

April 20, 2016 International Right-Of-Way Association Legal Symposium



Holland & Knight

131 South Dearborn Street, 30th Floor | Chicago, IL 60603 | T 312.263.3600 | F 312.578.6666
Holland & Knight LLP | www.hklaw.com

Memorandum

To: International Right Of Way Association
Chapter 12
Legal Symposium

From: Richard Redmond

Date: April 20, 2016

Re: Right Of Way Planning and Process
Government Perspective

I. RIGHT-OF-WAY PLANNING

A. Preliminary Right-Of-Way Work

Section 1.1.5.2 of IDOT's Land Acquisition Policies and Procedures Manual defines preliminary right-of-way work as including the following:

- title work
- preparation of plans
- plats and legal descriptions
- relocation studies
- appraisal work

B. Title Work

Are condemnation actions *in rem* or *quasi in rem* actions? See: *Village of Algonquin v. Lowe*, 2011 IL App(2d) 2100603; and *United States v. 50 Acres of Land*, 469 U.S. 24 (1984).

C. Preparation of Plans

D. Plats and Legal Descriptions

The plats and legal descriptions must be accurate. For example, if an ordinance authorizing condemnation does not precisely describe the property to be condemned, the condemnation case may be dismissed. See, *City of Rockford v. Rockford Life Insurance Co.*, 16 Ill.2d 287 (1959).

E. Relocation Studies

F. Appraisal Work

See 49 C.F.R. 24.103.

G. IDOT Land Acquisition Policies and Procedures Manual

See Section 1.5 entitled "Land Acquisition Activities Flow Chart."

II. THE GOLDEN RULE: GOOD FAITH NEGOTIATIONS

A. Federal Statutory Requirements

- Uniform Relocation and Real Property Acquisition Policies Act of 1970

B. Federal Regulatory Requirements

- 23 Code of Federal Regulations Part 710 (Right of Way and Real Estate)
- 49 Code of Federal Regulations Part 24 (Uniform Relocation and Real Property Acquisition Policies Act of 1970)

B. Illinois Regulatory Requirements

- Illinois Administrative Code, Title 92: Transportation
- IDOT Land Acquisition Policies and Procedures Manual

C. Illinois Statutory and Case Law

The Illinois Eminent Domain Act provides that a condemning authority may file a condemnation case if "the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or the owner's name or residence is unknown, or the owner is a non-resident of the state..." 735 ILCS 30/10-5-10. Illinois courts have interpreted this statutory condition to require the condemning authority to engage in "good faith" negotiations before filing a condemnation case.

The Illinois appellate courts have taken a critical look as to whether there were good faith negotiations before the condemnation case was filed. They have not been hesitant to require dismissal of the condemnation case when this condition precedent was not met. The trend started with the decision in *City of Naperville v. Old Second National Bank of Aurora*, 327 Ill.App.3d 734, 763 N.E.2d 951 (2d Dist. 2002). The Appellate Court, holding Naperville had not met the good faith test because its initial offer was below the sole appraisal obtained by Naperville, concluded: "...good faith requires that the condemning authority offer a price that correlates to the fair market value of the property as determined by the condemning authority."

Naperville had argued that it had an obligation to its taxpayers to proceed in the most cost-effective manner, which meant following the standards of normal negotiation tactics by starting low and then compromising. The Appellate Court acknowledged the government's legitimate interest in cost-efficiency, but held that interest was trumped by the property owner's right to obtain just compensation.

The Appellate Court's strict holding in the *City of Naperville* case that the offer must equal the government's approved appraisal has been questioned by the Illinois Supreme Court in *Forest Preserve District of Du Page County v. First National Bank*, 2011 IL 110759. The owner challenged whether the Forest Preserve District had negotiated in good faith because its offer was 10% below the appraised value. The Forest Preserve District instructed its negotiator that if the owner made a counteroffer the negotiator could offer the full appraised value and may go as high as 10% above the appraised value. The owner rejected the initial offer, but did not submit a counteroffer. Subsequently, the Forest Preserve District obtained an appraisal with a lesser valuation than the original appraisal. The Supreme Court held that the Forest Preserve District had negotiated in good faith.

However, statutory limits often preclude the Department from making an offer less than the approved appraisal. *See, e.g.* 42 U.S.C. §4651(3) ("In no event shall such amount [offer] be less than the agency's approved appraisal of the fair market value of such property.")

Other "negotiation" cases considered the following questions:

1. Must a State agency provide the owner with a copy of the appraisal?

735 ILCS 30/10-5-15 requires a state agency to provide an owner with "a letter ... [stating] the amount of compensation for the taking and the basis for computing it." At issue in *Department of Transportation v. Hunziker*, 342 Ill.App.3d 588, 796 N.E.2d 122 (3d Dist. 2003) was whether the Department, as part of its duty to negotiate in good faith and follow the statute, must provide the owner with the complete appraisal used to support the offer. The Third District Appellate Court took a very broad approach, interpreted the statutory words "letter" and "basis" to mean the actual appraisal and imposed upon the Department the duty to turnover its appraisal before it filed a condemnation case. Three years later, a different panel of the Third District Appellate Court rejected the *Hunziker* reading of the statute and held the Department did not have to provide a copy of its appraisal to the owner before filing a condemnation case. *Department of Transportation v. Tucker*, 853 N.E.2d 749 (3rd Dist. 2006). But, in a recent decision involving a non-State condemning authority, the Appellate Court noted that City of Chicago's failure to send its appraisals to the owner was a factor in determining whether the City had negotiated in good faith. *City of Chicago v. Zappani*, 376 Ill.App.3d 927 (1st Dist. 2007). The Appellate Court also found troubling a large discrepancy between the appraised value in the City's offer and the much higher appraised value submitted by the City in the condemnation proceedings.

2. Does the statutory 60 day negotiating period restart after every offer?

Another requirement of 735 ILCS 30/10-5-15, specifically the requirement that a state agency send the "basis" letter to the owner "at least 60 days before filing a petition with any

court to initiate a [condemnation case]", was at issue in the Supreme Court's decision in *Department of Transportation v. 151 Interstate*, 209 Ill.2d 471, 810 N.E.2d 1 (2004). The Department had filed its case 57 days, rather than 60 days, after giving a second offer to the owner. The second offer had reduced the size of the taking, but also had reduced the proposed compensation. The Supreme Court held that if the State agency makes an offer during negotiations that is "less advantageous to the property owner" the 60 day clock starts again. The Supreme Court took a very literal approach to the statute and noted any statutory construction should favor the property owner. But if the Department's second offer had been "more advantageous" to the owner, then presumably the 60 day period would not restart.

3. Is the State agency responsible for the validity its appraiser's opinions?

The Supreme Court's decision in *151 Interstate* did overturn those portions of the Appellate Court's ruling that (1) suggested the State agency was responsible for the validity of the appraisal submitted to it and (2) called into question the practice of retaining appraisers on a repeated basis. The State can continue to have a qualified list of appraisers upon which it draws.

4. Can more than one factor be considered in determining "good faith?"

The most recent decisions addressing negotiations are *City of Chicago v. Zappani* and *Forest Preserve District v. First National Bank*. The Appellate Court relied upon a number of factors in holding that the City had not negotiated in good faith. Specifically, the Appellate Court referred to "...the extremely low offers, along with the short period of time the offers remained open and the lack of any appraisal reports provided with the offers." The Appellate Court also pointed to the City's lack of effort to track down the owners.

II. SUGGESTIONS

Based on the statutory, regulatory and case law, as well as from our experience, we offer the following suggestions during negotiations:

1. Keep careful and accurate written records of contacts and discussions with the owner.
2. Assume that anything that is written will wind up in court if the owner asserts the Department failed to undertake good faith negotiations. Assume that you will have to explain any written records to a judge and to opposing counsel.
3. Make reasonable efforts to contact the owner, even if the owner is an out-of-state resident, and document the efforts.
4. If a person other than the owner contacts you and claims to represent the owner, ask that person to provide a written authorization stating the exact person or entity being represented.

5. Document receipt of any counteroffers from the owner. The Department does not have to accept a counteroffer and the Department does not have to increase its offer just because it received a counteroffer. But the Department must consider all counteroffers in a reasonable fashion. One way is to have the reviewing appraiser review any counteroffers. The Department should also respond in writing to any counteroffers.
6. During negotiations, the Department may advise the owner that, if agreement is not reached by a certain date, the Department must proceed with condemnation to adhere to its schedule. The owner cannot bombard the Department with counteroffers in an attempt to stall condemnation proceedings.
7. If the negotiator receives a counteroffer or communications from the owner after the parcel is sent out to condemnation, the negotiator must timely advise condemnation counsel for the Department.

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER f: HIGHWAYS
PART 518 RELOCATION ASSISTANCE SERVICES AND PAYMENTS PROGRAM FOR
STATE HIGHWAY PROJECTS
SECTION 518.10 PURPOSE

Section 518.10 Purpose

The purpose of this Part is to establish policies and procedures for the Illinois Department of Transportation, Division of Highways, when applying the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Uniform Act) (42 USC 4601 et seq.) to highway projects for which the State intends to provide State or federal financial assistance and that involve the displacement of persons, businesses, farm operators or nonprofit organizations. This Part establishes a means of providing relocation services and of making moving cost payments, replacement housing cost payments, and other expense payments to persons, businesses, farm operators or nonprofit organizations displaced as a result of programs designed for the benefit of the public. It is also designed to assure compliance with the federal requirements of the Uniform Act and the federal rules titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR 24) to assure federal participation on federally-aided projects.

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 92: TRANSPORTATION
CHAPTER 1: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER F: HIGHWAYS
PART 518 RELOCATION ASSISTANCE SERVICES AND PAYMENTS PROGRAM FOR
STATE HIGHWAY PROJECTS
SECTION 518.20 DEFINITIONS

Section 518.20 Definitions

The following definitions are in addition to those found in the incorporated material in Section 518.30 and apply for purposes of this Part:

"Central Bureau of Land Acquisition" – means the office of the Division responsible for developing, evaluating and interpreting the policies and procedures for planning and implementing the statewide land acquisition program and for advising, guiding and assisting the Regional Engineers and the districts on all program policies.

"Director" – means the Director of the Division of Highways or the Director's designee.

"District" – means a geographic subgroup of the Division of Highways. Each district has its own land acquisition office or bureau.

"Division" – means the Illinois Department of Transportation, Division of Highways.

"Regional Engineer" – means the Regional Engineer of any one of the 5 regional offices of the Division of Highways or the Regional Engineer's designee. A Regional Engineer is responsible for all actions within a region, which is comprised of one or two districts.

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER F: HIGHWAYS
PART 518 RELOCATION ASSISTANCE SERVICES AND PAYMENTS PROGRAM FOR
STATE HIGHWAY PROJECTS
SECTION 518.30 INCORPORATION BY REFERENCE

Section 518.30 Incorporation by Reference

This Part incorporates by reference 49 CFR 24, except subpart B, as of October 1, 2007, that is the basis and guideline for the development of the Division's policy for highway projects for which federal financial assistance may be requested and for relocation assistance advisory services and payments for persons, businesses, farms or nonprofit organizations displaced as a result of those projects. 49 CFR 24 is incorporated as a part of this Part and is effective as indicated, not including any later amendments or editions. Copies of the appropriate materials are available from the Division of Highways, Central Bureau of Land Acquisition, Room 210, 2300 South Dirksen Parkway, Springfield, Illinois 62764 or by calling 217/782-6243.

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER f: HIGHWAYS
PART 518 RELOCATION ASSISTANCE SERVICES AND PAYMENTS PROGRAM FOR
STATE HIGHWAY PROJECTS
SECTION 518.40 REVIEW PROCEDURES

Section 518.40 Review Procedures

Any aggrieved person may file a written request for review with the Regional Engineer in any case in which the person believes that the District has failed to properly consider his/her eligibility for relocation assistance advisory services or payments, or the amount of a payment required under this Part.

- a) If relocation assistance advisory services, payments, or the amount of the payment is denied, in whole or in part, the District will notify the aggrieved person in writing of the denial or revised amount of the claim, including the basis for the District's determination. The written notification will also inform the person of his/her right to request a review of the determination by the Regional Engineer and will include the procedures to be followed when requesting a review.
- b) An aggrieved person may file a written request for review within 90 calendar days after receipt of written notification of the District's determination. The request for review shall be filed with the Regional Engineer at the address provided in the written notification. If the aggrieved person does not file a request for review within 90 calendar days after receipt of written notification of the District's determination, the aggrieved person shall be deemed to have waived his/her opportunity to file a request for review. In that case, the determination will stand and the Division will take appropriate action to implement the determination and/or process the approved amount of the claim, if any, for payment. A written request for review will be considered regardless of form.
 - 1) Upon receipt of the request for review, the Regional Engineer will assign a date and place for the review meeting. Written notification of the date and place will be provided to the aggrieved person by certified mail, return receipt requested, at least 10 days prior to the scheduled date for review. The Regional Engineer cannot have been directly involved in the actions being reviewed.

- 2) Prior to the review, the aggrieved person will be permitted to inspect and copy all materials pertinent to his/her review, except materials that are classified as confidential.
 - 3) The aggrieved person, or a representative, will be afforded a full opportunity to be heard and to present information or documentation in support of his/her position. Representation by another person will be at the sole expense of the aggrieved person.
 - 4) The Regional Engineer will render a decision based upon the facts presented and the law. Written notification of the decision will be sent by certified mail, return receipt requested, within 30 calendar days after the date of the review.
 - 5) If the Regional Engineer's decision upholds the denial of eligibility for relocation assistance advisory services or payments, in whole or in part, the written notification will detail the reasons supporting the denial and will also advise the aggrieved person of his/her right, if dissatisfied with the decision, to request a final review by the Director. If the aggrieved person does not request a final review within 30 calendar days after written notification of the decision, the aggrieved person shall be deemed to have waived his/her opportunity to file a request for a final review. In that case, the Regional Engineer's decision will stand and the District will take appropriate action to implement the decision and/or process the approved amount of the claim, if any, for payment.
- c) An aggrieved person may request a final review by notifying the Regional Engineer in writing at the address provided in the written notification of the decision. The Regional Engineer will forward the request to the Director. A written request for final review will be considered regardless of form.
- 1) Upon receipt of the request for a final review, the Director will assign a date and place for the final review meeting. Written notification of the date and place of the final review will be provided to the aggrieved person by certified mail, return receipt requested, at least 10 days prior to the scheduled date of the final review. The Director cannot have been directly involved in the action being reviewed.
 - 2) The aggrieved person, or representative, will be afforded a full opportunity to be heard and to present information or documentation in support of his/her position. Representation by another person will be at the sole expense of the aggrieved person.
 - 3) The disposition of the final review will be based upon the facts presented and the law. Written notification of the final decision and the reasons supporting the decision will be sent by certified mail, return receipt requested, within 30 calendar days after the date of the final review. The District will take appropriate action to implement the Director's

determination and/or process the approved amount of the claim, if any, for payment.

- 4) The Director's decision is final. The aggrieved person will be advised of his/her right to seek redress through judicial review.
- d) The Director may extend any time period provided in this Part for up to 30 days upon written request from either the aggrieved person or the Regional Engineer.

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER F: HIGHWAYS
PART 522 CONTROL OF OUTDOOR ADVERTISING ADJACENT TO PRIMARY AND
INTERSTATE HIGHWAYS

The General Assembly's Illinois Administrative Code database includes only those rulemakings that have been permanently adopted. This menu will point out the Sections on which an emergency rule (valid for a maximum of 150 days, usually until replaced by a permanent rulemaking) exists. The emergency rulemaking is linked through the notation that follows the Section heading in the menu.

SUBPART A: GENERAL PROVISIONS

- [Section 522.10 Purpose](#)
- [Section 522.20 Definitions](#)

SUBPART B: PERMIT APPLICATION AND REGISTRATION PROCEDURES AND REQUIREMENTS

- [Section 522.30 Signs Requiring Permits and Registrations](#)
- [Section 522.40 Place of Filing](#)
- [Section 522.50 Permit Application Contents](#)
- [Section 522.60 Receipt of Application](#)
- [Section 522.70 Approval of Application](#)
- [Section 522.80 Denial of Application](#)
- [Section 522.90 Renewal of Permits](#)
- [Section 522.100 Registration of Existing Signs](#)

SUBPART C: REVOCATION OF PERMITS

- [Section 522.110 Notice of Intent to Revoke](#)
- [Section 522.120 Reply of Permittee](#)
- [Section 522.130 Review Procedures](#)
- [Section 522.140 Issuance of the "30 Day Letter"](#)

SUBPART D: STANDARDS FOR SIGNS

- [Section 522.150 Signs that may not be Erected or Maintained](#)
- [Section 522.160 Standards for Official Notices](#)
- [Section 522.170 Standards for Directional Signs](#)
- [Section 522.175 Standards for Official Signs](#)

- Section 522.180 Standards for Signs Advertising the Sale or Lease of Property on which they are Located
- Section 522.190 Standards for On Premise Signs
- Section 522.200 Standards for Signs in Business Areas
- Section 522.210 Standards for Signs Providing Information Relative to Lodging, Food, Outdoor Recreational Facilities or Automotive Service Facilities

SUBPART E: SIGNS WHICH MAY BE ERECTED WITHOUT A PERMIT

- Section 522.220 Department Notification

SUBPART F: MISCELLANEOUS PROVISIONS

- Section 522.230 Multiple Signs
- Section 522.240 Signs Facing Two or More Highways

- Section 522.ILLUSTRATION A Expressway
- Section 522.ILLUSTRATION B Unzoned Commercial or Industrial Area
- Section 522.ILLUSTRATION C Interchange Spacing
- Section 522.ILLUSTRATION D Spacing Measurement Along Pavement
- Section 522.ILLUSTRATION E Spacing Measurement At Right Angle
- Section 522.ILLUSTRATION F Spacing Measurement On Same Line
- Section 522.ILLUSTRATION G Spacing Measurement Along Curves
- Section 522.ILLUSTRATION H Map of Highway Districts (Repealed)
- Section 522.ILLUSTRATION I Control Along Intersecting Highways
- Section 522.ILLUSTRATION J Public Airports
- Section 522.ILLUSTRATION K Spacing Measurement Monopole Back-to-Back V-Type
- Section 522.ILLUSTRATION L Spacing Measurement Standard Back-to-Back V-Type
- Section 522.ILLUSTRATION M Department Offices and Counties

AUTHORITY: Implementing Sections 9-112.1 and 9-112.2 of the Illinois Highway Code [605 ILCS 5/9-112.1 and 112.2] and Sections 1 through 8 and 10 of the Highway Advertising Control Act of 1971 [225 ILCS 440/1-8 and 10] and authorized by Section 4-201.1 of the Illinois Highway Code [605 ILCS 5/4-201.1] and Section 14.01 of the Highway Advertising Control Act of 1971 [225 ILCS 440/14.01]; implementing Section 1 and authorized by Section 17 of the Airport Zoning Act [620 ILCS 25/1 and 17].

SOURCE: Amended August 23, 1976; codified at 7 Ill. Reg. 12887; Part repealed, new Part adopted at 12 Ill. Reg. 16163, effective September 27, 1988; amended at 17 Ill. Reg. 7258, effective May 7, 1993; amended at 22 Ill. Reg. 7262, effective April 9, 1998; amended at 30 Ill. Reg. 15792, effective October 1, 2006; amended at 32 Ill. Reg. 17810, effective October 30, 2008; amended at 35 Ill. Reg. 8523, effective May 17, 2011.

**Land Acquisition
Policies and Procedures Manual**

Prepared By:

Illinois Department of Transportation

Published By:

**Randall S. Blankenhorn
Secretary
Illinois Department of Transportation**

**Bureau of Land Acquisition
Springfield, Illinois**

**November 2015
(Continually Updated Resource)**

PREFACE

The *Bureau of Land Acquisition Manual* has been prepared to provide uniform practices for the acquisition of property required for highway improvements, including the control of outdoor advertising and junkyards by department and consultant personnel. This *Manual* presents the information normally required in the project, all criteria and practices presented in the *Manual* must be met.

The *Bureau of Land Acquisition Manual* was developed by staff within the Bureau of Land Acquisition with assistance from each individual district.



Policy LAC-2
Effective Date: July 20, 2012
Scheduled Review Date: Every 5 years

LAND ACQUISITION POLICIES AND PROCEDURES

1. POLICY

Land acquisition and related activities by the Illinois Department of Transportation, Division of Highways, shall be performed according to the standards set forth in this policy.

2. PURPOSE

The purpose of this policy is to provide operational guidelines in the form of a published Manual establishing a uniform procedure for land acquisition and related activities by the Illinois Department of Transportation, Division of Highways.

3. GUIDELINES FOR IMPLEMENTATION

- a. The Manual outlines the requirements necessary for planning and implementing the Statewide Land Acquisition Program, including allied functions such as relocation assistance, property management, and preparation of right of way plans.
- b. The Manual consists of two volumes, namely, the text portion entitled "Land Acquisition Policies and Procedures Manual" and the exhibit portion entitled "List of Forms, Templates and Exhibits."

The Manual is divided into ten major chapters which are as follows:

- Chapter 1 – Overview, Federal Programming and Qualifications
- Chapter 2 – Right of Way Engineering
- Chapter 3 – Appraisal and Appraisal Review
- Chapter 4 – Negotiation and Acquisition
- Chapter 5 – Relocation Assistance and Payments Program
- Chapter 6 – Property Management
- Chapter 7 – Accounting for Land Acquisition Services
- Chapter 8 – Contracting for Land Acquisition Services
- Chapter 9 – Outdoor Advertising
- Chapter 10 – Special Wastes

4. RESPONSIBILITIES

The Bureau of Land Acquisition shall implement the policies and procedures published in this Manual.

5. ACCESSIBILITY

Copies of this Departmental Policy and Manual may be obtained from the Bureau of Land Acquisition, Division of Highways, Department of Transportation, 2300 South Dirksen Parkway, Springfield, IL 62764.

An electronic version of this manual can be obtained on the Land Acquisition Services page of IDOT's website, which is accessible through the following link:

<http://www.idot.illinois.gov/doing-business/procurements/land-acquisition-services/index>

A direct link to this manual is shown below:

<http://www.idot.illinois.gov/Assets/uploads/files/Doing-Business/Manuals-Guides-&-Handbooks/Highways/Land-Acq/Land%20Acquisition%20Manual.pdf>

6. CLOSING NOTICE

Supersedes: Departmental Policy LAC-1 Land Acquisition Policies and Procedures, Effective: November, 1983.

Departmental Policy LAC-1 Land Acquisition Policies and Procedures, Effective July 3, 1985.

Departmental Policy LAC-1 Land Acquisition Policies and Procedures, Effective April 1, 2011.

Approved: _____
Interim Director of Highways

Date

TABLE OF CONTENTS

SECTION	PAGE
1 OVERVIEW, FEDERAL PROGRAMMING AND QUALIFICATIONS.....	1-1
1.1 GENERAL.....	1-1
1.1.1 Confidentiality of Records.....	1-1
1.1.2 Manner of Notices to Property Owners/Tenants.....	1-1
1.1.3 Administration of Jointly Funded Federally-Assisted Projects.....	1-2
1.1.4 Federal and/or Agency Waiver of Regulations.....	1-2
1.1.5 Federal Aid Programming of Right of Way Projects.....	1-2
1.2 LAND ACQUISITION PROCESS-OVERVIEW.....	1-6
1.3 DISTRICT BUREAU OF LAND ACQUISITION.....	1-7
1.4 CENTRAL BUREAU OF LAND ACQUISITION.....	1-7
1.5 LAND ACQUISITION ACTIVITIES FLOW CHART.....	1-8
1.6 REALTY SPECIALISTS QUALIFICATIONS (FEE AND STAFF).....	1-10
1.6.1 General.....	1-10
1.6.2 Appraisers.....	1-11
1.6.3 Trainee Appraisers.....	1-12
1.6.4 Review Appraisers.....	1-13
1.6.5 Waiver Valuations.....	1-14
1.6.6 Negotiators—Staff and Fee.....	1-17
1.6.7 Relocation Agent—Staff and Fee.....	1-18
2 RIGHT OF WAY ENGINEERING.....	2-1
2.1 GENERAL.....	2-1
2.2 RIGHT OF WAY PLANS.....	2-1
2.2.1 Parcel Definition and Numbering System.....	2-1
2.2.2 Right of Way Plans Preparation.....	2-2
2.2.3 Right of Way Plans Review.....	2-5
2.2.4 Preliminary Right of Way Plans.....	2-6
2.3 LAND SURVEYING.....	2-6
2.3.1 General.....	2-6
2.3.2 Responsibility of Surveyor.....	2-7
2.3.3 Surveying Service Limitations.....	2-7
2.3.4 U.S. Public Land Surveys.....	2-8
2.3.5 Perpetuation of U.S. Public Land Survey Monuments.....	2-9
2.3.6 Preservation of Monuments.....	2-11
2.3.7 Survey Ties to Existing Monuments.....	2-12
2.3.8 Accuracy of Field Work.....	2-13
2.3.9 Entry on Lands to Make Survey.....	2-13
2.3.10 Right of Way Markers.....	2-14
2.3.11 Permanent Survey Markers and Permanent Survey Ties.....	2-14
2.4 RIGHT OF WAY PLATS.....	2-15
2.4.1 General.....	2-15
2.4.2 Right of Way Conveyances Exempt from Plat Act.....	2-15
2.4.3 Parcel Plat.....	2-16

2.4.4	Plat of Highways.....	2-18
2.4.5	Centerline Survey Plat.....	2-20
2.4.6	Corridor Protection Map.....	2-20
2.4.7	Premise Plat.....	2-22
2.4.8	Surveyor's Affidavit of Corrections.....	2-23
2.4.9	Surveyor's Certificate.....	2-23
2.5	LEGAL DESCRIPTIONS.....	2-24
2.5.1	General.....	2-24
2.5.2	Sufficiency of Descriptions.....	2-24
2.5.3	Form of Descriptions.....	2-24
2.5.4	Metes and Bounds Descriptions.....	2-24
2.5.5	Standard Rules for Metes and Bounds Descriptions.....	2-30
2.6	GUIDELINES FOR DESIGNING RIGHT OF WAY.....	2-38
2.6.1	General.....	2-38
2.6.2	Width of Right of Way.....	2-39
2.6.3	Establishment of Proposed Right of Way Lines.....	2-39
2.6.4	Principal Arterial Highways/NHS-Interstate, Freeway or Expressways (Construction and Reconstruction).....	2-39
2.6.5	Arterial Highways Not Classified as Freeways or Expressways (Construction and Reconstruction).....	2-40
2.6.6	Collector and Local (Land Access) Roads.....	2-41
2.6.7	Rehabilitation Projects.....	2-42
2.6.8	Factors Controlling Width.....	2-42
2.6.9	Other Considerations.....	2-42
2.7	METRIC GUIDELINES.....	2-44
2.7.1	Metrication.....	2-44
2.7.2	Basic Unit of Measure.....	2-45
2.7.3	Right of Way Plats and Plans.....	2-45
2.7.4	Right of Way Lines.....	2-46
2.7.5	Legal Descriptions.....	2-47
2.7.6	Conversion Policy.....	2-47
3	APPRAISAL AND APPRAISAL REVIEW.....	3-1
3.1	GENERAL.....	3-1
3.2	SELECTING AN APPRAISER.....	3-1
3.3	APPLICABLE APPRAISAL STANDARDS, REGULATIONS, AND POLICIES.....	3-1
3.4	INFORMATION FURNISHED APPRAISERS.....	3-2
3.5	APPRAISAL FORMATS AND WAIVER VALUATIONS.....	3-3
3.5.1	Non-Complex Appraisal Format.....	3-3
3.5.2	Complex Appraisal Format.....	3-4
3.5.3	Waiver Valuation.....	3-6
3.5.4	Valuation Finding Appraisal Format.....	3-8
3.6	APPRAISALS.....	3-9
3.6.1	Minimum Appraisal Requirements.....	3-9
3.6.2	Scope of Work.....	3-11
3.6.3	Number of Appraisals.....	3-12
3.6.4	Farmland Preservation Act Requirements.....	3-12
3.6.5	Comparable Sales.....	3-14
3.6.6	Approaches to Value.....	3-15
3.6.7	After Values and Damages.....	3-15
3.6.8	Benefits.....	3-16

3.6.9	Unit Rule	3-16
3.6.10	Influence of Proposed Highway Improvement on Value.....	3-16
3.6.11	Non-Compensable Items of Damage.....	3-16
3.6.12	Access Rights.....	3-17
3.6.13	Valuation of Easements and Temporary Use Permits.....	3-17
3.6.14	Valuation of Contaminated Property	3-20
3.6.15	Uneconomic Remnants	3-21
3.6.16	Compensation for Acquiring Railroad and Utility Operating Right of Way	3-21
3.6.17	Highest and Best Use (Probability of Re-Zoning).....	3-24
3.6.18	Tenant-Owned Improvements and Personal Property	3-25
3.6.19	Valuation of Signs	3-26
3.6.20	Nursery Stock.....	3-27
3.6.21	Not Valuing the Whole.....	3-27
3.7	APPRAISAL REVIEW	3-28
3.7.1	Examination of Appraisal Reports.....	3-28
3.7.2	Approval and Documentation	3-29
3.7.3	Corrections and Revisions.....	3-30
3.7.4	Appraisal Review Certification.....	3-31
3.8	SPECIALTY REPORTS	3-31
3.9	SUBMITTAL OF APPRAISALS TO CENTRAL BUREAU OF LAND ACQUISITION ...	3-33
3.10	SUBMITTAL OF APPRAISALS TO THE FEDERAL HIGHWAY ADMINISTRATION ..	3-34
3.11	CONDEMNATION.....	3-34
3.12	VALUATION OF EXCESS LAND	3-35
3.12.1	General	3-35
3.12.2	Valuation of Stand-Alone Parcels	3-36
3.12.3	Valuation of Assemblage Parcels	3-37
3.12.4	Valuation of Dedicated Land.....	3-37
3.12.5	Valuation of Dedicated Land and Access Rights	3-37
3.12.6	Valuation of Access Rights Only.....	3-38
3.12.7	Valuation of Easements.....	3-38
3.13	LAND ECONOMIC STUDIES.....	3-38
3.13.1	General	3-38
3.13.2	Origin of Data	3-38
3.13.3	Investigation	3-38
3.13.4	Screening.....	3-39
3.13.5	The Interview.....	3-39
3.13.6	The Rough Draft.....	3-40
3.13.7	Computation.....	3-40
3.13.8	The Final Copy	3-40
3.13.9	Printing Procedure.....	3-41
4	NEGOTIATION AND ACQUISITION	4-1
4.1	NEGOTIATION POLICIES	4-1
4.1.1	General	4-1
4.1.2	Right of Way Plans, Design and Construction Features	4-1
4.1.3	Appraisals and Waiver Valuations	4-3
4.1.4	Group Meetings.....	4-3
4.1.5	Acquisition Process	4-4
4.1.6	Offer Packet	4-5
4.1.7	Offer Presentation	4-5
4.1.8	Title Information.....	4-6

4.1.9	Closing on the First Contact	4-6
4.1.10	Subsequent Contacts	4-6
4.1.11	Items Which May Assist in Closing	4-6
4.1.12	Donations or Administrative Settlements	4-7
4.1.13	Negotiator's Report	4-8
4.1.14	Uneconomic Remnant	4-8
4.1.15	Retention of Improvements	4-9
4.1.16	Acquisition of Tenant-Owned Improvements	4-9
4.1.17	60-Day Notice	4-10
4.1.18	Explanation of Legal Rights, Obligations, Etc.	4-10
4.1.19	Date of Possession	4-12
4.2	ACQUISITION POLICES	4-12
4.3	INTEREST TO BE ACQUIRED	4-12
4.4	FACTORS WHICH MAY AFFECT EXECUTION AND OWNERSHIP	4-14
4.4.1	Owners	4-14
4.4.2	Marital Status	4-15
4.4.3	Homestead and Release of Marital Rights	4-15
4.4.4	Property Held Jointly	4-16
4.4.5	Estates	4-16
4.4.6	Condominium Property	4-16
4.4.7	Limited Liability Company	4-17
4.4.8	Corporate Property	4-18
4.4.9	Partnerships	4-19
4.4.10	Church Property	4-19
4.4.11	School Property	4-19
4.4.12	Power of Attorney	4-20
4.4.13	Required Signatures, Acknowledgments and Releases	4-20
4.4.14	Trusts	4-21
4.4.15	Disclosure of Beneficial Interests	4-21
4.4.16	Guardians	4-22
4.4.17	Contract for Deed/Installment Land Contract	4-22
4.4.18	Life Estates	4-22
4.5	ACQUISITIONS INVOLVING GOVERNMENT EMPLOYEES	4-23
4.5.1	Acquisitions Involving Government Employees Performing Land Acquisition Functions	4-23
4.5.2	Acquisitions from State Officers, State of Illinois Employees, their Spouses or Minor Children Not Involved in the Land Acquisition Process	4-24
4.5.3	Suspension of Activities for Non-Awareness	4-24
4.5.4	Employees Representing Themselves	4-25
4.5.5	Report of Acquisition	4-25
4.6	ENCUMBRANCES	4-25
4.6.1	Mortgage Liens	4-25
4.6.2	Real Estate Tax Liens	4-26
4.6.3	Liens of Special Assessments	4-27
4.6.4	Liens of Other State Agencies or Debts Owed the State	4-27
4.6.5	Other Encumbrances	4-27
4.7	MINERAL INTERESTS	4-28
4.7.1	Oil and Gas-Producing Facilities Within the Proposed Right of Way	4-28
4.7.2	Oil and Gas-No Producing Facilities Within the Proposed Right of Way	4-29
4.7.3	Other Minerals	4-29
4.8	PROPERTY OR RIGHTS OWNED BY UTILITY COMPANIES	4-30

4.9	Acquisition for Freeways	4-31
4.9.1	Full Freeways	4-31
4.9.2	Modified Freeways	4-31
4.9.3	Other Bureau Responsibilities	4-33
4.10	INSTRUMENT OF CONVEYANCE	4-33
4.11	Closing Documents – General	4-35
4.11.1	Affidavit of Title	4-35
4.11.2	Receipt and Disbursement Statement	4-36
4.12	TITLE EXAMINATION	4-37
4.12.1	Title Insurance Services	4-38
4.12.2	Closing Title	4-38
4.12.3	Recording the Instruments	4-39
4.12.4	Escrow Title Closings	4-40
4.13	REAL PROPERTY OWNED BY THE STATE AND UNDER THE CUSTODY AND CONTROL OF OTHER STATE AGENCIES	4-40
4.14	ACQUISITION OF PROPERTY TO REPLACE PROPERTY OF PUBLIC AGENCY	4-40
4.15	REAL PROPERTY OWNED BY THE FEDERAL GOVERNMENT	4-41
4.16	ACQUISITION OF PRIVATELY OWNED LANDS OR INTERESTS IN LANDS BY FEDERAL CONDEMNATION ACTION	4-41
4.17	ACQUISITION OF LAND FOR RELOCATION OF RAILWAY TRACKS OR PUBLIC UTILITY FACILITIES	4-41
4.18	ACQUISITION OF REMNANTS AND REMAINDERS	4-41
4.18.1	Inaccessible Remnants	4-42
4.18.2	Accessible Remnants or Remainders	4-42
4.19	JOINT IMPROVEMENT AGREEMENTS	4-42
4.19.1	General	4-42
4.19.2	State Highway Projects	4-43
4.19.3	Local Agency Highway Projects	4-44
4.19.4	Compliance Review Checklists	4-46
4.19.5	Compliance Reviews by District	4-46
4.19.6	Agreements	4-47
4.20	ENTRY ON LANDS TO MAKE SURVEYS	4-47
4.21	ACQUISITION OF RIGHT OF WAY FOR FUTURE USE	4-47
4.22	URBAN RENEWAL PROJECTS	4-48
4.23	CONDEMNATION	4-48
4.23.1	Request for Condemnation	4-48
4.23.2	Appointment of a Special Assistant Attorney General	4-48
4.23.3	Assignment to a Special Assistant Attorney General	4-49
4.23.4	Immediate Possession (Quick Take Procedures)	4-49
4.23.5	Preparation for Trial	4-50
4.23.6	Cooperation During Trial	4-50
4.23.7	Court Orders, Disclosures or Beneficial Interests, Incorporations, Partnerships and Trusts, and Title Insurance Policy	4-50
4.23.8	Documentation of Condemnation Awards After Settlement	4-51
4.23.9	Documentation of Condemnation Awards after Contested Trial	4-51
4.23.10	Appeals	4-52
4.23.11	Inverse Condemnation	4-52
4.23.12	Eminent Domain Checklist	4-52
4.24	ACQUIRING FUNCTIONAL REPLACEMENT PROPERTY FOR GOVERNMENTAL AGENCIES	4-53
4.24.1	Acquisition Based on Market Value	4-53

4.24.2	Acquisition Based on Functional Replacement.....	4-53
4.24.3	Replacement Site.....	4-53
4.24.4	Alternatives in Functional Replacement.....	4-54
4.24.5	Partial Takings.....	4-54
4.24.6	Approval of the Concept.....	4-54
4.24.7	Detailed Justification.....	4-55
4.24.8	Agreement Between the Department and Local Public Agency.....	4-55
4.24.9	Architect's Agreement Contracted by the Local Agency.....	4-55
4.24.10	Architect's Agreement Contracted by the District.....	4-56
4.24.11	Site Selection.....	4-56
4.24.12	Development of Plans, Specifications and Estimates.....	4-57
4.24.13	Advertising for Bids and Award of Contract.....	4-57
4.24.14	Review of Construction Progress and Payment.....	4-57
4.24.15	Exchange of Deeds.....	4-58
4.24.16	Joint Statement.....	4-58
4.24.17	Close-Out Report.....	4-58
4.24.18	Approvals Required from FHWA on Federal Participating Projects (FHWA Participation In Any Phase).....	4-59
4.24.19	Right of Way Acquisition for State Highways.....	4-59
4.25	ADVANCE ACQUISITION.....	4-60
4.25.1	State and Federally-Funded.....	4-60
4.25.2	Federally-Funded.....	4-60
5	RELOCATION ASSISTANCE AND PAYMENTS PROGRAM.....	5-1
5.1	GENERAL.....	5-1
5.1.1	Compliance with State and Federal Fair Housing Laws (Civil Rights).....	5-1
5.1.2	Authority and Compliance With Other Laws and Regulations.....	5-2
5.1.3	No Duplication of Payments.....	5-3
5.1.4	Aliens Not Lawfully Present in the United States.....	5-3
5.1.5	Relocation Payments Not Considered As Income.....	5-5
5.2	RELOCATION ASSISTANCE ADVISORY SERVICES.....	5-5
5.2.1	To Whom Provided.....	5-5
5.2.2	Advisory Assistance Requirements.....	5-5
5.2.3	Coordination of Relocation Activities.....	5-7
5.2.4	Eviction for Cause.....	5-8
5.3	RELOCATION PLAN.....	5-8
5.3.1	Objectives.....	5-8
5.3.2	Scope.....	5-9
5.3.3	Content.....	5-9
5.3.4	Addendums.....	5-11
5.4	NOTICES.....	5-11
5.4.1	Ninety (90)-Day Notice of Displacement Letter.....	5-11
5.4.2	Thirty (30)-Day Specific Date Written Notice to Vacate.....	5-12
5.4.3	Notice of Intent to Acquire.....	5-13
5.4.4	Notice of Receipt of a Claim for Payment.....	5-13
5.4.5	Notice of Denial of Claim.....	5-13
5.4.6	No Waiver of Relocation Assistance.....	5-13
5.4.7	Expenditure of Payments.....	5-13
5.5	AVAILABILITY OF COMPARABLE REPLACEMENT HOUSING.....	5-14
5.5.1	General.....	5-14
5.5.2	Circumstances Permitting Waiver.....	5-14

- 5.5.3 Emergency Move 5-14
- 5.6 REPLACEMENT HOUSING PAYMENTS..... 5-15
 - 5.6.1 Whole Takes 5-16
 - 5.6.2 Partial Takes 5-16
 - 5.6.3 Dwelling on Land With Higher and Better Use 5-16
 - 5.6.4 Determination of Payment Eligibility 5-17
 - 5.6.5 Price Differential..... 5-17
 - 5.6.6 90-Day Owner-Occupants Who Purchase 5-18
 - 5.6.7 Replacement Housing Payments for 90-Day Owners Who Rent 5-23
 - 5.6.8 Mixed-Use and Multi-Family Properties 5-23
 - 5.6.9 Replacement Housing Payments for 90-Day Occupants 5-24
 - 5.6.10 Multiple Occupants of One Displacement Dwelling..... 5-27
 - 5.6.11 Additional Rules Governing Replacement Housing Payments 5-27
 - 5.6.12 Replacement Housing as Last Resort 5-30
- 5.7 MOBILE HOMES..... 5-34
 - 5.7.1 Partial Acquisition of Mobile Home Park..... 5-34
 - 5.7.2 Replacement Housing Payment for 90-Day Mobile Home Owner-Occupants 5-34
 - 5.7.3 Replacement Housing Payments for 90-Day Mobile Home Occupants..... 5-36
- 5.8 ELIGIBLE INCIDENTAL EXPENSES ON TRANSFER OF REAL PROPERTY TO THE STATE..... 5-37
- 5.9 PAYMENTS for MOVING and related expenses 5-38
 - 5.9.1 Actual Reasonable Moving and Related Moving Expenses 5-38
 - 5.9.2 Direct Payment to Mover 5-38
 - 5.9.3 Advertising for Bids 5-38
 - 5.9.4 Cost of Moving Bids 5-38
 - 5.9.5 Payment After Death 5-39
 - 5.9.6 Nursing Homes..... 5-39
 - 5.9.7 Multiple Occupants of One Displacement Dwelling..... 5-39
 - 5.9.8 Moves from a Dwelling 5-39
 - 5.9.9 Moves from a Mobile Home..... 5-40
 - 5.9.10 Moves from a Business, Farm or Non-Profit Organization 5-41
 - 5.9.11 Personal Property Only 5-43
 - 5.9.12 Advertising Signs..... 5-43
 - 5.9.13 Eligible Actual Moving Expenses 5-43
 - 5.9.14 Additional Eligible Related Business, Farm and Non-Profit Moving Expenses 5-48
 - 5.9.15 Ineligible Moving and Related Expenses 5-48
 - 5.9.16 Notification and Inspection 5-49
 - 5.9.17 Transfer of Ownership 5-49
 - 5.9.18 Filing the Claim for Payment..... 5-49
- 5.10 RE-ESTABLISHMENT EXPENSES FOR SMALL BUSINESSES, FARM OPERATIONS AND NON-PROFIT ORGANIZATIONS 5-50
 - 5.10.1 Eligible Expenses 5-50
 - 5.10.2 Ineligible Expenses 5-50
 - 5.10.3 Filing the Claim for Payment..... 5-51
 - 5.10.4 Fixed Payment for Moving Expenses 5-51
 - 5.10.5 Business Fixed Payment 5-52
 - 5.10.6 Farm Operation Fixed Payment..... 5-53
 - 5.10.7 Non-Profit Organization Fixed Payment 5-53
 - 5.10.8 Average Annual Net Earnings for a Business or Farm Operation 5-54
 - 5.10.9 Request for a Determination of Eligibility 5-54
 - 5.10.10 Filing the Claim for Payment 5-55

5.11	UTILITY RELOCATION	5-55
5.12	CLAIMS FOR RELOCATION PAYMENTS	5-55
5.12.1	Documentation	5-55
5.12.2	Expeditious Payments	5-55
5.12.3	Advanced Payments	5-55
5.12.4	Time for Filing	5-55
5.13	RECORDS	5-56
5.13.1	Moving Expense Records	5-56
5.13.2	Replacement Housing Payment Records	5-57
5.13.3	Miscellaneous Documentation	5-57
5.13.4	The Relocation Assistance Unit Record	5-58
5.14	DISPUTE OF CLAIMS	5-58
5.14.1	District Review	5-58
5.14.2	Determination and Notification of the Regional Engineer Review Finding	5-59
5.14.3	Final Review	5-59
5.14.4	Determination and Notification of the Director of Highways Review Finding	5-59
6	PROPERTY MANAGEMENT	6-1
6.1	GENERAL	6-1
6.1.1	Organizational Responsibility	6-1
6.1.2	Statutory Authority and Requirements	6-1
6.2	PRE-NEGOTIATION REQUIREMENTS	6-2
6.2.1	Inspection of Buildings and/or Improvements	6-2
6.2.2	Preparing the Inventory	6-3
6.2.3	Establishing Values	6-3
6.3	NEGOTIATION ACTIVITIES	6-4
6.3.1	Owner Retention	6-4
6.3.2	Acquired Improvements	6-6
6.3.3	Rental to Existing Owner/Tenant Occupants	6-6
6.3.4	Effective Date of Rental Agreements for Existing Owner/Tenant Occupants	6-8
6.3.5	Outdoor Advertising Signs-Rental Prohibited	6-10
6.4	POST-ACQUISITION ACTIVITIES	6-10
6.4.1	Vacation and Physical Possession	6-10
6.4.2	Interim Protection of Property	6-11
6.4.3	Soliciting New Tenants	6-11
6.4.4	Effective Date for Rental Agreements for New Tenants	6-12
6.4.5	Leasing of Lands to Government Agencies	6-12
6.4.6	Leasing Lands Where a Dedication of Right of Way for Highway Purposes (Easement) was Acquired	6-12
6.4.7	Rental to Department Employees	6-12
6.5	RENTAL AGREEMENTS AND RECORDS	6-12
6.5.1	General	6-12
6.5.2	Non-Discrimination Provisions	6-12
6.5.3	Tenure of Rental Agreements	6-13
6.5.4	Rental Payments and Deposits – Accounting	6-14
6.5.5	Refunds	6-14
6.5.6	Rental in Arrears	6-15
6.5.7	Taxing of Tenants on Exempt Lands	6-16
6.5.8	State Real Property Leasing Act	6-16
6.5.9	Rental of Residential Properties Lead-Based Paint Hazards	6-16
6.6	MANAGEMENT OF ACQUIRED PROPERTY – GENERAL	6-16

6.6.1	Rentable Lands and Buildings	6-16
6.6.2	Non-Rentable Lands and Buildings – Disposal	6-18
6.6.3	Rodent Control	6-20
6.6.4	Capping, Sealing, or Filling of Wells, Cisterns, Basements, Etc.	6-21
6.6.5	Statutory Requirements–Tax Exempt Property	6-21
6.6.6	Maintenance of Rental Properties	6-22
6.6.7	Records and Reports	6-22
6.6.8	Incidental Expenses – Property Management	6-22
6.7	PUBLIC SALE OF BUILDINGS AND IMPROVEMENTS – GENERAL	6-25
6.7.1	Advertising and Notice to Bidders	6-25
6.7.2	Bidders Proposals and Performance Deposits	6-27
6.7.3	Accounting for Public Sale Proceeds	6-28
6.7.4	Bill of Sale Validation	6-28
6.7.5	Reporting Sale to Central Bureau of Land Acquisition	6-28
6.7.6	Sale of Residential Improvements – Lead-Based Paint Hazards	6-28
6.8	DEMOLITION OF BUILDINGS	6-29
6.8.1	Preliminary Asbestos Surveys	6-29
6.8.2	Demolition as Part of the Construction Plans	6-29
6.8.3	Demolition Contract	6-29
6.8.4	Documentation Requirements	6-30
6.9	MANAGEMENT OF NON-OPERATING RIGHT OF WAY (NORWAY) AND DISPOSAL OF EXCESS LAND OR RIGHTS IN LAND NO LONGER NEEDED FOR STATE HIGHWAY PURPOSES - GENERAL	6-30
6.9.1	Inventory and Management	6-31
6.9.2	Policy on Disposal of Excess Land	6-32
6.9.3	Methods of Disposal – General	6-34
6.9.4	Initiation of Disposals	6-36
6.9.5	Sale to Former Owner Method	6-39
6.9.6	Public Sale Method	6-40
6.9.7	Exchange Method	6-42
6.9.8	Inter-Departmental Transfer Method	6-43
6.9.9	Legislative Action	6-44
6.9.10	Conveyance to Another Governmental Agency or Not for Profit Organization	6-46
6.9.11	Wetland Disposal/Release Procedures	6-47
6.10	MANAGEMENT OF RIGHT OF WAY FOR NON-HIGHWAY RELATED USE – GENERAL	6-48
6.10.1	Definition	6-49
6.10.2	Procedure to Use Space – General	6-49
6.10.3	Lease Agreement	6-49
6.10.4	Appraisal	6-51
6.10.5	Advertising and Notice to Bidders	6-51
6.10.6	Bidders Proposals and Performance Deposits	6-52
6.10.7	After the Bidding	6-53
6.10.8	Soliciting New Lessees or Renewal of Leases	6-53
6.10.9	Use of Space by Permit	6-54
6.10.10	Inventory and Management of Leased or Permitted Use Areas of Operating Right of Way	6-56
6.11	LAND CONVEYANCE PROCEDURES INVOLVING JURISDICTIONAL TRANSFERS TO OTHER HIGHWAY AUTHORITIES	6-57
6.11.1	Past Jurisdictional Transfer	6-58
6.11.2	Future Jurisdictional Transfers - Jurisdictional Transfers Not Yet Executed	6-59

6.11.3	Land Vacated or Disposed of Subsequent to it Being Conveyed Under 605 ILCS 5/4-508(d)	6-61
6.12	ANNEXATIONS.....	6-61
7	ACCOUNTING FOR LAND ACQUISITION SERVICES	7-1
7.1	GENERAL.....	7-1
7.2	TAX ISSUES (1099).....	7-1
7.3	WARRANT REQUISITION PROCEDURE.....	7-1
7.3.1	Warrant Request for Right of Way.....	7-2
7.4	INCIDENTAL EXPENSES.....	7-3
7.4.1	Legal Fees.....	7-4
7.4.2	Incidental Expenses Other Than Legal Fees.....	7-4
7.5	REVENUE.....	7-5
7.5.1	Accounts Receivable Invoice.....	7-5
7.5.2	Accounts Receivable Remittance Statement.....	7-7
7.5.3	Refunds from Condemnation Deposits.....	7-7
7.5.4	Rental Income.....	7-8
7.5.5	Proceeds from Disposition of Excess Land Improvements or Other Rights.....	7-8
7.5.6	Miscellaneous Refunds.....	7-8
7.5.7	Adjustment to Invoices.....	7-9
7.5.8	Warrants.....	7-9
7.6	RIGHT OF WAY FUNCTION CODES.....	7-9
7.7	FUND TYPE CODES.....	7-10
7.8	GEOGRAPHICAL LOCATION CODES.....	7-10
7.9	RECORDS MANAGEMENT GENERAL.....	7-10
7.9.1	Organization of Land Acquisition Files.....	7-10
7.9.2	Record Retention Schedules.....	7-13
7.9.3	Disposition Procedures.....	7-13
7.9.4	Microfilming of Records.....	7-15
7.10	STATE AND LOCAL CONTRIBUTIONS-CREDIT.....	7-16
8	CONTRACTING FOR LAND ACQUISITION SERVICES	8-1
8.1	OUTSOURCING LAND ACQUISITION SERVICES.....	8-1
8.2	CONTRACTS FOR LEGAL SERVICES.....	8-1
8.3	CONTRACTS FOR TITLE SERVICES.....	8-1
8.4	CONTRACTS FOR LAND ACQUISITION SERVICES.....	8-1
8.4.1	Advertisement of Need.....	8-2
8.4.2	Submission of Proposals.....	8-2
8.4.3	Opening of Proposals.....	8-2
8.4.4	Administrative Responsibility Review.....	8-2
8.4.5	Selection.....	8-3
8.4.6	Negotiations/First Meeting.....	8-3
8.5	AGREEMENT PROCESSING.....	8-4
8.6	FUNDING APPROVALS FOR FEDERAL AUTHORIZATION.....	8-4
8.7	AGREEMENT ADMINISTRATION.....	8-4
8.8	WORK ORDER ASSIGNMENT.....	8-5
8.9	DOCUMENTATION.....	8-5
8.10	FILING AND PAYING AGREEMENTS.....	8-5
8.11	CONSULTANT INVOICES.....	8-6
8.12	AMENDMENTS.....	8-6
8.13	EVALUATION OF CONSULTANT'S PERFORMANCE.....	8-6

8.13.1	General	8-6
8.13.2	Interim Evaluations	8-7
8.13.3	Final Evaluations	8-7
8.14	COMPLETION AND TERMINATION PROCEDURES	8-7
9	OUTDOOR ADVERTISING	9-1
9.1	GENERAL	9-1
9.2	CONTROLLED ROUTES	9-1
9.3	SIGN TYPES REQUIRING CONTROL	9-2
9.4	SIGN CONTROL CRITERIA	9-2
9.4.1	Requirements for Signs Located on or along the Interstate System (Including Tollways)	9-3
9.4.2	Rules for Signs Located Adjacent to Non-Interstate NHS Routes	9-5
9.4.3	Rules for Signs Located Adjacent to Scenic Byways	9-6
9.5	SIGN PERMIT APPLICATION PROCESS	9-6
9.6	SURVEILLANCE OF SIGNS	9-7
9.7	ILLEGAL SIGN CONTROL	9-7
9.8	RELOCATING ADVERTISING SIGNS	9-7
9.9	ACQUISITION OF OUTDOOR ADVERTISING SIGN SITE	9-8
9.9.1	Valuation of Signs Located on Property to be Acquired	9-8
9.9.2	Valuation of Legal Non-Conforming (Red Tag) Signs	9-9
9.10	OUTDOOR ADVERTISING CONTROL SYSTEM (OACS)	9-9
10	SPECIAL WASTES	10-1
10.1	General	10-1
10.1.1	Evaluation of Properties for Special Wastes	10-1
10.1.2	Acquisition	10-1
10.1.3	Underground Storage Tanks	10-2
10.1.4	No Further Remediation (NFR) Letters	10-2
10.1.5	Enforcement	10-3
10.1.6	Property Management	10-3
10.1.7	Safety	10-3

APPENDIX A – DEFINITIONS AND ACRONYMS

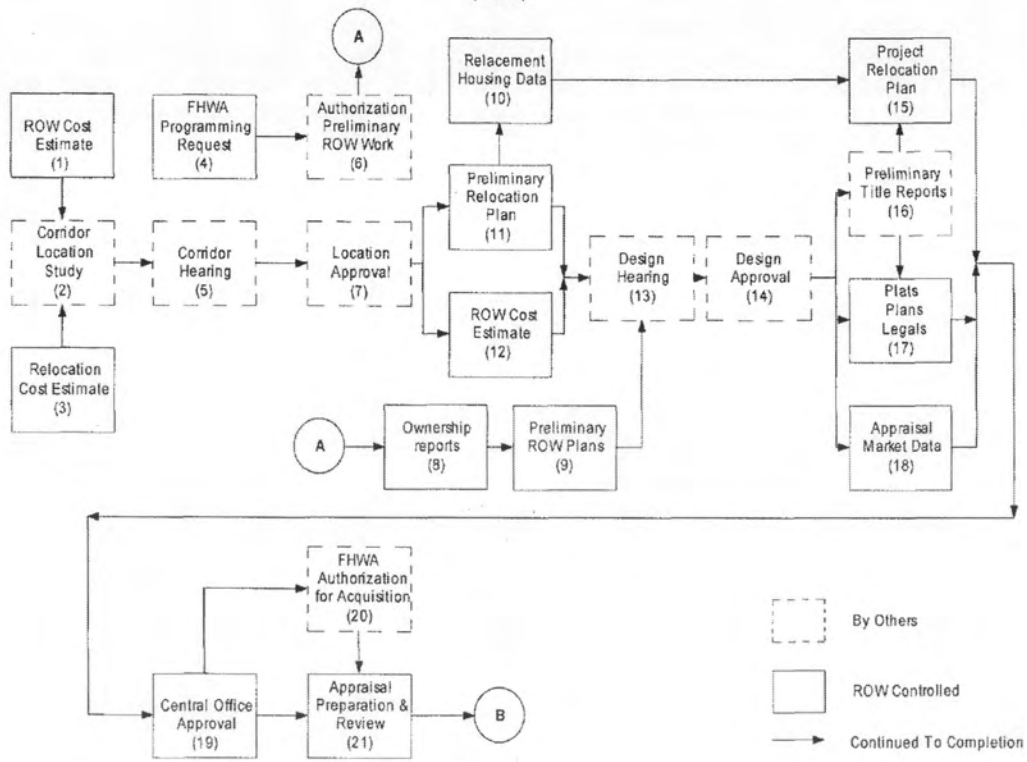
LIST OF FORMS, TEMPLATES, AND EXHIBITS

- Provide and review all data necessary for approval of legal title to land.
- Prepare all necessary documentation in regard to the release of excess land.
- Develop any land acquisition training programs.
- Regulate outdoor advertising.
- Regulate junkyards.
- Prepare, coordinate, and monitor the annual land acquisition program in tracking the district progress towards accomplishing objectives.
- Control, evaluate and maintain data in the Land Acquisition System (LAS).
- Produce monitoring reports, as required.

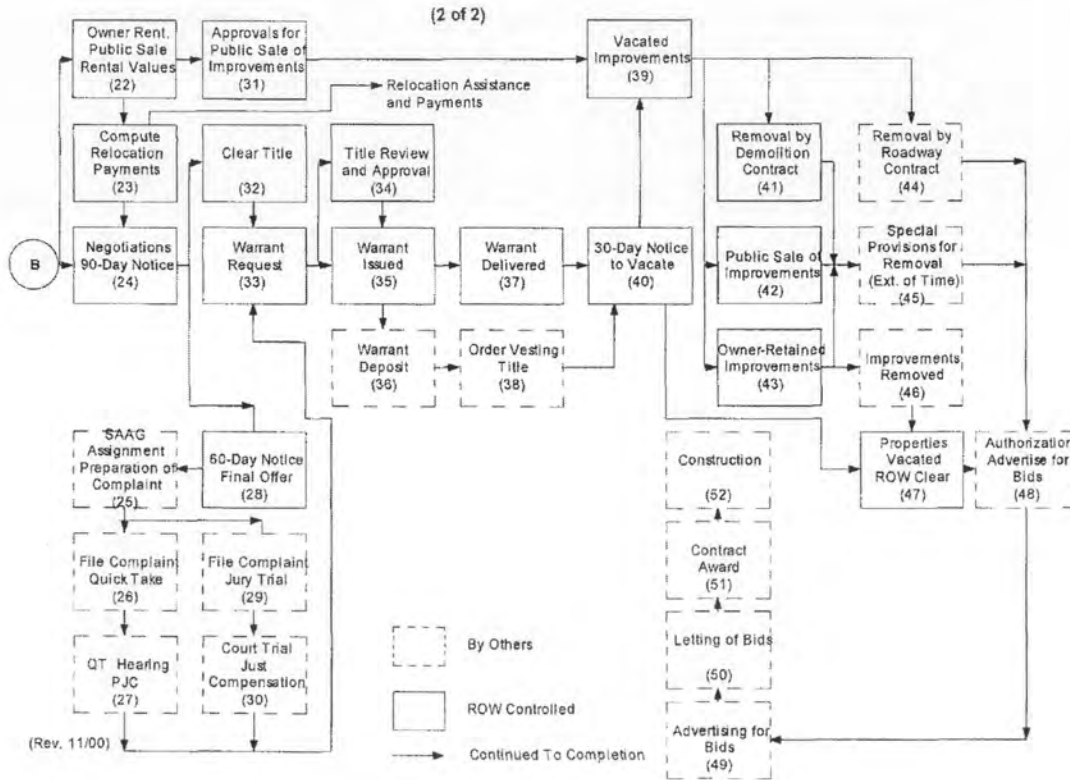
1.5 LAND ACQUISITION ACTIVITIES FLOW CHART

The Land Acquisition Flow Chart shows schematically all major steps and events of the land acquisition process from the inception of a project to its construction. Activities indicated in solidly outlined boxes are those that are performed and controlled by land acquisition. Activities indicated in boxes bound by dashed lines are performed by others and are not within the control of land acquisition. The numbers in the boxes relate to the definition of these steps and events that are contained in the following:

Land Acquisition
Flow Chart
(1 of 2)



(Rev. 11/00)



1.6 REALTY SPECIALISTS QUALIFICATIONS (FEE AND STAFF)

1.6.1 General

Appraisers (all types), Negotiators and Relocation Agents must have the necessary background, experience, and ability to demonstrate good judgment in the area of eminent domain acquisition and relocation. The appropriate state and federal regulations must be followed explicitly to secure the rights of the property owners and tenants guaranteed under the Fifth Amendment while assuring the taxpayers of Illinois only pay a fair and equitable price for the property.

All realty specialists must be either qualified staff or on the approved fee list. All lists are approved and maintained by CBLA.

Fee specialists complete the standard "Application for Assignment as Land Acquisition Fee Agent(s)" (LA 161) and furnish the required evidence. The applicant receives an approval or denial letter (with reason for denial) after the application is reviewed. A specialist must be on an approved list prior to receiving assignments.



§ 24.103

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

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

§ 24.103 Criteria for appraisals.

(a) *Appraisal requirements.* This section sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).¹ (See appendix A, § 24.103(a).) The Agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA).²

(1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

(2) The Agency has the responsibility to assure that the appraisals it obtains

¹ Uniform Standards of Professional Appraisal Practice (USPAP). Published by The Appraisal Foundation, a nonprofit educational organization. Copies may be ordered from The Appraisal Foundation at the following URL: <http://www.appraisalfoundation.org/html/USPAP2004/toc.htm>.

² The "Uniform Appraisal Standards for Federal Land Acquisitions" is published by the Interagency Land Acquisition Conference. It is a compendium of Federal eminent domain appraisal law, both case and statute, regulations and practices. It is available at <http://www.usdoj.gov/enrd/landack/toc.htm> or in soft cover format from the Appraisal Institute at <http://www.appraisalinstitute.org/econom/publications/Default.asp> and select "Legal/Regulatory" or call 888-370-4545.

49 CFR Subtitle A (10-1-10 Edition)

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 definition of appraisal in § 24.2(a)(3) and the five following requirements: (See appendix A, §§ 24.103 and 24.103(a).)

(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, 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 5-year sales history of the property. (See appendix A, § 24.103(a)(1).)

(ii) 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. (See appendix A, § 24.103(a).)

(iii) 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.

(iv) 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.

(v) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* The appraiser shall disregard any decrease or increase 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, other than that due to physical deterioration within the reasonable control of the owner. (See appendix A, § 24.103(b).)

Office of the Secretary of Transportation

§ 24.105

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

(d) *Qualifications of appraisers and review appraisers.* (1) The Agency shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Agency shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and review appraisers, and use only those determined by the Agency to be qualified. (See appendix A, §24.103(d)(1).)

(2) If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*).

[70 FR 611, Jan. 4, 2005, as amended at 70 FR 22611, May 2, 2005]

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified review appraiser (see §24.103(d)(1) and appendix A, §24.104) shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value. The level of review analysis depends on the complexity of the appraisal problem. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions. The review appraiser shall identify each appraisal report as recommended (as the basis for the establishment of the amount be-

lieved to be just compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. If authorized by the Agency to do so, the staff review appraiser shall also approve the appraisal (as the basis for the establishment of the amount believed to be just compensation), and, if also authorized to do so, develop and report the amount believed to be just compensation. (See appendix A, §24.104(a).)

(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with §24.103 to support a recommended (or approved) value. (See appendix A, §24.104(b).)

(c) The review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s). Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the approved value, and, if the review appraiser is authorized to do so, the amount believed to be just compensation for the acquisition. (See appendix A, §24.104(c).)

§ 24.105 Acquisition of tenant-owned improvements.

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



§ 24.103

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

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49 CFR Subtitle A (10-1-10 Edition)

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Office of the Secretary of Transportation

§ 24.105

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(b) If the review appraiser is unable to recommend (or approve) an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with § 24.103 to support a recommended (or approved) value. (See appendix A, § 24.104(b).)

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