by you.

This power of attorney does not impose a duty on your agent to exercise granted powers, but when powers are exercised, your agent must use due care to act for your benefit and in accordance with this power of attorney.

Your agent may exercise the powers given here throughout your lifetime, even after you become incapacitated, unless you expressly limit the duration of these powers or you revoke these powers or a court acting on your behalf terminates your agent's authority.

Your agent must keep your funds separate from your agent's funds.

A court can take away the powers of your agent if it finds your agent is not acting properly.

The powers and duties of an agent under a power of attorney are explained more fully in 20 Pa.C.S. Ch. 56.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Additionally, the following acknowledgment must be attached to powers of attorney executed on or after April 16, 2000:

I, ____________________, have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that in the absence of a specific provision to the contrary in the power of attorney or in 20 Pa.C.S. when I act as agent:

I shall exercise the powers for the benefit of the principal
I shall keep the assets of the principal separate from my assets.
I shall exercise reasonable caution and prudence.
I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the principal.

Powers of attorney executed after April 16, 2000, changed the term "attorney in fact" to "agent." Accordingly, signature blocks for powers of attorney should mirror the below example:

ENTITIES

Seller:

Monica Reyes
(Name of Entity)

BY: _____________________
John Doggett, Agent
It is acceptable to substitute the term "attorney in fact" for the term "agent," when the power of attorney at issue was executed prior to April 16, 2000.

Powers of attorney made in a different state must conform to that state's power of attorney law.
CHAPTER 8
TRUSTS

Except as otherwise provided by the trust instrument, the trustee(s), for any purpose of administration or distribution, may sell any real property of the trust. If the trust instrument designates co-trustees, then both co-trustees need to sign the acquisition documents.

ENTITIES

Seller:

The Walter Skinner Revocable Trust
(Name of Entity)

BY: ______________________
    Alex Krycek, Trustee
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CHAPTER 9
CONDOMINIUM ASSOCIATIONS

Condominium property may be held in a variety of ways and often at the same time by separate entities. To ensure that PennDOT is dealing with the proper landowner when it is acquiring land in and around a condominium, it is important to ascertain the status of the lands in the condominium and identify the record owners of these lands.

Condominium units are usually owned by individuals or business entities and common areas are usually owned by the condominium association. In some situations, however, ownership of common areas can be shared by the association with individual owners or retained by the declarant of the condominium.

Ultimately, acquisitions dealing with condominiums require a careful inspection of the declaration of condominium, deeds, and by-laws of the condominium association to ensure PennDOT has identified the appropriate landowner. Once the appropriate landowner (grantor) is identified, who will be required to sign PennDOT acquisition documents will depend on the status of the grantor(s).
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CHAPTER 10
MISCELLANEOUS ENTITIES

10.01 UNINCORPORATED ASSOCIATION

The Pennsylvania Uniform Unincorporated Nonprofit Association Law (PUUNAL) provides that a nonprofit association is a legal entity that can hold title to property. Transfer documents for real property held in the name of a nonprofit association must be signed by a person authorized in a statement of authority recorded in the county where the property is located. The statement of authority must state the following:

1. the name of the nonprofit association;
2. the address of the nonprofit association;
3. that the association is a nonprofit association; and
4. the name, title or position of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

Documents that do not involve a transfer of real property must be signed by a person authorized by the association’s bylaws or through a majority vote of the association members or managers.

Unincorporated associations that are not nonprofit associations are not legal entities and cannot hold title to property. If an unincorporated association is not a nonprofit association then title to its property is held in trust for it by trustees or members. If the deed is in the name of trustee(s) for the unincorporated association, the trustee(s) must sign the settlement documents. If the deed is in the name of the unincorporated association, a majority of members, a member designated by a majority of the members by a majority vote, or an officer designated by the bylaws to act on behalf of the members must sign. Most unincorporated associations, however, qualify as a nonprofit association for purposes of PUUNAL. Even an unincorporated association that makes a profit still qualifies as a nonprofit association as long as it is organized for a nonprofit purpose.

10.02 UNSTRUCTURED GROUPS

An unstructured group differs from an unincorporated association in that unstructured groups do not have organizing documents, i.e., constitution, bylaws, etc. Settlement documents involving an unstructured group must be signed by the group leader. Oftentimes, the identity of the group leader can be ascertained through a review of tax records or property records.

10.03 JOINT VENTURES

A joint venture involves two or more parties. The parties can be all the same type of business entity—for example, all partnerships or all corporations—or a combination of different types of entities. The settlement documents must be signed by all joint venturers. Signatures will be dictated by the status of the joint venturers.
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Endnotes

2. Id.
4. 23 Pa.C.S. §3507.
5. 20 Pa.C.S. §5101; 5505.
6. 20 Pa.C.S. §5155; 5521.
7. See, e.g., 20 Pa.C.S. §2502(2).
8. 15 Pa.C.S. §102.
9. (15 Pa.C.S. §1506)
10. (15 Pa.C.S. §5506)
11. Id.
13. 15 Pa.C.S. §8311(a).
15. 15 Pa.C.S. §8312.
16. 15 Pa.C.S. §8322 (a).
17. 15 Pa.C.S. §8511(a).
18. 15 Pa.C.S. §8511(a)(1).
19. 15 Pa.C.S. §8533.
20. 15 Pa.C.S. §8201.
21. 15 Pa.C.S. §8941, §8913(5).
22. 15 Pa.C.S. §8904(a)(1).
23. 15 Pa.C.S. §8904(a)(2).
24. 16 P.S. §203.
25. 16 P.S. §2307.
26. 16 P.S. §2307.
27. 53 P.S. §46006.
28. 53 P.S. §46006(3).
29. 53 P.S. §46142.
30. 53 P.S. §56502.
31. 53 P.S. §55701.
32. 53 P.S. §66505.
33. 53 P.S. §65602.
34. 53 P.S. §5610.
35. 24 P.S. §7-707.
36. 24 P.S. §4-427.
37. 10 P.S. §81.
38. 10 P.S. §81
40. 20 Pa.C.S. §3514, Orphan's Court Rule 6.11.
42. 20 Pa.C.S. §3351.
43. 20 Pa.C.S. §3351.
44. 20 Pa.C.S. §2507(2).
45. Estate of Trattner, 394 Pa. 133, 145 A.2d 678 (1958); Fidelity Trust Co.'s Appeal, 108 Pa. 492, 1 A. 233 (1885); Clarke's Estate, 82 Pa. 528 (1876).
46. 20 Pa.C.S. §2101.
47. 20 Pa.C.S. §5601(b).
APPENDIX G
APPENDIX G
BEST PRACTICES

G.01 EXPEDITED RIGHT-OF-WAY PROCEDURES

The key to expedited right-of-way delivery begins with the delivery of a recordable right-of-way plan to the District Right-of-Way Unit. The right-of-way plan must be complete and accurate. Allowing the District Right-of-Way Administrator to have input into the right-of-way durations in a project’s Open Plan schedule will help avoid impacts to project milestone dates once a complete and accurate right-of-way plan is received.

A. Right-of-Way Coordination. The Portfolio Manager/Project Manager should collaborate with the District Right-of-Way Administrator to ensure that Open Plan schedule durations for right-of-way clearance are set appropriately and tracked to ensure project delivery dates are met. Coordination between the Right-of-Way Administrator and Project Manager, especially for projects with complex right-of-way appraisals and acquisitions, should begin early in preliminary engineering. This early coordination is vital to identify critical issues early, as well as support the Right-of-Way Administrator’s role, ensuring all right-of-way incidentals are completed.

Right-of-way personnel must be invited to participate in the review of preliminary line and grade plans to identify any potential minor modifications to the project alignment that could minimize right-of-way impacts and expedite the process. Right-of-way personnel must be invited to participate in the Right-of-Way Plans Check Reviews. The Right-of-Way Administrator should be provided the Plans Check comments for review. Right-of-way personnel’s role is to provide early input on the right-of-way plan to minimize the need for any modifications to the plan later in the process.

B. Incidental Right-of-Way Activities. The completion of certain incidental right-of-way activities in preliminary engineering may expedite the right-of-way process. The completion of incidentals in preliminary engineering allows for right-of-way acquisition to begin very early in final design. The following is a listing of right-of-way incidentals:

- Coordination between the Right-of-Way Administrator and Project Manager, especially for projects with complex right-of-way appraisals and acquisitions
- Project Coordination and Staff Assignments by Chief Appraiser and Chief Negotiator
- Acquisition Cost Estimate Study
- Funding Request to Planning and Programming
- Comparable Sales Research
- Zoning/Highest and Best Use Determination
- Initiate Appraisal Problem Analysis (APA) preparation. Much of the APA can be prepared in preliminary engineering; however it cannot be completed until a final right-of-way plan is received.
- Request Utility Relocation Status
- Right-of-Way Plan Reviews
In general, an earlier start using the above incidental activities should be considered on larger and more complex projects. Incidental right-of-way activities typically provide the most value for projects that include:

- A large number of parcels
- Parcels with improved properties
- Acquisitions that have greater impacts on the remaining property
- Acquisitions that involve residential or business relocations

C. Preliminary Engineering Right-of-Way Activities with a 90% Complete R/W Plan. Certain right-of-way activities can be conducted in preliminary engineering under the following conditions:

1. The environmental document is nearly finalized;
2. The right-of-way plans are sufficiently developed (90% complete); and
3. The Portfolio Manager, Right-of-Way Administrator, and Assistant District Executive-Design are confident that little or no changes will be required in the development of the final right-of-way plan.

Where the above conditions are met, the District Office may complete the following preliminary right-of-way acquisition activities:

- Right-of-Way Consultant Contracting
- Title Searches
- Appraisal Contracting Preparation
- Property map preparation necessary for the completion of the environmental process (e.g., Right-of-Way Plans).
- Pre-Acquisition Survey including only the background information available from public sources.
- Appraisals and Waiver Valuations, reviews.
- Establishment of market value based on the recommended appraisal or waiver valuation

In addition, the preliminary right-of-way plan review should also be conducted in preliminary engineering. The early definition of the project scope is vital to avoid any changes in scope after preliminary engineering.

Appraisal activities that include appraisal or waiver valuation, appraisal review and the establishment of FMV should not be started until right-of-way plans are sufficiently developed and the District is certain of the areas needed for the project. With this information, an appraiser can adequately estimate compensation due the owner. Appraisal activities may need to be done again if started too soon. All of these preliminary acquisition activities may occur under preliminary engineering and prior to the final environmental document.

Under no circumstances may initiation of negotiations begin with a property owner during the preliminary engineering phase of the project. Negotiations with an owner cannot begin until the environmental document is completed and FHWA has authorized "Full R/W Acquisition" to begin (i.e., 4232 authorization for federally funded projects). These mandates are based on 23 CFR 710.203 (a)(3) and Publication 378 guidance.

There are risks that must be considered when preliminary acquisition activities are elected. For example, an appraisal may become "stale" before NEPA is approved, or the negotiations begin during the right-of-way phase. FHWA will not participate in the reimbursement for the additional expense incurred from a second appraisal to avoid duplication of payment. To mitigate this risk, the appraisal process should not initiate until completion of NEPA and right-of-way notice to proceed is imminent. If delays occur between the time an estimate of just...
compensation is established and the time an offer can be made to the owner, the District should reevaluate the offer amount to assure that the amount to be offered is still representative of the current market value.

D. **Final Right-of-Way Plan.** Where right-of-way acquisition is required, the goal should be to complete the right-of-way plan within one month after the start of final design. As an additional best practice, based on the submission of a complete and accurate plan, the right-of-way acquisition process may begin with the signed approval of the right-of-way plan by the District Executive. The Secretary’s signature of the right-of-way plan is required prior to recording. A right-of-way plan executed by the Secretary of Transportation is needed to file a Declaration of Taking in accordance with PA Statute 71P.S. §513 (e)(6). This best practice clarifies the language in Publication 14M, Design Manual Part 3, *Plans Presentation*, Chapter 3.

E. **Central Office Review Appraisers Performing Work for the District Chief Appraiser.** The Central Office Review Appraisers (CORA) may assist the District Chief Appraiser with any duties as assigned, as long as all other commitments from the CORA’s assigned Districts have been met. Any appraisal report written by a CORA must be reviewed by a Consultant Review Appraiser or a different CORA.

F. **Residentially Certified Appraisers Valuing Commercial Property.** As a best practice, a residentially certified staff appraiser may assist (as provided in the Uniform Standards of Professional Appraisal Practice, current edition) a generally certified staff appraiser in valuing property in accordance with Chapter 2, *Appraisal*, Section 2.09, if approved by the District Chief Appraiser. Because they are ultimately responsible for the report after signing it, it is not mandatory for a general appraiser to approve (sign) the valuation of properties by residential appraisers. This best practice shall be performed in conformity with the Certified Real Estate Appraiser Law, Act 98 of 1990, as amended; The Pennsylvania Code, Title 49, Professional and Vocational Standards (Chapter/Section 36.54), as amended; and as may apply to the Uniform Standards of Professional Appraisal Practice, current edition. This best practice is allowed for training purposes.
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FLOW CHART

Determine Procurement Method
Low Bid or Best Value

Low Bid
Prepare Low Quote Package
Prepare Solicitation of Interest Notice
Send Solicitation of Interest Notice
Send Request for Quotes Package to Interested Appraisers
Select Appraiser
Prepare CPO Package
PO Approved
Notice to Proceed to Appraiser

Best Value
Select Evaluation Team
Select Best Value Criteria
Prepare Best Value Quote Package
Prepare Solicitation of Interest Notice
Send Solicitation of Interest Notice
Send Request for Quotes Package to Interested Appraisers
Evaluate Best Value Criteria
Select Appraiser
Prepare PO Package
PO Approved
Notice to Proceed to Appraiser

Figure H.1
BEST VALUE CRITERIA CHECKLIST

The numbered items below are the criteria under which your quote will be evaluated. The criteria are numbered in the order of importance. Criteria that are not numbered will not be considered in the evaluation process.

___ A. Understanding of the appraisal problem.

Does the appraiser understand the assignment, including how the take may affect the value of the property remaining, if any, after condemnation?

___ B. Soundness of the approach to solving the appraisal problem.

Does the appraiser have a credible plan for collecting data and analyzing the assignment, including what approaches to value may be appropriate; how specialty reports would be utilized in this assignment, if appropriate; and any other factors necessary to reach well-documented and well-reasoned value conclusions?

___ C. Timeliness.

Does the appraiser have favorable prior experience with the Department and/or other clients in meeting time requirements?

___ D. Cost.

What is the cost for the appraisal in comparison to other interested parties responding to the solicitation?

___ E. Quality products.

Does the appraiser have favorable prior experience with the Department and/or other clients in producing a well-written and well-supported appraisal document?

___ F. Prior experience appraising this type of property or a related type of property.

What prior experience, if any, does the appraiser have valuing the same type or property similar to the subject property?

___ G. Current workload.

Does the current workload of the appraiser with the Department and other clients allow for a timely and complete submission on this assignment?

___ H. Litigation experience.

What litigation experience, if any, does the appraiser have in condemnation or other cases?

___ I. Personnel qualifications.

Does the appraiser have access to the necessary personnel and resources to fulfill the needs of the assignment?

___ J. Other.

(State with specificity a special criterion, if any, not covered by above that is determined necessary to evaluate the quotes in this particular assignment).

Figure H.2
H - 2
(Date)

Best Value – Quote Package Cover Letter

Dear _________________:

Thank you for your interest in receiving a quote package. The following information is provided for your quote:

COUNTY: ___________________________________
SR/SECTION: ___________________________________
LOCAL NAME: ___________________________________
PARCEL NO(S): ___________________________________
TIME TO COMPLETE ASSIGNMENT: ______________

Also please find enclosed an Appraisal Problem Analysis (APA), Right-of-Way Plan and/or Plat Sheets, a Best Value Criteria Checklist, an Information Required from Contractor Checklist, and other information necessary to submit a quote on the above assignment.

The successful appraiser will be selected based on Best Value. The quote package must be received at the District Office no later than ______ am/pm on ________________.

(Date)

The Best Value Criteria Checklist defines the criteria and indicates their order of importance that will be used to determine the successful appraiser to be awarded the contract. It is imperative that you expound in writing on each of the best value criteria listed. The format for your quotation can be found on the attached Information Required from Contractor Checklist.

A District Committee with knowledge of the project, appraisal process and the appraisal assignment will evaluate all applicants and determine the successful appraiser based on the "Best Value" submission.

If you have any questions, please call _________________________, at ________________ or ________________.

(Name) (Phone No.) (Email)

Sincerely,

Attachments: APA

Property Plats/Plans
Best Value Criteria Checklist
Information Required from Contractors Checklist

Figure H.3
H - 3
INFORMATION REQUIRED FROM CONTRACTORS CHECKLIST

This is the information you will provide to the Department for it to evaluate Best Value. The information you are to provide is numbered in the order of importance. Those items not numbered need not be part of the submission for this particular assignment.

Contractor quotes should be submitted in the format outlined below, i.e. state the information requested in the item numbered one first, that requested in item two second, and so on. To be considered, the quote must respond to all numbered requirements. Any other information thought to be relevant, but not included in the enumerated items, may be provided as an appendix to the quote. Information referred to in the quote can also be included in an appendix.

_____ A. Statement of the appraisal problem – State your understanding of the appraisal problem presented in the Appraisal Problem Analysis (Form RW-275), including how the take may affect the value of the property remaining, if any, after condemnation.

_____ B. Work plan (soundness of the approach to solving the appraisal problem) – Describe in narrative form your approach to solving the appraisal problem and completing the assignment. Provide a brief description of the steps that will be taken to ensure the Department is provided with a credible, reliable and quality appraisal, including what approaches to value may be appropriate; how specialty reports would be utilized, if appropriate; and any other factors necessary to reach well-documented and well-reasoned value conclusions. Provide a detailed explanation of the steps and processes that will be undertaken to ensure that all critical time frames relating to delivery are met.

_____ C. Timeliness – Provide information on the timeliness with which you have completed prior assignments for the Department and/or other clients. Experience included must be work done by individuals who will be assigned to this assignment. Assignments for the Department should be identified by county, highway route, and claim number. Assignments for others should also be identified with specificity, and the name and telephone number of a reference provided. The Department may check the Commonwealth's Contractor Responsibility Program database for information relating to timeliness on prior assignments and may contact references supplied.

_____ D. Costs – Provide detailed and total costs for the services required. This will serve as your cost quote for this assignment.

_____ E. Quality products – Provide information on prior assignments for the Department and/or other clients that exemplify your ability to provide a well-written and well-supported appraisal. Experience included must be work done by individuals who will be assigned to this assignment. Assignments for the Department should be identified by county, highway route, and claim number. Assignments for others should also be identified with specificity, and the name and telephone number of a reference provided. The Department may check the Commonwealth's Contractor Responsibility Program database for information relating to the quality of prior performance and may contact references supplied.

_____ F. Prior experience appraising this type or similar properties – Provide information on the prior appraisal of the same type of property involved in this assignment or with similar properties, either for the Department or other clients. Experience included must be work done by individuals who will be assigned to this assignment. Assignments for the Department should be identified by county, highway route, and claim number. Assignments for others should also be identified with specificity, and the name and telephone number of a reference provided. The Department may check the Commonwealth's Contractor Responsibility Program database on assignments and may contact references supplied.

Figure H.4
G. Current workload – Provide a brief description of the amount and types of assignments currently in process by individuals who will be assigned to this assignment. This description should include pending work for the Department and other clients.

H. Litigation experience – Provide information on prior experience of the individuals who will be assigned to this assignment in litigation matters involving condemnation and other cases for the Department and other clients. Assignments for the Department should be identified by county, highway route, and claim number. Assignments for others should also be identified with specificity, and the name and telephone number of a reference provided. The Department may check the Commonwealth's Contractor Responsibility Program database on assignments and may contact references supplied.

I. Personnel qualifications – Provide information on professional personnel, analysts, researchers, etc. who will be engaged in performing this assignment. Include educational backgrounds and experience in similar types of work. Indicate the responsibilities each will have in this assignment. Provide information on other resources that will be utilized to complete the assignment.

J. Other – If a special "Other" criterion is stated on the Best Value Criteria Checklist, provide information necessary for the Department to evaluate that criterion.
SOLICITATION OF INTEREST LETTER - BEST VALUE

DATE:

TO:

FROM:

SUBJECT: Interest in Quote Package for Real Property Appraisal

The Department of Transportation would like to engage services to develop a real property Appraisal for right-of-way acquisition with the following pertinent information:

- State Route:
- County:
- Township:
- Location:
- Number and Type of Claims:
- Type of Appraisals:
- Time Constraints:
- Time to Complete Appraisals:

If you are interested in a quote package for this appraisal assignment, please respond on or before ___________________________ by faxing this letter with your response set forth below to the Right-of-Way Appraisal Department, attention me, at ___________; by e-mailing your response with this letter as an attachment to me at ___________; or by calling me at ___________ (not an option if cost is greater than $10,000.00).

Thank you for your participation.

____________________________________________________________________________________

I have reviewed the scope of this appraisal assignment. Please send me a quote package.

Appraiser’s Name: Contract No: ______ - ______
Change of Address (if any):
Phone: Fax: e-mail

Attachments: Best Value Criteria Checklist
Information Required from Contractors Checklist

Figure H.5.a

H - 6
SOLICITATION OF INTEREST LETTER – LOW QUOTE

DATE:

TO:

FROM:

SUBJECT:  Request to Receive Quote Package

The Department of Transportation would like to engage services to develop a real property Appraisal for right-of-way acquisition with the following pertinent information:

- State Route:
- County:
- Township:
- Location:
- Number and Type of Claims:
- Type of Appraisals:
- Time Constraints:
- Time to Complete Appraisals:

If you are interested in a quote package for this appraisal assignment, please respond on or before __________________ by faxing this letter with your response set forth below to the Right-of-Way Appraisal Department, attention me at __________; by e-mailing your response with this letter as an attachment to me at __________; or by calling me at __________ (not an option if cost is greater than $10,000.00).

Thank you for your participation.

Date:

I have reviewed the scope of this appraisal assignment. Please send me a quote package.

Appraiser's Name:           Contract No: _____-_____
Change of Address (if any):  
Phone:        Fax:         e-mail:

Attachments:
## BEST VALUE MATRIX

<table>
<thead>
<tr>
<th>ROW OFFICE PROJECT NO.</th>
<th>COUNTY</th>
<th>SR – SECTION</th>
<th>MUNICIPALITY</th>
<th>PARCEL(S)/NOS.</th>
<th>CLAIM NO(S)</th>
<th>CLAIMANT(S)</th>
</tr>
</thead>
</table>

| Appraiser Names | | | | | | |
| Selection Criteria | | | | | | |

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Scoring: Excellent, Good, Average, Fair, Poor (Except for Cost)

Narrative: Reasons for Selection
Low Quote – Quote Package Cover Letter

____________________________________________________
____________________________________________________
____________________________________________________

Dear __________________ :

Thank you for your interest in receiving a quote package. The following information is provided for your quote:

COUNTY: _______________________________________
SR/SECTION: _________________________________
LOCAL NAME: ________________________________
PARCEL NO(S): _____________________________
TIME TO COMPLETE ASSIGNMENT: ____________

Also please find enclosed an Appraisal Problem Analysis (APA), the Right-of-Way Plan and/or Plat Sheets, and other information necessary to submit a quote on the above assignment.

The successful appraiser will be selected based on Low Quote. The quote package must be received at the District Office no later than ______ am/pm on ________________.

(Date)

If you have any questions, please call ____________________________, at ________________ or _______________.

(Name) (Phone No.) (Email)

Sincerely,

Attachments: APA
Property Plats/Plans
PO COVER MEMO FOR ITQ CONTRACT ______
BEST VALUE OPTION FOR SELECTION

DATE:

SUBJECT: PO for ___________ County
         SR _________, Section __________

TO:   Contract Review Section
       Comptroller’s Office

FROM: NAME, ____ TITLE____
       Engineering District ____-0

Please process the attached PO for Appraisal services:

ITQ No. ___________ - ____________
3 digit sub number of agreement

PO No. _______________________
Vendor _______________________
Vendor FID No. _________________
Vendor SAP No. ________________
Category _______________________

100% State Funded: Yes____ No____

Acquisition Procedure Used (select only one):

_____ $0 to $5,000.00
_____ $5,000.01 to $10,000.00 Low Bid
_____ $5,000.01 to $10,000.00 Best Value
_____ $10,000.01 and over Low Bid
_____ $10,000.01 and over Best Value
_____ Sole Source for Litigation

Attachments: Line out any items not required and not included.

a. Original PO and a copy.
b. Summary of Bids – List all contractors who requested quote package. Include any MBE/WBE.
c. Awarded Contractor's signed quote.
d. Best Value Matrix with narrative reason for selection of the appraiser.
e. Criteria Checklist.
f. Information Required from Contractors Checklist.
g. APA.
h. CRP Certification (if over $10,000).
i. MBE/WBE Contractor and Supplier Solicitation and Commitment Form – STD-168
   (If 100% state funded and cost is $50,000 or more).
j. BEO Evaluation and Determination Letter (If STD-168 is included and cost is $50,000 to $250,000) or BMWBO Evaluation and Determination Letter (If STD-168 is included and cost is over $250,000).
k. Sole Source Justification.
PO COVER MEMO FOR ITQ CONTRACT _____
LOW QUOTE OPTION FOR SELECTION

DATE:

SUBJECT: PO for ________________ County
SR ________, Section __________

TO: Contract Review Section
Comptroller's Office

FROM: NAME, __ TITLE ________
Engineering District ____-0

Please process the attached PO for Appraisal services:

ITQ No. ________________ - __________
3 digit sub number of agreement

PO No. _______________________
Vendor ________________________
Vendor FID No. _________________
Vendor SAP No. ________________
Category ______________________

100% State Funded: Yes____ No____

Acquisition Procedure Used (select only one):

_____ $0 to $5,000.00
_____ $5,000.01 to $10,000.00 Low Bid
_____ $5,000.01 to $10,000.00 Best Value
_____ $10,000.01 and over Low Bid
_____ $10,000.01 and over Best Value
_____ Sole Source for Litigation

Attachments: Line out any items not required and not included.

a. Original PO and a copy.
b. Summary of Bids – List all contractors who requested quote package. Include any MBE/WBE.
c. Awarded Contractor's signed quote.
d. APA.
e. CRP Certification (if over $10,000).
f. MBE/WBE Contractor and Supplier Solicitation and Commitment Form – STD-168
   (If 100% state funded and cost is $50,000 or more).
g. BEO Evaluation and Determination Letter (If STD-168 is included and cost is $50,000 to $250,000) or
   BMWBO Evaluation and Determination Letter (If SD-168 is included and cost is over $250,000).
h. Sole Source Justification.
INVOICE INSTRUCTIONS

In addition to the number of copies to be submitted under the requirements of ITQ _____, your invoice should be on company letterhead and include the following information:

- Address of the Company.
- Signature of the appraiser.
- Date of the invoice.
- County.
- SR and SEC.
- Purchase Order number.
- FID number.
- SAP number.
- Claim number.
- Parcel number.
- Amount.*

*Note: If the purchase order included multiple parcel numbers the amount per parcel should be broken out and then totaled.
APPENDIX I
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CURRENT ITQ CONTRACT

I.01 SCOPE

The appraisal ITQ is a multiple award contract to qualify appraisers to provide appraisal services: Acquisition of property for Transportation Purposes, Sale of Property no longer needed, Lease of property not needed for the free movement of traffic.

A. Use by Other Agencies. The Department will require Local Public Agencies to employ only appraisers that are qualified under the Appraisal ITQ. Other state agencies may, but are not required to, limit their use of appraiser to those qualified under this ITQ.

B. Prequalification. Appraisers must be on the prequalified list in order to perform appraisal services. Who shall be qualified? If the Appraiser employees one or more qualified appraisers, each appraiser under the Appraiser's employ shall be individually qualified.

C. Work not guaranteed. There is no guarantee that the Department will use the Appraiser's services.

D. Appraisal Problem Analysis. The Department will issue an Appraisal Problem Analysis (APA) to solicit assignments under this Contract.

I.02 APPRAISAL ASSIGNMENT CATEGORIES

Appraisers must complete all required information in the Qualification Application Exhibit "C", including the specific category or categories of assignments and the counties in which they will accept assignments.

Qualifications fall into two (2) categories of appraisal assignments:

1. Category 1
2. Category 2

When Searching in ROWO for available appraisers one may need to search by Category 1, Category 2, Both, or Statewide

I.03 QUALIFICATION OF APPRAISERS

A. Qualification deadline. The Department will not accept applications for qualification after September 30, 2013 or after September 30, 2018 if the Commonwealth chooses to renew this contract for an additional five (5) years.

B. Qualification update. The Appraiser will use the Qualification Application Update Form Exhibit "E" to request the following actions:

1. Qualification into additional category(s) and/or additional county(s).
3. Transfer of an already-qualified appraiser from one awarded company to another awarded company.

I.04 NOTIFICATION

It is the responsibility of the Appraiser to report to the Department any changes including, but not limited to name change; address change; e-mail address change; telephone number change; fax number change; and any other changes as listed in Exhibit "E".
Failure to notify the Department of any changes may result in not being notified of appraisal assignments in a timely manner, if at all; and, Delayed payment of invoices.

I.05 CATEGORY OF ASSIGNMENT

A. Category 1 Residential or General PA Appraisal Certificate.
   1. Total Take, residential, (4) units or less.
   2. Total take, vacant unimproved land, with residential highest & best use.
   3. Partial take, residential, (4) units or less, with no anticipated impact on the remaining property.
   4. Partial take, residential, (4) units or less, with only minor anticipated impact on the remainder, requiring a before & after analysis.
   5. Partial take, vacant unimproved land, with a residential highest & best use.

B. Category 2 Requires General PA Appraisal Certificate.
   1. Total Take non-residential.
   2. Partial take, non-residential, where there may be a significant impact to the value of the remainder.
   3. Unique or special purpose properties where there is little or no market data readily available.
   4. Situations where the take severely impacts the remaining property and/or where complex cost of adjustment estimates may be appropriate to determine the impact of the taking.
   5. Properties in transition of highest and best use.

I.06 ORDERING PROCEDURES

The Ordering procedures fall into three classes based on costs of services.
   1. $0 - $5,000.
   2. $5,000.01 - $10,000.
   3. $10,000.01 and above.

   OR

   4. Best Value – Which is also restricted by the cost of services.

A. Assignments of $5,000 or Less. The District Chief Appraiser (DCA) will:
   1. Prepare an APA.
   2. Contact qualified appraiser in the category of assignment and county of interest.
   3. If there are no pre-qualified appraisers for a particular County, then we can search for appraisers in other counties.
   4. Ask appraiser for a written quote.

B. Assignments of $5,000.01 - $10,000.00.
1. Low Quote Option. The Department will solicit (send a Letter of Interest) to a minimum of three (3) appraisers from the prequalified list. The Department will award to the lowest responsive and responsible appraiser.

2. Best Value Option. The Department may choose to award the contract based upon best value criteria when the Department determines that it is in its best interest to do so.

C. Assignments of $10,000.01 and above.

1. Low Quote Option. The Department will contact all appraisers from the prequalified list for the category of assignment and county of interest. (Category 1, 2, Both, or Statewide). The Department will award to the lowest responsive and responsible appraiser.

2. Best Value Option. The Department may choose to award a contract based upon best value criteria when the Department decides that it is in its best interest to do so.

I.07 BEST VALUE OPTION FOR SELECTION

The best value option is the concept for obtaining appraisals for services over $5,000. It is defined as the process of selecting the quote which provides the greatest value to the Department. The best value option compares all pertinent criteria including cost so that the overall combination which best suits the Department can be selected.

A. Why Best Value.

1. Tailor to needs of claim or project.

2. Obtain a better product.

3. Hold appraisers accountable.

B. Best Value Option - Core Criteria.

1. Understanding of the appraisal problem.

2. Soundness of the approach to solving the appraisal problem.

3. Timeliness - prior experience in meeting time requirements with the Department and other clients.


5. Prior Experience Similar Properties.

6. Quality Products.


9. Litigation Experience.

C. How to Use Process.

1. Determine Best Value or Low Bid.

2. Assemble an Evaluation Team.

3. Select Criteria.

4. Prepare a Quote Package.
5. Prepare a Letter of Interest.
7. Evaluate Best Value Quotes.
8. Select the Appraiser.

D. Select Best Value or Low Bid.

1. District R/W Administrator makes decision.
   a. What is best for that claim.
   b. What is best for the route.
2. Decision should be made after consultation with:
   a. District Chief Appraiser.
   b. Real Estate Appraisal Reviewer.
   c. Office of Chief Counsel in special cases.

E. Assemble an evaluation team.

1. Team must consist of at least 3 people.
2. Two (2) of the members must come from the following titles:
   a. District R/W Administrator
   b. District Chief Appraiser
   c. Real Estate Appraisal Reviewer
   d. Design Services Engineer
   e. NOTE: No consultant will be a part of the evaluation team

F. Select Criteria.

1. Use Best Value Checklist
2. Team determines which criteria in addition to the core are applicable to the assignment
3. Prioritize what the team considers important
4. Criteria that is not selected by the team will not be considered in the evaluation
5. If a special "other" is chosen, determine what information the contractor must supply

G. Quote Package (Bid Package).

1. Appraisal Problem Analyses (APA)
2. R/W Plan and/or Plat Sheet(s)
3. Best Value Criteria Checklist *(Figure H.2)
4. Information Required from Contractor *(Figure H.4)
Appendix I - Appraisal ITQ

5. Form RW-218
6. Bid Envelope for Submission
7. Form RW-271 (if applicable)
8. Form RW-260OAD (if applicable)
9. Form RW-277 (if applicable)

*Note: Figures found in Appendix H, Appraisal Figures.

H. Letter of Interest (Preparation).
   1. Sample letter *(Figure H.5A)
   2. Best Value Checklist
   3. Information Required from Contractor
   4. Quote could include:
      a. Writing appraisal --Update fee--Fee for making minor revision
      b. These items would be listed separately in the quote document and PO document

I. Sending Letter of Interest.
   1. How.
      a. Email - preferred method.
      b. Fax.
      c. Telephone (difficult to document).
   2. Who.
      a. $5,000.01 to $10,000.
         (1) A minimum of three (3) qualified in the category of assignment from the county of interest.
         (2) Appraiser must be from the prequalified list.
         (3) If 100% State Funds one (1) must (if available) be a Department of General Services MBE/WBE.
         (4) Sending Letter of Interest (continued).
   3. How.
      a. Email - preferred method.
      b. Fax.
      c. NOTE: Telephone solicitation can NOT be used.
      a. $10,000.01 and above
         (1) Solicit all appraisers qualified for appraisal assignment in the county of interest
(2) Appraiser must be from the prequalified list

(3) If 100% state funded and the cost of services is anticipated to >$50,000 include Exhibit "D" MBE/WBE Subcontractor and Supplier Solicitation & Commitment Form STD-168 Rev. 08/14/2007

J. Evaluating Best Value Quotes.
   1. District Chief Appraiser maintains summary of bids (STD 171).
   2. First review - Did appraiser supply all information necessary to evaluate quote.
   3. Incomplete or late quotes will be rejected.
   4. Use Best Value Matrix in their order of importance *(Figure H.6).
   5. Check Contractor Responsibility Program.

K. Selecting the Appraiser.
   2. Select quote that best meets the needs of Department.
   3. Team must write a narrative, at the bottom of the matrix, why the appraiser was selected.
   4. Cost must be within the limit for the class.

L. Package for Comptroller's Office.
   1. Since back up documentation will be attached electronically, nothing will need to be sent hard copy.
   2. PO cover Letter *(Figure H.8a).
   3. Purchase Order.
   5. Awarded Contractor's Signed Quote.

Note: Only Department employees have access to SRM (financial software system) or most current program.

8. Information Required from the Contractors Checklist.
9. APA.
10. Contractor Responsibility Program (CRP) if over $10,000 or Current Threshold.
11. MBE/WBE Contractor and Supplier Solicitation and Commitment Form (STD 168) if 100% State-funded and cost is over $ 50,000.
12. Other Requirements if necessary.

M. Comptroller Approval/Notice to Proceed.
   1. Comptroller's Office will review & approve if properly documented.
   2. Department will only issue a Notice to Proceed after getting approval from Comptroller's Office.
3. Invoicing instructions *(Figure H.9) must be attached to Notice to Proceed.

I.08 LOW QUOTE OPTION FOR SELECTION.

Defined as a contract based upon Low Quote. In a price class of:

1. $5,000 or less
2. $5,000.01 to $10,000.00
3. $10,000.01 and above

A. How to Use the Process.

1. Determine Best Value or Low Quote
2. Solicitation of Interest Letter
3. Send Solicitation of Interest Letter
4. Bid Packages to Interested Bidders
5. Request for Quotes
6. Select Appraiser

B. Select Best Value or Low Bid.

1. District R/W Administrator makes decision
   a. What is best for that claim
   b. What is best for the route
2. Decision should be made after consultation with:
   a. District Chief Appraiser
   b. Real Estate Appraisal Reviewer
   c. Office of Chief Counsel in special cases

C. Quote Package.

1. Appraisal Problem Analyses (APA).
2. R/W Plan and/or Plat Sheet(s).
3. Other Applicable Information i.e. deed, leases.

D. Letter of Interest (Preparation).

1. Sample letter *(Figure H.5b)
2. Quote could include:
   a. Writing appraisal --Update fee--Fee for making minor revision
   b. These items would be listed separately in the quote document and PO document
E. Sending Letter of Interest.

1. How.
   a. Email - preferred method.
   b. Fax.
   c. Telephone (difficult to document).

2. Who.
   a. Less than $5,000.
      (1) Contact one (1) qualified in the category of assignment from the county of interest.
      (2) Appraiser must be from the prequalified list.
      (3) Ask the appraiser to submit a written quote.

3. How.
   a. Email - preferred method.
   b. Fax.
   c. Telephone (difficult to document).

   a. $5,000.01 to $10,000.
      (1) Contact a minimum of three (3) qualified in the category of assignment from the county of interest.
      (2) Appraiser must be from the prequalified list.
      (3) If 100% State-funded one (1) must (if available) be a Department of General Services MBE/WBE.

5. How.
   a. Email - preferred method.
   b. Fax.
   
   NOTE: Telephone solicitations can NOT be used.

   a. $10,000.01 and above.
   b. Appraiser must be from the prequalified list.
   c. Solicit all appraisers qualified for appraisal assignment in the project county (Category 1, 2, Both or Statewide).

F. Selecting the Appraiser.

1. Select the appraiser with the Low Quote.
   a. Quote must fall into the classes based on the cost of services
b. If the selected quote is over the dollar limit of that class, all bids must be rejected and the procedures for the next class must be used.

G. Contracting Package to Comptrollers.
   1. Prepare PO in SRM (or current system).
   2. Attach back up documentation electronically.

H. Comptroller Approval/Notice to Proceed.
The Department will issue a Notice to Proceed ONLY after the PO has been approved by the Comptroller

I.09 PENALTY CLAUSES

A. Liquidated Damages.
   1. 1% / day from amount contracted for late submission of the appraisal report.
   2. Satisfactory Submission.
      a. Initial Appraisal – Revisions.
      b. Appraisal Updates.
   3. Satisfactory Submission - Appraisal Document acceptable to the Department determined by the District Chief Appraiser.
      a. Contains all necessary information.
      b. Prepared on the proper form in the correct format.
      c. Attachments: Photographs, specialty reports, etc.

B. Retainage.
   1. Department may elect to retain 10% of billing of an assignment until receiving a final product.
      a. Optional Procedure.
      b. Specifically stated in the Letter of Interest.
   2. Final Product - Department has either:
      a. Approved the appraisal.
      b. Decided not to proceed further with the appraisal review on this report.
         (1) Approves another report.
         (2) Prepared a Determination of Value (DOV).

C. Retainage - Establishing the PO and Invoicing.
If the agency is receiving specific deliverables, the best practice is to set up two lines for each deliverable, one for the actual 'upfront' payments and the second for the 'retainage'.

Example, if they have deliverable A for $100,000, they would set line 10 for the Deliverable A to be paid on an ongoing basis (if 10% retainage, then $90,000). Line 20 would be for the retainage for Deliverable A ($10,000). We would pay the invoices net of the retainage, then at the end of the project, we could pay an invoice for the amount retained against line 20.
If multiple deliverables, there would be two lines per deliverable.

**I.10 EVALUATION OF APPRAISERS' PERFORMANCE**

**A. When.**

1. May evaluate appraisers on each work assignment.
2. Appraisers who perform poor work, do not provide services on time, or engage in other unacceptable conduct.

**B. How.**


**C. Who.**

1. District Chief Appraiser with input from Review Appraisers, Legal and Others.
2. Copies of evaluations will be maintained by the Utilities and Right of Way Section of the Bureau of Project Delivery.

**I.11 CONTRACTOR RESPONSIBILITY PROGRAM CRP**

Appraisers will be entered into CRP when receiving poor evaluations or assessed Liquidated Damages. Bureau of Office Services (BOS) will assist with entries into CRP. Contact the Contracting Officer at (717) 787-7997.

**I.12 REVISIONS, UPDATES, AND SERVICES FOR LITIGATION**

**A. Request Quotes**

1. The Department can award assignments for revisions, updates and litigation services from an appraiser who previously prepared the Fair Market Value report.
2. With recommendation from the Office of Chief Counsel (OCC) - the Department can award appraisal services required for litigation purposes to a single appraiser.

**I.13 INSURANCE**

Insurance is not required on a routine basis, only if deemed necessary for contaminated or dangerous properties. If proof of insurance is required it must be stated in the Letter of Interest.

**I.14 EMERGENCY PROCEDURES**

When appraisals are needed due to an emergency to protect the traveling public from an Act of God or a natural occurrence:

1. Requires approval from the District Executive prior to requesting quotes.
3. Send Letters of Interest to three (3) appraisers.
4. Evaluate Quotes.
5. Give a verbal Notice to Proceed.

6. Upon receipt and acceptance of an invoice for emergency services - prepare and process documents for payment.

### I.15 RECORD KEEPING AND RETENTION

1. Place in Claim or Contract File:
   a. Copy of approved PO.
   b. Letter of Interest Notice.
   c. List of Contractors solicited.
   d. List of contractors receiving quote packages.
   e. Summary of Quotes (STD 171).
   f. Best Value Checklist.
   g. Information Required from Contractor Checklist.
   h. Best Value Matrix.

2. Bureau of Office Services (BOS) retains the original signed ITQ Contract.

3. Records must be maintained for the time frames set forth in the *Records Management Manual*.

### I.16 ROW OFFICE

1. Lists ITQ Contracts.

2. Lists Qualified Appraisers.

3. Tracks appraisal assignments.

4. Appraisal Screens will be maintained by the Districts.

### I.17 FREQUENTLY ASKED QUESTIONS

1. Q. What is the web-site for a new appraiser to apply to be on this ITQ Contract # 357I01 and what is the CVMU portal web site to get a vendor number or make changes to their information?

How to apply:

(1) [www.dgs.state.pa.us](http://www.dgs.state.pa.us).

(2) At the top under PA STATE AGENCIES, click on Procurement.

(3) Click on Block that says PA E Marketplace.

(4) Under menu click on Solicitations block.

(5) You are now in the solicitations search screen, enter the solicitation number (357I01) in the solicitation # area and click on search.

(6) At the bottom of the screen click on the solicitation number, this will open the advertisement.
Appendix I - Appraisal ITQ

(7) Scroll down and at the bottom of the advertisement on the left side is the link for the Appraisal Services ITQ (Adobe file), click on it to open.

(8) Once open print.

CVMU portal web site. Below is the path to the supplier portal for registration.

(1) Go to www.dgs.state.pa.us.

(2) Under How do I, (Click on become a Commonwealth Supplier).

(3) On the Left side under Supplier Dashboard, (Click on Supplier Registration).

(4) This is the supplier registration screen which has the portal, and a toll free number of 877-435-7363 for help.

2. Q. Are the Forms & Reports section of ROWO working so that the Districts can run a search for appraisers in the category of assignment and their county of choice?

A software compatibility issue between ROW Office and Crystal was discovered shortly after the Department upgraded from Crystal X to Crystal XI software for its Crystal Enterprise initiative.

We found that registered forms and reports will not run successfully for all ROW Office user types without stored procedures applied.

Efforts to troubleshoot the problem have been ongoing with coordination between Client/Server staff, ROW Administration, Bentley Systems, Inc Project Team and Business Objects (Crystal Reports).

The most recent ROW Office application enhancement included an upgrade to Crystal XI which was anticipated to solve the problem. It did not. Problem has been turned-over to Business Objects for resolution.

Manual forms will continue to be utilized until electronic forms can be used for all user types in ROW Office.

3. Q. Are the new Vendor Contract numbers beginning with 44000 in SRM?

Yes. For the Bureau of Office Services to get a fully executed contract back from the Attorney General the Vendor Contract number must be established in SRM.

4. Q. In the section on Bridging between the two ITQ contracts for Existing Assignments as seen on slide 63. The new PO that is established would be for the work remaining, however could additional items be added to the new PO if properly documented? i.e. legal request additional hours for testimony or there has been a change to the plan that would require additional work by the vendor.

If the original assignment contained various elements such as writing the appraisal report, minor revisions, litigation support, and expenses for litigation support then the answer is YES as long as there is no major change in the scope of work for the original appraisal assignment. If the original PO did not call out for these various elements then the answer is NO.

Appraisers bid in terms of dollars not hours to complete a task.

Note: Care must be taken to be sure that the dollar amount of any additional work does not go over any dollar thresholds established in the original PO i.e. ($5,000.01 to $10,000.00).

5. Q. What exactly does it mean to have to solicit (send Letters of Interest) to three or more appraisers? Does this mean that one needs to send a minimum of three (3) Letters of Interest and not have to send three (3) bid packages even if three appraisers did not express an interest in receiving bid packages?

First of all in the original power point presentation the term Solicitation of Interest Letter has been changed to Letter of Interest. It was thought that this change in terminology would be less confusing. The Letter of Interest goes out to the appraisers to see if they want to receive a bid package.
The Bureau of Office Services would check with their legal counsel to get a clarification and this was the reply.

For that cost category the ITQ requires that three potential bidders be contacted and allows that contact to be by telephone, mail, or e-mail. It does not state that a bid package has to be delivered to three contractors. There is no requirement in the ITQ that three bid packages must be delivered.

From a legal standpoint, the process may not be used to play favorites with appraisers and the fewer bidders the districts contact the more opportunity there is for arbitrary selections. My "process concern," is providing fair competition for bidders and the best price for the Commonwealth. Office of Chief Counsel, General Law Division, Contract & Legal Services Section

Therefore, you do not need to send out more Letters of Interest in order to get 3 people who want to receive bid packages. If only 2 appraisers ask for bid packages that is OK as long as you solicited a minimum of three.

6. Q. Are Revisions and Update Fees counted in the bid amount?

Yes. The fee amount to write the appraisal report and a fee for revisions or updates will equal the Total Amount of the Bid.

7. Q. Can a fee appraiser under this contract sub-contract some or all of the assignment to an appraiser who is not on this ITQ Contract?

The appraiser under contract who received the assignment must make that request in writing to the District RW Unit; and the DCA or RW Administrator may or may not grant this request in writing.

The problem is that this sub-contractor has not contractual obligation to the Department; therefore, you may not receive responses to critiques, updates or revisions, and you may not have a witness if the claim goes into litigation.

8. Q. Under, Bridging – Existing Assignments, it states that the appraiser needs to document in writing the % of work complete under the old ITQ so that the remainder can be paid under the new PO. But if the appraisal document is complete and the PO only has litigation hours and expenses remaining does the appraiser need to send us a letter? The litigation time and expenses are controlled by legal and the DCA not the appraiser. Some of my PO’s have used a portion of the litigation time and some have not, but will be in the near future.

This was a good question that had not been considered before; therefore the power point presentation has been revised to handle this situation.

9. Q. Must we apply the retainage penalty if we state in the solicitation (Letter of Interest) that retainage may be applied?

No. Even if this is stated in the Letter of Interest it is up to the District Chief Appraiser if he/she implements the retainage.

10. Q. If retainage is applied how is the invoicing to be handled?

If the agency is receiving specific deliverables, the best practice is to set up two lines for each deliverable. one for the actual "upfront" payments and the second for the "retainage".

For example, if they have deliverable A for $100,000, they would set line 10 for the Deliverable A to be paid on an ongoing basis (if 10% retainage, then $90,000). Line 20 would be for the retainage for Deliverable A ($10,000). We would pay the invoices net of the retainage, then at the end of the project, we could pay an invoice for the amount retained against line 20.

If multiple deliverables, there would be two lines per deliverable.