



# RIGHT OF WAY MANUAL



Prepared by  
NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
BISMARCK, NORTH DAKOTA  
[www.dot.nd.gov](http://www.dot.nd.gov)

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March, 2019

Note: This manual provides a written account of how certain activities are performed and is designed to guide and assist staff in performing their functions. When appropriate, there may be deviations from these written procedures due to changes in personnel, policies, interpretation, law, experimentation with different systems, or simply evolution of the process itself. This manual may be changed at any time. Staff members are encouraged to review this manual periodically and suggest changes in the manual to keep the manual current and to minimize differences between the manual and actual practices. Changes to this manual shall be submitted for NDDOT and FHWA approval.



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**North Dakota Division**

March 15, 2019

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Attention: Mr. Mark Gaydos

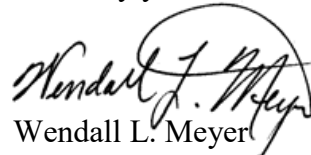
Dear Mr. Henke:

Subject: North Dakota Department of Transportation (NDDOT) 2019 Right-of-Way Manual

We have reviewed the subject revisions to NDDOT's Right-of-Way Manual and find that the changes adequately address the requirements of 23 CFR 710 and 49 CFR 24. The revisions to the Right-of-Way Manual are hereby approved.

If you have any questions regarding this issue, please contact Pam Todd at 701-221-9477.

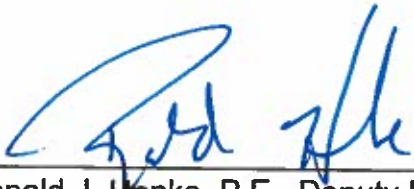
Sincerely yours,

  
Wendall L. Meyer  
Division Administrator

ecc: Chad Orn, NDDOT  
Michael Knox, NDDOT

# Right of Way Manual

## 49 CFR PART 24 – Uniform Relocation Assistance and Real Property Acquisitions Policies Act



Ronald J. Henke, P.E., Deputy Director for Engineering  
North Dakota Department of Transportation

3/7/19  
Date



Wendall Meyer, Division Administrator  
Federal Highway Administration

3/15/19  
Date

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## **SECTION I - RIGHT OF WAY FUNCTION AND ORGANIZATION**

### **1.1 RESPONSIBILITY**

The Right of Way Section functions as a section of the Environmental & Transportation Services (ETS) Division of the North Dakota Department of Transportation (NDDOT). The ETS Division is classified as a major division on staff level with other major divisions.

The Right of Way Section has as its responsibility the acquisition and management of all real properties or interests therein for NDDOT in accordance with State and Federal laws and regulations.

The Right of Way Section Program Manager is designated by the ETS Division Director. The ETS Division Director reports directly to the Director of the Office of Project Development of NDDOT.

The NDDOT organizational chart is illustrated as [Exhibit I-1](#).

### **1.2 SUPERVISION**

The ETS Division Director is responsible for right of way matters on the State highway system and has the authority to approve all disbursements necessary for State highway rights of way with the approval of the Director of the Office of Project Development and the Deputy Director for Engineering Policy; this authority vests in the Right of Way Program Manager during the absence of the ETS Division Director. The ETS Division Director or their assigns is authorized to sign the right of way certification and supporting documents. The ETS Division Director, along with the assistance of the Right of Way Section, establishes the policy and operating procedure for the Right of Way Section. District offices work closely with the Right of Way Section to ensure project delivery.

Uniformity of operation is obtained through the use of NDDOT Right of Way Manual and supplementary written directives.

### **1.3 HEADQUARTERS**

All right of way operations are directed from the Central Office located on the 608 East Boulevard Ave, Capitol Grounds, Bismarck, North Dakota, 58505-0700.

### **1.4 FUNCTIONAL ORGANIZATION**

The basic Right of Way Section functions are divided into supervised sections: Titles, Acquisition, Project Payment, Appraisal and Review Section and Relocation Assistance.

## 1.5 FUNCTION

The principle function of the Right of Way Section is the acquisition and management of right of way for State highway purposes. Its responsibilities include the following:

- a. To appraise, negotiate, and secure all necessary lands or interests in lands for right of way and NDDOT operations, such as sites for maintenance storage, stockpiles, buildings, easements for detour, borrow, drainage, channel change, waste, etc.
- b. To provide staff administrative assistance as required by the ETS Division Director and Director of the Office of Project Development pertinent to right of way acquisition.
- c. To have authority to, and take an active part in determining highway location, and to otherwise function on full staff status.
- d. To provide right of way cost estimates to other divisions in NDDOT to assist overall planning.
- e. To handle all rental and leasing functions covering all types of real estate held by NDDOT during the interim between acquisition and necessary clearance to prepare for highway construction or other proposed uses.
- f. To administer the Relocation Assistance program.
- g. To maintain and update no less than every five years, the Right of Way Manual.

## 1.6 LEGAL COUNSEL

Legal assistance and guidance is provided to State agencies by the Attorney General. NDDOT currently employs two in-house attorneys who are available to the ETS Division for legal advice and assistance in condemnation cases. One is designated as General Counsel. Both in-house counsels are specially appointed by the Attorney General to represent NDDOT.

NDDOT generally relies on attorneys employed by the Attorney General's office to provide litigation services in connection with the acquisition of rights of way.

As the need arises and if in the public interest, private attorneys may be retained to assist NDDOT with an individual condemnation case, or a group of cases. In those instances where outside attorneys are needed, those attorneys will be employed and supervised in a coordinated effort by NDDOT's General Counsel and the ETS Division. Supervision is accomplished by conferences and instructions in division policies.

In the event, an immediate consultation with an attorney is necessary and in-house counsels are unavailable, ETS staff should contact NDDOT's Legal Division and Legal staff will assist ETS staff with contacting the Attorney General's office for assistance.

North Dakota employs attorneys from outside the Attorney General's office and as special counsel on a project-by-project basis where the work load or the nature of the case requires their use. Terms and conditions of the employment of outside attorneys will be considered on a project-by-project basis. Fees are mutually agreed upon between the state and the fee attorney in accordance with the complexity of the case and are not determined on a percentage basis. North Dakota has no standard contract form since use of outside attorneys is extremely limited. Outside attorneys must be specially appointed by the Attorney General to represent NDDOT.

## **1.7 TITLES, ACQUISITION, PROJECT PAYMENT SECTION**

This section processes clearances of mortgages, liens and judgments, Preliminary Certificates of Title (PCT) ([Exhibit V-1](#)), Surface Ownership Reports (SOR) ([Exhibit V-3](#)), title insurance, and mailbox compliance letters.

It is also responsible for the approval of and disbursement of funds, preparation of claims for payment of rights of way, and internal control and internal auditing of right of way, processing contracts, preparing and processing of condemnations, and recording with county recorders all necessary documents and plats. It is responsible for cost accounting and Federal-aid right of way reporting.

It has the responsibility of the actual purchasing of right of way, including the negotiating for borrow areas, maintenance and stockpile sites, rest areas, etc.

Additional functions of this section include various types of damage complaints, coordination with local governments, property management, and preparation of necessary right of way certifications.

## **1.8 APPRAISAL AND REVIEW SECTION**

The Appraisal and Review Section is staffed with a Chief/Review Appraiser, and a complement of real property appraisers. Staff Realty Officers are located in the Central Office and, when acting as real property appraisers or review appraisers, are supervised by the Chief/Review Appraiser.

The Appraisal and Review Section is responsible for the valuation of interests in real property to be acquired by NDDOT. It is responsible for developing appraisal policies, procedures, and guidelines; providing technical education for the training and continuing development of staff appraisers; arranging for services of outside fee appraisers, when needed; providing valuation information for NDDOT; determining the compensation that

should be paid for each parcel of real property to be acquired; preparing land economic studies, cost estimates, and salvage value estimates; and for coordinating right of way activities and reviews of appraisal and acquisition procedures used by local public agencies on Federal-aid projects.

### **1.9 RELOCATION ASSISTANCE AND OUTDOOR ADVERTISING CONTROL**

The responsibility of this section is to ensure to the maximum extent possible the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and nonprofit organizations displaced as a result of a Federal-aid highway program. The duties of the Relocation Officer will include the preparation of conceptual stage studies, relocation reports, providing relocation services, making move cost estimates, determining replacement housing and rental supplement payments and other expense payments, to see that all payments are made promptly and to maintain adequate records.

The Maintenance Division reviews and approves applications for licenses and permits for outdoor advertising, and other private land uses. With cooperation from NDDOT's District Offices, the Maintenance Division secures inventories of and maintains adequate records of each such item that is subject to regulation or control by NDDOT. Based on established standards, the Maintenance Division determines which uses may be continued under permit or license and which uses must be terminated. The Maintenance Division initiates termination and removal of unauthorized uses through the appropriate District Office.

### **1.10 CIVIL RIGHTS**

The ETS Division has taken all affirmative actions to assure that no person, on the grounds of race, color, national origin, sex, age, disability, or income status will be (1) excluded from participation in, (2) denied the benefits of, or (3) subjected to discrimination under any of NDDOT's right of way programs.

The ETS Division complies with Title VI ([Exhibit I-2](#)) and Title VII ([Exhibit I-3](#)) in accordance with NDDOT's policy.

The ETS Division Director is responsible for compliance with the right of way program(s).

### **1.11 RIGHT OF WAY MANUAL**

NDDOT maintains the Right of Way Manual in order to describe its right of way organization, policies, and procedures. The manual shall describe functions and procedures for all phases of the real estate program, including appraisal and appraisal review, negotiation, eminent domain, acquisition, outdoor advertising control, and



relocation assistance. The manual shall also specify procedures to prevent conflict of interest and avoid fraud, waste, and abuse. The manual shall be in sufficient detail and depth to guide state employees and others involved in acquiring and managing real property.

Whereby the NDDOT has established that all Federal-Aid projects will follow the procedures contained within this manual (or any manuals referenced herein--such as the LPA manual) and that this manual will be the reference guide for ALL entities engaging in Federal-Aid projects.

The LPA Manual is a guide to the right of way acquisition procedures. The manual incorporates the day to day business practices and details negotiator responsibilities and activities. [Exhibit I-4](#)

## **1.12 STEWARDSHIP AND OVERSIGHT AGREEMENT**

The Federal Highway Administration, North Dakota Division (FHWA), and the North Dakota Department of Transportation (NDDOT) have entered into a Stewardship and Oversight Agreement. The purpose of this agreement is to conduct project oversight activities in accordance with the stipulated elements contained within the agreement. Additionally, this agreement is to not only document the roles and responsibilities of the Federal Highway Administration, North Dakota Division (FHWA), and the North Dakota Department of Transportation (NDDOT) in administering the Federal-Aid Highway Program but to also clarify actions, prevent misinterpretations, and avoid time delays. This agreement also outlines the responsibilities and accountability for both FHWA and the NDDOT. [Exhibit I-5](#)

## **SECTION II - APPRAISAL**

### **2.1 UNIFORM ACT AND NDDOT RIGHT OF WAY ACQUISITION PROGRAM**

The Fifth Amendment to the Constitution of the United States requires the payment of just compensation to the owner of private property when acquired for public purpose. The Constitution also requires states to follow due process when they acquire privately owned property.

On January 2, 1971, Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, was signed into law; later amended in 1987 as part of the Surface Transportation and Uniform Relocation Assistance Act of that year; with more recent amendments becoming effective in February 2005. The "Uniform Act", as the law is referred, applies to all real property acquisitions for projects where Federal funds are involved at any stage of a project, either wholly or in part. Most or all NDDOT highway projects typically involve the participation of Federal funds at some phase of a project. It is, therefore, critical that right of way acquisitions conform to Uniform Act requirements, so as to preserve the availability of Federal funds for North Dakota's highway projects.

The Uniform Act further defines what an acquiring agency (NDDOT) must do to assure that property owners are receiving their constitutionally mandated reimbursement. Again, noncompliance with Federal law can result in ineligibility for reimbursement of project cost.

NDDOT right of way activities are conducted in compliance with the Uniform Act. Right of way activities are also subject to the requirements specified in North Dakota law and NDDOT's agency requirements.

### **2.2 APPRAISAL AND REVIEW SECTION RESPONSIBILITIES**

The Uniform Act requires that an "approved appraisal" be used to develop an amount NDDOT believes to be just compensation. The amount offered to the property owner cannot be less than the amount of the approved appraisal. The appraisal, then, with the review and approval by the acquiring agency, provides the cornerstone on which is built the entire effort to provide the property owner with just compensation.

The Appraisal and Review Section is responsible for the valuation of interests in real property to be acquired by NDDOT. They are responsible for developing appraisal policies, procedures, and guidelines; providing technical education for the training and continuing development of staff appraisers; arranging for services of outside fee appraisers, when needed; providing valuation information for NDDOT; determining the compensation that should be paid for each parcel of real property to be acquired; preparing land economic studies, cost estimates, and salvage value estimates; and for

coordinating right of way activities and reviews of appraisal and acquisition procedures used by local public agencies on Federal-aid projects.

### **2.3 APPRAISER QUALIFICATIONS AND PROFESSIONAL DUE DILIGENCE**

Qualifications of staff appraisers are covered by the Realty Officer class specification of the State of North Dakota Human Resource Management Services. Certification of staff appraisers through the North Dakota Appraiser Qualification & Ethics Board (NDAQEB), though not required, is recommended and encouraged of staff appraisers.

Staff review appraisers will be certified through NDAQEB. The work of Realty Officers, who act as appraisers, is continually evaluated by personnel from the Appraisal and Review Section of the ETS Division. A record of the work performance of each appraiser is reviewed once every year. Recommendations are made regarding their work performance.

Staff and consulting appraisers have a professional obligation to correctly employ those recognized methods and techniques necessary to produce a credible appraisal; to not commit a substantial error of omission or commission that significantly effects an appraisal; and to not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affect the credibility of those results. This obligation is not intended to imply the unrealistic expectation of perfection, which is neither possible to attain, nor required for professional competence. Appraisers are, however, expected to practice due diligence and due care in developing appraisals for NDDOT. Appraisal services are not to be rendered in a careless or negligent manner.

### **2.4 REVIEW APPRAISER QUALIFICATIONS AND DUTIES**

A qualified individual with extensive appraisal background, who is a full-time employee of NDDOT, is designated as the Chief/Review Appraiser. The selection is based on education, experience, and service in appraisal work. The Chief/Review Appraiser must be capable of weighing all available information of value relevant to the appraisal problem.

The Chief/Review Appraiser oversees NDDOT appraisal and review processes to ensure broad consistency in all appraisal related matters, and to ensure compliance with accepted standards of professional appraisal practice. The Chief/Review Appraiser is NDDOT's representative that works with project appraisers to develop the scope of work decision required in each appraisal problem. The Chief/Review Appraiser also conducts reviews of complex appraisals.

The Chief/Review Appraiser and staff review appraisers are certified ("Certified General") by the NDAQEB. Staff review appraisers report to the Chief/Review Appraiser, assist in

conducting uncomplicated project and appraisal reviews for NDDOT, and make recommendations concerning the results of reviews.

The Chief/Review Appraiser approves the recommendation of just compensation; this is to ensure consistency among the recommendations within each project, between projects, and in the administering of NDDOT's appraisal and review policies and practices. The authority to approve the recommendation of just compensation vests to full-time NDDOT staff review appraisers during the Chief/Review Appraiser's absence.

The Chief/Review Appraiser identifies, makes recommendations for, and arranges for the formal training of staff appraisers and staff review appraisers. Training is dependent upon the availability of funds.

The review appraiser will make field inspections of projects. If a field inspection is not made, a statement will be placed in the file containing the reasons therefore. This field inspection includes a visual inspection of the subject properties and pertinent sales data, in addition to a spot check of any items that the reviewer considers necessary or desirable.

Review appraisers also conduct field inspections of the properties appraised and the comparable market data used to substantiate the appraisal opinion. A technical desk review of the appraisal is then completed. Appraisals are correlated with the facts which the reviewer has gathered through the field inspection. It is the reviewer's responsibility to be certain all proper procedures, State, and Federal requirements have been followed. All appraisals are reviewed and the reviewer's conclusions and recommendations are documented. Review appraisers may, when necessary, develop appraisal documentation in accordance with paragraph 24.104(b) of the Uniform Act to support a value recommendation if it is determined that it is not practical to obtain additional appraisals.

Review appraisers are responsible for returning appraisals for correction or adjustment when the appraisal is not adequately documented or supported or when there have been items omitted from the report. Corrections or adjustments may be made by approved supplement, with the original appraisal remaining intact.

## **2.5 CONFLICT OF INTEREST**

No appraiser, review appraiser, or person performing a waiver valuation shall have any interest, direct or indirect, in the real property being valued for NDDOT that would in any way conflict with the preparation or review of the appraisal or waiver valuation. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review

or waiver valuation. Except for full-time NDDOT right of way staff employees, persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work. This provision is not intended to prevent NDDOT from providing appraisers with appropriate project information and participating in determining the scope of work for the appraisal or valuation.

No appraiser or waiver valuation preparer making an appraisal or waiver valuation may act as a negotiator for real property for which that person has valued, except that NDDOT may permit the same person to both value and, after review, negotiate the acquisition, when the total value of the acquisition (includes part taken, improvements, and nominal damages or costs to cure, if any) is \$10,000 or less.

## **2.6 LOCATION STUDIES AND PROGRAMMING**

The ETS Division and District Personnel are effectively utilized in the determining of highway locations. Where applicable, detailed estimates of right of way costs of alternate routes of highway locations are prepared. Cost estimates are considered not only in major highway locations, but also in design standards where suitable. These cost estimates, more appropriately termed "right of way estimates", are preliminary in nature and intended only to provide a starting point for NDDOT projects. The right of way estimates are not expected to rise to the level of completeness, appropriateness, relevance, accuracy, and reasonableness that is expected of an appraisal.

During the early phase of a project, the right of way needs may not be defined clearly enough to differentiate between what will be a whole take and what will be a partial take. Cost estimates may consider only whole parcels to be acquired if that would provide useful data. Costs of partial acquisitions, including damages to the remaining properties and project overhead, can be factored into an estimate; this may be based on the actual costs of completed projects, or on other means as available.

Field inspections are made during location study and the Plans, Surveys and Estimates (PS & E) stage. The complexity of the project determines the amount of time spent and the detail of the study. This is documented by written reports and detailed cost estimates, which become part of the Right of Way Section project files.

Detailed cost estimates are prepared for programming purposes after project concept approval.

When a project involves relocation assistance, the Relocation Officer will prepare the relocation cost estimates.

## 2.7 PUBLIC HEARINGS

An audio-visual presentation is presented at public hearings. This explains the appraisal, appraisal review, land acquisition, and relocation assistance procedures.

A Realty Officer should be available for discussion at the public hearing if a project involves significant right of way taking. Public information brochures are made available for distribution without cost. [Exhibit III-14](#)

The public hearing phase of a project can be used to alleviate many citizen concerns and, ultimately, to expedite a project's acquisition phase. Questions about the project and the effects on the surrounding area and specific properties should be answered factually, sensitively, and accurately. If an answer is not known or cannot otherwise be given, the person should be referred to the proper official who is able to respond. The Realty Officer should avoid engaging in speculation or assumptions, as misinformation can damage the credibility of NDDOT, and can hinder the acquisition phase of a project.

## 2.8 OVERVIEW OF TYPICAL ACQUISITION PROCESS

The completion of all project right of way acquisitions in time to meet a project's letting date is critical to a project's success. A successful acquisition -- one that does not depend upon condemnation -- requires the cooperation of the property owner, who may not necessarily be motivated by NDDOT's timetable. Unexpected problems can emerge in any project acquisition, making it critical that all related processes are completed without unnecessary delay. The success of a project should never depend on the assumed "simplicity" of right of way acquisitions, or the assumption that condemnation will be used to expedite acquisitions. Condemnation is only used as a last resort.

The typical right of way acquisition process can be viewed in the enclosed flow chart ([Exhibit II-5](#)), with a summary of the general process continued in the following discussion.

### **Preauthorization Phase**

Activities at the preauthorization phase are conducted to develop the preliminary cost estimate and authorization request sent to FHWA; to identify potential problems that may emerge during acquisition; to identify those properties suited to acquisition by waiver valuation, and those properties that will require appraisal; to identify the scope of work required for individual appraisal problems; to provide support for uncomplicated acquisitions; and to prepare for the acquisition phase.

The receipt of project right of way limits usually triggers all right of way activities in the preauthorization phase. Once the limits are known, Preliminary Certificates of Title ([Exhibit V-1](#)) are ordered and Surface Ownership Reports ([Exhibit V-3](#)) are prepared, right of way plat development and borrow acquisition begins, and the project appraiser

conducts preliminary market research and analysis to prepare for data books, waiver valuations and/or appraisals. (The simplistic nature of some projects may allow preliminary market research to begin before the limits are received. Some rural projects, for example, involve unimproved agricultural properties, ample availability of comparable sales, and involve project acquisitions that are strictly of an uncomplicated nature, such as construction easements used solely to provide temporary work area during construction, with the intent of restoring the encumbered area to a condition comparable to that existing before construction.)

Prior to commencing valuation work, a meeting will be held with the consultant and the NDDOT Chief/Review Appraiser. A Preliminary Valuation Review form ([Exhibit II-8](#)) must be completed for every project requiring an appraisal, waiver valuation, and/or basic data book. At this meeting and on the form, the Chief/Review Appraiser will recommend what type of valuations are required for each project.

The Preliminary Valuation Review meeting is conducted once the project limits are established. The purpose and objectives of the Preliminary Valuation Review are:

- a. To enable early identification of uncomplicated acquisitions eligible for waiver valuation.
- b. To enable early identification of acquisitions that are likely to require an appraisal; to assess their probable level of complexity; and to develop an appropriate scope of work decision for each appraisal problem.
- c. To determine whether a basic data book is needed for the project.
- d. To reconcile the basis for NDDOT offers via waiver valuation.
- e. To prepare for reviews of project appraisals.
- f. To assist in the early identification of problematic right of way issues that may be encountered during the project's right of way acquisition phase.

Successful completion of the above goals depends on the extent of detailed information available for each acquisition problem. The more complex the acquisition or project, the greater the need for detailed, accurate information.

Any and all relevant information is considered in the Preliminary Valuation Review.

Based on the recommendations from the Preliminary Valuation Review, the appraiser will conduct preliminary market research to submit a preliminary right of way cost estimate. This is done by multiplying each of the estimated areas of acquisition by the highest estimated unit value as determined by researching recent comparable sales or other



market data supporting documents. This estimated acquisition value is added to the estimated cost to acquire the property. These cost estimates include: administrative costs of negotiation and acquisition, title fees, appraisal fees, administrative settlements, court fees, relocation, and any other foreseen cost to acquire all of the right of way for the project. These values are summed and submitted as the preliminary cost estimate for FHWA to approve. This requirement applies whenever Federal funds are involved in a project and the requests are submitted by the ETS ROW staff. (Please note that if the project is State funded, the appraiser must still submit an estimated acquisition value.)

Once approval is obtained from FHWA, data books, appraisals and/or waiver valuations may be completed and submitted to the Chief/Review Appraiser to review. A review will be completed for each valuation prior to acquisition.

### **Acquisition Phase**

NDDOT contact with affected property owners begins promptly after receipt of authorization from FHWA. In the Right of Way Agent's initial contact, the property owner is presented with a Memorandum of Offer ([Exhibit III-4](#)), Compensation & Parcel Breakdown ([Exhibit III-18](#)), Notification and Appraisal Waiver ([Exhibit II-4](#)), and a copy of the NDDOT publication which outlines property owner rights - Public Information for Highway & Street Projects ([Exhibit III-14](#)). The property owner may also be presented with a copy of the project plat. A discussion will normally ensue as to the general characteristics of the project and how compensation is determined. The Right of Way Agent will also explain the necessity for and the characteristics of the proposed acquisition. Comments from the property owner on any aspect of the project, affected property, value of the acquisition, the property owner's perception of its effects on their property, damages, and any other concerns the property owner may express are encouraged. With each property owner contact, the Agent will prepare a detailed record of the property owner's comments and concerns. This record is documented in the agent's Negotiator Report & Ownership Contact form ([Exhibit III-1](#)).

If the proposed acquisition is uncomplicated and less than \$10,000, the Right of Way Agent will present NDDOT's offer to the property owner based on waiver valuation. (The person preparing the waiver valuation can also act as Right of Way Agent, so long as the amount is less than \$10,000.) This offer should be made in the first contact. In the event that compensation is less than the amount specified in the NDDOT Minimum Payment Policy, compensation will be rounded up to the minimum payment.

If the proposed acquisition is uncomplicated and over \$10,000 but is less than \$25,000, the acquisition agent must offer the property owner the right to an appraisal, and the right to accompany the appraiser during the inspection. The offer of these rights will be documented in the Negotiator Report & Ownership Contact form ([Exhibit III-1](#)). The property owner should also be advised of the right to donate the right of way. If the proposed acquisition is over \$25,000 or is complicated, (regardless of amount) an appraisal will be conducted. The Right of Way Agent will complete and the property owner will sign a Notification and Appraisal Waiver form ([Exhibit II-4](#)), indicating the



appropriate option. If the property owner declines to sign the Notification and Appraisal Waiver form, the Agent should note in the Negotiator Report that the property owner was advised of the right to receive just compensation, was offered the options specified on the Notification and Appraisal Waiver form, and that the property owner did not wish to sign. The Agent will explain to the property owner that NDDOT will proceed with negotiations and acquisition of the property.

The person preparing a waiver valuation of an uncomplicated acquisition between \$10,000 and \$25,000 may not act as negotiator; that dual role is available only when the amount is less than \$10,000 and the acquisition is uncomplicated.

When the property owner requests an appraisal, the Right of Way Agent should notify the appraiser so that they can arrange the earliest available inspection date and time with the property owner. The appraiser should, when possible, attempt to accommodate the property owner's schedule to maximize available time for the appraisal process and all other right of way functions to follow, including the appraisal review, relocation, negotiations and the actual acquisition of the property.

The appraisal, once complete, is promptly submitted to the Right of Way Section. The date that the report is received should be noted. The Chief/Review Appraiser will then either conduct the review or assign it to a staff review appraiser; this will depend upon the problem's complexity, timing, and existing staff caseloads.

The appraisal review is technical rather than simply an administrative "checklist". The appraisal review is an opinion of quality, encompassing the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements applicable to that work. It is the review appraiser's job to determine if the work in question provides an adequate supporting basis for the agency's offer of just compensation.

The review appraiser will notify the appraiser in writing if the appraisal is found to contain major errors, deficiencies, or otherwise requires clarification. The appraiser will be provided an opportunity to review the concerns noted and provide written clarification, corrections, and/or provide additional support as necessary, such as to correct a deficiency. The appraiser's response is considered a supplement to the appraisal, so the review opinion will consider all information and analyses appearing in both the supplement and the original appraisal report.

If the appraisal, despite the appraiser's response, is still not acceptable or otherwise cannot be approved as the basis for the agency's offer, the review appraiser should promptly request a new appraisal from a second appraiser. Like the first appraisal, the second is subject to agency review and approval.

If a second appraisal cannot be obtained, the review appraiser may develop his/her own appraisal. The review appraiser's appraisal must comply with the Uniform Act and NDDOT's requirements. The review appraiser does not have to replicate the entire

appraisal process, however, but can instead refer to any part of the original work that the reviewer considers to be credible. The reviewer's appraisal will then be subject to final review by the Chief/Review Appraiser.

The review appraiser prepares the review report and will then pass it on to the Right of Way Section Program Manager. The project Right of Way Agent (negotiator) will then meet with the property owner to present NDDOT's offer. The appraiser may act as the negotiator, but only when the acquisition is uncomplicated and totals \$10,000 or less. The Agent's offer to the property owner, based upon an approved appraisal, is presented using the Memorandum of Offer.

If the property owner accepts NDDOT's offer, the Right Of Way Agent will complete the necessary forms (Memorandum Agreement and, as appropriate, Warranty Deed, Permanent Easement, Temporary Construction Easement, etc.), and obtain the property owner signatures, notarizing acquisition documents as appropriate. The Agent will also complete the Negotiator Report & Ownership Contact ([Exhibit III-1](#)) form, providing a detailed case-file record of the acquisition for future reference.

The Right of Way Agent has the responsibility of acting as a liaison between NDDOT and the property owner. If the property owner does not accept NDDOT's offer, the Agent will then need to identify and attempt to resolve the property owner concerns. To avoid delays in acquisition, the Agent will need to quickly distinguish between those agency positions that are negotiable and those that are not. This may require the input of a variety of agency officials, such as NDDOT's ROW Program Manager, legal staff, the project designer, and/or the ETS Division Director.

The Right of Way Section Program Manager is required to certify the completed acquisition of all right of way parcels on Federal-aid projects. This written certification is signed no later than six weeks prior to the project's bid letting date. [Exhibit II-7](#)

FHWA may allow NDDOT to certify with exception. Certifications with exceptions must come from the NDDOT Deputy Director or assigns and are to be used on a limited basis rather than becoming the rule. Rights of entry may be used in limited situations as a means to address unforeseeable and extenuating circumstances that may arise during the right of way phase of project development. However, rights of entry are not intended as an alternative methodology for property acquisition of needed right of way.

## **2.9 DONATION**

An appraisal is not required if the property owner is donating the property and releases NDDOT from this obligation.

The property owner completes, signs, and dates the Notification and Appraisal Waiver form ([Exhibit II-4](#)). The property owner selects the following option on this form:

I/We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plat(s)

a. Donation Guidelines

- i. According to 23 CFR 710.505(a), donations must be voluntary and owners must be advised of their benefits under the State and Federal Uniform Acts and of their right to fair compensation, relocation assistance benefits, and their right to receive an appraisal report of the market value of their real property being donated.
- ii. All property owners will be advised of NDDOT's policy of accepting voluntary donations, but the offer to donate must not in any way result from an act of coercion. The property owner will be notified of this policy at the time of the first written offer.
- iii. Once the environmental and location process requirements are satisfied and regular right of way activity is underway, donations may be accepted by the acquiring agency as part of their regular acquisition program providing the restrictions referred to above are followed.

b. Local Match for Donations

Section 146(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 provides that the fair-market value of land lawfully donated after April 2, 1987, and incorporated into the project may be used as credit toward the state or local matching share for a Federal-aid highway project. It does not apply to dedications or to donations made by an agency of the Federal, State, or local government.

The fair-market value of donated land shall be established by an appraisal made in conformity with the provisions of this section subject to the following conditions:

- i. Increases and decreases in the value of donated property caused by the project are to be excluded.
- ii. The appraisal shall not reflect damages or benefits to remaining property.
- iii. The fair-market value shall be established as of the date the donation becomes effective or when equitable title vests in the state, whichever is earlier. Donated land must be incorporated into the project to be eligible for credit purposes. All appraisals involving donations for credit to state or local matching funds must otherwise meet the same standards as normal acquisition appraisals.
- iv. In order to qualify for a "soft match," it must be a true donation, not an

exchange of right of way for non-cash consideration. Also, the appraisal completed to determine the amount of credit does not include any severance damages to the remainder.

## **2.10 MINIMUM PAYMENT AND FENCING POLICIES**

It is NDDOT's policy to use the Minimum Payment Policy whenever the estimated just compensation, based on recognized appraisal techniques, is less than the Minimum Payment Policy amounts, including those instances where the estimated compensation is zero. In these cases, the appraisal report should show the property values as estimated using recognized techniques. The Chief/Review Appraiser will apply the applicable minimum payment. Regardless of the specific policy established, NDDOT should ensure that its Minimum Payment Policy is fair and equitable from one property owner to the next.

The minimum payment policy applies to all types of acquisitions:

Minimum Payment for Permanent Property Interests: The minimum payment for any property interest acquired by deed or easement will be \$600.

Minimum Payment for Temporary Use of Property: The minimum payment for the temporary right to occupy and use property during highway construction, e.g., construction easements, haul roads, etc., will be \$300.

Minimum payments are based on property ownership and type of acquisition, not on parcel. The purpose of minimum payments is to help offset the cost to the property owner signing our documents. When the property owner signs, there is only the possibility of one minimum payment per acquisition type, regardless of how many larger parcels were valued. Minimum payment has to do with the value of time for a property owner, not for how many parcels the DOT is acquiring.

If there are multiple permanent or temporary acquisitions on the same ownership and the total estimated compensation does not exceed minimum payment, only one minimum payment is made (either \$600 for permanent or \$300 for temporary.) If there are both permanent and temporary acquisitions and neither exceed the minimum payment, the property owner will receive a total of \$900 for a minimum payment (\$600 for permanent plus \$300 for temporary.)

If the fee value exceeds minimum payment and the TCE does not, the minimum payment will still be paid on the temporary construction easement. The same is true for the fee; if the TCE exceeds minimum payment and the fee taking does not, minimum payment is still paid on the fee taking.

NDDOT has also developed a Fencing Calculation Addendum ([Exhibit II-10](#)) over and above its Minimum Payment Policy. The fencing addendum is approved by NDDOT

prior to the beginning of the acquisition process. Once again, NDDOT should ensure that the fencing payment policy is fair and equitable from one property owner to the next.

## 2.11 BASIC DATA BOOKS

When determined to be cost effective or when there are an unknown number of waivers, the Chief/Review Appraiser will recommend a basic data book in the Preliminary Valuation Review meeting. ([Exhibit II-8](#))

Data books are completed by qualified appraisers and are a compilation of all the data used throughout the valuation process. The appraiser will conduct the necessary market research, assembling, inspecting, confirming, and analyzing the data. The appraiser's information and analysis of the project, the subject real estate market, and supporting comparable sales, together with the appraiser's conclusions, are reported in a basic data book. This collective work, referenced as the supporting basis for waiver valuations and uncomplicated appraisals, can be used to minimize unnecessary repetition, thereby aiding in improving the turnover time for appraisals. To ensure consistency, analytical impartiality, and to save on lead time, the appraiser preparing the basic data book should also be assigned to the project's uncomplicated appraisals. These documents may be subject to the State Appraisal Board requirements.

A data book must contain supported value for every type of property along the project, including separate comparisons, analysis and value conclusions for each. There may be multiple conclusions for corridor projects. Value conclusions will generally be at the top of the range for the project area. Appraisals may come in lower or at the same value but will rarely, if ever, be higher than the basic data book value.

A data book must contain a subject property ownership table. Each parcel under acquisition must be labeled with the owner, acquisition type, property type, size, unit value, and include a total compensation summary for each property owner. ([Exhibit II-9](#))

The Chief/Review Appraiser will, as necessary, request additional information or make recommendations to the appraiser concerning the documentation of the basic data book. When, in the opinion of the Chief/Review Appraiser, the collective work provides an adequate basis to substantiate uncomplicated acquisitions, a Statement of Project Review will be prepared and signed, authorizing acquisitions by waiver valuation or recommending appraisals. Each appraisal and/or waiver valuation will be submitted to the Chief/Review Appraiser for final review and approval prior to acquisition.

## 2.12 WAIVER VALUATIONS

- a. Waiver Valuation, as defined by FHWA

*"an administrative process for estimating fair market value for relatively low-value, non- complex acquisitions. A waiver valuation is prepared in lieu of an appraisal."*

A waiver valuation is the valuation process used and the product produced when NDDOT determines that an appraisal is not required, pursuant to appraisal waiver provisions of the Uniform Act and the NDCC. By definition, a waiver valuation is not an appraisal.

- b. Basis for Waiver Valuation, as per Uniform Act

The Uniform Act permits an appraisal to be waived:

- i. When the property owner elects to donate the property and releases NDDOT from the obligation of performing an appraisal, or
- ii. When NDDOT believes the acquisition of the property is uncomplicated and a review of available data supports a fair market value likely to be under \$10,000, NDDOT may prepare a waiver valuation, rather than an appraisal, to estimate fair market value.

- c. Increase in NDDOT waiver threshold authorized by FHWA

The Federal regulation specifies that the fair market value of the uncomplicated acquisition must be under \$10,000 to be eligible for waiver valuation. However, in 2005, FHWA authorized NDDOT to increase the threshold to \$25,000 for uncomplicated right of way acquisitions (49 CRF 24.102(c)(2)(C).) This authorization is contingent upon the following conditions:

- i. The total value of NDDOT's uncomplicated acquisition (land, easements, improvements, damages, cost-to-cure, etc.) cannot exceed \$25,000. (The cost of moving fences or signs can be over and above this threshold.)
- ii. When the total value of the uncomplicated acquisition exceeds \$10,000;
  - (1) The property owner will be offered the right to an appraisal. If the owner requests an appraisal, an appraisal must be prepared. However, if desired, the owner may then voluntarily agree to waive the right to an appraisal in exchange for compensation based on waiver valuation.
  - (2) The person preparing the waiver valuation may not act as the Right of Way Agent (negotiator.)

The availability of the increased threshold is subject to annual review by FHWA to ensure that the procedures used are properly implemented and protect the interests of affected property owners.

d. Determination of Acquisition by Waiver Valuation

Although a waiver valuation is not an appraisal, NDDOT must still have a reasonable basis for its determination of market value. Some of the concepts inherent in valid appraisal practice are, therefore, appropriate for estimates made by waiver valuation.

Federal law requires the acquiring agency (NDDOT) to determine whether a waiver valuation is appropriate for a particular acquisition. The determination is made by a properly qualified agency employee knowledgeable in appraisal valuation methodology and able to properly assess the complexity of a particular valuation problem. NDDOT's Chief/Review Appraiser, or other staff review appraiser, acting under the direct supervision of the Chief/Review Appraiser, is that person.

The Chief/Review Appraiser or staff review appraiser determines whether a waiver valuation will be prepared. The determination is made after completing a Preliminary Valuation Review ([Exhibit II-8.](#))

When a data book is necessary, the Chief/Review Appraiser will prepare a Statement of Project Review (SPR), authorizing acquisition by waiver valuation, which includes the amounts approved for that purpose. The project's acquisition agent will then use the approved amount(s) to compute each offer by waiver valuation.

Waiver valuations completed without using a data book shall be submitted to the Chief/Review Appraiser to review and approval. A Statement of Appraisal Waiver Review will be completed for each waiver valuation.

e. When to Use a Waiver Valuation

A waiver valuation may be developed when all of the following circumstances apply:

- i. The acquisition, including the physical part taken, together with all easements, is less than \$25,000.
- ii. In situations where the total value of the uncomplicated acquisition (land, improvements, easements, damages/costs to cure, etc.) is over \$10,000, NDDOT offers, and the property owner waives, the right to an appraisal.
- iii. The property type in question is not complex, and value is readily substantiated by an adequate availability of comparable sales data.



- iv. The acquisition does not damage the remainder.
- v. The property's highest and best use as improved is the same as the highest and best use as vacant.

A waiver valuation is to be prepared objectively, consistent with, and supported by the local real estate market. Contrary practices are to be avoided, as they can lead to unfavorable perceptions, such as inconsistency or unfairness, which are a discredit to NDDOT and can actually hinder current and future right of way acquisitions. In addition, a waiver valuation will not be used when circumstances require an appraisal, nor will a waiver valuation be used to justify a settlement that is administrative in nature.

f. Who Can Prepare a Waiver Valuation?

Any individual possessing an adequate level of knowledge of the local market and the nature of the acquisition, and who is able to differentiate uncomplicated acquisition problems from complex ones, may prepare a waiver valuation. All waivers must be approved by NDDOT.

Except for full-time NDDOT right of way staff employees, individuals who prepare waiver valuations are not to be supervised by those responsible for and actively involved in the acquisition negotiations with property owners. Valuation staff and contractors doing valuation work (i.e. appraisals, waiver valuations, etc.) must be removed from possible undue influence by those responsible for property negotiation.

The person preparing the waiver valuation may also act as Right of Way Agent when the total amount of the acquisition (including physical part taken, easements, improvements, and any nominal damages or costs of cure) is less than \$10,000. The person preparing the waiver valuation may not act as negotiator if the total amount is greater than \$10,000.

g. Role of Appraiser in Market Research for Waiver Valuations

A qualified appraiser or knowledgeable person will be used to conduct all market research and analyses used to substantiate the waiver valuation acquisitions.

h. Documentation Requirements for Waiver Valuation

The waiver valuation will be documented as follows in the appropriate project parcel file:

- i. Negotiator Report & Ownership Contact Form ([Exhibit III-1](#))



- (1) Detailed narrative of acquisition.
  - (2) All necessary calculations to clearly demonstrate how the estimate was computed, including a breakdown of fencing payments, nominal damages, and/or costs to cure (if any).
  - (3) Reference to NDDOT's fencing schedule as the basis for payment, if the amount includes fencing.
  - (4) A statement that the property owner was offered the right to an appraisal, but agreed to waive that right in exchange for payment via waiver valuation (Note: This is necessary only if the waiver valuation is between \$10,000 and \$25,000.)
  - (5) A signed statement by the preparer of the waiver valuation, certifying that they have neither current nor prospective interest in the property that is the subject of the waiver valuation.
- ii. Comparable sales and/or the underlying rationale supporting the waiver valuation, if a basic data book was not developed.
  - iii. A copy of Chief/Review Appraiser's Statement of Project Review or Statement of Appraisal Waiver Review.
  - iv. Bids for cost-to-cure items, if warranted.
  - v. Basic data book (when appropriate)

NDDOT has a Minimum Payment Policy that is potentially applicable to all acquisitions, including those based upon waiver valuations. When a waiver valuation results in a total amount that is less than the Minimum Payment Policy, the payment according to NDDOT's Minimum Payment Policy will automatically be offered to the property owner.

Any deviation from the established procedures for waiver valuations could result in loss of Federal funds.

## **2.13 APPRAISAL POLICY**

- a. **Appraisal Process as Cornerstone of Just Compensation:** The US Constitution and the State of North Dakota Constitution require that a property owner be paid "just compensation". The Uniform Act requires that an "approved appraisal" be used to develop an amount the agency believes to be just compensation. The amount offered to the property owner cannot be less than the amount of the approved appraisal. The appraisal, then, with its review and approval by NDDOT, provides the cornerstone on which is built the entire effort to provide the property

owner with just compensation.

- b. Uniform Act and USPAP: Appraisals developed and reported for NDDOT's eminent domain purposes must comply with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (aka, The Uniform Act), the North Dakota Constitution, statutory and case law, and state administrative law and policy. As a matter of public policy, the FHWA regards the appraisal requirements of the Uniform Act to be consistent with Standard Rules 1, 2, and 3 of the Uniform Standards of Professional Appraisal Practice (USPAP). This "consistent" relationship was more formally recognized in OMB Bulletin 92-06.

While the appraisal requirements of the Uniform Act are considered to be consistent with the USPAP, neither can supplant the other, because the provisions of each are neither identical, nor interchangeable. The Uniform Act was established specifically to address the acquisition of real property for Federal and federally-assisted projects, whereas Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) -- which provides the basis for the USPAP -- was established for mortgage lending; a different and unrelated purpose. Appraisals performed for Federal and federally-assisted real property acquisition must, therefore, follow the requirements of the Uniform Act.

North Dakota appraisers, state-certified through the NDAQEB, are required to develop and report appraisals in compliance with the USPAP, as a condition of their certification. An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and the Uniform Act appraisal requirements may be achieved by using the Supplemental Standards Rule and the Jurisdictional Exception rule of the USPAP, where applicable.

- c. All lands or interests in land required for right of way shall be appraised by qualified appraisers.
- d. Contract (fee) appraisers must either be licensed or certified by the North Dakota Appraiser Qualifications & Ethics Board. (NDAQEB). This requirement pertains to all appraisal problems, regardless of their complexity. If the contract appraiser is not licensed or certified by NDAQEB but has comparable licensing/certification in another state, the appraiser must obtain a temporary practice permit from NDAQEB prior to the appraisal's development. Appraiser licensing and appraiser certification are neither interchangeable classifications, nor are the sole criteria for selection of a contract (fee) appraiser. Selection of a contract (fee) appraiser must also consider, in the context of the individual appraisal problem, other factors relating to professional competence, including professional qualifications, education, experience, and other relevant factors. The Chief/Review Appraiser determines the minimum level of appraiser qualifications necessary for each appraisal assignment through the initial scoping.

Consulting fee appraisers, when hired for a project assignment, are selected from an approved list of appraisers maintained by NDDOT. The intent of the list is to assist in locating independent contract (fee) appraisers who have demonstrated an ability to provide appraisal services in compliance with Federal regulations. A contract appraiser does not have to appear on the list to perform appraisal services for NDDOT, nor is an individual's inclusion on the list to be considered a generic endorsement of professional competence for all appraisal assignments. Individual appraiser qualifications and professional competence are to be considered with each assignment and in the context of the specific appraisal problem.

- e. All appraisals will be prepared in accordance with the provisions of the Uniform Act and NDDOT's Right of Way Manual. The development and reporting of complex appraisals will observe on the Uniform Standards for Federal Land Acquisitions (USFLA), established by the Interagency Land Conference, modified as appropriate to conform to the additional appraisal requirements specified in NDDOT's Right of Way manual.

Exceptions to this requirement are allowed in accordance with Minimum Payment Policy, Waiver Valuations, or other administrative agreements as approved by NDDOT management. Administrative agreements are covered in Section 3.7.

- f. Appraisers are usually furnished right of way plats, design plans, and, in the case of permanent acquisitions, a copy of the title insurance company's Preliminary Title Certificate. Fee appraisers will be provided the necessary instructions and directives concerning various complexities of the appraisal assignment. The instructions and directions may include both written and verbal communication. All information furnished to the appraiser is without warranty as to completeness and accuracy, and the appraiser is expected to take all necessary and appropriate steps to ensure proper appraisal development in compliance with accepted appraisal standards.
- g. A property owner may obtain an appraisal independent of the appraisal prepared by NDDOT. The property owner will be offered the opportunity, but is not required, to select an appraiser from the list maintained by NDDOT. An appraiser selected by a property owner must, as a minimum, meet the same minimum requirements for Board certification/licensing and professional competence as required of contract (fee) appraisers hired by NDDOT
- h. Uncomplicated appraisals will make reference to the written appraisal scope, which will be retained in the project file. When the appraisal problem is complex, the written scope of work will be included in the appraisal report's addenda.
- i. Complex appraisal problems involving a partial take require a complete "Before and After" analysis of the subject property.

- j. As a general rule of thumb, railroad-owned properties, and any complex appraisal problem, including the appraisal of improved properties requiring whole takes and/or relocation, should be among the first properties appraised for a project, so as to maximize available lead time.
- k. When buildings lie within the proposed new right of way, the appraisal will typically be made on a buy-out basis.
- l. "On-premise" signs, which are permanently affixed to the land, shall be appraised as a component of the whole property as real estate. The value estimate will be arrived at through the same processes as used in the appraisal of real estate, as applicable. In all cases where applicable, a reproduction cost new shall be obtained from reliable cost sources.

An "on-premise" sign is defined as: Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on property used for the purpose advertised or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.

- m. All appraisals shall be properly signed and dated by the individuals making the appraisal.
- n. Appraisals require NDDOT review and approval prior to use for all acquisition-related purposes, including making NDDOT's offer to the property owner.
- o. Technical reviews of the appraisals, in compliance with Uniform Appraisal Standards of Federal Land Acquisitions (UASFLA, and 49 CFR 24.104 will be prepared by qualified review appraisers. This includes observance of Standard 3 of the USPAP.
- p. NDDOT's estimate of just compensation is established by the NDDOT staff Chief Review Appraiser. This is based upon an appraisal approved through the review process, together with other pertinent information as appropriate. The amount may not be less than the amount of the approved appraisal.

## **2.14 APPRAISAL SCOPE OF WORK**

The scope of work defines the general parameters of an appraisal. It is a written set of expectations that forms an agreement or understanding between the appraiser and NDDOT as to the specific requirements of the appraisal, resulting in a report to be delivered to the agency by the appraiser. The scope of work specifies or refers to appraisal performance requirements, such as those appearing in NDDOT Right of Way Manual.

Each appraisal assignment is different due to variations in the property type, in physical and economic characteristics, and in the characteristics of an acquisition and its effects on the remainder. These variations can be virtually limitless, so a proper scope of work decision needs to be developed for each appraisal assignment.

The assigned appraiser and the Chief/Review Appraiser work in a cooperative effort to develop the appraisal scope. However, each has a different role in scope development. The Chief/Review Appraiser, who is NDDOT's representative, determines the minimum acceptable scope of work that will be necessary to address the needs of a particular appraisal problem. The appraiser, in turn, has the responsibility of ensuring that the actual scope of work is not less than that which is necessary to produce meaningful, credible results that are not misleading.

Initial appraisal scoping will occur in an early stage of the project, usually after project limits are known and prior to the start of appraisal development. Thus, the actual scope of work appropriate to the problem may evolve over time. To determine the scope of work, a preliminary meeting will be held with the consultant and the NDDOT Review Appraiser. A Preliminary Valuation Review form ([Exhibit II-8](#)) must be completed for every project requiring an appraisal, waiver valuation, and/or basic data book. At this meeting and on the form, the Chief/Review Appraiser will recommend what type of valuations are required for each project.

The actual development phase of the appraisal is a discovery period in which the appraiser uncovers facts and develops conclusions pertinent to the problem that may not have been evident at the time the initial scope of work decision was made. Modifications to the scope may become necessary as appraisal development progresses, so both parties should periodically re-examine the scope to ensure that it is appropriate.

Either the Chief/Review Appraiser or the assigned appraiser may recommend modifications to the scope, but changes must be approved by both parties. Modifications to the scope of work should be in writing, detailing the changes and the reason(s) for the change, and this documentation should be included in the appraisal report.

Each scope of work must address the unique, unusual and variable appraisal performance requirements demanded of the particular problem. The scope of work should consider the specific requirements in 49 CFR 24.103(a) (1) and (2) of the Uniform Act, and address them as appropriate, including:

- a. The appraisal must meet the Uniform Act's definition of an appraisal.
- b. The appraiser must afford the property owner or the owner's designated representative the opportunity to accompany the appraiser on the inspection of the property.

- c. The appraiser will inspect the subject property, with the extent of the inspection being appropriate to the appraisal problem. The scope of work will also address:
  - i. The extent of the inspection and description of the neighborhood and proposed project area.
  - ii. The extent of the subject property inspection, including interior and exterior areas.
  - iii. The level of detail of the description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, the remaining property).
- d. The appraisal report will include a sketch of the property and provide the location and dimensions of any improvements. Adequate photographs of the subject property (street scenes from all four primary directions, with subject clearly indicated in each photo; exterior photos, and, when an interior inspection is completed, interior photos) and comparable market data, with appropriate captions to assist the reader. Also to be included are clear, descriptive maps depicting the location of the subject property and comparable data.
- e. The appraisal report will include:
  - i. Purpose/function of appraisal, intended use and intended user.
  - ii. Description of the property rights to be appraised; and the property rights to be acquired.
  - iii. Definition of the value standard appraised. Value based on the property's "as is" condition.
  - iv. The effective date of the appraisal; and the date of the appraisal report.
  - v. A report of realty/personal property, per 49 CFR 24.103(a)(2)(i).
  - vi. Known and observed encumbrances, if any.
  - vii. Title information
  - viii. Location
  - ix. Zoning
  - x. Present use
  - xi. At least a five-year sales history of the property, as per the Uniform Act.

xii. Signature and Certification of Appraiser

- f. Identification of highest and best use, both as vacant and as improved (the latter, when the site is improved). If highest and best use is in question or different from the existing use, provide an appropriate analysis identifying the market-based highest and best use.
- g. Parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The extent of market research and information requirements, inspection, analysis, and verification of market data should be clarified.
- h. Identify the general and specific assumptions and limiting conditions of the appraisal.
- i. Disregard any increases or decreases in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project.
- j. Report the analysis, opinions, and conclusions in the appraisal report.

The scope of work decision cannot be less than the minimum level necessary to produce credible results that are not misleading.

## 2.15 GENERAL PROCEDURE

Appraisals shall be consistent with 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs, including the UASFLA as published by the Interagency Lands Acquisition Conference and the Justice Department. Appraisals must also comply with state-approved requirements.

- a. Some of the procedures typically considered in an appraisal's development include:
  - i. A review of the transcript of public hearings and general file data.
  - ii. A check of various sources including public records for current comparable market information relevant to the assignment.
  - iii. Inspection and confirmation of comparable market data. The details of the comparable market data should be verified by the appraiser. The verification should be with a party directly involved with the comparable (i.e. seller, buyer, lessor, lessee, etc.). If confirmation with a party directly



involved with the comparable is not possible, a second choice would be to verify the market information with another party fully informed as to the relevant background and details of the comparison. The appraiser should also personally complete a curb viewing of comparable sales.

- iv. Contact with knowledgeable persons for further market data and market trends in the area.
- v. The appraiser is to notify all property owners of the subject property, verbally or in writing, that their property is being appraised. (The appraiser will promptly send to the property owner written notification of the appraisal and right of accompaniment, via certified mail, if telephone or in-person contact cannot be established with the owner.) The property owner, or the owner's designated representative, must be afforded the opportunity to accompany the appraiser during an inspection of the property. This offer of accompaniment shall be documented in the appraisal report. All tenants should be interviewed when they can reasonably be found.
- vi. The appraisal report will include a discussion of the ownership contact, including the offer of accompaniment extended to the property owner, whether the property owner/designated representative elected to accompany the appraiser, the date of the inspection, etc.
- vii. The direct sales comparison approach is a necessary part of every appraisal except in the valuation of some special-purpose property types, and/or in other cases where no market data is available.
- viii. The cost approach should be used in the appraisal of improved special purpose properties, and/or whenever buildings are acquired. The cost approach may not be applicable in some appraisal problems. However, regardless of the approach's applicability, appraisals of improved properties should still include an estimate of the improvements' cost new to assist acquisition and relocation personnel.
- ix. The income approach should be used when applicable, such as when market research indicates that typical buyers/sellers are relying on the method to make buy/sell decisions. Appraisals of improved properties, developed in anticipation of a total acquisition, should include an estimate of the property's market rent to assist acquisition and relocation personnel.
- x. Not all appraisal assignments will require the cost and income approaches. However, these approaches should never be excluded if the results of the appraisal are unreliable and/or misleading.
- xi. The appraisal report must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his/her



opinion of value. The adequacy of an appraisal report for a particular assignment depends upon the problem's complexity and the level of detail needed to clearly and credibly communicate the analysis in a manner that is not misleading.

If a project is anticipated to have more than a few uncomplicated appraisals, market research and general analysis may be consolidated into a basic data book. Uncomplicated appraisals may then refer to supporting information and analyses appearing in the basic data book (typically, city and neighborhood analyses, comparable market data and analyses, etc.), to reduce unnecessary repetition, to improve reporting time, and to help expedite appraisal review. References should be specific as to the precise location of supporting information and analyses in the basic data book.

If a project is anticipated to be limited to only a few uncomplicated appraisals, the initial appraisal scoping should consider whether it is preferable to develop a basic data book, or, to simply include all relevant supporting information and analyses directly in each appraisal report.

Complex appraisals should not be linked to a basic data book but, rather, should be self-contained.

To save time, ensure consistency, and provide assurances as to an impartial analysis, the person preparing the Basic Data Book on a particular project should also be the same person preparing the project's uncomplicated appraisals.

Appraisal reports are subject to detailed examination and review by NDDOT personnel and may also be reviewed by the FHWA on those projects involving Federal-aid participation. In the event that the review concludes that an appraisal amount should be more or less, then the appraiser may reconsider, but will not be required to alter the amount of their appraisal, unless it is evident that the appraiser has made significant oversights, mistakes or errors in the development and/or reporting of the appraisal.

In the case of partial takings, the appraiser must differentiate between damages that are compensable and damages that are not compensable. Only damages that are legally compensable may be considered. Damages must not be remote or speculative. Compensable damages must be substantiated by market evidence and sound reasoning. Compensable damages are offset by special benefits, when present. There are no net damages when the amount of special benefits equals or exceeds compensable damages.

## **2.16 APPRAISAL DEVELOPMENT**

The adequacy of an appraisal's development depends upon the property type appraised, the nature of the acquisition, the work's intended use, the practices of real estate market participants, and what is considered "reasonable" among the appraiser's professionally

competent peers with respect to the particular appraisal problem. The scope of work decision also has a role in determining the adequacy of appraisal development.

Development of NDDOT appraisals, for eminent domain-related purposes, will observe the requirements of the Uniform Act. This means:

- a. The appraisal will conform to the Uniform Act's definition of and requirements for an *Appraisal*;
- b. The extent of appraisal reporting required will depend upon the complexity of the appraisal problem.

The Uniform Act defines an *appraisal* as:

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

The Uniform Act's definition of an appraisal is specific to the appraisal needs of public agencies with the power of eminent domain. This is specifically noted, as the definition may vary from that used in some appraisal literature. It is important that consulting fee appraisers, whose practice is often heavily invested in the valuation of real property for mortgage-lending purposes rather than appraisals for eminent domain purposes, understand and are able to successfully apply the valuation definitions, concepts, and methodology uniquely appropriate to eminent domain appraising.

The elements in the definition of an appraisal are examined in the following discussion.

"A Written Statement": The appraisal must be in writing. This is required so that the appraisal will serve as a permanent record documenting support in the payment of Federal funds. The report must be written in a form that is not readily subject to alteration. This means the report should be either typewritten or written in non-erasable ink. The important items of value in an appraisal, such as dollar amounts should not be erased and written over or otherwise altered. When corrections to an appraisal are necessary, but are not made by an addendum or separate report, a single line should be drawn through the incorrect information, the correct information should be noted above or in the side margin, and the correction should be initialed and dated.

"Independently and Impartially Prepared" - The provision for independent, impartial preparation is intended to preclude two different appraisers, assigned to the same appraisal problem, from exchanging opinions and analysis of data. Such an exchange of opinions and data analysis can result in the agency paying for two appraisals, yet basically receiving only one. The exchange of factual data between two appraisers is permitted, and would include factual information of comparable sales that is a matter of public record, such as grantor/grantee, date of sale, deed book, and page where the instrument is recorded. However, the exchange of an analysis of the sale, opinions as to condition, or

other subjective data is not permitted. This does not preclude the use of multiple appraisers from the same firm or otherwise working in a cooperative effort to produce a single appraisal. In such a case, each responsible appraiser will sign the work and if pertinent, describe the phases of the appraisal they actually performed.

"By a Qualified Appraiser" - This requires the appraiser to be adequately qualified and experienced to perform the specific type of appraisal involved. Basic qualifications of appraisers are set forth in the State of North Dakota Human Resource Management Services Realty Officers series. The Competency Rule of the USPAP applies in the selection of an appraiser.

"Setting Forth an Opinion of Defined Value" - The appraisal report must show the appraiser's opinion of the value of the property. Federal law requires, in part, that the amount to be offered the property owner may not be less than the "...approved appraisal of the market value of the property...." This means, then, that "market value" is the value standard to be estimated in eminent domain appraisals prepared for projects using Federal-aid funds.

"Of an Adequately Described Property" - The "adequacy" of a description depends upon the nature of the appraisal problem, on the physical and economic characteristics of the subject property (larger and remainder parcels), on the acquisition and, in the case of a partial take, its effects on the remainder. Descriptions should contain enough detail to effectively communicate the appraiser's understanding of the valuation problem, the property, the nature of the acquisition, and its effects on the remainder. The appraisal must adequately describe all relevant parts of the subject property and related parts of the appraisal problem, including the property interest appraised, and the property interest being acquired. Appraisal development will recognize the applicability of the unit rule, when various portions of the real property may have different owners, such as in the case of a site leased to and improved with a building constructed by a tenant.

"As of a Specified Date" - The appraisal is effective as of a specific date, which should not be later than the appraiser's latest inspection of the subject property. The date, however, can be prior to the inspection if the appraiser is preparing a retrospective appraisal based upon photographs, descriptions, and other data accurately describing the property and its condition.

"Supported by the Presentation and Analysis of Relevant Market Information": The appraisal must include all the pertinent assumptions and the pertinent facts that the appraiser considered in arriving at his/her conclusion of market value. These facts and assumptions should be specifically set forth in a report and the appraiser should distinguish as to which are assumptions and which are facts.

The appraiser will research, assemble, and analyze relevant, factual, market supported information about the subject property and the market in which it competes. "Analyze" means, "to separate into parts or basic principles so as to determine the nature of the whole; a methodical examination." ("The American Heritage College Dictionary, Third

Edition, copyright 1997, 1993, Houghton Mifflin Company). Thus, the requirement for analysis means that the appraiser must consider the essential components of supporting market information, such as sales or rental data, as they relate to the subject property and the appraisal problem. This must be shown in the appraisal and will typically involve a breakdown of the various characteristics of comparable sales or listings, followed by their comparison with the subject property.

The customary appraisal practice of most mortgage-loan appraisers is to limit market research to a minimum number of comparable sales necessary to support a conclusion. That decision is driven by loan underwriter requirements that may fall short of the level of due diligence expected in an eminent domain appraisal that by nature of its intended use, is prone to the discovery process and to litigation. It is, therefore, essential that the appraiser search the market to assure that all sales have been considered that, by any stretch of the imagination, could be deemed pertinent to the problem. Such sales should be included in the appraisal report (or the report should include appropriate reference to the information) so that, in the event of condemnation, the appraiser can affirmatively state that all potentially relevant sales were considered, including those that, for valid reasons, were given little or no weight in the final reconciliation.

NDDOT has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and Federally-assisted program appraisal practice and, as a minimum, complies with the Uniform Act's definition of an appraisal and the following requirements:

- a. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a five-year sales history of the property
- b. All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
- c. An adequate description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

Identified photographs of all comparable sales are to be included whenever possible.

- d. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the

remaining real property, where appropriate.

- e. The effective date of valuation, date of appraisal, and a certificate of value signed by the appraiser.

The above requirements are imposed by the Uniform Act and are to be considered in the development of every appraisal for eminent domain purposes. Though approaches to value have been developed to aid in the appraisal of virtually any property type, the essential parameters that determine whether an appraisal is "complete", "adequate", "relevant", "appropriate" and "reasonable" are less precise, such that the extent of appraisal development appropriate for one assignment may not be adequate for another. Each appraisal depends on a variety of considerations, such as the nature of the problem (e.g. the property type; the physical and economic characteristics of the larger parcel; the specific nature of the acquisition and how it affects the remainder); the appraisal's intended use (eminent domain, in this case); the customs of market participants considered in the context of the defined market value standard; and on the practices of competent peer- professionals. This is specifically noted to illustrate the inherent variability between appraisal assignments, and to emphasize the importance of observing sound appraisal practices.

All eminent domain appraisals shall disregard any decrease or increase in the market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner. This is both a Federal and State requirement. When knowledge of the project has become public and sales have occurred in the area in anticipation of the project happening, the appraiser must not use these sales.

Eminent domain appraisal problems will involve acquisitions that are either total or partial:

Total Acquisition - Conceptually, appraisals made in anticipation of a total acquisition of a property need simply to address the value of the subject property as it exists before the project, free from the project's influence. However, a distinction sometimes needs to be made between a total acquisition needed to enable project construction, versus a compulsory total acquisition that is the result of a partial take that otherwise leaves the owner with an uneconomic (but otherwise readily marketable) remnant. The distinction between the two situations can sometimes be very subtle, yet, should nonetheless be identified, since the acquiring agency may be able to offer the uneconomic remnant for re- sale to the open market.

Partial Acquisition - Appraisals made in anticipation of a partial acquisition of a property require analysis of the property both before and after the take. True "Before-and-After" valuation methodology is not simply an analysis of "market value less taking and damages" but, instead, involves the valuation of two distinctly different properties, one embodying all pertinent characteristics existing before the take, and the other embodying all pertinent characteristics existing after the take.

In the case of a partial acquisition:

- a. The estimate of market value is to be separated into dollar amounts for the value of the property actually taken, the value of any damages and/or special benefits to the remaining property.
- b. Proper consideration must be given if allowable benefits and damages are included in the fair market value estimate.

Discussion of Fair Market Value in Appraisals for Agencies with the Power of Eminent Domain - NDDOT's eminent domain appraisals are developed based upon "market value". Market value is defined in North Dakota, NDCC 24 (Highways, Bridges, & Ferries):

*"Market value" means the highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion and both exercising reasonable judgment."*

The words "market value" and "fair market value" are actually synonymous. The United States Supreme Court has even commented on the lack of distinction; as has the United States Congress in its legislative history of Public Law 91-646.

Market value is used as the basis to "indemnify" the owner of the property for his/her loss. The loss is paid in money. The amount of money is represented by the market value of the property which, in turn, is based on the market actions of knowledgeable, informed parties exercising reasonable judgment and not acting under compulsion. While the State of North Dakota's market value definition in NDCC 24 refers to the "highest price", the reference is further qualified as being in the context of buyer and seller acting willingly, reasonably, and without compulsion.

Market value is customarily estimated in terms of cash or cash-equivalent terms, as distinguished from a price based either wholly or partly on the face amounts of notes or other securities that cannot be sold at their face amounts. Some real estate transactions may be financed with special terms that are atypical of the market. Special terms can have the net effect of inflating the sale price beyond market levels likely to be realized if the sale had been made strictly for cash or cash-equivalent terms. To the appraiser, this means that the investigation of comparable sales requires due diligence to ascertain whether a sale was influenced by special financing terms, trades, or other unusual conditions.

Transactions of this nature should be carefully compared to other transactions of comparable properties that were either purchased for cash or financed at typical market terms.

The market value definition requires each party to the sale to be willing, not acting under compulsion, and exercising reasonable judgment. The market value estimate should,



therefore, not be based upon "forced" sales or sales that occurred under duress of any type. The motives of both parties to a sale should be examined, since either can be compelled to act because of duress. Sales culminating in a price substantially above or below the level at which a "meeting of the minds" is likely to occur should be carefully examined to ensure that both parties were willing, reasonable, and not unduly influenced to act. Sales to a condemning authority, such as those made for right of way acquisition purposes, are ultimately made under threat of condemnation; are not open-market, arm's-length transactions; and should not be emphasized as a supporting basis for the opinion.

Appraisers are also to exercise care to ensure that eminent domain appraisals consider only those issues that are relevant to the valuation of the real property estate. Property owners typically may have a variety of concerns, including disruption or loss of business due to the project; may be unwilling to sell; or may be unable to find a replacement location, etc. While such concerns may be very real to the property owner, they are not of themselves relevant to the valuation of the real property and, therefore, they are not considered by the appraiser. (See 2.18 for a list of non-compensable items). The appraiser cannot account for issues extraneous to the question of the real property's value to the open market. This means that the appraiser cannot account for items that are non-compensable, and cannot otherwise add value into his/her opinion because of sentimental attachment or because of the owner's unwillingness to sell.

## **2.17 APPRAISAL REPORTS: FORMATS, NUMBER, AND TYPE**

Appraisal development requirements, as per the Uniform Act, are the same for all NDDOT appraisals made for eminent domain purposes. However, this is not to say that every appraisal must be communicated using the same *report* format. This section explains NDDOT policy in the selection and use of appraisal report formats.

An *appraisal report* is a written document containing sufficient documented information, valuation data, and the appraiser's analyses of that data, to support his/her opinion of value.

The "adequacy" of appraisal reporting depends upon the nature of the appraisal problem, including the type of property appraised and the nature of the acquisition problem, the actions of market participants, the peer-practices of competent appraisers, and the appraisal's Intended Use. The adequacy of appraisal reporting also depends upon the problem's *complexity*.

For NDDOT purposes, eminent domain appraisal problems are either classified as "uncomplicated" or "complex". An appraisal problem is "uncomplicated" when all of the following criteria apply:

- a. The acquisition is of low value.
- b. The parcel's present use is the property's highest and best use.

- c. The property's highest and best use is the same before and after the taking.
- d. Adequate comparable sales data are available.
- e. Damages are nominal and/or readily measured by their cost-to-cure.
- f. The acquisition does not create special benefits.

Uncomplicated appraisal problems involve simple acquisitions of low value, causing minimal or no effect to the remainder property. Damages are either nominal or are readily estimated by the cost of their cure.

Uncomplicated appraisal problems typically don't require lengthy, detailed, and costly appraisal reports to address the valuation problem. In these circumstances, the use of an abbreviated appraisal report can be to public benefit by expediting the appraisal and review process, by saving time and costs, speeding administrative approval, and avoiding unnecessarily long, stylized formats that contribute little, if anything, to the value estimates reliability and/or accuracy.

Uncomplicated appraisal reports may be communicated using the "restricted" or "short form" appraisal report formats. As a general rule, the short form appraisal report ([Exhibit II-1](#)) may be used for uncomplicated acquisitions involving amounts that are less than \$25,000, and the restricted appraisal report may be used when the uncomplicated acquisition exceeds \$25,000. The appropriateness of a particular report format will ultimately depend, however, on the adequacy of available data and the level of detail required to effectively communicate the assignment results. Contact the Chief/Review Appraiser for concerns and clarification.

To reduce unnecessary repetition, and to expedite appraisal and review processes, both reports may refer to supporting information and analyses contained in a separate basic data book. In a short form report, additional comments may be included on attached pages to the extent necessary to effectively communicate the results of the appraisal. Short form reports should not be used when litigation is anticipated.

An appraisal problem is "complex" or "detailed" when any one or more of the following criteria apply:

- a. A complicated valuation problem is involved.
- b. A complex specialty report is needed.
- c. The highest and best use of the property is different after the acquisition, compared to before the acquisition.
- d. Damages, other than cost-to-cure, are more than nominal.



- e. Decreases or increases in market value due to the proposed improvements are involved.
- f. Market data for a sales comparison approach is inadequate and consideration must be given to the cost and/or income approaches, as appropriate.
- g. The possibility of adversary eminent domain proceedings is high.
- h. The acquisition creates special benefits.

Complex appraisal problems require detailed appraisal reporting; the more complex the problem, the greater the need for detailed information. Also, generally, the more complex and sophisticated the appraisal problem, the greater the need for two appraisals. Two appraisals will usually be requested when the assignment involves the total acquisition of an improved property with improvements contributing substantial value, or when the likelihood for litigation is high.

Complex appraisals are developed and reported in written narrative format, according to the UASFLA. Complex appraisals should be self-contained rather than being linked to information found in a separate document, such as a basic data book.

The scoping of the appraisal assignment, developed jointly by the appraiser and the Chief/Review Appraiser, will seek to identify the type of appraisal report believed to be appropriate for each assignment. An *uncomplicated appraisal* will contain all necessary information to provide a supported opinion of value, but at considerably less detail than that expected of a *detailed appraisal*. Regardless of the selected format, all appraisal reports will include the following items:

- a. The appraiser or acquisition agent will offer the property owner or the owner's designated representative the right to accompany the appraiser on an inspection of the property. Both in-state and out-of-state property owners shall be contacted and afforded this right of accompaniment. The appraisal report should include a discussion of the ownership contact that indicates that the offer of accompaniment was extended to the property owner, whether the property owner/designated representative elected to accompany the appraiser, the date of the inspection, etc.
- b. The purpose or function of the appraisal, a definition of the estate being appraised, a statement of the assumptions and limiting conditions affecting the appraisal, and the type of appraisal report. For brevity, the assumptions and limiting conditions may be placed in the basic data book.
- c. An adequate description of the subject neighborhood; physical characteristics of the property being appraised, acquisition area/parcel, (and, in the case of a partial acquisition, an adequate description of the remaining property); a statement of the known and observed encumbrances, if any; title information (a copy of the

Preliminary Certificate of Title (PCT) ([Exhibit V-1](#)) or Surface Ownership Report (SOR) ([Exhibit V-3](#)) will show the five-year delineation of title; location; zoning; present use; and analysis of highest and best use; and a minimum five-year sales history of the property.

- d. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair-market value given the specific appraisal problem encountered, NDDOT, at its discretion, may require only the sales comparison approach. If more than one approach is used, there should be an analysis and reconciliation of value that is sufficient to support the appraiser's opinion(s) of value.
- e. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- f. Identified photographs of the subject property including all principal above-ground improvements or unusual features affecting the value of the property.
- g. An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which the appraiser considers to be a part of the real property to be acquired.
- h. The estimate(s) of market value. In the case of a partial acquisition, a reasonable allocation of the market value estimate should be contained in the report.
- i. The date of the property inspection, the effective date of the value estimate, and the date of the report's preparation. The date of the property inspection is usually the effective date of the value estimate.
- j. The appraiser's certification ([Exhibit II-2](#)), signature, and date of signature.
- k. Other descriptive material (maps, charts, plans, photographs).
- l. The project number and parcel identification.

Appraisals shall be consistent with 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs and, in cases of complex appraisals, the UASFLA, published by the Interagency Land Acquisition Conference and the Justice Department. Appraisals must also comply with State-approved requirements.

A basic data book containing project data useful to more than one appraisal within a particular project may be developed and used in the appraisal process. Information contained in the basic data book (typically, city and neighborhood analyses, comparable

market data, etc.) can be used to supplement each appraisal report, thereby reducing or eliminating repetition. Specific information contained in the basic data book is referenced in the appraisal report where applicable. Any information incorporated into an appraisal through reference to a Basic Data Book must be specific concerning the type of data applicable to the appraisal, and to the data's specific location in the basic data book.

A guide to determining the type of valuation may be found at [Exhibit II-6](#).

## **2.18 NON-COMPENSABLE DAMAGES**

Some damages have been found by the state courts not to be compensable and should not be included in appraisals. In general, non-compensable damages are all types of damages which can be considered to be potential, speculative and remote, being uncertain and difficult of ascertainment. The non-compensable damages may include:

- a. Damage to business.
- b. Loss of good will.
- c. Damages arising from owner's inability to locate acceptable substitute location.
- d. Loss of profits due to necessity of moving business to some other location.
- e. Loss of profits due to interruption of business by reason of and during course of construction of the public improvements or for any reason at all.
- f. Noise and fumes caused by increase of traffic.
- g. Damages due to annoyance and inconvenience suffered by the public generally.
- h. Rerouting or diversion of traffic.
- i. Increase or decrease in the amount of traffic on the highway.
- j. Living expenses, incurred while relocation or resettlement is being accomplished.
- k. Personal damages suffered by the owner, such as damaging elements resulting from the exercise of the state's police power.

The above list may not cover all non-compensable damages. Furthermore, legal authorities may disagree on the compensability of a particular damage issue. For these reasons, legal advice should be sought to assist the appraiser in determining the compensability of a particular damage concern.

## 2.19 SPECIAL BENEFITS

In North Dakota, special benefits, when present, offset compensable damages to the remainder. Special benefits cannot be used, however, to offset the value of the property being acquired. There are no net damages when the amount of special benefits equals or exceeds compensable damages.

## 2.20 UNECONOMIC REMNANTS AND ALTERNATE APPRAISALS

An uneconomic remnant is, "a remaining part of land, after a partial acquisition, that NDDOT determines is of little or no use or value to the owner." NDDOT will offer to purchase all uneconomic remnants.

Alternate estimates of value should be prepared by the appraiser in two situations involving uneconomic remnants that may need to be acquired due to a project.

Situation A - uneconomic remainder, with legal access: In acquiring right of way, an uneconomic remnant may be left which would be of value only to an abutting property. The remainder does have access, however. The appraiser should prepare an estimate of value for the right of way plus the uneconomic remnant. If the property owner decides to sell the remainder, the acquisition agent will be in a position to make an offer which includes the uneconomic remnant.

Situation B - uneconomic remainder, without legal access (landlocked): Where the remainder is landlocked, the appraiser shall prepare an appraisal for the right of way required and obtain an estimate of the cost of construction of an access road to the landlocked remainder. An alternate appraisal shall be prepared for the right of way plus the remainder, without access.

## 2.21 ACQUISITION OF BUILDINGS

Negotiations shall be on the basis of an outright purchase of buildings located partially or completely within the acquisition. An inventory list of all buildings and improvements (outbuildings, quonsets, sheds, etc.) acquired shall be prepared and included in the Negotiator Report.

## 2.22 SALVAGE VALUES

Salvage value is,

*"... the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e. not eligible for relocation assistance)."- 49 CFR 24.2(a)(23)*

Salvage values of buildings and equipment, if any, shall be estimated by the appraiser as of the effective date of the appraisal. The salvage value estimate(s) will be used to provide the acceptable dollar amount for buy-back options during negotiations with the owner.

## **2.23 WELLS AND SPRINGS**

When the right of way acquisition on given parcels include the taking of a well or spring, the policy will be to include in the appraisal an amount estimated to be the depreciated value of the well or spring and damages to the remainder. This will necessitate a complex appraisal.

It is necessary to have data on the quality and quantity of water produced by the well or spring prior to construction of the project.

The appraiser shall obtain water samples and have them analyzed by the State Health Department Laboratory. The quantity should be determined by a draw-down test.

## **2.24 CATTLE PASSES SEQUENCE AND JUSTIFICATION**

The installation of cattle passes are made to allow for the safe and free movement of livestock on a property from one side of a public roadway to the other.

Requests for cattle passes originate either at the District level or by owner contact through Right of Way personnel. These requests will be processed through the ETS Division.

Complex appraisals will be prepared on properties where there is a new alignment and a cattle pass has been requested. The appraisal will be prepared with two after values, one considering the damages without the cattle pass installed and one with the cattle pass installed. This will determine the damage mitigated by installation of the cattle pass and if the property owner will be required to contribute toward the cost of the cattle pass.

- a. Requests on projects scheduled for reconstruction.

During a route inspection, a representative from the Right of Way Section should accompany the inspection team. All situations of possible cattle pass requirements will be noted and included in the route location report. A copy of the report shall be submitted to the ETS Division for future reference by appraisal personnel.

During the appraisal field investigation, the appraiser will further investigate all possible requirements for cattle passes within the assigned project. All data will be collected as required in "Cattle Pass Consideration" form [Exhibit II-3](#) by the

appraiser during his/her field investigation.

Upon completion of the field data on the form, the appraiser will forward the form to the Design Division project designer for office data.

Upon completion of the "Design Data" and economic factors, the Right of Way Section will analyze the cattle pass request regarding justification and amount of property owner monetary contribution when applicable. This justification will conform to the following criteria and will be reviewed and approved by the ETS Division Director:

- i. The highest and best use of the property must include a provision for a livestock operation.
- ii. Fee simple ownership on both sides of the roadway.
- iii. The property must be fenced on both sides of the roadway prior to construction of a cattle pass.
- iii. Is decision sight distance available?
- iv. No more than one cattle pass will be provided per mile when ownership is contiguous
- v. 5' x 7' stock passes will only be provided when raising horses are a part of the operation. The use of saddle horses to herd cattle does not normally justify the installation of a stock pass.
- vi. The joint use of a structure as a cattle crossing and drainage structure must always be considered.
- vii. Cost justification is determined by any or all of the following:
  - (1) Safety warrants shall always be considered as the first justification for a cattle pass.
  - (2) Road user cost benefits shall be considered as an additional justification of a cattle pass.
  - (3) Mitigated damages, and or, a cash contribution by the property owner shall be the final justification of a cattle pass.

Cattle passes justified entirely by safety and road user benefits do not become a property right of the property owner.

Cattle pass justification, which includes mitigated damages and/or property owner

contribution shall become a property right.

b. Request for cattle passes on completed projects

It is usually recognized or understood that cattle passes are installed during new construction to mitigate damages; or, portions of the installation cost were borne by the cost of a culvert being replaced; or the property owner has contributed a proportionate share of the cost.

Because North Dakota State law requires that cattle crossing a State highway must be tended, and because there is no State obligation to mitigate damages, etc., on a completed State highway, it then may be reasoned that a cattle pass will be primarily a convenience to the property owner. The requesting party will be expected to pay 100 percent of the bid price to install unless:

- i. The sight distance at the crossing point is less than the computed decision sight distance for the design speed of the highway.
- ii. The frequency of confirmed crossings is so high that an obvious road user benefit is shown. In this category one must also consider the estimated duration of the crossings based on the size of pasture, adequacy of water, etc.

Under either or both of the above exceptions, NDDOT will, in the interest of safety and road user benefits, pay one half of the installed bid price upon assurance that the property owner shall bear the balance of the cost. In the event NDDOT determines a hazard exists, it may install a cattle pass at its own expense and require the property owner to use it.

c. Procedures for closing or removing existing cattle pass structures on highway construction projects.

- i. The Design Division will determine whether the cattle pass structure is being used for drainage.
- ii. The Design Division will determine if it is cost-effective to plug or remove the cattle pass structure. If the structure is used for drainage, it may be more cost-effective to extend the cattle pass than to install a new drainage structure.
- iii. If the cattle pass structure can be plugged or removed, the ETS Division will contact the property owner to get approval to terminate the owner's rights to the cattle pass. The property owner may be offered payment not to exceed \$1,000 in lieu of extending or replacing the structure.
- iv. The ETS Division will obtain a quitclaim deed from the property owner

conveying the right of access authorizing the crossing of the public way via the cattle pass.

- v. Once the property owner agrees to the plugging or removal of the cattle pass structure, the ETS Division will notify the appropriate District.
- vi. The ETS Division will be responsible for processing payment on all releases and properly recording the quitclaim documents.
- vii. If the property owner will not agree to the plugging or removal of the cattle pass structure, NDDOT will extend or replace the structure. If the proposed cover over the structure exceeds 16 feet, the entire structure may need to be replaced.

## **2.25 APPRAISING ACCESS RIGHTS**

Damages due to control of access will ordinarily be reflected in the before and after value estimates by the appraiser or on a cost-to-cure basis. There will be instances when the attempt to appraise the entire property before and after the taking for controlling of access rights would be impractical, and it is apparent that a token amount is the solution. The appraiser will exercise good judgment in writing reports for these takings as to the need for any lengthy treatise because of the nominal amount of compensation.

Access points eliminated during construction shall be considered during the appraisal process as to any compensable loss to the value of the unit. Typically, the owner must retain reasonable access, but is not entitled to unlimited access. This statement must be kept in mind during the appraisal process. Legal advice should be obtained by the appraiser when determining the compensability and/or non-compensability of loss of and/or changes in access to a particular property.

No damages will be considered for access rights where the controlled access highway is on a new location.

## **2.26 REALTY AND PERSONAL PROPERTY DETERMINATION**

The classification of equipment and fixtures as between realty and personal property is necessary in order that the appraisal may list and evaluate each piece of equipment to be included as realty. Stated in the simplest terms but requiring frequent interpretation, equipment should be considered as part of the realty by reason of its annexation to real property and adaptation to continuing use in connection with the realty. Equipment not falling under this category is considered personal property. The determination of realty or personal property is the responsibility of the appraiser and is subject to review.

In the appraisal of commercial, industrial, and special use properties it is essential that the determinations be made at an early date between realty and personal property in



order that the appraiser may list and evaluate all realty items. The appraisal shall include all realty and the written offer to the owner or tenant, if tenant owned, shall specify all equipment covered by the offer.

## **2.27 FUNCTIONAL REPLACEMENT**

Functional replacement is defined as the replacement of real property, either lands or facilities, or both, acquired as a result of a highway or highway-related project with lands or facilities, or both, which will provide equivalent utility.

When an acquisition involves the facilities of another public agency, other than federally-owned, functional replacement may be considered as a measure of compensation.

During the early stages of project development, District Personnel should meet with the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement procedures. The results of this discussion and decisions concerning functional replacement should be included in negative declarations and environmental impact and Section 4F statements if required on a project.

If the owning agency desires functional replacement, it should initiate a formal request to the ETS Division Director and fully explain why it would be in the public interest.

If NDDOT agrees that functional replacement is necessary and in the public interest, it must submit a specific request for FHWA concurrence. The request should include:

- a. Cost estimate data relative to contemplative solutions;
- b. Agreements reached at meetings between NDDOT and the owning agency and;
- c. An explanation of the basis for its request.

The request shall include a statement that replacement property will be acquired in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable FHWA regulations. After concurrence by FHWA that functional replacement is in the public interest, FHWA may at NDDOT's request, authorize NDDOT to proceed with the acquisition of the substitute site and to proceed with physical construction of minor structures, or, in the case of major improvements, to proceed with development of detailed plans, specifications and estimates. The plans, specifications, estimates and modifications thereof shall be submitted to FHWA for review and approval in accordance with established procedures. Where major improvements are involved, advertising for bids and letting of the contract to construct the replacement facility may follow the general procedures utilized by the owning agency, if acceptable to NDDOT and FHWA. The submission, where applicable, shall include provisions for NDDOT inspection during construction of the replacement facility.

Prior to FHWA concurrence in the award for actual construction, an agreement shall be entered into setting forth the rights, obligations, and duties of each party with regard to the facility being acquired, acquisition of the replacement site, and construction of the replacement facility. The executed agreement shall also set forth how the costs of a new facility are to be shared between the parties. At the earliest practicable time, NDDOT shall have the property appraised, establish an amount it believes to be just compensation, and shall advise the owning agency of the amount established. Subject to the requirements of this regulation, the owning agency has the option of accepting the amount of compensation established by the appraisal process or accepting functional replacement. The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement. In cases where an appraisal is required it will include:

- a. The market value of the acquisition and damages to the remainder, if any, and either:
- b. If the owning agency has suitable lands available, the actual functional replacement cost of relocating the facilities to those lands plus the market value of the lands to be acquired, or
- c. If the owning agency does not have suitable lands available, the actual functional replacement cost of relocating the facilities plus the reasonable cost of acquiring a functionally equivalent substitute site.

NOTE: Functional replacement costs do not include betterments. The owning agency may elect to update its facilities at the time of their relocation; however, the owning agency must bear the costs of such betterments. New replacement facilities must however meet minimum current code requirements.

## **2.28 VALUATION OF EXCESS RIGHT OF WAY PARCELS**

NDDOT periodically leases or disposes of right of way parcels that the District Engineer deems to be surplus to the State's operational right of way needs. Many of these parcels, though State-owned assets are essentially unmarketable due to little or no utility to anyone but the adjoining property owner.

The Right of Way Section estimates the fair market value (or rent, as necessary) of surplus right of way, following the request from the District Engineer to proceed with an appraisal. The appraisal process, typically employing the sales comparison approach, is used as the basis for valuation. The depth of appraisal development and reporting is commensurate with the complexity of the appraisal problem. When a situation involving low value is encountered, the appraiser assigned to the task should consider alternate forms of valuation support, such as a spot-check of sales data provided by the County

Tax Director and/or land survey data as obtained from North Dakota State University. As a matter of public policy, it's expected that an individual preparing such an analysis will use sound judgment as to the amount of effort expended in the development and reporting of appraisals of excess parcels, to ensure the best use of public funds. In many cases, unless the tract in question involves a separately marketable entity with substantial value, a brief memo should suffice.

## 2.29 APPRAISAL REVIEW

The Uniform Act requires the Agency (NDDOT) to establish an amount believed to be just compensation for the real property. This amount:

*"...shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property."* 49 CFR 24.102(d)

Appraisals must be approved prior to their use. The total appraisal process is, therefore, not complete until an adequate review of the appraisal has been completed and a determination made as to whether the work adequately supports the market value opinion for the property, and NDDOT has developed the estimate of just compensation due the property owner.

Appraisal reviews for NDDOT are technical, meaning that the review goes beyond an administrative "checklist", instead requiring the review appraiser to develop and report a credible opinion as to the quality of another appraiser's work. The reviewer's opinion of quality encompasses the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements that are applicable to that work. The review appraiser must also clearly disclose the scope of work performed in the review assignment.

The objectives of an appraisal review include:

- a. To ascertain whether the appraisal was developed to professional standards of appraisal practice, and
- b. To ascertain whether the appraisal provides a reasonable basis for NDDOT's estimate of just compensation.

Each appraisal report is examined to determine that it:

- a. Complies with NDDOT appraisal requirements, including those specified in the Right of Way Manual; in the scope of work decision; and, when a consulting appraiser is used, in the Appraisal Contract.
- b. Follows accepted appraisal principles and valuation methods

- c. Contains or, when appropriate, makes reference to the information necessary to explain, substantiate, and document the conclusions and estimates of value.
- d. Includes consideration of compensable items, damages and benefits, and does not include compensation for items that are non-compensable under North Dakota law.
- e. Contains an adequate identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which the appraiser considered to be a part of the real property to be acquired.
- f. Contains the value estimate for the part taken and, in the case of a partial taking, includes an allocation between the taking, damages, and special benefits, if any.

Review appraisers conduct field inspections of projects, the properties appraised, and the comparable market data used to substantiate the appraisal opinion. A technical desk review of the appraisal is then completed. Appraisals are correlated with the facts which the reviewer has gathered through the field inspection. It is the reviewer's responsibility to be certain all proper procedures, State, and Federal requirements have been followed. The review appraiser prepares a written review report, which is then submitted to the Chief/Review Appraiser who develops NDDOT's estimate of just compensation.

In each review, the review appraiser will have one of three options:

- a. The appraisal meets the minimum requirements, provides a supported, credible basis, and, therefore, can be accepted.
- b. The appraisal contains errors or is otherwise deficient and, therefore, will be rejected.
- c. The reviewer advises the appraiser of errors, deficiencies, etc., and provides the appraiser an opportunity to supplement the report with additional information, clarifying statements, correction of errors, deficiencies, etc.

Each review problem is approached with the goal of obtaining an objective, professional appraisal product that will assist NDDOT in achieving its legitimate project goals. Thus, if the review appraiser is unable to initially approve an appraisal because of a problem identified during review, the review appraiser should work with the appraiser to resolve the problem. Except in unacceptable circumstances involving ethical issues (e.g. fraud, intentional misrepresentation, incompetence, conflict of interest, misconduct, etc.) an appraisal should not be summarily rejected without first affording the appraiser an opportunity to correct the problem.

The appraisal review is not intended to be an adversarial process, and an appraiser accepting an assignment for NDDOT's use should regard his/her response to a review

inquiry as simply following through the professional responsibility to clearly and effectively communicate the appraisal report in a manner that does not mislead. However, the matter of the review appraiser conferring with the appraiser is an area that is often misunderstood.

An appraisal review essentially is an *appraisal* of the appraisal and, for the review appraiser to correctly perform their job, the reviewer must first ensure that they understand the analysis as communicated by the appraiser. Thus, except for those items which involve interpretations of value, the review appraiser should always contact the appraiser and endeavor to straighten out misunderstanding of facts, poor format and items of similar nature.

The reviewer should advise the appraiser of all significant concerns and provide the appraiser opportunity to respond, such as by providing additional support or clarification to resolve deficiencies. The review appraiser must distinguish, however, between problems that are the result of technical errors, omissions, etc. (which warrant resolution), and issues arising because of a legitimate difference of professional opinion, to which the appraiser is entitled. The review appraiser is to remain in an advisory role, not directing the appraisal, and retaining objectivity and options for the appraisal review itself. In addition, just as the appraiser is entitled to his/her opinion, so too is the review appraiser. When extreme differences of opinion exist, it may be necessary to obtain another independently-prepared appraisal to resolve differences.

The level of review analysis depends upon the complexity of the appraisal problem. The written review report for an uncomplicated appraisal, in which the value is less than \$25,000 (includes the part taken, minor improvements, nominal damages and/or their cost of cure), may consist of a simple memorandum summarizing the review scope and conclusions.

More complex review problems will require a more in-depth level of review analysis and reporting detail. Regardless of complexity, review reports should clearly disclose significant appraisal errors, deficiencies, inconsistencies, etc. as identified in the review process, including the steps taken to resolve them. The reviewer should also attach any additional support needed to substantiate the review opinion.

Each written review report will:

- a. Identify the appraisal report reviewed.
- b. Document the findings and conclusions arrived at during the review.
- c. Identify any damages or benefits to any remaining property.
- d. Include the review appraiser's signed certification stating the parameters of the review.

- e. State the approved value.
- f. State whether the appraisal meets the minimum requirements as the basis for NDDOT's estimate of just compensation.

No appraisal report is expected to be perfect. However, at the same time, NDDOT review appraiser must not approve an appraisal report that is deficient, violates standards of practice, employs improper methods, or is otherwise unreasonable. When an error, deficiency, or other problem is identified, NDDOT review appraiser will need to take appropriate action, such as described in Revision of Appraisals.

### **2.30 REVISION OF APPRAISALS**

In many instances after the original appraisal(s) of a property have been received, reviewed, and approved, a revision is required. This is sometimes caused by a change in right of way requirements, change in construction plans, oversights, a material change in the character or condition of the property, a significant delay has occurred since the time of the appraisal(s) of the property, or the updating of the report for condemnation purposes.

Revisions caused by lack of documentation, errors, or changes in right of way requirements prior to the original review approval will be done by the appraiser. An original copy of all appraisal reports shall be retained. When correction(s) or revision(s) are necessary, the appraiser shall furnish corrected, revised, or supplemental pages or portions of the report for attachment to the original. Any request for a substantive correction or revision shall be documented in the files.

Treatment of subsequent revisions will be as follows:

- a. If the revision is due to a minor change in right of way requirements or a minor oversight, and if there is no resultant depreciation other than previously set forth in the appraisal, and if the property is not in condemnation, then NDDOT staff review appraiser can submit a Memorandum of Appraisal Review setting forth the reasons for the change and the revised compensation.
- b. If the revision, due to change in right of way requirements or construction plans, is substantial, the appraiser is to be apprised of the situation by letter or memo and a revised appraisal report requested. In the case of a fee appraiser, the letter shall also state the amount that the State will authorize the fee appraiser to bill for the revision. In any revision of this nature, a new and properly executed certificate of appraiser ([Exhibit II-2](#)) must be attached. An original of the certificate of appraiser, revision sheet, and documentation will be required.
- c. Revisions are often requested for updating prior to testimony in condemnation proceedings or for other reasons where a totally current appraisal report is

required.

- d. If the latest appraisal information indicates that a change in the purchase offer is warranted, the agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

### **2.31 SPECIALTY APPRAISALS**

There is a very definite distinction between specialty appraisals versus contractor's and engineer's estimates. Specialty appraisers are individuals specializing in the appraisal of extensive equipment, fixtures, mechanical apparatus, etc. A typical specialty appraiser would prepare an appraisal of all of the equipment in an industrial plant, mechanical apparatus in a packing plant, or the fixtures and facilities in a sizable supermarket.

Specialty appraisers and their appraisals are governed by the same procedures and policy applicable to fee appraisers. These qualifications, specifications, policies, and procedures can be found elsewhere in this manual. In all cases, two specialists will be employed if the value of the specialty items exceeds \$50,000.

### **2.32 QUALIFICATIONS FOR ENGINEERING, EQUIPMENT, OR SPECIALTY PERSONNEL**

At times, it is necessary to contract for the services of individuals or companies who are qualified to evaluate machinery, equipment, or other specialty items. Specialists performing services of this nature may be members of appraisal or engineering firms whose principal occupation is the appraisal of specialty items, contractors who are engaged in the installation of such items or equipment, or suppliers, or dealers who are familiar with the valuation of certain specialty items or equipment. Persons performing services described shall be qualified to offer an opinion of value, in addition to being capable of submitting written information to explain, substantiate, and thereby document these opinions in accordance with accepted appraisal principles and techniques.

### **2.33 CONTRACTOR'S AND ENGINEER'S ESTIMATES**

These are estimates dealing with such items as reproduction costs, cost of irrigation relocation, cost of septic system design, fencing costs, etc. These estimates are not subject to the same policy criteria that specialty appraisals are subject to, and are detailed in the following:

When it is found that these contractor's or engineer's estimates are necessary, NDDOT should contract for these people to furnish the desired information. In the event that the total estimate for these items exceeds \$50,000, two such engineers or contractors should



be employed unless prior approval is obtained. These estimates, or information, are to be reviewed and approved by NDDOT staff review appraiser and distributed to those appraisers, either fee or staff, who are working on the parcel. At times, it may be more workable for the fee appraiser, if assigned, to obtain these estimates or advice from a contractor or engineer, and pay that person from the compensation they receive for the appraisal. In these cases, in making the estimate of fair payment for the appraisal, it should be considered by the estimator of the fee appraiser's contract, it may be more workable for the staff appraiser to obtain these estimates, in which case, they will secure permission and authorization from NDDOT staff review appraiser, and will present the contractor's or engineer's billing to NDDOT staff review appraiser for approval and processing.

In cases where considerable money is involved and the fee appraiser discovers that the contractor's or engineer's estimates are required, and the need for such advice has not been recognized in the contracted fee, the fee appraiser should request approval from the ETS Division to add the cost of these services to the billing. However, this information should be sent to the District involved so that should any other appraisal be made upon the property, this information can also be given to that appraiser.

Should it become necessary to obtain more than two contractor's or engineer's estimates on a parcel, and the monetary amount of these estimates does exceed \$50,000, it will be necessary to request approval from the ETS Division, who in turn will request concurrence from the Division Administrator of the FHWA. This is required to ensure Federal participation in the payment of the contractor's or engineer's billing.

Upon receiving the contractors or engineer's estimate and billing, NDDOT staff review appraiser will review the estimate for factual content and completeness. If the estimate is found acceptable, NDDOT staff review appraiser will indicate the original estimate is reviewed and approved. This approved estimate, along with the properly approved engineer's or contractor's billing, will be forwarded for processing. Particular care should be taken to ensure that the billing contains tax identification for income tax purposes.

The ETS Division prefers obtaining estimates from local, bonafide contractors for replacement costs of buildings, irrigation rehabilitation, landscaping, etc., rather than attempt to arrive at a figure from cost handbooks, or even from our own engineering personnel. It is felt that local engineers and contractors are more aware of costs in the local area and can furnish us quite accurate information to be used in our appraisal processes, and also provide a value witness in court, if necessary. Another theory and reason for this procedure is that when acquisition takes place, these bid estimates can be given to the property owner and in this way, a person is certain that they can have the required work done for the amount offered by the State. In all cases, the bid must reflect the duration of time for which the bid is valid.

When securing contractor's and/or engineer's estimates, the contractor or engineer will first be contacted to explain the necessary work and to secure his/her estimate of fee. If the Realty Officer deems the fee acceptable, they will submit it to the ETS Division



Director or his/her assigns for approval. Once approved, a copy of the agreement will be returned to the contractor and/or engineer, and the original will be placed in the Right of Way Section project file.

## **2.34 CONTRACT APPRAISERS**

### **a. Qualifications of Contract Appraisers.**

It is preferred to award contract appraisal work to professional fee appraisers who possess highly specialized knowledge and experience. Contract fee appraisers contracting with NDDOT should be members in good standing with a recognized appraisal organization, must enjoy a good reputation among their peers, and must have previously displayed or be in a position to offer verifiable appraisal experience in the type of property the person proposes to appraise. Contract fee appraisers must be licensed or certified in the State of North Dakota, in addition to possessing the proper level of professional competence appropriate for the appraisal assignment.

### **b. Contracting of Contract/Fee Appraisers**

Negotiations or proposals for contracted appraisals shall not be commenced without authority from the ETS Division Director.

The Chief/Review Appraiser shall analyze the appraisal work load to determine if staffing is such that letting schedules and/or anticipated expenditures may be completed in a timely manner. If the Chief/Review Appraiser is of the opinion that the staff is unable to accomplish anticipated work schedules, the ETS Division Director shall be informed and shall authorize the commencing of contractual procedures. Also, contract appraisers may be employed if an appraisal problem requires highly specialized knowledge and experience that is outside the expertise of staff appraisers.

NDDOT approved contracting procedures shall be used when engaging a fee appraiser.

### **c. Application for Contracting as Contract Fee Appraiser**

All contract appraisers, not previously approved by the ETS Division, who are desirous of contracting appraisal work, must submit an application for employment as a contract appraiser. When the application has been submitted, a qualification investigation shall be conducted by the Chief/Review Appraiser. This investigation will determine the abilities of the applicant, general reputation among professional counterparts, and the individual's membership in appraisal or professional societies. References shown on the application should be contacted to learn of the applicant's abilities and reputation. All applicants must be well recommended

by at least two references. After the investigation is completed and the Chief/Review Appraiser is satisfied with the applicant and the qualifications, a statement should be prepared regarding the investigation. In addition to the above requirements, all applicants must be licensed or certified in the State of North Dakota to be eligible for inclusion on NDDOT's list of contract appraisers.

The Chief/Review Appraiser will determine if the applicant is qualified to perform appraisal work for NDDOT. The Chief/Review Appraiser will state, in writing, if an applicant is approved for (1) all types of realty appraisal work, (2) limited realty appraisal work, (3) equipment appraisal work, or (4) is rejected for lack of qualifications or other causes. A list of approved appraisers shall be maintained by the Right of Way Section.

d. Appraisal Fee Study

The Chief/Review Appraiser should complete an appraisal fee study for each parcel authorized for contract appraisal by the ETS Division.

The Chief/Review Appraiser should field inspect each property and estimate a reasonable appraisal fee for the required services. During the process of fee study, it must be determined if, in addition to realty appraisals, specialty or equipment appraisals are required. If both realty and specialty appraisals are required for any given parcel, it is then necessary to estimate a fee for each service. Fixtures or equipment which are not identifiable as a compensable improvement, shall be identified, tabulated, and referred to the Legal Division, for an opinion prior to completing the fee study.

The fee study shall indicate those parcels where the appraiser is permitted to estimate a contributory value of improvements rather than completing a detailed before and after value approach. Some examples include large farms, industrial complexes, etc., in which it becomes obvious the acquisition neither enhances nor damages remaining improvements.

Each fee study shall contain parcel numbers, narrative description of each parcel, description of the appraisal problem, number of appraisals required for each parcel, approach or approaches to value, and the estimated appraisal fee. Fees for equipment and specialty appraisers may be a lump sum figure or may be computed on a per diem rate with stated maximum fee. No fee may be based on an average rate per parcel or a percentage of anticipated right of way payment.

The fee study must be dated and signed by the party completing such work. The following information is required for completing the study:

- i. Complexity of appraisal work and skills necessary.
- ii. Number of parcels to be included in appraisal contract.

- iii. Information or data to be furnished the appraiser by District Office, such as, pictures, plats, sales information. Also, the extent of information that must be developed independently by the appraiser.
- iv. Location and conditions pertinent to project for which appraisal services are to be provided.
- iv. If appraiser is to furnish contractor's estimate of cost-to-cure items.
- v. If appraiser may estimate contributory value of unaffected improvements.
- vi. Time allocated for the performance of appraisal assignment.

Fee studies for updating prior appraisals, addenda, or reappraisals should be compiled in the same manner as outlined above.

e. Competitive Proposals for Contracted Realty Appraisals

It shall be departmental policy to solicit competitive proposals for the appraisal of rights of way when sufficient numbers of approved appraisers are available to offer competition.

A minimum of two proposals for the appraisals should be solicited from previously approved appraisers. This policy shall apply without regard to the number of appraisals required for each parcel.

The Chief/Review Appraiser shall decide how many principal parcels shall be awarded to an appraiser at any given contract letting.

- i. Projects or sections thereof containing lands which require two appraisals for each tract shall be awarded to the lowest and next to the lowest bidders who possess the potential ability to perform successfully under the stated terms and conditions.
- ii. Projects or sections thereof which require two appraisals for a portion of the parcels and one appraisal for remainder tracts shall be let as follows:

A minimum of four proposals should be solicited to appraise each parcel. Separate proposals for the second appraisal of specified parcels should also be solicited and submitted simultaneously with prime proposal. An appraisal contract will be awarded to the qualified appraiser submitting the lowest proposal for appraising all parcels and who possesses the ability to perform successfully as per the contract. A contract for the second appraisal of specified parcels shall be awarded

to a qualified appraiser submitting the lowest proposal of the remaining submissions.

- iii. Projects or sections thereof containing parcels requiring only one appraisal shall be let to lowest qualified bidder who possesses the ability to perform within the stated terms and conditions.
- ii. Reappraisals, updating, or addenda for appraisal specified in the original contract may be accomplished by completing appraisal fee study and subsequently executing a supplemental appraisal contract.
- iii. Additional parcels on a project may be added to the original appraisal contract, after completing appraisal fee study and execution of supplemental appraisal contract. Supplemental contracts for the additional parcels must be in accordance with current appraisal specifications. Total number of additional parcels added to original appraisal agreement shall not exceed 30 percent of parcels recited in original contract.
- iv. Competitive proposals must be re-solicited when quotas exceed 30 percent of the original contract.

Any variations from this policy shall be authorized in writing by NDDOT.

f. Selecting Prospective Contract Appraisers

Prior to completing, dating, and signing of the fee study, and when time permits, a minimum of two previously approved appraisers may be selected from whom proposals will be solicited. Consideration should be given to anticipated appraisal problems, talents, and skills possessed by the individual appraisers, past performance, pending appraisal contracts, etc. The Chief/Review Appraiser shall contact each of the selected appraisers to determine if they are interested in submitting proposals. All contacts shall be documented to show party contacted, date of contact, and brief summary of the conversation. If for some reason the individuals contacted are unable to submit proposals the next most qualified person from the roster of approved appraisers may be selected.

Each appraiser must be thoroughly familiar with all aspects of proposed appraisal assignment. The Chief/Review Appraiser may need to accompany the prospective appraisers during a field review of each parcel for purposes of acquainting the appraisers with the highway plan, rights to be appraised, and any unusual appraisal problems which may be encountered. The prospective appraiser(s) should be made aware of parcels, if any, where a detailed before and after appraisal is waived as indicated by the fee study. Such parcels may consist of properties where damages are not occurring to the remainder land and improvements, farms where damages are not occurring to the remainder improvements, etc. It should also be understood whether or not the appraisers

will value items of equipment or machinery which are considered realty but offer minimal contributory value to the property. Should a given parcel contain substantial amounts of equipment or machinery, thereby necessitating the services of a specialty appraiser, the prospective appraiser should be so informed and further advised that subsequently NDDOT will provide him/her an equipment appraisal or appraisals for incorporation within his/her appraisal document. After the appraiser is made aware of all facts regarding their prospective appraisal assignment, the appraiser shall be requested to submit a proposal setting forth a fee for each individual parcel.

g. Proposals from Contract Appraisers

A uniform request for appraisal services form shall be developed by the Chief/Review Appraiser. This form shall be used by all interested appraisers as a means of submitting their proposals. The Chief/Review Appraiser shall complete all portions of proposal except fees, date, and signature of appraiser. An envelope directed to ETS Division shall be prepared with a notation prominently displayed "Proposed Appraisal Fees - Do Not Open." Two copies of each proposal, together with envelope, shall be given to each appraiser for completion and return. Each appraiser will be directed not to alter any terms or conditions of the proposal. Altered proposals will be rejected at time of opening.

All proposals received at the Central Office shall be retained by the Chief/Review Appraiser until time of opening.

h. Opening of Proposals, Checking Tabulations, and Preparing Contract

The Chief/Review Appraiser shall open all proposals at the prescribed time. Personnel supervising the opening shall publicly announce the amounts recited in each proposal.

The Chief/Review Appraiser shall check the tabulations for accuracy and then compare the results with previously prepared appraisal fee study. If the total amount shown in lowest qualified proposal is not substantially different than total amount recited in appraisal fee study, the Chief/Review Appraiser may prepare an appraisal contract in favor of the party submitting the lowest proposal and who possesses the ability to provide the services as stated in the proposal. The contract must contain the same provisions as the proposal, i.e.: contractor may estimate contributory value of buildings. The Chief/Review Appraiser shall submit to the ETS Division Director the original copy of the appraisal contract(s) as executed by the successful bidder(s), one copy of appraisal fee study covering the respective parcels, and one copy of each proposal received for the respective parcels. The ETS Division Director shall review and approve the contract(s).

In the event the lowest proposal is substantially in excess of the previously prepared appraisal fee study, the Chief/Review Appraiser shall submit to the ETS

Division Director:

- i. Copy of the previously prepared appraisal fee study covering subject parcels,
- ii. One copy of each proposal received, and
- iii. A recommendation as to whether NDDOT should proceed with lowest qualified bidder or reject all proposals and resolicit.

i. Processing the Appraisal Contracts

The original appraisal contract shall be signed by the contract appraiser. The original contract will then be submitted to the Legal Division for approval and NDDOT Director's signature. The original copy is to be retained by the Legal Division with one photocopy returned to the contract appraiser and one photocopy filed in the Right of Way Section project file.

j. Contracting for Equipment or Specialty Appraisals and Cost-to-Cure Estimates

Contractors or specialists employed by the appraiser to perform such services must be approved in writing by the ETS Division Director. A contractor shall not be approved to perform identical services for both appraisers when each is appraising the same parcel.

NDDOT may not be required to secure competitive proposals from equipment and specialty appraisers through the bidding process if, in the opinion of NDDOT, persons or firms offering such services are very limited.

Equipment or specialty appraiser(s) shall be employed when items are affected by the acquisition, such as machinery, equipment, trade fixtures, etc., and the appraisal thereof is beyond the expertise of realty appraisers.

A tabulation identifying each item of equipment, machinery, or fixture must be prepared and submitted to Legal Division for review and determination if such items are compensable by law. An appraisal fee study shall be completed for items held to be compensable. The Chief/Review Appraiser shall contact specialty appraisers for the purpose of soliciting proposals. Such appraisers must be previously approved.

Every effort shall be made to secure the most qualified person for the particular job to be done. The Chief/Review Appraiser in company with prospective appraisers(s) may need to field review items to be appraised and explanations offered with regard to specifications and requirements of contract, time for completing contract(s), etc.

After being made aware of appraisal problems, requirements, specifications, etc., the prospective appraiser(s) should submit to the ETS Division a statement of the proposed fee. The Chief/Review Appraiser shall review the proposal(s) and compare same with previously prepared fee study. In the absence of substantial variations, the ETS Division may prepare and submit to appraiser(s) for execution an appraisal contract(s) covering desired work. Should the proposed fee(s) be substantially in excess of appraisal fee study, the ETS Division shall:

- i. Negotiate with appraiser(s) in an effort to obtain a lesser fee(s),
- ii. In the event negotiations fail, the Chief/Review Appraiser shall submit to the ETS Division Director the original copy of the appraiser's proposal, one copy of fee study together with its recommendation to the ETS Division Director for a final decision.

Staff appraisers may have the benefit of written estimates from qualified parties for cost-to-cure items. Estimates may cover curable items such as septic systems, removing and replacing portions of buildings, pump islands, wells, etc. Proposed fees for such estimates must be submitted in writing to the ETS Division Director for approval prior to purchasing this service.

k. Contracting for Appraisals through Noncompetitive Negotiations

Requests submitted to the ETS Division Director for authority to contract for appraisals shall contain statements with regard to the possibility of securing competitive bidding for such appraisal services. If, in the opinion of the Chief/Review Appraiser, competition is not possible because:

- i. the service is available only from a single source or
- ii. public exigency or emergency when the urgency for appraisal services will not permit the delay incident to competitive solicitation or
- iii. the FHWA authorizes noncompetitive negotiations or
- iv. after solicitation of a number of sources, competition is determined to be inadequate;

The Chief/Review Appraiser should advise the ETS Division Director and request a waiver of competitive bidding procedures.

The ETS Division Director shall review the request together with other available data and:

- i. authorize to proceed with securing contract appraiser(s) without competitive bidding or



- ii. attempt to secure competitive proposals from other areas of the country.

Securing contract appraisals with noncompetitive negotiation shall be accomplished as follows:

The Chief/Review Appraiser shall select an appraiser from list or roster of approved appraisers or select the qualified appraiser if the services are available from a single source. Every effort shall be made to select the most qualified appraiser available for the particular job to be done. Consideration should be given to anticipated appraisal problems, talent, and skills possessed by the individual appraiser past performance, pending appraisal contracts, etc. The Chief/Review Appraiser shall contact the selected appraiser to determine if their services are available and if the appraiser is in a position to complete the work by a specified time.

All contacts by telephone or in person shall be documented in the file to show party contacted, date of contact, and brief summary of the conversation. In the event the most qualified appraiser is not available for work at that particular time, the next most qualified person from the roster of approved appraisers may be selected. Each prospective appraiser must be made completely familiar with all provisions of the appraisal contract, appraisal format, and any other requirements necessary for the performance of appraisal work.

If possible, the Chief/Review Appraiser should accompany the prospective appraiser during a field review of each parcel for purpose of acquainting appraiser with highway plan, rights to be appraised, and any unusual appraisal problems which may be encountered. The prospective appraiser should be made aware of parcels, if any, where a detailed before and after appraisal is waived as indicated by the fee study.

These would include properties where damages are not occurring to the remainder land and improvements, farms where damages are not accruing to remainder improvements, etc. It should also be clearly understood that the appraiser will or will not value items of equipment or machinery which are considered realty but offer minimal contributory value to the property. Should any given parcel contain substantial amounts of equipment or machinery, thereby necessitating the services of a specialty appraiser, the prospective fee appraiser should be so informed of this fact and further advised that subsequently NDDOT will submit to him/her an equipment appraisal or appraisals for incorporation within his/her appraisal document.

The prospective appraiser shall also be informed of those parcels where the appraiser shall furnish a contractor's estimate of "cost-to-cure" items, replacement costs of unusual structural improvements, sewer systems, etc. Prospective appraisers shall be advised that contractors or specialists employed by the appraiser to perform such services must be approved in writing by the ETS Division Director.



A contractor shall not be approved to perform identical services for both appraisers when each is appraising the same parcel.

After the appraiser has been made aware of all facts regarding his/her prospective appraisal assignment, a proposal shall be requested setting forth a fee for the job assignment.

The proposal must be dated, signed, and submitted to the Chief/Review Appraiser by the prospective appraiser without his/her knowledge of amounts recited in the appraisal fee study.

The Chief/Review Appraiser shall review each proposal and compare same with appraisal fee study to determine if fair and equitable fees are being proposed. In the event proposed fees are substantially higher than those reflected in the appraisal fee study, it shall be determined by the Chief/Review Appraiser if the appraisal fee study was conservative or if the prospective appraiser is proposing excessive fees. Should it be determined that proposed fees are in excess of reasonable compensation, the Chief/Review Appraiser shall negotiate with appraiser in an effort to arrive at more equitable payments. In the event negotiations fail to render more reasonable fees, the matter shall be referred to the ETS Division Director with one copy of appraiser's proposal, one copy of fee study covering subject parcels, and a recommendation that NDDOT should (1) reject proposal(s) and re-solicit from other appraiser(s), (2) accept charges or fee(s) as same prevails at that time. The ETS Division Director shall consider all data relative to the issues and advise which course to pursue.

When the total amount recited in the proposal is substantially the same as the previously prepared fee study or proposed fees are negotiated to be generally in accord with the fee study, the Chief/Review Appraiser then may prepare an appraisal contract in favor of the contract appraiser. Contracts must contain same provisions as proposal, such as: contractor may estimate contributory value of buildings; NDDOT shall furnish equipment appraisal(s) etc.

In some instances, as provided by the contract, the appraiser shall furnish a contractor's estimate of cost-to-cure item, replacement costs of unusual structural improvements, sewer systems, etc. Contractors or specialist employed by the appraiser to perform such services must be approved in writing by the ETS Division Director. A contractor shall not be approved to perform identical services for both appraisers when each is appraising the same parcel.

#### I. Performance Evaluation

The work of fee appraisers is also evaluated once each year. This evaluation includes comments on the types of appraisal work, quality, promptness and dependability of meeting deadlines, cooperativeness in providing information, and correcting reports in compliance with specifications. A complete record of the

appraisal submitted and a final disposition of each parcel is kept for each fee appraiser. The evaluation is done by the Chief/Review Appraiser.

The Chief/Review Appraiser shall submit an annual report to the ETS Division Director regarding performance of each contract appraiser having or holding an active contract during past year. The report may be completed in narrative form and shall contain statements as to the appraiser's ability to accomplish assignments within allocated time, accuracy of appraisal reports, and any other comments that may reflect upon the appraiser's ability or lack of ability to perform appraisal work. Also, annual reports shall be submitted for each appraiser previously approved to perform appraisal work but has not done so within the past year. The reports for inactive appraisers shall indicate if past services were satisfactory, if the individual is actively engaged in appraisal activities for other clients, unable to perform appraisal work, retired, or any other information which shall indicate the individual's qualifications or lack of qualification to accomplish appraisal work.

An individual report for each approved contract appraiser shall be submitted to the ETS Division Director each year.

m. Right of Way Appraisal Contract

Each and every fee appraiser, performing appraisal work for the ETS Division, shall do so by authority of a contractual agreement. The Chief/Review Appraiser shall assure that each proposed contract submitted contains: name and address of appraiser, parcel number for each parcel to be appraised, route, project, county, number of calendar days in which to complete the contractual work, a specific appraisal fee for each parcel, the personal services of given individual, signature of appraiser, and date appraiser signed proposed contract. Appraisal contracts with companies, firms, or corporate entities shall designate a given individual who shall perform the valuation services. All appraisal contracts with companies, firms, or corporate entities shall be executed by an officer of such entity and, if incorporated, recite the state in which the firm was incorporated.

Instructions for preparing appraisals and a "Certificate of Appraiser" ([Exhibit II-2](#)), consistent with the requirements of the USPAP, shall be attached and made a part of the contract when appraising either total or partial acquisitions. Also, the appraisal contract shall indicate those parcels where the appraiser may estimate the contributory value of improvements lying beyond the influence of highway acquisition.

The original copy of the appraisal contract, signed and dated by the fee appraiser (or designated representative), plus all attachments to the contract, together with one copy of signed and dated appraisal fee study, shall be submitted to the ETS Division for consideration. The Legal Division and ETS Division Director shall review all contents of the proposed appraisal contract and subsequently approve

or reject the proposal. The original contract will then be submitted to the Legal Division for approval and NDDOT Director's signature. The original copy is to be retained by the Legal Division with one photocopy returned to the contract appraiser and one photocopy filed in the Right of Way Section project file.

n. Supplemental Appraisal Contract

If necessary, a supplemental appraisal contract, approved by the ETS Division Director and Legal Division, may be used. This document is designed to minimize administrative efforts when it becomes necessary to add additional parcels to the original appraisal contract, reappraise certain parcels, updating, or securing addenda to the original appraisal reports.

The supplemental contract refers to specifications as recited in the original appraisal contract so it becomes imperative that such requirements and specifications are effective at the date "new" parcels are added to the original contract. New parcels shall be construed to mean tracts not previously appraised or formerly appraised parcels where the plan or ownership revisions are so acute as to nullify the original appraisal report. An updating or an addendum to the original appraisals may be accomplished without regard for revised appraisal specifications.

Supplemental appraisal contracts shall contain: name, signature, date of signature by fee appraisal contractor (signature must be exactly the same as shown in original contract), contractor's address, date of original contract, route, project, and county, recite parcel numbers, type of appraisal data desired, such as, appraisal, update, addendum, etc., and the fee to be paid for each parcel. The contract shall also indicate a calendar period in which the fee appraiser is to complete specified appraisal work.

The original copy of the supplemental appraisal contract, as signed by the proposed appraiser, together with one copy of signed and dated appraisal fee study shall be submitted to the ETS Division for consideration. The Legal Division and ETS Division Director shall review all contents of proposed supplemental appraisal contract and subsequently approve or reject the proposal. Should the supplemental contract be approved as submitted, the original contract will then be submitted to the Legal

Division for approval and NDDOT Director's signature. The original copy is to be retained by the Legal Division with one photocopy returned to the contract appraiser and one photocopy filed in the Right of Way Section project file

## SECTION III - ACQUISITION

### 3.1 RIGHT OF WAY AGENT

The Right of Way Agent (negotiator) assigned to the acquisition phase should be familiar with real estate values, real estate transaction, and eminent domain procedures. The Right of Way Agent should be fully aware and thoroughly understand the policies, procedures, and functions of the NDDOT. The Agent must be able to read and understand project plans, plats, and appraisals, and should be able to thoroughly explain them to the property owner(s).

### 3.2 STEPS IN ACQUISITION

**Refer to section 2.8 for a detailed overview of the typical acquisition process.**

Prior to commencing initial right of way work, a preliminary meeting will be held with the consultant, sub consultant (negotiator), NDDOT ROW tech support, NDDOT Design tech support, NDDOT Designer and any additional participants as needed. This will include reviewing forms, package submission, process review and reporting requirements. A Preliminary Negotiation Review form ([Exhibit III-16](#)) must be completed for every project requiring an acquisition. The Preliminary Negotiation Review meeting is generally conducted once plats are completed but the timing should be determined on a case by case basis. Negotiation documents will not be released until after this form is completed. See [Exhibit III-17](#) for a sample Preliminary Valuation Review Agenda.

The Right of Way Agent shall act as a liaison between the NDDOT and the property owner(s). The Agent shall present the approved, fair market offer to the property owner(s) on behalf of the NDDOT. The Agent will review the details of the project, property valuations and fair market compensation with the property owner(s), while identifying and addressing their questions and concerns.

Market value determinations provide the Right of Way Agent with the amount of compensation offered to each property owner for the acquisition or damage to property for State highway purposes. The approved appraisal or waiver valuation shall be the basis upon which all acquisition shall be conducted. In limited cases, facts and circumstances may develop showing that the approved appraisal is either too high or too low. In the case(s) where values are deemed to be too high, the Chief Review appraiser may reject the valuations. In the case(s) where values may be deemed to be too low or justify some upward adjustment, the decisions shall be approved and documented by the ETS Division Director or the ROW Program Manager. The Summary Narrative form ([Exhibit III-19](#)) shall be used as supporting documentation to support and summarize the settlement.

### 3.3 DUTIES AND RESPONSIBILITIES

It is the duty of the Right of Way Agent assigned to see that both NDDOT and the property owner(s) are treated fairly, and not to lose sight of the fact that they are also the property owner's representative and should protect their rights.

The Agent shall make reasonable efforts to contact the property owner(s) or the owner's representative and meet with them in person to discuss the purpose of the project and the proposed acquisition. Only after all attempts to make personal contact have been exhausted, the Right of Way Agent may make the offer via certified mail. The Certified mail tracking info must be included in the Agent's packet and also noted in the report as to date sent, date signed for, or date returned. Certified mail may not be used where major relocation activity is involved.

Throughout the acquisition process, the Right of Way Agent is required to prepare a detailed narrative report of all contacts, whether the parcel is acquired or not. This report contains the date, time, place of contact, persons present, and pertinent data discussed, including the amount of the offer. Reports are prepared for all contacts up to settlement or condemnation. Negotiator's Report & Ownership Contact ([Exhibit III-1](#)). Please note: Should a parcel be eliminated, any correspondence must be documented and retained in the Negotiator Report & Ownership Contact form.

During the first contact, the Right of Way Agent shall present the NDDOT publication Public Information for Highway & Street Projects ([Exhibit III-14](#)) and the Notification and Appraisal Waiver ([Exhibit II-4](#)) to the property owner(s). The Agent shall discuss property owner rights, the basis for the offer of just compensation, explain the NDDOT acquisition policies and procedures, including its payment of incidental expenses in accordance with 49 CFR 24.106.

A Memorandum of Offer ([Exhibit III-4](#)) along with the Compensation & Parcel Breakdown ([Exhibit III-18](#)), will be presented to the property owner(s) at first contact when an offer is made. These forms will include the parcel number, parcel size, type of acquisition and the amount of the offer. Any revised offers require a new Memorandum of Offer and they all must be submitted with the final negotiator's packet.

A Memorandum Agreement ([Exhibit III-2](#)), along with the Compensation & Parcel Breakdown ([Exhibit III-18](#)), contains all the terms of settlement and will be signed by the property owner(s), the Right of Way Agent and Right of Way Section Program Manager or ETS Division Director. Any approved construction related items must be relayed to the project designer so the plans can be updated.

Except for waiver valuations under \$10,000, NDDOT does not permit the Right of Way Agent to create a waiver valuation and act as the negotiator. Therefore, upon receipt of the copy of the waiver valuation or appraisal, the Right of Way Agent should proceed to study them carefully so that the Right of Way Agent will have the benefit of all the information which was assembled and used as a basis for the appraiser's final estimates

of value before they make the offer to the property owner. If the Right of Way Agent becomes aware of new sales or other information, they should discuss it with their supervisor and/or the review appraiser.

The property owner shall be given "reasonable opportunity" to consider the offer and present material which the property owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase.

NDDOT shall consider the property owner's presentation and reply in a timely manner.

### **3.4 CONDEMNATION**

If condemnation is necessary, the laws provide that the State may take possession upon making an offer to purchase and by depositing the amount of such offer with the Clerk of District Court of the county wherein the right of way is located. This is accomplished through Section 16 of the State's Constitution and Section 24-01-22.1 of the NDCC. Additional procedural requirements are found in Chapter 32.15 NDCC. The laws provide that all owners in state and out of state be notified in writing by the Clerk of District Court that NDDOT has made an offer and deposited the amount with the clerk. The amount equivalent to 100 percent of the deposit may be withdrawn by the property owner at the time of the deposit without prejudice ([Exhibit III-5](#), [Exhibit III-6](#), [Exhibit III-7](#), [Exhibit II-8](#), [Exhibit III-9](#), and [Exhibit III-10](#)). The State has no authority to condemn property that is not needed for highway purposes.

### **3.5 TITLE CHECK**

During the acquisition phase of a project, and prior to submitting the file for processing and payment, it will be the responsibility of the Right of Way Agent to whom the project is assigned to check the titles in the County Recorder's Office for the purpose of verifying any changes in title beyond the Preliminary Certificate of Title. If there are changes in title, new title certificates, and updated plats and documents will be required.

### **3.6 CONFLICT OF INTEREST**

A Right of Way Agent should promptly disqualify themselves from the acquisition phase where there may be a possible conflict between personal or family interests and the interests with whom they transact state business. This should be so indicated in memorandum form.

### 3.7 ACQUISITION POLICY

- a. The approval of all administrative settlements rest with the Right of Way Section Program Manager and ETS Division Director. The ETS Division Director reports directly to the Director of the Office of Project Development of NDDOT.

This function is assumed by the Right of Way Agent for all settlements which conform to the just compensation amount approved by the review appraiser. Only in deviations from the approved appraisal will the ETS Division Director formally examine and approve the settlements.

- b. Acquisition of real property is conducted by employees of NDDOT under the direction of the Right of Way Section Program Manager who is directly responsible to the ETS Division Director.
- c. The Right of Way Agent responsible for the acquisition of a project will be responsible for carrying the project through to condemnation, if necessary. The condemnation proceedings will be initiated by the Right of Way Section Program Manager at the proper time, with observance of the letting date of the project as a guide.
- d. The Right of Way Agent responsible for the acquisition of a project will inform the Relocation Officer that the acquisition phase has begun on parcels involving relocation.
- e. The minimum documentation acceptable for a settlement is:
  - i. Written offer of approved estimate of just compensation and a summary of the basis for the offer that will include:
    - (1) In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
    - (2) A description and location identification of the real property and the interest in the real property to be acquired.
    - (3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made.
    - (4) Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.



- ii. Deed or easement;
  - iii. Memorandum Agreement containing terms of settlement;
  - iv. Narrative report of settlement.
- f. Possession of a property is obtained at the time the consideration is tendered, following the signing of the documents of title transfer. Occupants of buildings are given a 90 day notice to vacate.

Administrative Settlement - When a settlement exceeds the approved appraisal offer, adequate justification is placed in NDDOT's records. These records are available to FHWA. Administrative settlements are made by the ETS Division Director and justified in accordance with 23 CFR 710 Subpart B and 49 CFR 24.102(i).

- g. Prior to initiating a condemnation action, the Right of Way Section Program Manager will review the acquisition packet and make a final determination if any additional calls are warranted prior to processing a condemnation action.
- h. After condemnation proceedings have been instituted and the property owner has obtained legal counsel, settlement rests with NDDOT's Legal Counsel with the approval of the ETS Division Director.
- i. Right of way acquisition procedures for road and street projects involving NDDOT:
  - i. The right of way program, including acquisition and disposal, is the responsibility of the ETS Division. This includes acquisition and disposition of maintenance and operation sites.
  - ii. On State highway system projects where Federal-aid is programmed for right of way, NDDOT or its consultant will acquire the right of way, following the procedures outlined in the Uniform Act in accordance with 49 CFR 24 and the Right of Way Manual.
  - iii. On projects off the State highway system, where Federal-aid is not programmed for right of way (Federal-aid urban, county, etc.), local political entities will acquire the right of way under the LPA Manual processes. [Exhibit I-4](#)
  - iv. On all projects where Federal-aid is involved, NDDOT will furnish advisory assistance for relocation activity if requested. On projects where right of way is acquired by local political entities under the LPA Manual processes, NDDOT will furnish advisory assistance if requested.
  - v. NDDOT may obtain the services of fee appraisers or negotiators as needed.



### **3.8 ACQUISITION OF WATER WELLS AND SPRINGS**

The appraisal will include an amount estimated to be the depreciated value of the well or spring and damages to the remainder. If the property owner does not want the water source reestablished, they will receive just compensation.

In the event the owner wants the well or spring reestablished and has agreed to accept the offer of just compensation for the other items in the appraisal, the project Right of Way Agent will deduct the depreciated value of the well from the settlement.

The well agreement ([Exhibit III-11](#)) will be completed setting forth the responsibilities of the property owner and NDDOT.

The project Right of Way Agent will ensure that the property owner will be allowed additional costs of well or spring reestablishment, including the sums expended for dry holes, not to exceed the fair market value of the property.

All costs shall be supported by itemized statements forwarded to the ETS Division.

### **3.9 ACQUISITION OF ENVIRONMENTAL MITIGATION**

The NDDOT will follow basic negotiation procedures in acquisition of environmental mitigation. The negotiator will work with the landowner/agencies to secure and ensure the interest for NDDOT long term 99 year perpetual easement or land purchase in fee title. See the NDDOT Design manual, Chapter 2, Section 4.4, for additional procedures. [Exhibit III-15](#)

### **3.10 ACQUISITION PAYMENT OBLIGATION**

Under condemnation, the State becomes legally obligated to pay right of way costs when the deposit is made and the State takes possession of the property. (Section 24-01-32 NDCC). The State has no appeal from the deposit which it makes in condemnation since the State deposits its determination of fair market value and the deposit is, therefore, set by the State and not by any quasi-judicial body. Once a deposit is made with the Clerk of District Court, a property owner has the immediate right of accepting that deposit. It is, therefore, felt that the State is obligated once the deposit is made; therefore, the State generally takes possession immediately upon the making of the deposit. For other incidental costs secured by contract such as appraisal fees, title, and escrow services, etc., the State becomes obligated as of the date of execution of the contract. However, payment is not made until the services have been performed and billed in accordance with the terms of the contract.

### 3.11 RIGHT OF WAY AGENT QUALIFICATION

NDDOT normally does not use political subdivisions to acquire right of way where Federal participation in right of way acquisition is requested. Should it be deemed necessary to employ fee acquisition agents, their operation would be under the direction of the ETS Division.

Acquisition agent qualifications are covered by the Right of Way Agent class specifications of the State of North Dakota Human Resource Management Services. In addition to those requirements, they are selected for their personality and their ability to get along with people. They are also selected for their maturity and ability to work without immediate supervision. The work of each acquisition agent is continually being evaluated. A complete record of parcels completed for each is reviewed once every year. This is in conjunction with the overall evaluation of the individual at this time.

Any consultant or sub consultant performing right of way acquisition negotiations must submit a biography ([Exhibit III-20](#)), including a certificate of completion for the following class:

[FHWI – NHI Course # 141045, Real Estate Acquisition under the Uniform Act: An Overview.](#)

This class is a one-time requirement, however, the NDDOT expects the consultant or sub consultant to stay up to date on changes to the uniform act and may suggest the class be taken again if there has been a large lapse in training or on the job experience.

### 3.12 PROCEDURES ON ACQUISITION OF BORROW

The securing of borrow areas is performed by the Right of Way Agents. These areas are generally acquired by a Temporary Borrow Option. Excess lands are sometimes utilized, and, on occasion, a temporary borrow option with a stipulation to purchase is used, and consideration may be given to providing water holding basins for easement wetland replacement.

The Temporary Borrow Option is an unrecorded instrument and options a borrow area for the length of time required for construction of the project or five years, whichever occurs first. [Exhibit III-12](#)

#### a. Site Selection

The quality and location of borrow needed is determined by the ETS Division, based on the engineer's estimate. Site selections will be made adjacent to or as near as possible to the needed locations. Provisions for drainage as adequate as presently exists are also needed. In some cases, Cartway Easements may also be needed to provide access.

After borrow sites for a particular project have been optioned, the borrow option and a location map should be furnished to Right of Way contact, to the environmental section for wetlands clearance and to the cultural resources section for cultural clearance. Materials and research should be notified for soil boring testing. The locations and estimated available quantities from each is then submitted to the Design Division, along with any commitments or obligations made during negotiations. These borrow options and specific notations are then incorporated into the plans.

Excavation of the sites is governed by the Standard Specifications for Road and Bridge Construction, Section 203. This does not compel the contractor to use these optioned sites; the contractor is still permitted to obtain borrow at their own discretion.

Acquisition of borrow options creates an equal bidding practice for all bidders. The Grantor(s) will be given written notification if this option is not approved by NDDOT.

b. Payments

- i. Option. A flat rate payment of \$150 will be made by NDDOT to the property owner(s) for each optioned site. Federal participation will not be claimed for the \$150 option payment.
- ii. Should a contractor enter an optioned borrow area, payments will be made according to the "Borrow Option." The costs of these payments will be claimed as a construction item and could include any of the following:
  - (1) Rent. A per acre rent payment, based on disturbed acres, will be paid to the property owner for the period of time during which the pit is opened and used. This payment will be supported from either market information, local bankers, realtors, or county officials and the project file so documented.
  - (2) Rehabilitation. The rehabilitation payment will be one year's cash rent based on disturbed acres, since it is estimated that it may take at least that amount of time to bring the land back to its prior production level.
  - (3) Seeding. If the area was seeded at the time of disruption, an additional per acre payment will be made for the area disturbed.
  - (4) Royalty. Royalty payments will be paid at a pre-negotiated rate with the landowner. These rates are based on the market value rate of borrow sites in the surrounding area or vicinity and that are similar in nature. A market analysis maybe used to determine regional market values. This royalty payment will be expressed in a cubic yard price.

The quantity of borrow material used shall be determined by a before and after cross sectional survey. These royalty payments are made by the contractor after they have obtained a pit release from the affected property owner, unless other arrangements are made between NDDOT, contractor, and property owner.

- iii. Processing Payment to the Property Owner. The Borrow Area Status Report ([Exhibit III-13](#)) will be utilized to trigger the right of way portion of the payments due to the property owner in accordance with option agreement. Prior to mailing these reports to the District for completion, the known terms pertinent to the individual borrow area and our preliminary agreement will be inserted onto this form. It will then be up to the Project Engineer to provide the information relative to yardage taken, date utilized, acres disrupted, crops destroyed, if any, and any other pertinent information which would reflect upon payments as per our original option agreements.

Payment to the property owner will be made in accordance with the Borrow Area Status Report as completed by the Project Engineer, except in those cases where we are aware of a payment commitment the State may have to the renter.

- c. Borrow Sites Acquired in Fee

The NDDOT does not typically acquire borrow sites in FEE. The above Borrow Option is preferred. In the event the borrow site is acquired in FEE, the following procedure may be used as a guideline:

When borrow is taken from sites acquired in fee by the acquiring agency, the royalty payment per cubic yard for borrow will be directly related to the actual fair market value paid on a per-acre-used basis and charged to the applicable Federal-aid project. The initial cost or present fair market value of the tract will be used as the basis for Federal participation and claimed as a right of way item. If the site is subsequently disposed of, the disposition will be in accord with Section 7.2 of this manual.

- d. Fence

No payments for fence relocation will be made, since it is the obligation of the contractor to make all fence adjustments as specified in the North Dakota Standard Specifications for Road and Bridge Construction.

- e. Top Soil

Top soil shall be removed and stockpiled as specified in the North Dakota Standard Specifications for Road and Bridge Construction. After excavation of

material, the underlying soil shall be scarified and top soil replaced. All areas, after replacement of the top soil, shall be leveled and seeded to grass at the discretion of the property owner.

### **3.13 EARLY ACQUISITION, HARDSHIP ACQUISITION AND PROTECTIVE BUYING**

The State has the authority to acquire property for future highway use. Section 24-01-18 of the NDCC refers specifically to lands "necessary for reasonable future public use."

In extraordinary cases or emergency situations, NDDOT may request and the FHWA Division Administrator may approve Federal participation in the acquisition of particular parcel or a limited number of particular parcels within the limits of a proposed highway corridor prior to completion of processing of the final environmental document.

Prior to initiating early acquisition, the ETS Division Director will notify the FHWA Division Administrator of NDDOT's intention to acquire property under these provisions. A meeting will be held to define the policies and ramifications of early property acquisition.

#### **a. Early acquisition**

- i. General.** A state agency may initiate acquisition of real property interests for a proposed transportation project at any time it has the legal authority to do so. The state agency may undertake Early Acquisition Projects before the completion of the environmental review process for the proposed transportation project for corridor preservation, access management, or other purposes. Subject to the requirements in this section, state agencies may fund Early Acquisition Project costs entirely with State funds with no title 23 participation; use state funds initially but seek title 23 credit or reimbursement when the acquired property is incorporated into a transportation project eligible for Federal surface transportation program funds; or use the normal Federal-aid project agreement and reimbursement process to fund an Early Acquisition Project pursuant to paragraph (v.) of this section. The early acquisition of a real property interest under this section shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for ly assisted transportation projects.
- ii. State-funded early acquisition without Federal credit or reimbursement.** A state agency may carry out early acquisition entirely at its expense and later incorporate the acquired real property into a transportation project or program for which the state agency receives Federal financial assistance or other Federal approval under title 23 for other transportation project activities. In order to maintain eligibility for future Federal assistance on the project, early acquisition activities funded entirely without Federal participation must comply with the requirements of § 710.501(c)(1) through

- (5).
- iii. State-funded early acquisition eligible for future credit. Subject to § 710.203(b) (direct eligible costs), § 710.505(b), and § 710.507 (State and local contributions), Early Acquisition Project costs incurred by a state agency at its own expense prior to completion of the environmental review process for a proposed transportation project are eligible for use as a credit toward the non-Federal share of the total project costs if the project receives surface transportation program funds, and if the following conditions are met:
- (1) The property was lawfully obtained by the State;
  - (2) The property was not land described in 23 United States Code (USC) 138;
  - (3) The property was acquired, and any relocations were carried out, in accordance with the provisions of the Uniform Act and regulations in 49 CFR part 24;
  - (4) The State complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d-2000d-4);
  - (5) The State determined, and the FHWA concurs, the early acquisition did not influence the environmental review process for the proposed transportation project, including:
    - (a) The decision on need to construct the project;
    - (b) The consideration of alternatives required by applicable law; and
    - (c) The selection of the design or location; and
  - (6) The property will be incorporated into the project for which surface transportation program funds are received and to which the credit will be applied.
- iv. Federally funded early acquisition. The FHWA may authorize the use of funds apportioned to a state under title 23 for an Early Acquisition Project if the state agency certifies, and FHWA concurs, that all of the following conditions have been met:
- (1) The State has authority to acquire the real property interest under State law; and

(2) The acquisition of the real property interest:

- (a) Is for a transportation project or program eligible for funding under title 23 that will not require FHWA approval under 23 CFR 774.3.4(f);
- (b) Will not cause any significant adverse environmental impacts either as a result of the Early Acquisition Project or from cumulative effects of multiple Early Acquisition Projects carried out under this section in connection with a proposed transportation project;
- (c) Will not limit the choice of reasonable alternatives for a proposed transportation project or otherwise influence the decision of FHWA on any approval required for a proposed transportation project;
- (d) Will not prevent the lead agency from making an impartial decision as to whether to accept an alternative that is being considered in the environmental review process for a proposed transportation project;
- (e) Is consistent with the state transportation planning process under 23 U.S.C. 135;
- (f) Complies with other applicable Federal laws (including regulations);
- (g) Will be acquired through negotiation, without the threat of, or use of, condemnation; and
- (h) Will not result in a reduction or elimination of benefits or assistance to a displaced person required by the Uniform Act and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(3) The Early Acquisition Project is included as a project in an applicable transportation improvement program under 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304.

(4) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project. Pursuant to 23 U.S.C. 108(d)(4)(B), the Early Acquisition Project is deemed to have independent utility for purposes of the environmental review process under NEPA. When the Early Acquisition Project may result in a change to the use or character of the real property interest prior to the completion of the environmental review process for the



proposed transportation project, the NEPA evaluation for the Early Acquisition Project must consider whether the change has the potential to cause a significant environmental impact as defined in 40 CFR 1508.27, including a significant adverse impact within the meaning of paragraph (e)(2)(ii) of this section. The Early Acquisition Project must comply with all applicable environmental laws.

- v. Prohibited activities. Except as provided in this paragraph, real property interests acquired under paragraph (e) of this section and pursuant to 23 U.S.C. 108(d) cannot be developed in anticipation of a transportation project until all required environmental reviews for the transportation project have been completed. For the purpose of this paragraph, “development in anticipation of a transportation project” means any activity related to demolition, site preparation, or construction that is not necessary to protect public health or safety. With prior FHWA approval, a state agency may carry out limited activities necessary for securing real property interests acquired as part of an Early Acquisition Project, such as limited clearing and demolition activity, if the activities are necessary to protect the public health or safety and are considered during the environmental review of the Early Acquisition Project.
  - vi. Reimbursement. If Federal-aid reimbursement is made for real property interests acquired early under this section and the real property interests are not subsequently incorporated into a project eligible for surface transportation funds within the time allowed by 23 U.S.C. 108 (a)(2), FHWA must offset the amount reimbursed against funds apportioned to the State.
  - vii. Relocation assistance eligibility. In the case of an Early Acquisition Project, a person is considered to be displaced when required to move from the real property as a direct result of a binding written agreement for the purchase of the real property interest(s) between the acquiring agency and the property owner. Options to purchase and similar agreements used for Early Acquisition Projects that give the acquiring agency a right to prevent new development or to decide in the future whether to acquire the real property interest(s), but do not create an immediate commitment by the acquiring agency to acquire and do not require an owner or tenant to relocate, do not create relocation eligibility until the acquiring agency legally commits itself to acquiring the real property interest(s).
- b. Protective buying and hardship acquisition
- i. General conditions. Prior to obtaining final environmental approval, FHWA must agree to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (protective buying), or to alleviate hardship to a property owner(s) on the preferred



location (hardship acquisition), provided the following conditions are met:

- (1) The project is included in the currently approved Statewide Transportation Improvement Program (STIP);
  - (2) The applicable public involvement requirements in 23 CFR parts 450 and 771 have been complied with;
  - (3) A determination has been completed for any property subject to the provisions of 23 USC 138; and
  - (4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 54 U.S.C. § 306108 (historic properties).
- ii. Protective buying. The NDDOT must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.
  - iii. Hardship acquisitions. The NDDOT must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:
    - (1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to other property owners; and
    - (2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.
  - iv. Environmental decisions. Acquisition of property under this section shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

### **3.14 RURAL APPROACH MODIFICATION AGREEMENT**

The Rural Approach Modification Agreement, or RAMA ([Exhibit III-21](#)), is an optional agreement between the NDDOT and landowner. This agreement gives the landowner the option to have their rural approach modified to meet D-203-08 specifications. If accepted, the modifications will be completed by the NDDOT at no expense or compensation to the landowner. The RAMA process does not fall under NDCC §32-15, regarding condemnation.

### **3.15 RETENTION OF RECORDS**

Acquisition records, including records related to property owner or tenant displacements, and property inventories of improvements acquired shall be in sufficient detail to demonstrate compliance with State and Federal laws and regulations. These records shall be retained at least 3 years from either:

- a. The date of Federal reimbursement of the final payment made to each property owner of a property and to each person displaced from a property, or
- b. The date a credit toward the Federal share of a project is approved based on early acquisition activities

## SECTION IV - EXECUTION OF INSTRUMENTS

### 4.1 GENERAL

Deeds and other documents must be prepared showing the date, the names, and present addresses of the grantor(s) or other parties to correspond with the record or the title certificate, except in cases where a change of name by marriage or otherwise is encountered, which change must be shown in the caption or otherwise verified.

The caption shall include the marital status of each party. If the grantor(s) conveys under a name different from that under which title was acquired, such variation must be accounted for in an Affidavit of Identity ([Exhibit IV-14](#)), such as John Doe a/k/a John L. Doe.

Signatures and acknowledgments must be in agreement with the names of grantor(s) or other parties appearing in the caption or the body of the instrument. All parties named as grantor(s) must sign and be acknowledged by a notary.

All transfers of property are taken in the name of the State of North Dakota for the use and benefit of the North Dakota Department of Transportation as the grantee. The type of title taken is generally in fee ([Exhibit IV-1](#), [Exhibit IV-2](#), [Exhibit IV-3](#), and [Exhibit IV-4](#)) except in those instances where a lesser title will accomplish the State's objectives. ([Exhibit IV-5](#), [Exhibit IV-6](#), [Exhibit IV-7](#), [Exhibit IV-8](#), and [Exhibit IV-9](#))

### 4.2 SIGNATURE OF HUSBAND OR WIFE

Under North Dakota law, the spouse has certain homestead rights to property and, therefore, the signature of the spouse is required. If the property has never been occupied as a home, the spouse's signature can be omitted; however, a suitable Affidavit of Non-Homestead ([Exhibit IV-13](#)) must be acquired in lieu of signature, which accounts for NDDOT's Legal Counsel's preference of having the spouse's signature on all instruments.

The spouse's signature should show his/her own given name, such as Mary Doe or Mary Jones Doe. Mrs. John Doe is improper.

Where couples are contemplating or in the process of securing a divorce, the attorneys for the parties should be consulted. If divorce is granted, we must have a copy of the decree.

Partnerships require the signature of all partners unless documentary evidence is on record authorizing certain persons to act for the person giving such authority. On limited partnerships, only the general partners are required to sign.

### **4.3 ESTATES**

Section 30.1-18-11 (3-711) NDCC Powers of Personal Representative - In General Until termination of his/her appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have in trust. However, for the benefit of the creditors and others interested in the estate, this power may be exercised without notice, hearing, or order of court.

The acquisition agent should obtain a copy of the "Letters Testamentary" which appoint the personal representative(s) and gives them their "powers." A copy of the document can be obtained from the personal representative, attorney for the estate or the Clerk of Probate Court.

The proper format for the caption to go in the heading of all documents is: William Brown, Personal Representative of the Estate of John Doe, deceased. The signature block should reflect the "grantor" in the heading of all documents.

### **4.4 CORPORATIONS**

Corporation deeds for lands or interest therein, owned by a corporation should be signed by the president and countersigned or attested to by the secretary, and sealed with the corporate seal, if available. In the event the corporate seal is unavailable, provide supporting documentation from the Secretary of State Office or articles of incorporation.

### **4.5 POLITICAL SUBDIVISIONS**

Documents by cities, counties, etc., must be executed by proper officers and supported by proper resolution from a governing board or body authorizing the execution of the documents. A seal should be affixed or official meeting minutes attached.

### **4.6 FRATERNAL, RELIGIOUS, OR CHARITABLE CORPORATIONS AND GROUPS**

Care should be taken that instruments from fraternal, religious, or charitable organizations and corporations are executed in conformity with the bylaws and constitutions of such groups. Validation of signing authority must be obtained. In the event the corporate seal is unavailable, provide supporting documentation from the Secretary of State Office or articles of incorporation.

#### **4.7 SCHOOL BOARDS, CEMETERY ASSOCIATIONS, OR GROUPS NOT INCORPORATED**

Groups such as school boards, cemetery associations, or cooperative associations must, by resolution, authorize certain persons to act for the group. A copy of the resolution or official meeting minutes should be attached to the deed but not recorded.

#### **4.8 LEGAL AGE**

Minors in North Dakota law are all persons under 18 years of age. Minors can convey interest in land only through a duly court appointed guardian, and then only for the specific property for which the guardian was named.

#### **4.9 INCOMPETENT PERSONS**

No person who is legally adjudged incompetent or who is incompetent in fact without legal adjudication may execute a deed. In all cases, a legal guardian must be appointed and an order of the court authorizing execution of the deed must be obtained, or a copy of the Letters of Guardianship reciting the authority to sell or convey the property.

#### **4.10 POWER OF ATTORNEY**

Power of Attorney is legal only if such fact is recorded with specific authority to sell or convey specific lands or interests in lands. The Power of Attorney becomes void when either party dies or becomes incompetent.

#### **4.11 ACKNOWLEDGMENT BY NOTARY PUBLIC**

All recordable documents requires a notary acknowledgement. Notary publics are required to be familiar with N.D.C.C. §§ 44-05; 44-06.

#### **4.12 DATE OF POSSESSION**

The date on which the State takes actual physical possession of the property should be clearly understood to be the date of the deed unless otherwise noted in the Memorandum Agreement.

#### **4.13 SUBORDINATION OF RIGHTS**

Subordinate interests that may affect good merchantable title may be determined by a lease arrangement or agreement, tenant agreement, from the appraisal or title reports. A Subordination of Rights is provided for the release of such interests. Whether recorded or unrecorded, inquire with the land owner regarding outstanding arrangements or agreements. [Exhibit IV-9](#)

#### **4.14 SATISFACTION OF MORTGAGE**

Full or partial release of mortgage must be secured and submitted to the NDDOT by use of standard documents designed for this purpose. [Exhibit IV-10](#), [Exhibit IV-11](#), and [Exhibit IV-12](#)

#### **4.15 DELINQUENT TAXES**

NDDOT does not collect or withhold property taxes due to municipalities or government subdivision. As a matter of courtesy, the governmental subdivisions are notified when the State intends to acquire a "whole" property. N.D.C.C. § 11-18.

#### **4.16 ESCROW SERVICES**

Escrow services will be used on a case by case basis as determined by the NDDOT.

## SECTION V - TITLE CLOSING AND PARCEL RECORDS

### 5.1 TITLE RECORDS

There are two general types and sources of title records obtained by the State.

- a. Permanent Acquisition: Preliminary Certificates of Title (PCT) ([Exhibit V-1](#)) are generated by a certified title company and will include: record title owner's name(s) and addresses, legal description(s), source of title, mortgages, liens and etc. back to date of incorporation and will provide evidence certificate conforms to N.D.C.C. 26.1-20
- b. Temporary Acquisition: Surface Ownership Report (SOR) ([Exhibit V-3](#)) will accompany supporting documentation that will include: record title owner's name(s) and addresses, legal description(s), source of title and a copy of the most current tax statement. Chain of title must go back a minimum of five (5) years. If only one (1) owner in the five (5) year period, include previous owner to show clear chain of title.

### 5.2 TITLE INSURANCE

Any documents requiring recordation will be submitted to Right of Way Management for approval.

All documents of a permanent nature which are valued over \$2,500, including: warranty deeds, (individual and corporation), easements containing a "permanent" clause, full or partial releases of mortgages, partial and/or complete satisfactions of judgments, quitclaim deeds and subordination of rights: are sent for recording and insured through a title insurance agent (N.D.C.C. 11-18-03). As a general rule, each permanent acquisition valued over \$2,500 is insured for at least an amount equal to that being paid for the land. When clear insured title to the parcel is acquired, (final certificate of title) ([Exhibit V-2](#)) payment will be processed.

### 5.3 POLICY AND PROCEDURE

Payment will be issued as described in the Memorandum of Agreement. A payment database file is maintained wherein all claims are listed and will include claim for payment date, payee, property description and payment amount.

The checks are mailed from the Financial Management Division upon receipt of an approved Memorandum of Agreement and a W-9. These are attached to the Claim for Payment request. Exceptions in the payment process may be made on a case by case basis with written approval from Right of Way Management. Total amount of the settlement is paid to the property owner or any individuals having an interest in the

property. This will be evidenced by a copy of the claim for payment contained in the parcel files which shall serve as proof of payment.



## **SECTION VI - ACQUISITION OF SPECIAL INTEREST LANDS**

### **6.1 GENERAL**

Special interest lands, such as those owned by the Federal government, various departments of the State, municipalities, etc., require special handling.

### **6.2 SCHOOL LANDS**

State school lands by grant or acquisition are managed by a State Land Commissioner. Applications to purchase state school land shall be submitted by an online application that can be found at <https://land.nd.gov/SurfaceROW/RightOfWay>. The application, along with applicable fees to purchase, shall be accompanied by a copy of the State's appraisal and two prints of the stamped right of way plat showing the land involved and a legal description of said land. After agreeable settlement is reached, the transfer of land by the Land Department is made by patent on grant lands and by deed on acquired lands.

### **6.3 SPECIAL USE STATE LANDS**

State lands designated for the use of state hospitals, special schools, various state institutions, etc., are handled by the State Director of Institutions. Acquisition for right of way shall be processed through regular right of way acquisition and appraisal procedures.

### **6.4 UNIVERSITY SCHOOL LANDS**

Lands acquired or designated for use as University School Lands are under the jurisdiction of the State Board of Higher Education. Prior to July 1, 1963, these lands have been transferable only by an Act of the State Legislature. Pursuant to an Act of the 1963 State Legislature, the State Board of Higher Education may transfer by an easement, lands for right of way purposes.

Acquisition for right of way shall be processed through regular right of way appraisal and acquisition procedures with the acquisition agent making the offer and receiving concurrence from the proper officer of the University or State College involved prior to the submission of a formal application to the Board of Higher Education.

The formal application to the Board is usually submitted in person at a regular Board meeting.

## **6.5 LANDS OF COUNTY, CITY, TOWNS, ORGANIZATIONS, ETC.**

Appraisals and acquisition of lands owned by counties, cities, towns, fraternal and religious groups, charitable organizations, school boards, etc., are processed according to usual right of way policy and procedure.

The acquisition of land from a cemetery association also falls in the above category. However, if a grave move is involved, in addition to the land acquisition, the following procedure is mandatory:

The Right of Way Agent must locate, if possible, and obtain permission from all living relatives of the deceased to move the remains. If no relatives are living or available, a court order may be obtained from the county judge. The proper authorization to move is then submitted to the nearest undertaking establishment, or the lowest bidder of three undertaking establishments, if available in the vicinity, who applies for the proper authorization form from the State Health Department to exhume and re-inter the remains at the selected new location. Payment is made to the undertaking establishment on the basis of an itemized statement or low bid.

## **6.6 INDIAN LANDS**

The Bureau of Indian Affairs has jurisdiction over applications for rights of way across Indian lands. All applications for the use and occupancy of Indian lands for right of way purposes should, therefore, be filed with the Superintendent of the Indian Agency in charge of the reservation on which the lands involved are situated, in accordance with the regulations of the Bureau of Indian Affairs contained in 25 CFR Part 169.

It is mandatory that the Superintendent or Right of Way Agent of each individual agency be contacted prior to submitting an application for right of way.

Title status reports ([Exhibit VI-1](#)) with current addresses of allotment owners are requested from the BIA Superintendent of the Indian Agency in charge of the reservation and realty office on which the lands involved are situated for all tribal and allotment lands to determine ownership interests. Allotment ownership interests and current addresses are needed to prepare the right of way plats.

Appraisals are required on all tribal and allotment parcels. Three copies of the approved appraisal are mailed to the BIA's review appraiser for review and approval.

The minimum payment on Indian allotment lands to each allotment owner is \$50.

Each allotment owner is sent a Right of Way Consent form ([Exhibit VI-2](#)) for completion and signature. The Right of Way Consent form, which discloses the payment amount based on the individual's percentage of ownership interest in the allotment, is sent via certified mail to all individuals indicated in the Title Status Report as having an ownership interest in the allotment. A self-addressed stamped return envelope is enclosed for the

allotment owner to return the consent form.

The agency BIA superintendent requires that NDDOT get signed right of way consents for 51 percent of the ownership interest on each allotment before the right of way grant of easement is approved.

A right of way application is completed for all allotment parcels on the project. The right of way application is sent with a cover letter to agency BIA superintendent requesting the Grant of Easement.

The original signed right of way consent forms are sent along with the right of way application for each right of way parcel along with the original cover letter that was sent to allotment owner a certified card. Copies of all unsigned right of way consent forms and cover letters with undelivered certified card also need to be sent with the right of way application showing that NDDOT attempted to get signed allotment owners consents.

An original and two copies of the map of definite location, an original and two copies of the right of way plat and descriptions, claim for payment, and check for all the allotment ownership interests on the entire project, are mailed with the right of way application.

The original grant of easement is recorded by the BIA at their Aberdeen, South Dakota, office before it is sent to NDDOT. After the grant is received from the BIA, it is then recorded at the county recorder's office.

Upon completion of construction, NDDOT is required to complete and file in duplicate with the BIA Superintendent of the Indian Agency in charge of the reservation the following two documents: an affidavit of completion, signed by NDDOT's Deputy Director for Engineering; and a certification, signed by NDDOT's Director. Failure to file an affidavit shall subject the right of way to cancellation.

## **6.7 FEDERAL OWNED LANDS**

The policies and procedures relating to the acquisition of lands or interests in lands owned by the United States for highway purposes are as outlined in 23 CFR Part 710 Subpart F.

## **6.8 RAILROAD OWNED LANDS**

The policies and procedures relating to the acquisition of lands or interests in lands owned by the Railroad for highway purposes are on a case by case basis. NDDOT ROW department secures easement and construction and maintenance agreements related to ROW. All other aspects regarding railroad facilities are coordinated through other NDDOT divisions. NDDOT follows the guidelines as outlined in 23 CFR 635.307. All Federal-aid highway projects are certified that all necessary right of way are available for construction in accordance with the approved plans. [Exhibit II-7](#).

## SECTION VII - PROPERTY MANAGEMENT

### 7.1 GENERAL

Property management is the administrative oversight of real property acquired by NDDOT, either by direct purchase or by eminent domain proceedings, for the construction of any Federal-aid or State-aid projects on the State highway system.

ETS Right of Way Section is responsible for the disposal, relinquishment, or leasing, of real and personal property associated with active highway projects. The management of Right of Way (ROW) Use Agreements and the inventory of permitted encroachments are the responsibility of the District Engineer. The disposal and leasing of real property related to closed highway projects is the responsibility of the Maintenance Division. The Maintenance Division will assist the District Offices as needed with ROW Use Agreements that are unrelated to highway projects.

The areas of responsibility of the ETS Division are as follows:

- 7.2 Management of Improvements
- 7.3 Management of Vacant Lands
- 7.4 Management of ROW Use Agreements
- 7.5 Inventory of Permitted Encroachment

Files maintained by the ETS Division, Maintenance Division or the District Office are as follows:

- a. Inventory
  - i. Improvements
    - (1) Project Number
    - (2) Parcel Number
    - (3) Type and Size of Building and Improvement
    - (4) Salvage Value
    - (5) Move Costs (if available)
    - (6) Date Acquired
    - (7) Purchase Amount
    - (8) Date Sold
    - (9) Amount Received from Sale
    - (10) Purchaser's Name
    - (11) Removal Date
    - (12) Bill of Sale
    - (13) Disposition Report
    - (14) Advertising Costs
    - (15) Rodent Reports
    - (16) Name of Lessee (if leased)

- (17) Lease Amount
- (18) Date Lease Payment Received
- (19) Term Lease Pavement Covers

ii. Excess Land

- (1) Project Number
- (2) Parcel Number
- (3) Legal Description
- (4) Acreage
- (5) Date Acquired
- (6) Date Sold
- (7) Amount Received from Sale
- (8) Purchaser's Name
- (9) Advertising Costs
- (10) Name of Lessee (if leased)
- (11) Lease Amount
- (12) Date Lease Payment Received
- (13) Term Lease Payment Covers

iii. ROW Use Agreements

- (1) Location
- (2) Name of Lessee
- (3) Date ROW Use Agreement approved by FHWA (Required for agreements involving Interstate ROW only)
- (4) Description
- (5) Copy of executed ROW Use Agreement

iv. Permitted Encroachments

- (1) Location of Encroachment
- (2) Description of Encroachment
- (3) Date Permitted Encroachment Approved by FHWA (Required for agreements involving Interstate ROW only)

Note: Disposal or lease actions as part of a current highway projects will be the responsibility of the ETS Division. Closed project files will be transferred to the Maintenance Division.

## 7.2 MANAGEMENT OF IMPROVEMENTS

a. General

- i. The ETS Division reviews the approved appraisal for each project to

determine if improvements will be acquired.

Improvements may be offered to the original owner for the appraised salvage value with the stipulation that they remove said improvement from the right of way by or before a specified date.

A review of the acquisition files is made by the ETS Division to determine if the grantor will or will not retain the improvement for the salvage value.

- ii. An inventory of all improvements acquired on a project is kept by the ETS Division.
- iii. Improvements constituting real property that are acquired through the acquisition of right of way may fall in one of two categories:
  - (1) Improvements located within the limits of permanent right of way.
  - (2) Improvements located outside the limits of the permanent right of way and construction area which are acquired along with excess takings due to land locking or other justifiable reasons.

The improvements in the first category are to be disposed of at the earliest possible date after title has been conveyed to NDDOT allowing the property owner a reasonable period in which to vacate the property.

The improvements in the second category may be leased or sold at the discretion of the ETS Division Director.

- iv. Rodent Control

- (1) Buildings disposed of through public sale or retained by owner.

- (a) It shall be the responsibility of the Right of Way Agent on the project to inspect all buildings to determine if rodents are present. The Right of Way Agent will prepare a written report for the parcel file that states that the inspection has been made and their findings.

- (b) If it is evident rodents are present, a qualified pest control operator will be contracted by NDDOT.

- (c) Files will show data supporting adherence to this policy.

- (2) Buildings disposed of by contractor

- (a) These buildings will be inspected as provided in subsection iv, (1), (a) above, at the time of their purchase.

- (b) It shall be the responsibility of the Project Engineer, at the time of destruction by the contractor, to inspect these buildings again for any evidence of rodents.
- (c) If rodents are found, a qualified pest control operator will be contracted by the District Office.
- (d) The Project Engineer will submit a written report to the ETS Division that this policy has been adhered to.

(3) Garbage Dumps or Landfills

- (a) It shall be the responsibility of the Project Engineer, and so noted on the plans, that prior to any work being undertaken at these sites, the advice of the local health officer having jurisdiction be sought. If none are available, the State Health Department should be contacted to determine if rodents are present.
- (b) If rodents are present, a qualified pest control operator will be contracted by the District Office. The Project Engineer will submit a written report to the ETS Division that this memorandum has been adhered to.

(4) Insurance

When insurable interests exist, buildings or structures acquired in the name of the state shall be insured in the State Insurance Fund or any properly authorized insurance company.

(5) Salvage Value of Buildings and Appurtenances

When improvements will be disposed of by sale, the salvage values shall be justified by qualified staff personnel or fee appraisers. The staff appraiser will include a salvage value estimate in the original appraisal.

(6) Bill of Sale

Any instrument by the state transferring title to personal property shall be executed by the ETS Division Director or his/her duly authorized representative. [Exhibit VII-1](#)

(7) Public Sale Advertisement

Three publications of the proposed sale of the improvements shall be made in the official county paper. The ETS Division is responsible for preparing

the publication. The last publication shall be not less than ten days before the day of the sale.

b. Lease of Improvements

i. Normally, 90-days free occupancy is allowed after the acquisition by the state. Any extension of the 90-day free occupancy must be approved by the ETS Division Director and District Engineer. Consideration must be given for clearing the right of way prior to construction. Specific circumstances surrounding each extension will be determined if free occupancy will be extended or if extended occupancy by payment will be required.

ii. The lease rates are established by an Appraiser using rents obtained for similar improvement within the area. The amount of the lease rate shall not exceed the fair market value lease rate of a property for a short-term occupancy.

iii. A lease will be prepared which will set forth the terms and conditions. [Exhibit VII-2](#) and [Exhibit VII-3](#)

iv. Payments.

(1) All payments will be handled by the Right of Way Section Program Manager.

(2) Payments will be transmitted to the individual in the Right of Way Section who is responsible for crediting the receipts to the appropriate project.

(3) The method of accounting for the payments is handled in accordance with the memorandum from the Finance Division. [Exhibit VII-4](#)

(4) All payments in which Federal funds participated in the initial acquisition shall be credited to Federal funds.

c. Disposal of Improvements

i. Improvements on Right of Way

(1) Improvements are first offered for resale to current owner at appraised salvage value.

(2) The estimated average cost of advertising and conducting a sale is approximately \$1,000. Therefore, improvements with an appraised salvage value below \$1,000 which are not leased to the current owner will be disposed of on a negotiated basis to other interested parties.



- (3) Improvements with an appraised salvage value in excess of \$1,000 which are not resold to the current owner will be disposed of at a public sale.

Where buildings are located on any one parcel or tract, each building will be sold individually and in all cases, intact and in an as is condition at the time of the sale. No improvements are to be moved or salvaged until payment in full has been received by the State. Initial down payments will be forfeited by the purchaser should they fail to come up with the balance of the payment within 30 days after the date of the sale. The deposits of unsuccessful bidders will be returned immediately after the successful bidder has been determined.

The State, after completion of any sale, will furnish a proper bill of sale [Exhibit VII-1](#) to the purchaser and in all cases reserves the right to reject any or all bids prior to the issuance of said bill of sale. The bill of sale is approved and signed by NDDOT's ETS Division Director.

ii. Improvements off Right of Way

(1) The first consideration given is possible retention by the State for maintenance uses, consideration is also given to other state departments which may have use for these improvements.

(2) After determination is made that the State has no use for these improvements, they are offered for resale in accordance with subdivisions c, i, (2) and c, i, (3) above.

iii. Reporting Sale Results

Tracking and reporting the results of the sale of property and the proper documentation files is the responsibility of the Division staff member in charge of disposing of said properties.

iv. Site Clearance

Site clearance and removal of buildings will be accomplished in accordance with terms and conditions of the bill of sale. The terms and conditions of bills of sale relating to site clearance are enforced by the District Office.

All costs of removal are borne by the purchasers, excepting that concrete foundation or masonry structures may remain in place to be demolished by the contractor.

Upon failure to sell or when sale is not feasible because of condition, market

restrictions, zoning, etc., buildings may be razed either by separate razing contracts or in connection with a highway construction contract or the use of state forces.

### 7.3 MANAGEMENT OF VACANT LANDS

#### a. General

##### i. Highway right of way acquired for future use is managed by the ETS Division

Highway right of way acquired a year or more in advance of construction requirements. Such real properties, together with other excess real properties, may be considered for lease until required for construction or disposed as excess real properties.

Right of way acquired for future four-lane construction is generally a strip taking. Because the State in this situation is doing what may be termed protective purchasing, a lease for an indefinite term ([Exhibit VII-3](#)) may be agreed to as part of the acquisition settlement. This type of lease will terminate when the land is needed for future construction. Usually one dollar is the consideration shown. When such leases do not enter into the acquisition phase, a lease of the right of way acquired is generally negotiated with the adjacent owner after current construction is complete. Consideration for such leases is generally on an annual basis.

The ETS Division Director, acting upon advice of the Right of Way Section Program Manager and District Office, will determine when excess real property will be leased back as a part of the acquisition.

##### ii. Excess real property and uneconomic remnants from closed projects are managed by the Maintenance Division

In those situations where such tracts are available for at least one cropping season, and the anticipated lease would be in excess of \$1,000 on a parcel basis such properties may be advertised and leased. Those parcels falling into the latter category will be analyzed and if not economical to lease the file shall contain written support.

Lands in right of way inventory will be reviewed on a continuing basis to determine that property is no longer necessary for highway purposes.

##### iii. Quit Claim Deed

Transfer of title of excess lands is accomplished by a Quitclaim deed signed by NDDOT's Director and Governor.

iv. Public Sale Advertisement

Three publications of the proposed sale of excess lands shall be made in the official county paper. The last publication shall be not less than ten days before the day of the sale.

b. Disposition of Excess Real Property – This applies to the disposal of real property interests determined to be excess to transportation needs and may be sold or conveyed to a government entity (Federal, State or local government agency) or to a private party in accordance to 23 CFR 710.403 and 710.409. Real property interests determined to be excess to transportation needs may be disposed of, on an individual or project basis.

- i. Disposal may be offered to Federal, State, and local agencies when there is potential use for parks, conservation, recreation, or related purposes.
- ii. Real property interests may be retained to restore, preserve, or improve the scenic beauty and environmental quality adjacent to transportation facility.
- iii. Requests for the disposal of real property may be received from government agencies or private individuals. Said parties shall submit a written request and application to the District Engineer. The District Engineer and ETS Division Director will determine when a real property interest is determined to be excess and no longer needed.

NDDOT approval shall be made in accordance to the Federal-aid Highway Program Stewardship and Oversight Agreement between the NDDOT and FHWA.

FHWA approval is required for any disposal action, or any change in access control on or within the approved right of way limits of the Interstate.

- iv. Disposal actions, and Right of Way (ROW) Use Agreements, including leases are subject to 23 CFR part 771. ETS Division will evaluate the environmental effects of the proposed action.
- v. Current fair market value must be charged for the disposal or use of all real property interests if those real property interests were obtained with Federal funding.
- vi. FHWA approval is required if a property interest is sold to a public entity for less than fair market value. The property interest must remain in public use and the deed shall provide for reversion of the property for failure to continue public ownership and use.

- vii. No FHWA approval is required for disposal of excess real property located outside of the approved ROW limits or other project limits if Federal funds did not participate in the acquisition cost of the real property.
- c. The disposal of excess real property must be evaluated to ensure that:
- i. The real property will not be needed for transportation purposes in the future;
  - ii. The remaining real property is adequate under present day standards for the transportation facility involved;
  - iii. The real property is not suitable for use as public recreation, parks, or landscape use; and
  - iv. The real property is not suitable to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility consonant with the intent of Title III of the Highway Beautification Act of 1965.
- d. Additional considerations for evaluation before any highway right of way is declared excess real property include:
- i. Should the highway right of way be retained for sight distance purposes?
  - ii. Should the highway right of way be retained for -future construction needs?
  - iii. Is the highway facility built to current geometric standards for shoulder width, curvature and roadside?
  - iv. Are all current safety standards in place, which require right of way or embankment material such as inslopes, culvert lengths, driveways, or bridge approach guardrail?
  - v. Can the site be used in the future for stockpiling milled material or as a recycling construction site?
  - vi. Can the site be used for material for maintenance purposes?
  - vii. Does the site have any significant value as a wildlife site?
  - viii. Is the highway right of way being used for utility locations?
  - ix. Will the disposal of the highway right of way affect access to adjacent property, and if so, is the value of the site greater than the cost of alternate access?

- x. Will the disposal of the highway right of way restrict the possible future construction of needed service roads?
- xi. Would the disposal of the highway right of way to a political subdivision be in the public interest?

ETS Division and the District Office are responsible for evaluating conditions in subsections c and d above and determining findings, before real property can be disposed.

- e. Relinquishment of Highway Right of Way or Facilities – This applies only to the relinquishment of highway facilities to a government entity (Federal, State or local government agency) for continued highway purposes and use in accordance to 23 CFR 620.203.
  - i. Final NDDOT acceptance of a project shall automatically authorize the routine relinquishment of real property lying outside of the final right of way limits and control of access. FHWA authorized NDDOT to make the final decision as outlined in the Stewardship Agreement.
  - ii. No charge or credit of Federal funds is required if the real property stays in public use.
  - iii. The following facilities maybe relinquished without FHWA approval:
    - (1) Sections of a State highway, which have been superseded by new construction location.
    - (2) Sections of reconstructed local facilities that are located outside the control access lines.
    - (3) Frontage roads or portions thereof that are constructed generally parallel to and outside the control of access lines.
  - iv. The following facilities maybe relinquished only with FWHA approval:
    - (1) Frontage roads that serve as connections between Interstate ramps.
    - (2) Ramps that serve as connections for interchange of traffic between Federal-aid projects and local roads or streets.
    - (3) A frontage road not on an approved Federal-aid system, where the political subdivision is to assume control thus eliminating the need for transfer later.
  - v. Relinquishments must be justified by the State's finding concurred in by the

FHWA, that:

- (1) The subject land will not be needed for Federal-aid highway purposes in the foreseeable future;
  - (2) That the right-of-way being retained is adequate under present day standards for the facility involved;
  - (3) That the release will not adversely affect the Federal-aid highway facility or the traffic thereon;
  - (4) That the lands to be relinquished are not suitable for retention in order to restore, preserve, or improve the scenic beauty adjacent to the highway consonant with the intent of the Highway Beautification Act of 1965.
- vi. Immediately following action by the State in approving a relinquishment, it shall furnish the Division Administrator for record purposes a copy of a suitable map or plats identified by the Federal-aid project number with the facilities to be relinquished and the date of such relinquishment action clearly delineated thereon.
- vii. If at any time after the relinquishment of real property that the real property is in fact required for the safe and proper operation of the Federal-aid highway; the State shall take immediate action to restore such facility to its jurisdiction without cost to Federal-aid highway funds unless otherwise approved by FHWA.
- f. Charges and Credits
- i. Current fair market value is charged for the disposal or use of all real property interests.
  - ii. If disposal or lease is to a Federal, State, or local government agency for public use, an exception to the requirement of charging fair market value and no credit to Federal funds may be justified. The justification must be in the overall public interest based on social, environmental, or economic benefits, or is for a nonproprietary governmental use. ETS Division Director must approve proper written justification.
  - iii. The instrument of conveyance shall contain the appropriate non-discrimination provisions included in Appendix "C" of the State's Title VI Civil Rights Assurances with respect to the Civil Rights Act of 1964.
  - iv. When disposing or leasing of real property acquired after the Federal-Aid Highway Act of 1956, a credit to Federal funds is required if Federal funds

participated in the acquisition and the value of the real property being disposed exceeds \$2,000.00. An approved appraisal or value estimate will be used to verify the value of these types of parcels. The credit to Federal funds is at the same pro rata share as Federal funds that participated in the acquisition. There is no Federal participation in the costs of such disposals.

- v. When relinquishing real property or facilities to a Federal, State, or local government agency for highway purposes, there need not be a charge to the said agency, nor any credit to Federal funds.
  - vi. If for any reason when relinquishing real property or facilities there is a charge, the State may retain the Federal share of the proceeds if used for projects eligible under Title 23 United States Code.
- g. Lease of Excess Real Property
- i. Disposal actions, and Right of Way (ROW) Use Agreements, including leases are subject to 23 CFR part 771. ETS Division will evaluate the environmental effects of the proposed action. The adjacent property owner has the first option to lease any unused right of way.
  - ii. Lease requests from individuals other than the adjacent property owner are required to be put up for public lease.
  - iii. Lease rates are based on a per acre or square foot price or by utilizing the most recent NDSU annual report on farmland leasing trends.
  - iv. A lease will be prepared which will set forth the terms and conditions. [Exhibit VII-2](#) and [Exhibit VII-3](#)
  - v. Payments
    - (1) All payments will be handled by the Maintenance Division.
    - (2) All payments will be managed and reported by the Maintenance Division.
    - (3) The method of accounting for the payments is handled in accordance with the memorandum from the Finance Division. [Exhibit VII-4](#)
    - (4) All payments in which Federal funds participated in the initial acquisition shall be credited to Federal funds. The credit shall be on the same pro rata basis as the original acquisition.

## 7.4 MANAGEMENT OF RIGHT OF WAY (ROW) USE AGREEMENTS

A ROW Use Agreement for the non-highway use of real property interests may be executed with a public entity or private party in accordance with 23 CFR 710.403 and 23 CFR 710.405. Any non-highway alternative use of real property interests requires a determination by FHWA that such occupancy, use, or reservation is in the public interest; is consistent with the continued use, operations, maintenance, and safety of the facility; and such use does not impair the highway or interfere with the free and safe flow of traffic.

Approvals shall be made in accordance to the Federal-aid Highway Program Stewardship and Oversight Agreement between the NDDOT and FHWA. FHWA approval is required for any ROW Use Agreement, within the approved right of way limits of the Interstate.

Disposal actions, and Right of Way (ROW) Use Agreements, including leases are subject to 23 CFR part 771. ETS Division will evaluate the environmental effects of the proposed action.

All non-highway use of right of way shall be covered by a properly executed ROW Use Agreement.

ROW Use Agreements must contain provision that address the following:

- a. The responsible party for developing and operating the non-highway use of real property.
- b. A Description of the proposed non-highway use.
- c. How the non-highway use ensures the safety and integrity of the federally assisted facility.
- d. Defines the term (length) of the agreement.
- e. Identifies the design and location for the non-highway use including a legal description of the space.
- f. Establish terms for the revocation of the ROW Use Agreement to be revoked if the real property is not used for the purpose described in the agreement; is abandoned; or if the agreement is violated and such violation is not corrected within a reasonable length of time after written notice of noncompliance has been given. The removal of any improvements occupying the real property as a result of the ROW Use Agreement shall be accomplished by the responsible party in a manner prescribed by NDDOT at no cost to the State or FHWA.
- g. The responsible party must maintain adequate insurance to cover any damages which may occur during and/or after construction of any facilities within the non-highway use of the real property itself and the highway right of way, throughout the



term of the ROW Use Agreement.

- h. Require compliance with non-discrimination provisions included in Appendix "C" of the State's Title VI Civil Rights Assurances with respect to the Civil Rights Act of 1964.
- i. Prior approval by NDDOT, subject to concurrence by the FHWA, is needed for any significant revision in the design, construction, or operation of the non-highway use, or assignment of ownership.
- j. Grant access to NDDOT and authorized FHWA representatives to enter the premises for the purpose of inspection, maintenance, or reconstruction of the highway facility, as may be deemed necessary by the NDDOT or FHWA.
- k. The responsible party must maintain the non-highway use of real property to assure that the structures and the area within the real property and highway right of way boundaries will be kept in good condition, both as to safety and appearance. The maintenance must be accomplished in a manner to cause no unreasonable interference with highway use. In the event, the responsible party fails in its maintenance obligations; the NDDOT may enter the premises to perform such work.

All authorized ROW Use Agreements will be inventoried and made available for review.

## **7.5 INVENTORY OF PERMITTED ENCROACHMENTS**

- a. General
  - i. The District Engineer shall be responsible for the elimination or permitting of all existing encroachments and the prohibition or removal of future encroachments. All legal authority necessary to fulfill such responsibility has been delegated to the District Engineer, within the highway District they are assigned. (See ND PM VIII, Subject 1-6.)
  - ii. FHWA approval is required on any permitted encroachments on the National Highway System and Interstate System.
  - iii. The District Engineer is required to enter into a written agreement with the owner of any permitted encroachments. The agreement should identify the type and location of the encroachment and the terms and conditions that must be followed.

The ETS Division and Maintenance Division shall maintain a record of all permitted encroachments.

## SECTION VIII - RIGHT OF WAY PLATS

### 8.01 RIGHT OF WAY PLATS

Right of way plats are prepared by the Design Division's Right of Way Plat Section. Refer to Chapter 20, Procedure for Creating Right of Way Plats and [ND CADD Standards](#), of the Design Division-Right of Way Plat Section's [Surveys and Photogrammetry Manual](#) for guidelines.

## SECTION IX - RELOCATION ASSISTANCE

### 9.1 GENERAL STATEMENT

Relocation assistance ([Exhibit IX-3](#)) and payments will be provided to individuals, families, businesses, farm operators, and nonprofit organizations displaced by the acquisition or clearance of rights of way for any State or Federal-aid highway program as set forth in the Code of Federal Regulations (49 CFR Part 24) and Chapter 54-01.1 of the NDCC.

The North Dakota Forty-First Legislative Assembly in 1969 did create and enact Section 24-01-41.1 of the NDCC relating to the expenditure of highway funds for state participation in relocation payments. This section in part states, "and such changes or amendments thereof which Congress may hereafter enact." ([Exhibit IX-1](#)) This law would then enable the State of North Dakota to fully comply with the provisions of the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," upon its inception.

### 9.2 ORGANIZATION AND RELOCATION PERSONNEL

The ETS Division Director will have the complete responsibility for implementing the relocation assistance program. Relocation payments and services will be provided by one Relocation Officer as overall coordinator, with requested field work and relocatee contacts being done by Right of Way Agents.

### 9.3 PURPOSE

The purpose of these regulations is to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601 et seq.) in accordance with the following objectives:

- a. To ensure that owners of real property to be acquired for Federal and federally assigned projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs;
- b. To ensure that persons displaced as a direct result of Federal or federally assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole;
- c. To ensure NDDOT implements these regulations in a manner that is efficient and cost effective.

- d. All State highway funded projects shall follow the objectives outlined in the Federal guidelines contained herein and the NDCC.

This section is not intended to state all the rules and regulations that are required to implement the Relocation Assistance Act, but rather, outlines NDDOT's procedures in administering the program. Any person using these procedures should become very knowledgeable with the latest rules and regulations contained in the Federal Register, Rules & Regulations - Final Rule. [Exhibit IX-2](#)

#### 9.4 GENERAL

##### a. Related Definitions

- i. Agency. The term Agency means the Federal agency, State, State agency, or person that acquires real property or displaces a person.
- ii. Alien or Alien not lawfully present. The term Alien means a person who is not lawfully present in the United States who has not been admitted or paroled into the U.S. pursuant to the Immigration and Nationality Act.
- iii. 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.
- iv. Business. The term "business" means any lawful activity, except a farm operation, that is conducted:
  - (1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or
  - (2) Primarily for the sale of services to the public; or
  - (3) Solely for the purpose of these regulations, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or
  - (4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.
- v. Citizen. The term citizen for purposes of this part includes both citizens of the United States and noncitizen nationals.

- vi. Comparable Replacement Dwelling. The term "comparable replacement dwelling" means a dwelling which is:
- (1) Decent, safe, and sanitary as described in paragraph viii. of this section;
  - (2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principle features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, NDDOT may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling;
  - (3) Adequate in size to accommodate the occupants;
  - (4) In an area not subject to unreasonable adverse environmental conditions
  - (5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment
  - (6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;
  - (7) Currently available to the displaced person on the private market.
  - (8) Within the financial means of the displaced person;
    - (a) A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential, all increased mortgage interest costs and all incidental expenses, plus any additional amount required to be paid under replacement housing of last resort.

(b) A replacement dwelling rented by an eligible displaced person is considered to be within his/her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.

(c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if NDDOT pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in 9.7, b., ii, (2). Such rental assistance must be paid under replacement housing of last resort.

(9) For a person receiving government housing assistance before displacement, a dwelling that may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.

vii. **Contributes Materially** The term "contributes materially" means that during the two taxable years prior to the taxable year in which the displacement occurs, or during such other period as NDDOT determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5,000; or

(2) Had average annual net earnings of at least \$1,000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, NDDOT may approve the use of other criteria as determined appropriate.

viii. **Decent, Safe, and Sanitary Dwelling** The term "decent, safe, and sanitary dwelling" means a dwelling that meets local housing and occupancy codes. However, if any of the following standards are not met by the local code, such following standards shall apply, unless waived for good cause by FHWA. The dwelling shall:

(1) Be structurally sound, weather tight, and in good repair.

- (2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.
  - (3) Contains a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climate conditions do not require such a system.
  - (4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the uniform policy of NDDOT. In addition, NDDOT shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the uniform policy of NDDOT.
  - (5) There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
  - (6) Contains unobstructed egress to safe, open space at ground level.
  - (7) For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.
- ix. Department. The term "Department" refers to the North Dakota Department of Transportation (NDDOT).
  - x. Displaced Person.
    - (1) General. The term "displaced person" means, except as provided in paragraph 2 of this section, any person who moves from the real property or moves his/her personal property from the real property:
      - (a) As a direct result of NDDOT's acquisition of such real property in whole or in part for a project. This includes any person who moves from the real property as a result of the initiation of negotiations. In the case of a partial acquisition, NDDOT shall determine whether the person is displaced as a direct result of the partial acquisition; or

- (b) As a result of a written order from NDDOT to vacate such real property for the project; or
  - (c) As a result of NDDOT's acquisition of, or written order to vacate other real property for a project, on which the person conducts a business, farm operation, or is a nonprofit organization. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance, advisory services, and moving expenses.
- (2) Persons Not Displaced. The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:
- (a) A person who moves before the initiation of negotiations, unless NDDOT determines that the person was displaced as a direct result of the program or project; or
  - (b) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or
  - (c) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act; or
  - (d) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by NDDOT in accordance with any guidelines established by FHWA; or
  - (e) An owner-occupant who moves as a result of an acquisition of real property, or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation, or demolition for a Federal or federally-assisted project is subject to this part.); or
  - (f) A person whom NDDOT determines is not displaced as a direct result of a partial acquisition; or
  - (g) A person who, after receiving a notice of relocation eligibility, is notified in writing that they will not be displaced for a project. Such written notification shall not be issued unless the person has not moved and NDDOT agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or



- (h) An owner-occupant who voluntarily conveys his/her property, after being informed in writing that if a mutually-satisfactory agreement on terms of the conveyance cannot be reached; NDDOT will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part; or
  - (i) A person who retains the right of use and occupancy of the real property for life following its acquisition by NDDOT; or
  - (j) A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations or a person who has been evicted for cause. However, advisory assistance may be provided to unlawful occupants at the option of NDDOT in order to facilitate the project; or
  - (k) A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance in accordance with 9.5,e,viii. [Exhibit IX-21](#) and [Exhibit IX-22](#); or
  - (l) Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided under the American Dream Down Payment Initiative (ADDI) authorized by section 102 of the American Dream Downpayment Act (Pub. L. 108-186; codified at 42 USC 12821).
- xi. Dwelling. The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
  - xii. 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.
  - xiii. Farm Operation. The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially in the operator's support.
  - xiv. Federal-Financial Assistance. The term "Federal-financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

- xv. FHWA. The term "FHWA" refers to Federal Highway Administration.
- xvi. 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.
- xvii. Initiation of Negotiations. Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:
  - (1) Whenever the displacement results from acquisition of the real property by NDDOT, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by NDDOT to the owner or the owner's representative to purchase the real property for the project. However, if NDDOT issues a notice of its intent to acquire the real property and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.
  - (2) Whenever the displacement is caused by rehabilitation, demolition, or privately-undertaken acquisition of the real property (and there is no related acquisition by NDDOT) the "initiation of negotiations" means the notice to the person that they will be displaced by the project or, if there is no notice, the actual move of the person from the property.
  - (3) 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, the "initiation of negotiations" means 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.
- xviii. Lead Agency. The term "lead agency" means NDDOT acting through the FHWA.
- xix. Mobile home. The term mobile home includes manufactured homes and recreational vehicles used as residences.
- xx. Mortgage. The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the state in which the real property is located, together with the credit instruments, if any, secured thereby.

- xxi. **Nonprofit Organization.** The term "nonprofit organization" means a corporation organized under the NDCC: Nonprofit Corporation Act, chapters 10-24 through 10-28, or an organization defined in subsections 7, 8, 9, 10, or 11 of Section 57-02-08.
- xxii. **Notice of Intent to Acquire or Notice of Eligibility for Relocation Assistance.** Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of Federal financial assistance.
- xxiii. **Owner of a Dwelling.** A person who is considered to have met the requirement to own a dwelling if the person holds any of the following interests in real property:
- (1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
  - (2) An interest in a cooperative housing project that includes the right to occupy a dwelling; or
  - (3) A contract to purchase any of the interests or estates described in subparagraphs (1) and (2) of this paragraph; or
  - (4) Any other interest, including a partial interest, which in the judgment of NDDOT warrants consideration as ownership.
- xxiv. **Person.** The term "person" means any individual, family, partnership, corporation, or association.
- xxv. **Program or Project.** The phrase "program or project" means any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding agency guidelines.
- xxvi. **Salvage Value.** The term salvage value means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it will be removed from the property at the buyer's expense. This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.
- xxvii. **Small Business.** A business having not more than 500 employees working

at the site being acquired or permanently 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.

- xxviii. Tenant. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.
- xxix. Uneconomic Remnant. The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which NDDOT has determined has little or no value or utility to the owner.
- xxx. Uniform Act. The term "uniform act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 State. 1894; 42 USC 4601 et seq.; Pub. L. 91-646), and amendments thereto.
- xxxi. Unlawful Occupant. A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under state law. NDDOT, at its discretion, may consider such person to be in lawful occupancy.
- xxxii. Utility Costs. The term "utility costs" means expenses for electricity, gas, other heating and cooking fuels, water, and sewer.
- xxxiii. Utility Facility. The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.
- xxxiv. Utility Relocation. The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by NDDOT. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right of way on new location; moving, rearranging, or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequence of project construction.

b. No Duplication of Payments

No person shall receive any payment under this part if that person receives a payment under Federal, State, local law, or insurance proceeds, which is determined by NDDOT to have the same purpose and effect as such payment under this part.

c. Appeals ([Exhibit IX-8](#))

- i. General. NDDOT shall promptly review appeals in accordance with the requirements of applicable law and this part.
- ii. Actions Which May be Appealed. Any aggrieved person may file a written appeal with NDDOT in any case in which the person believes NDDOT has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of a payment, or a relocation payment required. NDDOT shall consider a written appeal regardless of form.
- iii. Time Limit for Initiating Appeal. NDDOT may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of NDDOT's determination on the person's claim.
- iv. Right to Representation. A person has a right to be represented by legal counsel or other representative in connection with his/her appeal, but solely at the person's own expense.
- v. Review of Files by Person Making Appeal. NDDOT shall permit a person to inspect and copy all materials pertinent to his/her appeal, except materials that are classified as confidential by NDDOT. NDDOT may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.
- vi. Scope of Review of Appeal. In deciding an appeal, NDDOT shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair and full review of the appeal.
- vii. Determination and Notification After Appeal. Promptly after receipt of all information submitted by a person in support of an appeal, NDDOT shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, NDDOT shall advise the person of his/her right to seek judicial review of NDDOT's decision.

- viii. NDDOT Official to Review Appeal. NDDOT official conducting the review of the appeal shall be either the head of NDDOT or his/her authorized designee. However, the official shall not have been directly involved in the action appealed.
- d. Recordkeeping and Reports ([Exhibit IX-10](#))
  - i. Records. NDDOT shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least three years after each owner of a property and each person displaced from the property receives the final payment to which they are entitled under this part, or in accordance with the applicable regulations of FHWA, whichever is later.
  - ii. Confidentiality of Records. Records maintained by NDDOT in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.
  - iii. Reports. NDDOT shall submit a report of its real property acquisition and displacement activities under this part if required by FHWA. A report will not be required more frequently than every three years, or as the Uniform Act provides, unless FHWA shows good cause.

## 9.5 GENERAL RELOCATION REQUIREMENTS

### a. Relocation Information and Written Notices

Any person who qualifies as a displaced person must be fully informed of his/her rights and entitlements to relocation assistance and payments provided by the Uniform Act and this regulation. Each notice that NDDOT is required to provide to a property owner or occupant under this part shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in NDDOT files.

- i. General Information Notice (General Written Notice) ([Exhibit IX-4](#)). As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of NDDOT's relocation program which does at least the following:
  - (1) Informs the person that they may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s);
  - (2) Informs the displaced person that they will be given reasonable relocation advisory services, including referrals to replacement

properties, help in filing payment claims, and other necessary assistance to help displaced person successfully relocate;

- (3) Informs the displaced person that they will not be required to move without at least 90 days advance written notice, and informs any person to be displaced from a dwelling that he/she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available;
  - (4) Informs the displaced person that any person who is an alien not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child; and
  - (5) Describes the displaced person's right to appeal NDDOT's determination as to a person's application for assistance for which a person may be eligible under this part.
- ii. Notice of Intent to Acquire. A notice of intent to acquire is NDDOT's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that NDDOT intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance. This notice should be sent with the "General Written Notice", but not later than the initiation of negotiations for the acquisition of the occupied parcel. [Exhibit IX-5](#)
  - iii. Notice of Relocation Eligibility. Eligibility for relocation assistance shall begin on the date of a notice of intent to acquire, the initiation of negotiations, or actual acquisition, whichever occurs first. When this occurs, NDDOT shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance. [Exhibit IX-6](#)
  - iv. Ninety-Day Notice. This is a required written notice unless the occupant moves on his/her own will, prior to the time NDDOT usually issues the notice. If the notice is issued, NDDOT must comply with the following criteria: [Exhibit IX-7](#)
    - (1) General. No lawful occupant shall be required to move unless they have received at least 90 days advance written notice of the earliest date by which they may be required to move.



- (2) Timing of the Notice. NDDOT may issue the notice 90 days before it expects the person to be displaced or earlier.
- (3) Content of the Notice. The 90-day notice shall include a specific date as the earliest date by which the occupant may be required to move, or it may include a statement that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which they must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available.
- (4) Urgent Need. In unusual circumstances, an occupant may be required to vacate the property in less than 90 days advance written notice if NDDOT determines that a 90-day notice is impracticable, such as when a person's continued occupancy of the property would constitute danger to the person's health or safety. A copy of NDDOT's determination shall be included in the appropriate parcel file.

b. Availability of Comparable Replacement Dwelling Prior to Displacement

- i. General. No person to be displaced shall be required to move from his/her dwelling unless at least one comparable replacement dwelling has been made available to the person. When possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person if:
  - (1) The person is informed of its location; and
  - (2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and
  - (3) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.
- ii. Circumstances Permitting Waiver. FHWA may grant a waiver of the policy in paragraph i. of this section, in any case where it is demonstrated that a person must move because of:
  - (1) A major disaster; or
  - (2) A presidential declared national emergency; or



- (3) Another emergency that requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.
  - iii. Basic Conditions of Emergency Move. Whenever a person to be displaced is required to relocate from the displacement dwelling for a temporary period because of an emergency as described in paragraph ii. of this section, NDDOT shall:
    - (1) Take whatever steps are necessary to assure that the affected person is temporarily relocated to a decent, safe, and sanitary dwelling;
    - (2) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation;
    - (3) Make available to the displaced person as soon as possible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling.)
- c. Relocation Assistance Advisory Services
  - i. General. Displaced persons will receive uniform and consistent services and payments in relocating to decent, safe, and sanitary housing regardless of race, color, national origin, sex, age, disability or income status. These services will be implemented by personal contact whenever possible. In the event that personal contact cannot be achieved, a Relocation Officer or personnel conducting these contacts will document the files accordingly to show that reasonable efforts were made to achieve the personal contacts.
 

Relocation personnel making calls on relocatees will, when necessary, schedule their work hours to assure positive contact regardless of possible abnormal working hours.
  - ii. To Whom Provided
    - (1) To any person (displaced person) who moved from real property or moves his/her personal property from real property as a result of the acquisition of the real property, in whole or in part, which is required for any State, Federal or a federally-assisted program or project.

- (2) Any person occupying property immediately adjacent to the real property acquired for the project is caused substantial economic injury because of the acquisition; NDDOT may offer advisory services to such person.
- (3) Any person who, because of the acquisition of real property used for his/her business or farm operation, moves from other real property used for a dwelling, or moves his/her personal property from such other real property.

iii. To Whom Provided

- (1) Nonresidential Displacements (businesses, farm and nonprofit organizations) displacements, determine the relocation needs and preferences of each business (farm and nonprofit organization) to be displaced and explain the relocation payments and other assistance for which the business may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each business. At a minimum, interviews with displaced business owners and operators should include the following items:
  - (a) The business's replacement site requirements, current lease terms and other contractual obligations, and the financial capacity of the business to accomplish the move.
  - (b) Determination of the need for outside specialists in accordance with 9.6, c, i, (8) that will be required to assist in planning the move, assist in the actual move, and in the reinstallation of machinery and/or other personal property.
  - (c) For businesses, an identification and resolution of personal property/realty issues. Every effort must be made to identify and resolve realty/personal property issues prior to, or at the time of, the appraisal of the property (See sections 2.20 and 2.25.)
  - (d) An estimate of the time required for the business to vacate the site.
  - (e) An estimate of the anticipated difficulty in locating a replacement property.
  - (f) An identification of any advance relocation payments required for the move, and NDDOT's legal capacity to provide them.
  - (g) Provide a copy of NDDOT's relocation assistance brochure.

- (2) Residential displacements, ([Exhibit IX-9](#)) 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:
- (a) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings. Explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available.
  - (b) As soon as feasible, NDDOT shall inform the person in writing of the specific comparable replacement dwellings and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which they may qualify.
  - (c) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. If such an inspection is not made, NDDOT shall notify the person to be displaced that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.
  - (d) Whenever possible, minority persons shall be given reasonable opportunities to relocate to a decent, safe, and sanitary replacement dwelling, not located in an area of minority concentration, which is within their financial means. This policy does not require NDDOT to provide a person a larger payment than is necessary, to enable a person to relocate to a comparable replacement dwelling.
  - (e) NDDOT shall offer all persons transportation to inspect housing to which they are referred.
  - (f) Any displaced person that may be eligible for government housing assistance at the replacement dwelling shall be advised of any requirements of such government housing assistance program that would limit the size of the replacement dwelling, as well as of the long term nature of such rent subsidy, and the limited (42 month) duration of the relocation rental assistance payment.
  - (g) Provide a copy of NDDOT's relocation assistance brochure.

- (3) Provide, for nonresidential moves, current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation, to obtain and become established, in a suitable replacement location.
  - (a) Minimize hardships to persons in adjusting to relocation by providing counseling advice as to other sources of assistance that may be available, and such other help as may be appropriate.
  - (b) 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, and technical help to persons applying for such assistance.

iv. Relocation Field Offices

Due to the sparse population in North Dakota and the probability of only a few relocatees on any given project, the use of relocation field offices will rarely be used. The use and establishment of such field offices will be considered on a project basis, and will be used if deemed necessary by the ETS Division Director. Where possible, District Offices may be utilized for relocation field offices. In order to make information more accessible, personal calls upon each relocatee will be mandatory.

v. Coordination of Relocation Activities

NDDOT's Relocation Officer will maintain personal contact with other Federal, State, and local government agencies to determine the extent of their present and proposed actions which will affect this relocation program. Through the exchange of information with other agencies providing services useful to persons who will be relocated may include, but not be limited to, social welfare agencies, urban renewal agencies, development authorities, public housing authorities, ND of Housing and Urban Development, Veterans Administration, and Small Business Administration. In order to maintain these services, NDDOT's Relocation Officer, shall contact local sources of information on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, home building contractors, or any other source considered useful to implement this program to its fullest extent.

## vi. Relocation Plans

A plan will be written whenever the ETS Division requests a plan for the EIS (Environmental Impact Study) being sent to FHWA, or whenever the ETS Division feels it will be helpful or needed.

Prior to proceeding with acquisition on any project that will cause the relocation of any person, if the EIS sent to FHWA includes relocation of people on the proposed project, a detailed relocation plan should be written but is not mandatory. This plan will be formulated by NDDOT's relocation personnel under the direction of NDDOT's ETS Division Director. This plan will be developed to include the following:

- (1) An estimate of the number of households to be displaced including information such as, owner/tenant status, estimated value, rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and persons with disabilities when applicable. This may be obtained by personal contact and interviews.
- (2) A reliable inventory of currently available replacement housing, businesses, farm, and nonprofit organization sites will be developed. The inventory shall include the type of building, number of rooms, and adequacy of such property as related to the needs of the individual, family, business, farm, or nonprofit organization to be relocated. When the project is within an urban area, maps and charts will be prepared to show the type of neighborhood and the proximity to public transportation and commercial shopping areas, schools, churches, and other social institutions. The estimate must be supported by listings of currently available housing that is for sale or rent to those being displaced. Such listings will be obtained from real estate firms, newspapers, multiple listing services, board of realtors, mortgage lenders, the Federal Housing Administration, and from individuals with property for sale or rent. Sufficient listings must be obtained and the estimate will be developed to the extent to support the statements made in the written assurances that the relocation plan will be expeditiously and fully implemented.
- (3) An estimate of the availability of replacement business sites. When an adequate supply of replacement business sites is not expected to be available, the impacts of displacing the businesses should be considered and addressed. Planning for displaced businesses which are reasonably expected to involve complex or lengthy moving processes or small businesses with limited financial resources and/or few alternative relocation sites should include an analysis of business moving problems.

(4) An Analysis of Inventories. An analysis and correlation of the inventory of individual needs, and the inventory of available housing, business, farm, and nonprofit organization sites will be prepared so as to develop a relocation plan which will:

(a) Outline the various relocation problems

(b) Identify and recommend, for the priority acquisition, potential problem parcels to the ETS / Right of Way Program Manager.

NOTE: At this time, information should be developed pertaining to the availability of adequate replacement housing resources which may be needed later in the project to accommodate any subsequent occupants who may occur on those parcels identified as having a potential for subsequent occupants.

(c) An analysis will be made to determine if there are any other Federal, State, or community programs in progress or planned for future development that may influence the availability of the housing market.

(d) The collected information will be assembled into a definite plan on necessary projects. NDDOT will display its ability and method of operation to resolve any identified problems with the relocation of all displaced persons of this specific project.

(e) An estimate of the amount of lead time will be made to assure fulfillment of all relocation assistance functions in a timely, orderly, and humane manner.

vii. Public Information

(1) General Provisions. In order to assure that the public has adequate knowledge of the relocation program, relocation services and payments will be discussed at public hearings. A relocation brochure will be available and full and adequate public notice of the relocation program will be given.

(2) Brochure. A brochure adequately describing the relocation program and the replacement housing policy will be distributed without cost at all public hearings and to all other appropriate individuals and organizations. This brochure will indicate where copies of any state regulations implementing the relocation assistance program can be obtained.

## d. Eviction for Cause

Any person, who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and assistance set forth in this part unless NDDOT determines that:

- i. The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or
- ii. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
- iii. In either case the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part.

For the purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

## e. General Requirements - Claim For Relocation Payments:

- i. Documentation. Any claim for relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred; such as, bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.
- ii. Expeditious Payments. NDDOT shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.
- iii. Advanced Payments. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, NDDOT shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.
- iv. Time for Filing. All claims for relocation payments shall be filed with NDDOT no later than 18 months after, the date of displacement for tenants, and for owners the date of the displacement or the date of final payment for the acquisition of the real property, whichever is later. This time period

shall be waived by NDDOT for good cause.

- v. Notice of Denial of Claim. If NDDOT disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.
- vi. No Waiver of Relocation Assistance. NDDOT shall not propose or request a displaced person to waive his/her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation. However, NDDOT may accept a written statement from the displaced person that states that they have chosen not to accept some or all of the payments or assistance to which they are entitled. Any such written statement must clearly show that the individual knows what they are entitled to receive (a copy of the Notice of Eligibility which was provided may serve as documentation) and their statement must specifically identify which assistance or payments they have chosen not to accept. The statement must be signed, dated, and may not be coerced by NDDOT.
- vii. Expenditure of Payments. Relocation payments provided pursuant to this part, shall not be considered to constitute Federal financial assistance. Accordingly, this part does not apply to the expenditure of such payments by, or for, a displaced person.
- viii. Persons Not Lawfully Present in the United States. [Exhibit IX-22](#)
  - (1) Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:
    - (a) In the case of an individual, that person is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
    - (b) In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.
    - (c) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.



- (d) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.
- (2) The certification provided pursuant to paragraphs (1) (a), (b) and (c) of this section shall indicate whether such person is either a citizen or national of the United States, or an alien who is lawfully present in the United States. Requirements concerning the certification in addition to those contained in this section shall be within the discretion of the FHWA, and within the parameters of NDDOT.
- (3) In computing relocation payments under the Uniform Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him/her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.
- (4) NDDOT shall consider the certification provided pursuant to paragraph (1) of this section to be valid, unless NDDOT determines in accordance with paragraph (6) of this section that it is invalid based on a review of an alien's documentation or other information that NDDOT considers reliable and appropriate.
- (5) Any review by NDDOT of the certifications provided pursuant to paragraph (1) of this section shall be conducted in a nondiscriminatory fashion. NDDOT will apply the same standard of review to all such certifications it receives, except that such standard may be revised periodically.
- (6) If, based on a review of an alien's documentation or other credible evidence, NDDOT has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, it shall obtain the following information before making a final determination.
- (a) If NDDOT has reason to believe that the certification of a person who has certified that they are an alien lawfully present in the United States is invalid, NDDOT shall obtain verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS) Office.

- (b) If NDDOT has reason to believe that the certification of a person who has certified that they are a citizen or national is invalid, NDDOT shall request evidence of United States citizenship or nationality from such person and, if considered necessary, verify the accuracy of such evidence with the issuer.
- (7) No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to NDDOT's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States.
  - (8) For purposes of paragraph (7) of this section, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:
    - (a) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
    - (b) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
    - (c) Any other impact that NDDOT determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.
  - (9) The certification referred to in paragraph (1) of this section may be included as part of the claim for relocation payments described in 9.5, e, of this part.

## **9.6 PAYMENT FOR MOVING AND RELATED EXPENSES**

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, which has been re-designated as the Internal Revenue Code of 1986 or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

- a. Payment for Actual Reasonable Moving and Related Expenses - Residential Moves. [Exhibit IX-11](#) and [Exhibit IX-20](#)

Any owner/occupant or tenant of a dwelling, who qualifies as a displaced person, is entitled to payment of actual moving and related expenses as NDDOT determines to be reasonable and necessary, including expenses for:

- i. Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless NDDOT determines that relocation beyond 50 miles is necessary.
  - ii. Packing, crating, unpacking, and uncrating of the personal property.
  - iii. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
  - iv. Storage of the personal property not to exceed 12 months, unless NDDOT determines that a longer period is necessary.
  - v. Insurance for the replacement value of the property in connection with the move and necessary storage.
  - vi. 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/her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
  - vii. Other moving related expenses that are not listed as ineligible in paragraph 9.6, c, ii, and that NDDOT determines to be reasonable and necessary for the complete move of the displaced person.
- b. A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be based on the cost of one, or a combination of the following methods:
- i. Self Move Actual Cost Method. Actual cost move method, as the name implies, is a payment for the actual direct expenses incurred by the displaced person in conducting the move. Payment will be made on the basis of receipted bills for costs incurred. In this move option, all expenses such as labor rates, equipment, and all related expenses must be approved by NDDOT prior to the start of the move. The total amount of reimbursement under the actual cost move option is limited only to costs that are reasonable and necessary for the move.

- ii. Self Move Fixed Cost Schedule Method. The fixed cost schedule moving method (room count method) of reimbursement provides the opportunity for the displaced person to be paid a fixed allowance in place of actual costs incurred. This method minimizes record-keeping and paperwork for the displaced person and NDDOT. This is outlined in the Claim for Room-Count Moving Expense and Dislocation Allowance Payment Schedule. [Exhibit IX-17](#)
- iii. Commercial Move Method. The commercial move method allows a displaced person the option to be moved by a professional moving company, the displaced person or NDDOT can arrange for at least two licensed commercial movers to submit bids. The lower of the two bids will be selected. Two bids are preferred but not necessary when only one licensed commercial mover is available.

NOTE: The commercial mover must execute the move and present receipted bills for reimbursement. Under this move option, the displaced person cannot conduct the move and receive compensation.

c. **Payment For Actual Reasonable Moving and Related Expenses - Nonresidential Moves**

- i. Eligible Moving and Related Expenses. Any business, farm, or nonprofit organization that qualifies as a displaced person (displacee) is entitled to payment for such actual moving and related expenses as NDDOT determines to be reasonable and necessary, including expenses for:
  - (1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless NDDOT determines that relocation beyond 50 miles is necessary.
  - (2) Packing, crating, unpacking, and uncrating of the personal property.
  - (3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property. This includes connection to utilities available within the building. It also includes modifications to the personal property including those mandated by Federal, State, or local law, code of ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and the modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right of way to the building or improvement are excluded.)

- (4) Storage of the personal property not to exceed 12 months, unless NDDOT determines a longer period is necessary.
- (5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.
- (6) Any license, permit, or certification required of the displacee at the replacement location. However, the payment may be limited to the remaining useful life of the existing license, permit, or certification.
- (7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displacee, his/her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- (8) Professional services as NDDOT determines to be actual, reasonable, and necessary for:
  - (a) Planning the move of the personal property;
  - (b) Moving the personal property; and
  - (c) Installing the relocated personal property at the replacement location.
- (9) Re-lettering signs, qualifying electronic or digital address changes and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.
- (10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business, farm, or nonprofit organization. The payment shall consist of the lesser of:
  - (a) The fair market value in place of the item as is for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the displacee must make a good faith effort to sell the personal property, unless NDDOT determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, farm, or nonprofit organization, not the potential selling price); or
  - (b) The estimated cost of moving the item as is, but with no allowance for storage; or the reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the

business, farm, or nonprofit organization is discontinued, the estimated cost shall be based on a moving distance of 50 miles.

- (11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- (12) Purchase of substitute personal property. If an item of personal property that is used as part of a business, farm, or nonprofit organization is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displacee is entitled to payment of the lesser of:
  - (a) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - (b) The estimated cost of moving and reinstalling the replaced item, but with no allowance for storage. At NDDOT's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.
- (13) Low value/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 NDDOT, the allowable moving cost payment shall not exceed the lesser of: The amount which would be received if the property were sold at the site or the replacement cost of a comparable quantity delivered to the 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 NDDOT.
- (14) Connection to available nearby utilities from the right of way to improvements at the replacement site.
- (15) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of NDDOT, a reasonable pre-approved hourly rate may be established.
- (16) Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by NDDOT.

(17) Searching for a replacement location. A displaced business, farm, or nonprofit organization is entitled to reimbursement for actual reasonable expenses, reimbursement not to exceed the amounts established in 49 CFR 24.301. Expenses incurred in searching for a replacement location including:

(a) Transportation.

(b) Meals and lodging away from home.

(c) Time spent searching, based on reasonable salary or earnings.

(d) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(e) Time spent in obtaining permits and attending zoning hearings.

(f) Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

(18) Other moving related expenses that are not listed as ineligible under paragraph 9.6, c, ii, as NDDOT determines to be reasonable and necessary.

ii. Ineligible Moving and Related Expenses

A business, farm, or nonprofit organization is not entitled to payment for:

(1) The cost of moving any structure or other real property improvement in which the business, farm, or nonprofit organization reserved ownership; or

(2) Interest on a loan to cover moving expenses; or

(3) Loss of goodwill; or

(4) Loss of profits; or

(5) Loss of trained employees; or

(6) Any additional operating expenses of a business, farm, or nonprofit organization incurred because of operating in a new location; or

(7) Personal injury; or

- (8) Any legal fee, or other cost for preparing a claim for a relocation payment, or for representing the claimant before NDDOT; or
  - (9) Expenses for searching for a replacement dwelling; or
  - (10) Physical changes to the real property at the replacement location of a business or farm operation; or
  - (11) Costs for storage of personal property on real property already owned or leased by the displace;
  - (12) Refundable security and utility deposits.
- iii. **Reestablishment Expenses - Nonresidential Moves.** In addition to the Actual Reasonable Moving and Related Expense Payments available under 9.6, c, a small business, farm, or nonprofit organization may be eligible to receive a payment for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.
- (1) **Eligible Reestablishment Expenses.** Reestablishment expenses must be reasonable and necessary as determined by NDDOT. They may include, but are not limited to, the following:
    - (a) Repairs or improvements to the replacement real property as required by Federal law, State law, local law, code, or ordinance.
    - (b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. It is assumed for the purposes of this payment that the business will move to a building substantially appropriate for its needs. The payments made hereunder are not intended to extensively renovate structures or build-out (finish) a "shell" building. The provision of basic amenities such as heating, air conditioning, plumbing, and other items, which are common and typical in a building considered appropriate for the business, are not eligible for payment under these provisions. Eligible improvements or modifications may include the addition of necessary facilities such as a bathroom, additional room partitions required by the business, built-in display cases and similar items considered reasonable and necessary for the operation of the business. However, this would be limited to a like area, size, product, and/or quality to the previous site.



- (c) Construction and installation costs for exterior signing to advertise the business, not to exceed \$5,000. To be eligible, the appraiser must determine that the sign is real property and not personal property. If the sign is deemed personal property see 9.6, c, i, (10), (11), and (12).
  - (d) Redecoration or replacement of soiled or worn surfaces at the replacement site such as paint, paneling or carpeting. This would be limited to a like area, size, product, and/or quality to the previous site. Example: If the relocatee has carpet at the current location and they want to switch to more expensive flooring such as a high grade tile at the new location. The displacee would only be eligible for the cost to install the same quality of carpet they had at the old location and the upgrade would be the cost of the displacee.
  - (e) Licenses, fees, and permits when not paid as part of moving expenses.
  - (f) Advertisement of replacement location, not to exceed \$5,000.
  - (g) Estimated increased costs of operation during the first two years at the replacement site, not to exceed \$12,500 for such items as:
    - i. Lease or rental charges,
    - ii. Personal or real property taxes,
    - iii. Insurance premiums, and
    - iv. Utility charges, excluding impact fees.
  - (h) Other items that NDDOT considers essential to the reestablishment of the business.
- (2) The total of the above Reestablishment Expenses, (c), (e), (f), (g) & (h), shall not exceed a combined total of \$25,000
- (3) Of the above Reestablishment Expenses, all expenses in (a), (b), & (d) that are actual, reasonable, and necessary as determined by NDDOT, are eligible expenses.
- (4) Ineligible Reestablishment 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 or renovations at the replacement site, which are for aesthetic purposes, except as provided in paragraph c, iii, (1), (d), of this section.
  - (d) Betterments or improvements above and beyond what the subject property has.
  - (e) Interest on money borrowed to make the move or purchase the replacement property.
  - (f) Payment to a part-time business in the home that does not contribute materially to the household income.
- iv. **Moving Options - Nonresidential.** Personal property as determined by an inventory from a business, farm, or nonprofit organization may be moved by one or a combination of the following methods:
- (1) **Commercial Moves.** The displaced business, farm, or nonprofit organization or NDDOT can arrange for a licensed commercial mover to execute the move and present receipted bills for reimbursement. At least two bids should be obtained and the lowest bid will be used. Two bids are preferred but not necessary when only one licensed commercial mover is available, or for a low cost or uncomplicated move it may be based on a single bid or estimate.
  - (2) **Self Move Actual Cost.** For this type of move, it must be supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity and equipment rental fees should be based on the actual rental cost of the equipment but not to exceed the cost paid by a commercial mover. The business, farm, or nonprofit organization may also bill for the time of management personnel who supervise the move.
  - (3) **Self-Move (Lower of Two Bids or Estimates).** If the displaced business, farm, or nonprofit organization desired to assume complete responsibility for the move and eliminate the documentation required by the actual cost self-move method, a lump sum amount may be negotiated not to exceed the lower of two acceptable bids or estimates

secured by NDDOT from qualified moving firms. The move can be done partly or entirely by the business or a mover can be hired to perform all or part of the move.

- (4) Self-Moves (NDDOT's Approved Pay Method). If the displaced business, farm, or nonprofit organization elects to take full responsibility for all or a part of the move of the business, farm operation, or nonprofit organization, NDDOT may estimate a move cost and approve a payment for the business, farm, or nonprofit organizations moving expenses in an amount not to exceed \$5,000. Two moving company bids should be obtained if it is estimated that the move will exceed \$5,000.

v. Fixed (In-Lieu) Payment for a combination of Moving and Reestablishment Expenses - Nonresidential Moves.

- (1) Business. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses provided by 9.6, c. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph v, (4), of this section, but not less than \$1,000 nor more than \$40,000. The displaced business is eligible for the fixed payment if NDDOT determines that:
  - (a) The business owns or rents personal property that must be moved in connection with such displacement for which an expense would be incurred in such move and the business vacates or relocates from its displacement site.
  - (b) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless NDDOT determines that it will not suffer a substantial loss of its existing patronage.
  - (c) The business is not part of a commercial enterprise having more than three other entities that are not being acquired by NDDOT, and that are under the same ownership and engaged in the same or similar business activities.
  - (d) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling or sites to others.

- (e) The business contributed materially to the income of the displacee during the two taxable years prior to displacement.
  - (f) Determining the Number of Businesses. In determining whether three or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:
    - i. The same premises and equipment are shared;
    - ii. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
    - iii. The entities are held out to the public and to those customarily dealing with them, as one business; and
    - iv. The same person or closely-related persons own, control, or manage the affairs of the entities.
- (2) Farm Operation. A displaced farm operation may choose a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. Such fixed payment shall be in an amount equal to its average annual net earnings as computed in accordance with paragraph v, (4) of this section, but not less than \$1,000 nor more than \$40,000. In the case of a partial acquisition of land that was a farm operation before the acquisition, the fixed payment shall be made only if NDDOT determines that:
- (a) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
  - (b) The partial acquisition caused a substantial change in the nature of the farm operation.
- (3) Nonprofit Organization. A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$40,000 in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if NDDOT determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless NDDOT demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses.

- (4) Average Annual Net Earnings of a Business or Farm Operation. 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. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when NDDOT determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displacee shall furnish NDDOT proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which NDDOT determines is satisfactory.
- vi. Notification and Inspection. NDDOT shall inform the displaced person, in writing, of the requirements of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided the displaced person as set forth in the General Written Notice. To be eligible for payments under this section the displaced person must:
- (1) Provide NDDOT reasonable advance notice of the approximate date of the start of the move or disposition of the personal property and an inventory of the items to be moved. However, NDDOT may waive this notice requirement after documenting its file accordingly.
  - (2) Allow NDDOT to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.
  - (3) Upon request and in accordance with applicable law, the displaced person/claimant shall transfer to NDDOT, ownership of any personal property that has not been moved, sold, or traded in.

## 9.7 REPLACEMENT HOUSING PAYMENTS

- a. Replacement Housing Payments for 90-Day Homeowner-Occupants. [Exhibit IX-12](#), and [Exhibit IX-16](#)
- i. Eligibility. A displaced person is eligible for the replacement housing payment for a 90-day homeowner-occupant if the person:

- (1) Has actually owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations; and
  - (2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of:
    - (a) The date the displaced person receives final payment for the displacement dwelling; or, in the case of condemnation, the date the required amount is deposited in the court; or
    - (b) The date the displaced person moves from the displacement dwelling.
- ii. Amount of Total Payment. The total replacement housing payment for an eligible 90-day homeowner-occupant is an amount, not to exceed \$31,000, which is the combined sum of:
- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph iv of this section; and
  - (2) The amount necessary to compensate the displaced person for any increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph v. of this section; and
  - (3) The amount of the reasonable expenses that are incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph vi of this section.
- iii. Rental Assistance Payment for 90-Day Owner Who Rents.
- (1) A 90-day owner eligible for a replacement housing payment who elects to rent a replacement dwelling is eligible for a payment not to exceed the statutory limit of \$7,200 (as amended by MAP-21). This is not applicable for a 90-day owner that elects to rent a replacement dwelling. The only limit referenced in this part of the regulation is that "under no circumstances would the rental assistance payment exceed the amount that could have been received" as the price differential payment.
  - (2) The payment shall be computed and disbursed in accordance with paragraph 9.7, b. - Rental Assistance Payments.
- iv. Price Differential.
- (1) Determination of Price Differential. The price differential to be paid

under section 9.7, a, ii, (1), of this section is the amount that must be added to the acquisition cost of the displacement dwelling and site to provide a total amount equal to the lesser of:

- (a) The reasonable cost of a comparable replacement dwelling as determined in accordance with paragraph 9.7, c - Additional Rules Governing Replacement Housing Payment; or
  - (b) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.
- (2) **Mixed-Use and Multi-Family Properties Acquired.** If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment that is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.
- (3) **Insurance Proceeds.** To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (e.g., fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.
- (4) **Owner Retention of Displacement Dwelling.** If the owner retains ownership of his/her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the sum of:
- (a) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
  - (b) The costs incurred to make the unit a decent, safe, and sanitary replacement dwelling; and
  - (c) The current fair market value for residential use of the replacement dwelling site unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
  - (d) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

- v. Increased Mortgage Interest Costs ([Exhibit IX-19](#)) The amount to be paid under paragraph 9.0, a, ii., 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 displacement dwelling.

In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs v (1) through v (5) of this section shall apply to the computation of the increased mortgage interest cost payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

- (1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the displaced person obtains a smaller mortgage than the mortgage balance(s) computed in the buy-down determination the payment will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
- (2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
- (3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
- (4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
  - (a) They are not paid as incidental expenses;
  - (b) They do not exceed rates normal to similar real estate transactions in the area;
  - (c) NDDOT determines them to be necessary; and
  - (d) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of the mortgage balance under this section.



- (5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known, and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.
- i. Incidental Expenses. The incidental expenses are those reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer, including:
    - (1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
    - (2) Lender, FHA, or VA application and appraisal fees.
    - (3) Loan origination or assumption fees that do not represent prepaid interest.
    - (4) Professional home inspection, certification of structural soundness.
    - (5) Credit report.
    - (6) Owners and mortgagee's evidence or assurance of title, not to exceed the costs for a comparable replacement dwelling.
    - (7) Escrow agent's fee.
    - (8) State revenue or documentary stamps, sales, or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
    - (9) Such other costs NDDOT determines to be incidental to the purchase.
  - vii. Rental Assistance Payment for 90-Day Homeowner. A 90-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph a. of this 9.7 section but elects to rent a replacement dwelling, is eligible for a rental assistance payment. The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling compared to a comparable rental dwelling available on the market. The difference, if any, is computed in accordance with 9.7, b, ii, (1), except that the limit of \$7,200 does not apply, and disbursed in accordance with 9.7, b., ii, (3). Under no circumstances would the rental assistance payment exceed the amount that could have been received as the price differential payment under 9.7, a., ii, had the 90-

day homeowner elected to purchase and occupy a comparable replacement dwelling.

b. Replacement Housing Payment for 1-89 Day Owner, Occupants, and Tenants

i. Eligibility. A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$7,200 for rental assistance, as computed in accordance with paragraph ii of this b. section, or down-payment assistance, as computed in accordance with paragraph iii. of this b. section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for less than 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within one year after:

(a) In the case of a tenant, the date the person moves from the displacement dwelling, or

(b) In the case of an owner-occupant, the later of:

i. The date the person receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited in the court; or

ii. The date the person moves from the displacement dwelling.

ii. Rental Assistance Payment ([Exhibit IX-13](#))

(1) Amount of Payment. An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$7,200 for rental assistance. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(a) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(b) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) Base Monthly Rental for Displacement Dwelling. The base monthly rental for the displacement dwelling is the lesser of:

- (a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by NDDOT. (For an owner- occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances); or
- (b) Thirty (30) percent of the displaced person's average monthly gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs. The base monthly rental shall be established solely on the criteria in paragraph b, ii (1) of this 9.07 section for persons with income exceeding the survey's "low income" limits, for persons refusing to provide appropriate evidence of income, and for persons who are dependents. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or,
- (c) The total of the amounts designated for shelter and utilities if the displaced person is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

(3) Manner of Disbursement. A rental assistance payment may, at the Department's discretion, be disbursed in either a lump sum or installments. However, except as limited, the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

iii. Down-Payment Assistance Payment ([Exhibit IX-18](#))

- (1) Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a down-payment assistance payment in the amount the person would receive under paragraph b of this 9.7 section if the person rented a comparable replacement dwelling. At the Department's discretion, a down-payment assistance payment that is less than \$7,200 may be increased to any amount not to exceed \$7,200. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under 9.7, a, ii, if the person met the 90-day occupancy requirement. If the Department elects to provide the maximum payment of \$7,200 as a down- payment, the Department shall apply

this discretion in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90-day owner-occupant under 9.7, a, i, is not eligible for this payment.

(2) Application of payment. The full amount of the replacement housing payment for down-payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

c. Additional Rules Governing Replacement Housing Payments

i. Determining Cost of Comparable Replacement Dwelling. The upper limit of a replacement housing payment shall be based on the cost of a representative comparable replacement dwelling.

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment.

(3) If a buildable residential lot or an uneconomic remnant remains after a partial taking and the owner of the remaining property refuses to sell the remainder to the Department, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the payment.

(4) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located; or, if that is not possible, in nearby or similar neighborhood where housing costs are generally the same or higher.

(5) Multiple occupants of one displacement dwelling. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Department, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Department determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation

payments.

- (6) Deductions from relocation payments. The Department shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. The Department shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.
  - (7) Mixed-use and multifamily properties. If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment, which is actually attributable to the displacement dwelling, shall be considered the acquisition cost when computing the replacement housing payment.
- ii. Inspection of Replacement Dwelling. Before making a replacement housing payment or releasing the initial payment from escrow, the Department shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling. [Exhibit IX-14](#)
  - iii. Purchase of Replacement Dwelling. A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:
    - (1) Purchases a dwelling; or
    - (2) Purchases and rehabilitates a substandard dwelling; or
    - (3) Relocates a dwelling that the person owns or purchases; or
    - (4) Constructs a dwelling on a site the person owns or purchases; or
    - (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
    - (6) Currently owns a previously-purchased dwelling and site, valuation of which shall be on the basis of current fair market value.
  - iv. Delay in Occupancy After Purchase of Replacement Dwelling. If the displaced person initially occupies the replacement dwelling after the date by which occupancy is required, but the delay beyond such date is caused by reasons beyond the person's control, as determined by the Department, the occupancy requirement shall be considered to be satisfied.

- v. **Payment Eligibility in Special Circumstances.** No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in the regulations in this part due to a disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President or FHWA. Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by NDDOT.
  - vi. **Conversion of Payment.** A displaced person who initially rents a replacement dwelling and receives a rental assistance payment, is eligible to receive a payment if the person meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under replacement housing payments for 90-day homeowner-occupants or any down-payment assistance payment.
  - vii. **Payment After Death.** A replacement housing payment is personal to the displaced person and upon the persons death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:
    - (1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
    - (2) Any remaining payment shall be disbursed to the remaining family members of the displaced household in any case in which a member of a displaced family dies.
    - (3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.
  - viii. **Insurance Proceeds.** To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential.
- c. **Replacement Housing of Last Resort**
- i. **Determination to Provide Replacement Housing of Last Resort.** Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, the Department shall provide additional or alternative assistance under the provisions of this subpart. Any decision

to provide last resort housing assistance must be adequately justified either:

- (1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:
  - (a) The availability of comparable replacement housing in the program or project area; and
  - (b) The resources available to provide comparable replacement housing; and
  - (c) The individual circumstances of the displaced person; or
- (2) By a determination that:
  - (a) There is little, if any, comparable replacement housing available to displaced persons within an entire program or project area; and, therefore, last resort housing assistance is necessary for the area as a whole; and
  - (b) A program or project cannot be advanced to completion in a timely manner without last resort housing assistance; and
  - (c) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total program or project costs.
- ii. **Basic Rights of Persons to be Displaced.** Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Department shall not require any displaced person to accept a dwelling provided by the Department under these procedures (unless the Department and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.
- iii. **Methods of Providing Comparable Replacement Housing.** The Department shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis, unless an exception to case-by-case analysis is justified for an entire project.

- (1) The methods of providing replacement housing of last resort include, but are not limited to:
  - (a) A replacement housing payment in excess of the limits set forth in 9.7, a, or 9.7, b. A replacement housing payment under this section may be provided in installments or in a lump sum at the Department's discretion.
  - (b) Rehabilitation of and/or additions to an existing replacement dwelling.
  - (c) The construction of a new replacement dwelling.
  - (d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
  - (e) The relocation and, if necessary, rehabilitation of a dwelling.
  - (f) The purchase of land and/or a replacement dwelling by the Department and subsequent sale or lease to, or exchange with a displaced person.
  - (g) The removal of barriers for persons with disabilities.
  - (h) The change in status of the displaced person with his/her concurrence from tenant to homeowner when it is more cost effective to do so, as in cases where a down-payment may be less expensive than a last resort rental assistance payment.
- (2) Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different from those in the displacement dwelling including upgraded, but smaller replacement housing that is decent, safe, and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence. In no event, however, shall a displaced person be required to move into a dwelling that is not functionally equivalent.
- (3) The Department shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available at rental rates within the person's financial means, which is 30



percent of the person's gross monthly household income. Such assistance shall cover a period of 42 months.

## 9.8 MOBILE HOMES

### a. Moving and Related Expenses - Mobile Homes

#### i. General

Any owner-occupant or tenant who qualifies as a displaced person and who moves from a mobile home is entitled to payment of his/her actual moving and related expenses, as the Department determines to be reasonable and necessary.

A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement to relocate the mobile home. If the mobile home is not acquired as real-estate, but the displaced person obtains a replacement housing payment the displaced person is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

### b. Moves From a Mobile Home

A displaced person's actual reasonable and necessary moving expenses for moving personal property from a mobile home may be based on the cost of one, or a combination of the following methods: (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section).

#### i. Payment for actual reasonable moving and related expenses Mobile home.

Eligible expenses for moves from a mobile home include those expenses described in 9.6, a, i, through vii, in addition to the items in paragraph a, of this section. If the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for applicable moving expenses in 9.6, a, and;

- (1) The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired as real property. Anchoring of the unit and utility hook up charges are also eligible.
- (2) The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.

- (3) The cost of a nonrefundable mobile home park entrance fee, (to the extent it does not exceed the fee at a comparable mobile home park), if the person is displaced from a mobile home park or the Department determines that payment of the fee is necessary.

- iii. Mobile home (Move Options)

- (1) Commercial move, the move is performed by a professional mover based on the lower of two bids.

- (2) Self move, the move is performed by the displaced person in one or a combination of the following methods:

- (a) Fixed Residential Moving Cost Schedule (Described in 9.6, b, ii)

- (b) Actual cost move. Supported by receipted bills for labor and equipment. Hourly labor rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

- c. Replacement housing payment for 90-day mobile home owner displaced from a mobile home, and/or from the acquired mobile home site.

- i. Eligibility. An owner-occupant displaced from a mobile home or site is entitled to a replacement housing payment, not to exceed \$31,000, under 9.7 if:

- (1) The person occupied the mobile home on the displacement site for at least 90 days immediately before:

- (a) The initiation of negotiations to acquire the mobile home, if the person owned the mobile home and the mobile home is real property;

- (b) The initiation of negotiations to acquire the mobile home site if the mobile home is personal property, but the person owns the mobile home site; or

- (c) The date of the Department's written notification to the owner-occupant that the owner is determined to be displaced from the mobile home as described in paragraphs c, i, (3), (a) through (d) of this section.

- (2) The person meets the other basic eligibility requirements at 9.7, a,

- i, (2); and
- (3) The Department acquires the mobile home as real estate, or acquires the mobile home site from the displaced owner, or the mobile home is personal property but the owner is displaced from the mobile home because the Department determines that the mobile home:
  - (a) Is not, and cannot economically be made decent, safe, and sanitary;
  - (b) Cannot be relocated without substantial damage or unreasonable cost;
  - (c) Cannot be relocated because there is no available comparable replacement site; or
  - (d) Cannot be relocated because it does not meet mobile home park entrance requirements.
- ii. Replacement housing payment computation for a 90-day owner displaced from a mobile home. The replacement housing payment for an eligible displaced 90-day owner is computed as described at 9.7, a, ii, incorporating the following, as applicable:
  - (1) If the Department acquires the mobile home as real estate and/or acquires the owned site, the acquisition cost used to compute the price differential payment is the actual amount paid to the owner as just compensation for the acquisition of the mobile home, and/or site, if owned by the displaced mobile homeowner.
  - (2) If the Department does not purchase the mobile home as real estate but the owner is determined to be displaced from the mobile home and eligible for a replacement housing payment based on paragraph c, i, (1), (c), of this section, the eligible price differential payment for the purchase of a comparable replacement mobile home, is the lesser of the displaced mobile homeowner's net cost to purchase a replacement mobile home (i.e., purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home); or, the cost of the Department's selected comparable mobile home less the Department's estimate of the salvage or trade-in value for the mobile home from which the person is displaced.
  - (3) If a comparable replacement mobile home site is not available, the price differential payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

- iii. Rental assistance payment for a 90-day owner-occupant that is displaced from a leased or rented mobile home site: If the displacement mobile home site is leased or rented, a displaced 90-day owner-occupant is entitled to a rental assistance payment computed as described in 9.7, b, ii, (1). This rental assistance payment may be used to lease a replacement site, it may be applied to the purchase price of a replacement site, or it may be applied with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home, or a conventional decent, safe and sanitary dwelling.
- iv. Owner-occupant not displaced from the mobile home: If the Department determines that a mobile home is personal property and may be relocated to a comparable replacement site, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. However, the owner is eligible for moving costs described in 9.6 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or 9.8, c, v, as applicable.
- v. Replacement Housing Payments for less than 90-Day Mobile Home Occupants: A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$7,200, if:
  - (1) The person actually occupied the displacement mobile home on the displacement site for less than 90 days immediately prior to the initiation of negotiations;
  - (2) The person meets the other basic eligibility requirements in Section 9.7, b, i; and
  - (3) The Department acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Department but the Department determines that the occupant is displaced from the mobile home because of one of the circumstances described in Section 9.8, c, i, (3).
- vi. Additional Rules Governing Relocation Payments for Mobile Homes
  - (1) Initiation of Negotiations. If a mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that the person is a displaced person for the purposes of these regulations.

- (2) **Person Moves Mobile Home.** If the owner is reimbursed for the cost of moving the mobile home under these regulations, the person is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.
- (3) **Partial Acquisition of Mobile Home Park.** Partial acquisition of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Department determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the occupant of the mobile home shall be considered to be a displaced person who is entitled to relocation payments and other assistance under this part.

## **9.9 MOVE PAYMENTS FOR ADVERTISING SIGNS**

- a. **General:** The following procedures and guidelines are minimum standards and not necessarily limited to the criteria in this section.
- b. **Eligible Payments:** The owner of a displaced advertising sign is eligible to receive a payment for actual reasonable moving and related expenses which includes
  - i. The amount of a payment for direct loss of an advertising sign(s) which is personal property, shall be the lesser of
    - (1) The depreciated reproduction cost of the sign(s) as determined by the Department, less the proceeds from its sale; or
    - (2) The estimated cost of moving the sign(s), but with no allowance for storage.

The above costs should be arrived at by the use of the Department's approved cost and move schedules whenever possible. Actual appraisals and move bids should only be used whenever it becomes necessary or is required by regulations, such as eminent domain cases.

- (3) The owner of a displaced advertising sign will be reimbursed for his/her actual, reasonable expenses in searching for a replacement sign site not to exceed \$2,500. Such expenses may include transportation expenses, meals, lodging away from home, and the reasonable actual time spent in search, including the fees of real estate agents or brokers.

- (a) Receipted Bills. All expenses claimed, except value of time actually spent in search, must be supported by receipted bills.
- (b) Time Spent in Search. Payment for time actually spent in search will be based on the applicable hourly wage rate for the persons conducting the search. A certified statement of the time spent in search and hourly rates must accompany the claim.

#### **9.10 RELOCATION ASSISTANCE RECORDS**

- a. General: The Department will establish and maintain individual parcel files according to projects in which the following documentation and information will be current and available at all times for inspection by representatives of FHWA when they have an interest or responsibility in the matters relative thereto.
  - i. State and Federal project and parcel identification.
  - ii. Names and addresses of displaced persons and their complete original and new addresses and telephone numbers (if available after reasonable effort to obtain when relocatee moved without assistance).
  - iii. Personal contacts made with each relocated person, including for each relocated person:
    - (1) Date of notification of availability of relocation payments and services,
    - (2) Name of the Relocation Officer 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 details of subsequent follow-up contact,
    - (5) Date on which the relocated person was required to move from the property,
    - (6) Date on which actual relocation occurred and whether relocation was accomplished with the assistance of the State, referral to other agencies, or without assistance. If the latter, an approximate date for actual relocation is acceptable, and
    - (7) Type of tenure before and after relocation.

- iv. If displaced from a dwelling
  - (1) Number in family
  - (2) Type of property (single detached, multi-family, and so forth).
  - (3) Value or monthly rent.
  - (4) Number of rooms occupied.

- v. For relocated businesses:
  - (1) Type of business.
  - (2) Whether continued or terminated.
  - (3) If relocated, distance moved (estimate acceptable).

- vi. For relocated farms
  - (1) Whether continued or terminated.
  - (2) If relocated, distance moved (estimate acceptable).

The information listed above will be recorded on one or more of the attached exhibit forms which are filed in each relocatee file as a permanent record.

- b. Moving Expense Records: The State will maintain records containing the following information regarding moving expenses payments
  - i. The date of removal of personal property was accomplished.
  - ii. The location from which and to which the personal property was moved.
  - iii. If the personal property was stored temporarily, the location, duration, justification, and charges for such storage
  - iv. Itemized statement of the costs incurred, supported receipted bills, or other evidence of expense

- v. Amount of reimbursement claimed, amount allowed, and an explanation of any differences
- vi. Data supporting any termination 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 four or more entities that are not being acquired.
- vii. When fixed (in-lieu) payment is made to a business or farm operation, data showing how the payment was computed.

The information listed above will be recorded on one or more of the exhibit forms which are filed in each parcel file as a permanent record.

- c. Replacement Housing Payment Records: The Department will maintain records containing the following information regarding replacement housing payments:
  - i. The date of the Department's receipt of each application for such payment.
  - ii. The date on which each payment was made or the application rejected.
  - iii. Supporting data explaining how the amount of the supplement payment, to which the applicant is entitled, was calculated.
  - iv. A copy of the closing statement to support the purchase or down-payment and the incidental expenses when replacement housing is purchased.
  - v. Data including computations to support the increased interest payments.
  - vi. A statement by the Department that in its opinion the relocated person has been relocated into decent, safe, and sanitary housing. If, in fact, the displaced person does not move into decent, safe, and sanitary replacement housing, the Department will document the file setting forth the circumstances.

The individual responsible for determining the amount of the replacement housing payment will place in the file a signed and dated statement setting:

- (1) The amount of the replacement housing payment,
- (2) His/her understanding that the determined amount is to be used in connection with a Federal-aid highway project, and
- (3) That the person has no direct or indirect present or contemplated personal interest in this transaction, nor will derive any benefit from the replacement housing payment.



The information listed above will be recorded on one or more of the exhibit forms which are filed in each parcel file as a permanent record.

- d. Annual Report ([Exhibit IX-15](#)). The annual report will be composed of a statistical section and a narrative section and will be submitted annually for the Federal fiscal year. The report will be forwarded to the office of ETS Division, Relocation Section, through the division and regional offices, who will verify the accuracy and completeness of the report.
  - i. The report will be on the Relocation Assistance and Real Property Acquisition Statistical form. The report format is addressed in 49 CFR Part 24, Appendix B.
  - ii. The narrative report will concern the waiver of assurances of replacement housing. Any situation or circumstance that required a waiver of assurances or replacement housing will be described. For each waiver report, the findings and determination supporting the waiver of the requirements of Subsection 205 (c) (3) of the Uniform Act will be submitted.

## SECTION X - ADVERTISING CONTROL (BEAUTIFICATION)

The control of outdoor advertising is the responsibility of the Maintenance Division, working in conjunction with the District Offices.

### 10.1 GENERAL POLICY OF SIGN CONTROL PROGRAM

The Outdoor Advertising Control Program involves regulation and control by NDDOT of the location, size, spacing, and lighting of outdoor advertising signs and devices along the State's Interstate and primary highway systems in accordance with the Highway Beautification Act of 1965 and related amendments, the State of North Dakota's agreement with the US Secretary of Transportation ([Exhibit X-8](#)), Chapter 24-17 of the NDCC ([Exhibit X-2](#)), and Article 37-05 of the North Dakota Administrative Code ([Exhibit X-1](#)).

This program basically consists of:

- a. Taking inventory of all outdoor advertising signs and devices along these highway systems.
- b. Issuing permits and identification tags for signs erected prior to the effective date of the State's outdoor advertising control agreement and for signs legally erected.
- c. Purchasing and removing lawfully-erected signs that do not conform to established standards for location, spacing, size, lighting, and other criteria.
- d. Removing, or causing to be removed, any signs not legally erected or maintained.

### 10.2 DELEGATION OF AUTHORITY AND RESPONSIBILITY

- a. Administration of Program

The responsibility for the administration of the Outdoor Advertising Control Program is under the authority of the Maintenance Engineer. Issuance of permits, control, and inventory will be functions handled by delegated persons under the direction of the District Engineer. The functions will be monitored and controlled by the Billboard Officer of the Maintenance Division, along with any other related work assignments. All permit applications must be reviewed by the Billboard Officer who will assign a permit number prior to the issuance of permits.

The purchase of advertising signs and sites for outdoor advertising control purposes under the Highway Beautification Act will be a joint effort between the District Engineers and the Billboard Officer and only will become active if Federal funds become available. It will be up to the discretion of NDDOT's Director if State and Federal funds will be used to purchase eligible signs.

The acquisition and/or relocation of outdoor advertising signs for highway projects is subject to the provisions of the Uniform Relocation and Real Property Acquisitions Policies Act (aka 'The Uniform Act') and its amendments, and is the responsibility of ETS Right of Way Section, acting under the direction of the ETS Division Director. The appraisal section of the ETS Right of Way Section is also responsible for periodically updating the Billboard Valuation Cost Schedule.

b. Sign Inventory

An inventory of outdoor advertising signs will be maintained with a joint effort between each District Engineer and the Maintenance Division Billboard Officer. A yearly inventory will be conducted of the controlled highways, along with an ongoing effort of policing and surveillance. [Exhibit X-10](#)

### 10.3 SIGN CATEGORIES

The different categories of advertising signs designated in the inventory are as follows:

- a. Grandfathered Signs - Signs that were in existence prior to 1965 that are located in conforming locations. There are also other signs that were in existence in 1965 that are located in nonconforming locations. These are considered nonconforming Grandfathered Signs.
- b. Permitted Sign - Signs that are located in zoned industrial or commercial areas under State law, or in unzoned industrial or commercial areas, as determined and in accordance with the provisions of the agreement between the Secretary of Transportation and the State. This subsection is not applicable to on-premise, farm- directional, and directional and other official signs that are defined under this section.

The following activities of unzoned commercial or industrial areas are not considered permissible for billboards:

- i. Public utilities.
- ii. Farms, riding or boarding stables.
- iii. Public golf courses.
- iv. Dog kennels incidental to residential use.

- v. Cemeteries.
  - vi. Trailer courts.
  - vii. Sewage treatment plants.
  - viii. Amusements.
  - ix. Nonprofit organizations.
  - x. Churches.
  - xi. Transmission towers, unless employee(s) and building(s) are on site.
  - xii. Oil wells.
  - xiii. Airports, unless commercial business activity is on site, such as crop spraying, etc.
  - xiv. Activities not visible from the main-traveled way.
  - xv. Activities more than 660 feet from the nearest edge of the right of way.
  - xvi. Activities conducted in a building principally used as a residence.
  - xvii. Railroad tracks and minor sidings.
  - xviii. Activities that have intervening uses between them and the main traveled way other than public uses.
- c. Nonconforming Permitted Sign - Signs that are lawfully erected and permitted, but which do not comply with the provisions of State law passed at a later date or which later fails to comply with State law due to changed conditions such as zoning.
- d. Violation Sign - Signs that are erected and/or maintained in violation of the State law.
- e. Directional or Informational Sign - "Directional signs" means signs containing directional information about cities; "Informational signs" means public places: owned or operated by Federal, State, or local government for their agency; publicly- or privately-owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural, scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

"Official signs and notices" means signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction and authorization contained in

Federal, State, or local laws for the purposes of carrying out an official duty or responsibility. Historic markers authorized by State law and erected by State or local governmental agencies or nonprofit historical societies may be considered official signs.

- f. Farm Directional Sign - Signs that give identification of the farm site owner and directions in miles or fractions thereof to the farm site.
- g. On-Premise Sign - Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on property used for the purpose advertised or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.

#### 10.4 SUMMARY OF RULES AND REGULATIONS

The following standards are a basic summary of the State's adopted rules and regulations on outdoor advertising control in North Dakota. This is to serve as only a guideline and reference to the complete regulations might be required.

- a. Application, Permit, and Alteration - "Farm Directional," "Directional and Other Official signs," and "On-Premise" signs do not require a permit. No commercial outdoor advertising sign may be erected along any portion of the right of way of any highway on the Interstate or Federal-aid primary portions of the State highway system without having first obtained a written permit issued and approved by the proper personnel of NDDOT. [Exhibit X-3](#) and front/back side of [Exhibit X-4](#)

An alteration permit is required to be applied for by the sign owner prior to any changes or alterations of any permitted sign. There is no fee for the alteration permit.

- b. Application for Permit - Permits may be applied for only on the permit form furnished and provided by NDDOT. The permit must be completed in full, or it will be returned to the applicant. The applicant's signature certifies that the information on the permit is correct.
- c. New Commercial Advertising Signs Erected without a Permit - When a new sign appears and the District does not have a copy of the new approved permit application, a joint effort between the Maintenance Division, Billboard Officer and District Personnel will be made to present a certified letter to the sign owner as follows:
  - i. A Sign in a Nonconforming Area - A certified letter will be sent to the sign owner giving him/her 30 days to remove said sign. If the sign is not removed within 30 days, the District Engineer shall instruct Maintenance

Personnel to remove said sign.

- ii. Sign in a Conforming Area - A letter will be sent, or personal contact made, informing the sign owner that a permit is required while giving him/her a full explanation of the Beautification Act and laws requiring the permit. If the person refuses to apply for and obtain permit, then follow guidelines of c, i.
- iii. Letters should also be sent for all non-commercial type signs that do not comply to the required rules and regulations.

NOTE: It is recommended that a written report be made for each new sign listing a complete synopsis of dates and actions taken relative to said sign. It may include any other pertinent information about the sign and/or sign owner which may prove useful in the future. Maintenance Section Personnel are requested to report any new signs erected in their areas to the District Engineer immediately upon discovery.

- d. Permit Duration and Fee - All permit applications shall be accompanied by a fee of \$50. Permits are effective for the life of the sign as approved by the various District Engineers.
- e. Permit Number - Placement of Sign - All signs that are issued permits will have an identification number and shall entitle the holder to erect only the advertising sign described in the permit and also be in the exact location authorized. The permit tag should be sent to the applicant when sending the approved permit.
- f. Permit License Tag - No person shall erect and maintain any outdoor advertising sign unless the permit tag is securely fastened and visible from the controlled highway. On-premise signs, farm-directional signs, and directional and other official signs are exempt from having permits or tags.
- g. Permit Revocation - If it has been determined at a later date that a sign which has been previously issued a permit no longer complies with State or Federal regulations and constitutes unlawful advertising, the permit shall be revoked and the sign removed under NDCC Section 24-17-11. [Exhibit X-2](#)
- h. Leases - All permit applications must be accompanied by written approval from the property owner showing his/her approval to erect the sign; a written lease, or signature on the sign permit application is required.
- i. Zoning - The following are the two areas in which commercial message signs may be erected and maintained:
  - i. In areas zoned by local zoning authorities as zoned commercial or industrial. The zoning cannot be honored for sign purposes if it has been

determined by the NDDOT that the area has been zoned solely for the use of erecting billboards.

- ii. In areas that are unzoned but are commercial or industrial in use. In this case, the following applies:

Signs may be erected a distance of 600 feet along the highway on both sides of the business activity and also directly across the road for the same distance provided that the land on which the sign is to be located isn't deemed scenic or zoned improperly for billboards. The 600 feet should be measured starting at the edge of useable portion of the business activity.

- j. Placement and Maintenance of Signs - Name display - No sign shall be erected or maintained unless the name of the person or company owning or maintaining it is plainly displayed on the sign.
- k. Placement and Lighting - (Refer to paragraph 37-05-02-02 of Title 37. ([Exhibit X-1](#)))
- l. Damaged Signs - Removal - Damaged or poorly maintained conforming signs shall be repaired within 180 days after notice by the NDDOT. If not repaired within the time limit, they shall be deemed abandoned and must be removed as unlawful advertising. When a sign has been identified in this status, a record of the date and pictures should be taken and kept on record.
- m. Blank Signs - If a sign remains blank for over one year, it is abandoned and must be removed as unlawful advertising. A blank sign is a sign structure having no panel or face, or whose panel or face is not covered at least 25 percent in area by an advertising message. A record of the date and pictures should be taken and kept on record.
- n. Nonconforming Signs - Maintenance, Repair, Alteration, Abandonment - A nonconforming sign is one that was lawfully erected, but that does not comply with the provisions of State or Federal laws or rules passed at a later date, or that later failed to comply with the law or rules due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.
- o. Face of Sign Size Requirements
  - i. Size of Signs - Signs shall not be erected or maintained that exceed 1,200 square feet in area including border and trim, but excluding base or apron, supports, and other structural members.
  - ii. Maximum length, 60 feet.
  - iii. Maximum height, 30 feet.

- iv. No more than two faces visible and readable from the same direction on the main traveled way may be erected on any one sign structure. The maximum face size limitations shall apply to each side of the sign structure and sign faces may be placed back to back, side by side, or in V-type construction. Such sign structures should be considered as one sign for permitting purposes.
- p. Spacing of Signs
- i. No two signs shall be spaced less than 500 feet apart adjacent to an Interstate highway or a designated expressway on the 1991 Federal-Aid Primary System and the current National Highway System. The 500-foot spacing applies inside or outside of incorporated city limits.
  - ii. Outside of incorporated cities on highways other than Interstate or designated expressways, on the 1991 Federal-Aid Primary System and the current National Highway System, no two signs shall be placed less than 300 feet apart. Inside incorporated cities, no two signs shall be spaced less than 100 feet apart.
  - iii. No signs, other than on-premise signs, shall be located outside of incorporated cities on highways other than Interstate or designated expressways, on the 1991 Federal-Aid Primary System and the current National Highway System and secondary highways that are designated scenic routes. One hundred foot spacing applies within incorporated cities.
  - iv. Signs erected on controlled highways may not be located in a manner as to obscure or otherwise physically interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or physically interfere with the driver's view of approaching, merging, or intersecting traffic.
  - v. Interchange Spacing: Signs within incorporated cities may be located near intersections and ramps on all controlled highways.
  - vi. Outside of incorporated cities on Interstate highways and designated expressways on the 1991 Federal-Aid Primary System and the current National Highway System, no signs may be located adjacent to or within 500 feet of an interchange, intersection at grade, or safety rest area. The 500 feet shall be measured along the Interstate or expressway from the beginning or ending of pavement widening at the ramp exit from, or entrance to, the main traveled way.
  - vii. Signs on the 1991 Federal-Aid Primary System and the current National Highway System may not be located within the 500-foot site distance triangle of any two State, Federal, or U.S. highway intersections outside of incorporated cities.



- viii. Other than on-premise signs, all signs must comply with the NDDOT's adopted spacing requirements.
- ix. The spacing between sign provisions of this section do not apply to signs separated by buildings or other obstruction in a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

### **10.5 SIGNS LOCATED ON INDIAN RESERVATIONS**

Signs on controlled highways that are located within the boundaries of Indian reservations aren't required to be controlled under Federal regulations. It is the NDDOT's policy that all signs on controlled routes within Indian reservations will be inventoried and identified as located on Indian reservation even though no routine policing or surveillance will be done.

### **10.6 INTERVENING USES**

Commercial or industrial activities that are within 660 feet, but not located or operational adjacent to the highway right of way, cannot be considered as a conforming location for the erection of billboards. The business activity must adjoin the highway right of way in order to qualify as an unzoned commercial or industrial location. No intervening use can be located between the activity and the right of way.

### **10.7 DIRECTIONAL AND OTHER OFFICIAL SIGNS**

- a. Definition of these type of signs are as follows:
  - i. "Directional and other official signs and notices" - include only official signs and notices, public utility signs, service club and religious notices, and directional signs.
  - ii. "Directional signs" - signs containing directional information about cities; public places owned or operated by Federal, State, or local government for their agency; publicly- or privately-owned natural phenomena; historic, cultural, scientific, educational, and religious sites; and areas of natural, scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.
  - iii. "Official signs and notices" - signs and notices erected and maintained by public officers or public agencies pursuant to and in accordance with

direction and authorization contained in Federal, State, or local laws for the purpose of carrying out an official duty or responsibility. Historic markers, authorized by State law and erected by State or local governmental agencies or nonprofit historical societies, may be considered official signs.

- iv. "Public utility signs" - warning signs, informational signs, notices, or markers that are customarily erected and maintained by publicly- or privately-owned utilities as essential to their operations
  - v. "Service club and religious notices" - signs and notices authorized by law, relating to meetings of nonprofit service clubs or charitable associations or religious services.
- b. Directional and official signs faces are limited to the following size, including border and trim, but excluding supports:
- i. Maximum area - 150 square feet (13.94 square meters).
  - ii. Maximum height - 20 feet (6.10 meters).
  - iii. Maximum length - 20 feet (6.10 meters).
- c. Spacing of directional and official signs:
- i. These type of signs don't have to follow or meet the zoning regulations of commercial type billboards and can be erected in most places. However, the same spacing requirements of commercial type signs should be applied and spacing should be followed in the NDDOT policy and approved by NDDOT's Director. On primary highways, signs must be at least 100 feet apart within city limits and 300 feet apart outside city limits. Spacing on Interstate highways inside and outside of cities is 500 feet.
  - ii. Directional or official signs may not be located within 2,000 feet of a rest area, park land, or scenic area.
  - iii. Any two directional signs facing the same direction of travel shall be spaced not less than one mile apart.
  - iv. Not more than three directional signs pertaining to the same activity and facing in the same direction of travel may be erected along a single route approaching the activity.
  - v. Directional signs located adjacent to the Interstate system shall be within 75 air miles of the activity.
  - vi. Directional signs located adjacent to the Federal-aid primary system shall

be within 50 air miles of the activity.

- d. The message on directional signs shall be limited to the identification of the attraction, or activity, and the directional information useful to the traveler in locating the attraction; such as mileage, route numbers, or exit numbers. Descriptive words or phrases, pictorial, or photographic representations of the activity, its environs, or its logos are prohibited.
- e. Directional sign criteria.
  - i. Privately-owned activities or attractions eligible for directional signs are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and outdoor recreational areas.
  - ii. To be eligible for a directional sign, privately-owned attractions or activities must be regionally known or known statewide and of outstanding interest to the traveling public.
- f. The following are prohibited as directional or other official sign:
  - i. Signs advertising activities that are illegal under Federal or State laws or regulations in effect at the location of those signs or at the location of those activities.
  - ii. Signs located in a manner as to obscure or otherwise interfere with the effectiveness of official traffic signs, signals, or devices, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
  - iii. Signs that are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
  - iv. Obsolete signs.
  - v. Signs that are in disrepair.
  - vi. Signs that move or have any animated or moving parts.
  - vii. Signs located in rest areas, park lands, or scenic areas.
- g. Farm-directional signs criteria.
  - i. Can be erected on privately-owned property for the purpose of directing the traveling public to individual farm sites.

- ii. The message contained on farm-directional signs shall be limited to the identification of the farm site owner and directions in miles (kilometers) or fractions thereof to the farm site. Descriptive words, phrases, and pictorial or photographic representations of the activity at the farm site or its logos are prohibited. The message may be located on both sides of the sign.
- iii. Farm-directional signs shall not exceed 8 square feet in area. No more than six farm-directional signs may be located on the same structure.
- iv. Farm-directional signs that are located on land owned or leased by the sign owner and which land is being used for his/her farm or ranch operation, can be considered an on-premise sign and exempt from State control. This would mean that the on-premise sign would not be limited to the regulations in item i, ii, or iii above. However, the message must be limited to the farm or ranch activity that is conducted on the premises. Purchasing or leasing a small tract of land for the purpose of erecting a sign will not qualify as an on-premise sign and is prohibited.

## 10.8 VALUATION AND REVIEW METHODS

[Exhibit X-6](#), Front and Back, [Exhibit X-7](#), and [Exhibit X-9](#)

- a. Schedules, formulas, and other methods to simplify valuation will be used to compute the payment due to the sign owner and the property owner. When a sign or site owner does not accept the amount offered, an appraisal under principles of eminent domain will be made. Computed schedules and formulas will be reviewed (checked) by a designated representative other than the person making the original determination and will include a signed and dated reviewer's statement.
- b. Appraisal of signs. Appraisals under the standard appraisal procedure will be made only when the amount determined by schedules or formulas is not accepted -- or when specifically requested or required. The standard appraisal review will be accomplished by a qualified review appraiser, including a signed and dated reviewer's statement.
- c. Nominal value plan. This plan provides for the expeditious removal of eligible nominal value signs and the purchase of nominal value advertising sites. The guidelines for this plan are as follows:
  - i. Payments up to \$250 for each nonconforming sign and up to \$100 for each nonconforming sign site is allowed.
  - ii. Payments up to \$100 for the cost of removal of each eligible nominal value sign, including abandoned or illegal signs where there is no sign or site

interest involved may be used where appropriate.

- iii. Negotiations for the above items may be accomplished by a single state representative without prior review and approval, except that a post negotiations review will be conducted to ensure compliance. The sign removal will be accomplished by negotiation with individuals, including sign or site owners, contract, or by state forces. Payment will not be made to the site owner until the sign is removed. All payments disbursed will be in accordance with the State's approved operating procedure. Before the sign is removed, the State will obtain applicable sign and site owner agreements, one copy of which will be retained in the State's files.
- d. Review of value estimates. All estimates of value will be reviewed by a person other than the one who made the estimate. Appraisal reports will be reviewed and approved prior to initiation of acquisition.

## **10.9 SIGN REMOVAL**

- a. All illegal signs will be removed by, or at the expense of, the sign owner whenever possible.
- b. Nonconforming signs may be removed and retained by a sign owner or property owner. Retention of the sign may constitute partial or full payment to the sign or site owner as determined by the estimated salvage value. Payment will not be made until removal is accomplished in any case.
- c. Removal may be accomplished by contract or state forces. Removal by contract will be used only in cases where state forces are not available.

## **10.10 ACQUISITION PAYMENTS**

This section applies to signs purchased in the course of administering the outdoor advertising control program. The following will apply when there are Federal funds to purchase signs available along with matching state funds:

- a. Generally, only those signs erected prior to October 22, 1965, will be purchased from sign owners, and only if these signs exist by permission from the property owner. Exception shall be in case of court determination or removal from newly-purchased right of way. Also, any signs given legal conforming permits by the NDDOT that later become nonconforming because of zoning change, etc.
- b. Sign owners who have signs determined to be compensable will be required to furnish evidence of lease or other agreement between him/herself and the property

owner prior to payment for the sign. This evidence will also be required prior to payment to the property owner for his/her interest. In certain instances, an affidavit, or canceled check from the property owner, will be considered sufficient.

- c. In cases where a sign erected prior to October 22, 1965, (or other court-determined date), exists with a written lease between the sign owner and the property owner, a release of this lease should be secured from the property owner, dependent on the term of the lease.
- d. In the course of sign removal, the sign owner will be allowed to retain the removed sign with no deduction from the estimated value when it has been determined that the sign has only a nominal salvage value. Signs with a substantial or apparent salvage value will be removed in accordance with normal improvement removal procedure.
- e. In cases where abandoned signs exist, they will be removed by NDDOT personnel or the property owner will be paid for removal only according to the state billboard removal schedule by a memorandum agreement with the property owner. No payment for the site interest will be made for abandoned signs.
  - i. Payments made to the property owner and the sign owner will be supported by schedules, formulas, value estimates, or appraisals as appropriate.
  - ii. Signs erected after October 22, 1965, or other court-determined date which, after direction from the state are not removed by the sign owner, will be removed by NDDOT personnel on a force-account basis.
  - iii. Where compensation to property owners and sign owners is established by a schedule, formula, or other method approved by the FHWA, the valuation and acquisition may be done in some cases by the same NDDOT staff member.

#### **10.11 DOCUMENTATION FOR FEDERAL PARTICIPATION**

This section applies to signs purchased in the course of administering the outdoor advertising control program. The following will apply:

- a. A statement of facts showing that the sign was nonconforming as of the date of taking. The statement will indicate the zoning of the land on which the sign was located and if unzoned, that the sign was not located in an unzoned commercial or industrial area, or that the sign was not located in a zoned commercial area.
- b. A statement that the sign falls into one of the following:
  - i. The sign was lawfully in existence on October 22, 1965, or other court-

determined date and was lawfully in place at the time of acquisition.

- ii. The sign was legally in place on a highway made a part of the Interstate or primary system on or after October 22, 1965, or other court-determined dates.
  - iii. That the sign was erected after January 1, 1968, in accordance with the criteria in the Highway Beautification Act, State law and regulations.
  - iv. In the event a sign was omitted in the original inventory and is discovered, the State will submit adequate evidence to establish that the sign was in existence before October 22, 1965, or other court-determined date.
- c. A photograph of the sign in place. Exceptions may be made in cases where in one transaction a number of company's nominal value signs are to be acquired, a single representative sample photo of a sign which is similar in size, shape, and condition will be considered sufficient.
  - d. Satisfactory indication of sign ownership and compensable interest, as well as land ownership and compensable interest.
  - e. Evidence that the sign has been removed.
  - f. Documented payment to property owner and sign owner when applicable.

## **10.12 INVENTORY AND SURVEILLANCE**

It is not only desirable, but extremely necessary that a continuing surveillance of North Dakota's primary and Interstate highway systems be conducted to properly control outdoor advertising. Each District Engineer is responsible for proper outdoor advertising control surveillance in their particular District according to the dictates of Chapter 24-17 of the NDCC, and with Article 37-05 of the North Dakota Administrative Code. The frequency of inspection and also as to how it is to be accomplished is the District Engineer's responsibility; however, a complete and detailed inspection of all routes must be made at least once a year. Any changes discovered should be reported to the Billboard Officer of the Maintenance Division. It is to be emphasized that the surveillance should be an ongoing process throughout the year and any changes found should be reported immediately to the Billboard Officer. Any violations that cannot be handled by the District Engineer should be reported or discussed with the Maintenance Division or Legal Division of the central office. It is Billboard Officer's responsibility to review all inventory sheets submitted by the Districts to verify their compliance with State and Federal law. It is also the responsibility of the Billboard Officer to make field inspections of the billboard inventory whenever the workload will allow, but at least every three years.

### **10.13 SIGNS WHICH HAVE BEEN REMOVED**

Any signs that have been removed should be so indicated on a Billboard Inventory Record sheet. Any further changes noted during routine inspections should be reported to the Billboard Officer.

### **10.14 PROJECT PRIORITIES**

The following will reflect the general priority of sign removal in the administration of NDDOT's Outdoor Advertising Control program, although some variance may be necessary:

- a. Illegal and abandoned signs.
- b. Company agreements.
- c. Area or route projects.
- d. Signs in areas that have been designated as scenic under authority of State law.
- e. Product advertising.
- f. Non-tourist-oriented directional advertising.
- g. Tourist-oriented directional advertising.

NOTE: Proposed priority schedule for removal of signs, as funding is available.



## SECTION XI - HIGHWAY DEFINITIONS AND RIGHT OF WAY TERMS

The following definitions of words and phrases are those normally used in their commonly accepted form. Those words or phrases for which definitions have been adapted by the American Association of State Highway Transportation Officials are indicated by (AASHTO) after the definition.

**ABANDONMENT** Cessation of use of right of way or activity thereon with no intention to reclaim or use again for highway purposes. (Sometimes call Vacation.) (AASHTO)

**ABSTRACT OF TITLE** A document showing the condensed history of the title to property, containing portions of all conveyances or other pertinent instruments relating to the estate or interest in the property and all liens, charges, encumbrances, and releases. (AASHTO)

**ACCESS RIGHTS** The right of ingress to and egress from a property that abuts a street or highway.

**ACQUIRING AGENCY** A state agency, other entity, or person acquiring real property for title 23, United States Code, purposes. When an acquiring agency acquires real property interests that will be incorporated into a project eligible for title 23 grant funds, the acquiring agency must comply with Federal real estate and ROW requirements applicable to the grant.

**ACQUISITION** Activities to obtain an interest in and possession of real property.

**AASHTO** American Association of State Highway Transportation Officials

**CERTIFICATE OF TITLE** A document based on a title search stating the title or interest in property is vested in a designated person and showing outstanding liens, charges, or other encumbrances.

**CLOSING** Final transactions between parties completing transfer of title to property conveyed, payment of consideration, release of liens, etc.

**COMPARABLE SALE** A sale completed by an actual market transaction that is used in the process of correlation and analysis for the subject property to estimate its market value.

**CONDEMNATION** The process by which property is acquired for highway purposes through legal proceedings under power of eminent domain. (AASHTO)

**CONSEQUENTIAL DAMAGES** Loss in value of a parcel, no portion of which is acquired, resulting from a highway improvement. (AASHTO)

**CONVEYANCE** A written instrument by which a title, estate, or interest in property is transferred. (AASHTO)

**DAMAGES** The loss in value attributable to remainder property due to severance or consequential damages, as limited by state law, that arise when only part of an owner's property is acquired.

**DEDICATION** The setting apart by the owner and acceptance by the public of property for highway use, in accordance with statutory or common law provisions. (AASHTO)

**DEED** A duly attested, written instrument, under seal, conveying real property or interest therein. (AASHTO)

**DIRECT COMPENSATION** Payment for land or interest in land and improvements actually acquired for highway purposes. (Sometimes called Direct Damages.) (AASHTO)

**DISPOSAL** The transfer by sale or other conveyance of permanent rights in excess real property, when the real property interests not currently or in the foreseeable future needed for highway ROW or other uses eligible for funding under title 23 of the United States Code.

**DONATION** The voluntary conveyance of private property to public ownership and use, without compensation to the owner. (AASHTO)

**DRAINAGE EASEMENT** An easement for directing the flow of water. (AASHTO)

**EARLY ACQUISITION** Acquisition of real property interests by an acquiring agency prior to completion of the environmental review process for a proposed transportation project.

**EASEMENT** An interest in real property that conveys a right to use a portion of an owner's property or a portion of an owner's rights in the property.

**EGRESS** Act of going out or leaving, emergence.

**EMINENT DOMAIN** The power to take property for public use with just compensation therefore. (AASHTO)

**ET AL** And others; or and other.

**ET UX** And wife.

**EXCESS REAL PROPERTY** Real property interest not needed currently or in the foreseeable future for transportation purposes or other uses eligible for funding under title 23, United States Code.

**EX PARTE** On behalf of, on the application of, or by one party only.

**FEE SIMPLE** An absolute estate or ownership in property including unlimited power of alienation. (AASHTO)

**FHWA** U.S. Department of Commerce, Bureau of Public Roads, Washington 25, D.C.

**GENERAL BENEFIT** Advantage accruing from a given highway improvement to a community as a whole, applying to all property similarly situated. (AASHTO)

**GRANTEE** A person to whom real estate is conveyed, the buyer.

**GRANTOR** A person who conveys real estate, the seller.

**GUARANTEE TITLE** A title, the validity of which is insured by an abstract, title, or indemnity company. (Sometimes called Insured Title.) (AASHTO)

**HIGHEST AND BEST USE** The most productive use, reasonable but not speculative or conjectural, to which property may be put in the future. (AASHTO)

**HIGHWAY DEVELOPMENT RIGHT** The right of owners to make changes in abutting property uses, which, if exercised would be inconsistent with present and future highway needs. (AASHTO)

**INTESTATE** Without a will; a person who has died without leaving a will.

**INVERSE CONDEMNATION** The legal process by which a property owner may claim and receive compensation for the taking of, or payment for damages to, his/her property as a result of a highway improvement. (AASHTO)

**JUST COMPENSATION** A full and fair equivalent for the loss sustained by the owner as a result of taking or damaging of private property for highway purposes. (AASHTO)

**LIFE ESTATE** An estate or interest held during the term of some person's life.

**LIS PENDENS** Suit pending. An instrument required to be filed with the Register of Deeds to indicate that a jurisdictional offer has been served on an owner.

**MARKET VALUE** The highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting under compulsion, and both exercising reasonable judgment. (North Dakota State Statutes) (AASHTO)

**NEGOTIATION** The process by which property is sought to be acquired for highway purposes through discussion, conference, and final agreement upon the terms of a voluntary transfer of such property. (AASHTO)

**NHS** The National Highway System as defined in 23 USC 103(b).

**OPTION** The purchase of a right to acquire real property within an agreed-to period of time, amount of compensation or through a method by which compensation will be calculated.

**OVERSIGHT AGREEMENT** The project approval and agreement concluded between the State and the FHWA to outline which projects will be monitored at the plans, specifications, and estimate stage by FHWA as required by 23 USC 106(c)(3).

**PARCEL** A part or portion of land.

**PARCEL PLAT** A map of a single parcel of property or portion thereof needed for highway purposes, showing the boundaries, areas, the remainder improvements, access, ownership and other pertinent information. (AASHTO)

**PARTIAL TAKING** The acquisition of a portion of a parcel of property. (AASHTO)

**PERSON** Any individual, family, partnership, corporation, or association.

**PERSONAL PROPERTY** Article of property that is not real estate.

**PLANTING EASEMENT** An easement for reshaping roadside areas and establishing, maintaining, and controlling plant growth thereon. (AASHTO)

**POLICY** A settled course adopted and followed by a government agency, institution, body, or individual.

**QUITCLAIM DEED** A deed conveying, without warranty, any title, interest, or claim which the grantor may have in the estate conveyed. (AASHTO)

**REAL PROPERTY** Any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve ROW for a transportation facility.

**RELINQUISHMENT** The conveyance of a portion of a highway right of way or facility by a grantee under title 23, United States Code, or is sub grantee, to another government agency for continued transportation use.

**RELOCATION ADVISORY ASSISTANCE** Services under Federal, State, or local law to give advisory assistance in the relocation of persons who have been displaced from their homes, businesses, etc., as a result of the acquisition of private property for public improvements.

**REMAINDER** The portion of a parcel retained by the owner after a part of such parcel

has been acquired. (AASHTO)

**REMNANT** A remainder so small or irregular that it usually has little or no economic value to the owner. (AASHTO)

**RIGHT OF ACCESS** The right of ingress to a highway from abutting land and egress from a highway to abutting land. (AASHTO)

**RIGHT OF IMMEDIATE POSSESSION** The right to occupy property for highway purposes, after preliminary steps for acquisition have been taken and before final settlement. (AASHTO)

**RIGHT OF SURVEY ENTRY** The right to enter property temporarily to make surveys and investigations for proposed highway improvement. (AASHTO)

**RIGHT OF WAY** Real property and rights therein obtained for the construction, operation, maintenance, or mitigation of a transportation or related facility.

**RIGHT OF WAY APPRAISAL** An estimation of the market value of property including damages, if any, as of a specified date, resulting from an analysis of facts.

**RIGHT OF WAY ESTIMATE** An estimation of the market value of property including damages, if any, in advance of an appraisal.

**RIGHT OF WAY STRIP MAP** A plan of a highway improvement showing its relation to adjacent property, the parcels or portions thereof needed for highway purposes, and other pertinent information. (AASHTO)

**RIPARIAN RIGHTS** The rights of an owner of water-fronting lands in the bed, banks, accretions, water, access, moorage, and related items. (AASHTO)

**ROADSIDE CONTROL** The public regulation of the roadside to improve highway safety, expedite the free flow of traffic, safeguard present and future highway investment, conserve abutting property values, or preserve the attractiveness of the landscape. (AASHTO)

**ROADSIDE ZONING** The application of zoning for roadside control. (AASHTO)

**SCENIC EASEMENT** An easement for conservation and development of roadside views and natural features. (AASHTO)

**SETBACK LINE** A line outside the right of way, established by public authority, on the highway side of which the erection of buildings or other permanent improvements is controlled. (AASHTO)

**SETTLEMENT** The result of negotiations based on fair market value in which the amount

of just compensation is agreed upon for the purchase of real property or an interest therein. This term includes the following:

- a. An *administrative settlement* is a settlement reached prior to filing a condemnation proceeding based on value-related evidence, administrative consideration, or other factors approved by an authorized agency official.
- b. A *legal settlement* is a settlement reached by an authorized legal representative or a responsible official of the acquiring agency who has the legal power vested in him by state law, after filing a condemnation proceeding, including agreements resulting from mediation and stipulated settlements approved by the court in which the condemnation action had been filed.
- c. A *court settlement* or *court award* is any decision by a court that follows a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

**SEVERANCE DAMAGES** Loss in value of the remainder of a parcel resulting from an acquisition. (Sometimes called Indirect Damages). (AASHTO)

**SIGHT DISTANCE TRIANGLE** A vision triangle - an area in one quadrant of an intersection upon which an easement is acquired or fee title obtained to provide unobstructed sight over it.

**SIGHT LINE EASEMENT** An easement for maintaining or improving the sight distance.

**SLOPE EASEMENT** An easement for cuts or fills. (AASHTO)

**SPECIAL BENEFIT** Advantage accruing from a given highway improvement to a specific property and not to others generally. (AASHTO)

**STATION** A position on a line identified by its distance from the beginning of the line. (85+34.4 would be 85 Stations plus 34.4 feet or 8534.4 feet from the beginning of the line.)

**TITLE** The evidence of a person's right to property or the right itself. (AASHTO)

**TITLE OPINION** An analysis and interpretation of a title search concerning present ownership, encumbrances, clouds on title and other infirmities. (AASHTO)

**TITLE SEARCH** An investigation of public records and documents to ascertain the history and present status of title to property, including ownership, liens, charges, encumbrances, and other interests. (AASHTO)

**TORRENS TITLE** A certificate of title issued by a public authority under a system wherein

all deeds and documents affecting real property are registered. (AASHTO)

**UNECONOMIC REMNANT** A remainder property which the acquiring agency has determined has little or no utility or value to the owner.

**UNIFORM ACT** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat), primarily codified in 42 U.S.C. 4601 *et seq*), and the implementing regulations at 49 CFR part 24.

**WARRANTY DEED** A deed containing covenants by the grantor, for him/herself and his/her heirs, to the grantee and his/her heirs, to warrant and defend the title and possession of the estate conveyed. (AASHTO)

**ZONING** The division of an area into districts and the public regulation of the character and intensity of use of the land and improvements thereon. (AASHTO)

## **ACRONYMS**

American Dream Down Payment Initiative (ADDI)

Bureau of Citizenship and Immigration Service (BCIS)

Office Environmental Impact Statement (EIS)

Federal Highway Administration (FHWA)

Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)

Finding of No Significant Impact (FONSI)

National Environmental Protection Act (NEPA)

North Dakota Appraiser Qualification & Ethics Board (NDAQEB)

North Dakota Department of Transportation (NDDOT)

Plans, Surveys and Estimates (PS & E)

Preliminary Project Review (PPR)

Statewide Transportation Improvement Program (STIP)

Uniform Appraisal Standards of Federal Land Acquisitions, (UASFLA)

Uniform Standards for Federal Land Acquisitions (USFLA)

Uniform Standards of Professional Appraisal Practice (USPAP)