

Right-of-Way Manual



**Your Safety • Your Mobility
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August 2018



REVISIONS

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1 INTRODUCTION AND PURPOSE OF THE MANUAL

This Chapter of the Manual will introduce the Right-of-Way Section Mission Statement, Vision, and the purpose of this Manual. We will provide a short introduction of our Unit and explain what we do for the Department and public. This section also contains a graphical explanation of the Right-of-Way process at the Idaho Transportation Department.

1.1 PURPOSE OF THE RIGHT-OF-WAY MANUAL

This manual is designed to guide right-of-way employees in the performance of their assigned duties and to assist them in complying with all applicable laws, regulations, policies and directives. This manual also serves as a guide to internal and external customers, including right-of-way consultants and local agency personnel who acquire right-of-way on jointly funded projects, who desire general information about the right-of-way process at the Idaho Transportation Department.

This Right-of-Way Manual is a compilation of procedures designed to streamline the right-of-way process and delivery. The manual has descriptive chapters which direct the reader to the appropriate procedures for each of the right-of-way disciplines. The policies and procedures contained in this manual are considered general guidelines to be followed. If a situation should arise that is not specifically covered in this manual, employees are encouraged to contact their immediate supervisor. Decisions in these situations will comply with laws, meet the intent of this Manual, and be fair to all parties.

This manual serves as the guiding document for the relationship between the Federal Highway Administration (FHWA) and the Idaho Transportation Department (ITD). The Right-of-Way Section is responsible for complying with current FHWA requirements whether or not they are reflected in this Right-of-Way Manual.

This manual complies with the Idaho Statutes, Federal laws and Federal regulations that control the process for acquiring private property rights for public purposes. In addition, this manual serves as a beneficial and informational source for Local Public Agencies (LPAs) involved in federal aid projects, resulting in greater accuracy and efficiency.

This Right-of-Way Manual is a living document that will continually change as applicable laws and regulations change. At least every five years, the Right-of-Way Manual shall be reviewed, updated as necessary, and certified that it conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate laws and regulations.

1.2 INTRODUCTION

The Right-of-Way Section of the Idaho Transportation Department (ITD) is responsible for the administration of the Department's eminent domain program and policies in compliance with the Federal Highway Administration (FHWA) and follows the federal regulations found in the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended.

The Right-of-Way Section applies the Department's [2017-2020 Strategic Plan](#) to improve upon the safety, mobility, and economic opportunity for the citizens of Idaho, and those that travel Idaho's highways.

We take pride in honoring our transparency, accountability, and timely delivery of our final product. We continually look for ways to be more efficient, minimize cost, and provide excellent customer service.

We ensure compliance with federal and state laws and regulations. The Right-of-Way Section also provides direct project support to the six district offices located in Idaho.

1.2.1 PROGRAM OVERSIGHT

ITD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by ITD are made in compliance with legal requirements of State and Federal laws and regulations ([23 CFR 710.201\(a\)](#)).

1.3 VISION

To be recognized as the leader in right-of-way services by setting the standard of quality in our industry.

1.4 MISSION STATEMENT

To continuously improve the Right-of-Way Section's value to our customers, citizens and communities by:

- Treating landowners fairly while fulfilling our responsibility to the taxpayer
- Implementing creative and innovative processes
- Providing professional and timely customer service

1.5 POLICY

APPROVAL ACTIONS

Except for the Interstate system, ITD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in this right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required ([23 CFR 710.201\(h\)](#)).

Right-of-Way activities required for transportation projects by the State of Idaho are conducted in compliance with all Federal, State, and local laws, regulations, policies, and any other ITD practice that may be periodically adopted. The Right-of-Way Section strives to deliver services and benefits to be derived from any right-of-way activity will be administered as required in Title VI and related statutes.

COMPLIANCE WITH STATUTES, POLICY AND PROCEDURE

Idaho Statutes

The Idaho Statutes are a compilation of all laws of the State of Idaho and cover all aspects of business law, government, revenue, public safety, civil, criminal and consumer protection. Discrepancies between the various applicable policies shall always be resolved in favor of statutes. Interpretation of statutes may be sought from the Deputy Attorney General's office at ITD.

Idaho Transportation Department Administrative Rules

The Idaho Transportation Department's rulemaking is governed by the Idaho [Administrative Procedures Act](#) (IDAPA) Title 67, Chapter 52, Idaho Code. Rulemaking is conducted by state agencies for a variety of reasons. The four most common reasons are: 1) the enactment or amendment of a statute by the state legislature; 2) new regulations are adopted by the federal government which require implementation by the state; 3) the agency itself initiates rulemaking and 4) the agency receives a petition, from an outside party, to change or adopt a particular rule.

1.6 DEFINITIONS

Act: Refers to United States Code, Section 131, Title 23, commonly referred to as Title 1 of the Highway Beautification Act of 1965.

Control Records: Original records

Department: The Idaho Transportation Department

District: Any one of the 6 Districts of the Idaho Transportation Department

FHWA: The Federal Highway Administration

Fixtures: Items that are purchased as realty and associated with the use of the property. They may consist of, but shall not be limited to, machinery, furnishings, built-in appliances, water and heating systems, carpet, drapes, water certificates and trade fixtures.

In order to determine whether or not an item might be classified as a fixture, it should be kept in mind that it may have been personal property prior to affixation. The determining factors are:

- Would the item, if separated, detract from the value of the property?
- Is the item considered as a normal item of realty customary to the area?
- What was the intent for which the item was installed?

Junkyard: An establishment or place of business which is maintained, operated, or use for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

Just Compensation: Payment required by law for the loss sustained by the owner as a result of taking or damaging private real property for public purposes.

LHTAC: The Local Highway Technical Assistance Council

LPA: Local Public Agencies, i.e., City, County and Highway Districts

Market Value: The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale. In a fair sale, the buyer and seller are each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated.
- Both parties are well informed or well advised and acting in what they consider their best interests.
- A reasonable time is allowed for exposure in the open market.
- Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Negotiations: The process by which an acquiring agency makes every reasonable effort to acquire real property through a voluntary transfer of such property and by payment of just compensation to the owner.

Negotiator/Fee Negotiator: An employee of ITD or LPA who negotiates the purchase of land and improvements for right-of-way.

Owner: Any individual, family, business, corporation, partnership, association, or farm operation having any right, title or interest in property which is acquired, condemned, or sought to be acquired or condemned ITD or agency.

Outdoor Advertising: Anything that is designed or intended or used to advertise or inform.

Personal Property: (from [Idaho Code, Title 55, Chapter 1, Section 102](#)): Every kind of property that is not real property.

Real Property: Real Property (from [Idaho Code, Title 55, Chapter 1, Section 101](#)): Real property or real estate shall be considered to consist of:

- Lands, possessory rights to land, ditch and water rights and mining claims, both lode and placer.
- That which is affixed to land.
- That which is appurtenant to land.

Relinquishment: (from [23CFR 710.105](#)): The conveyance of a portion of a highway right-of-way or facility by the Idaho Transportation Department to another government agency for continued transportation use.

1.7 SCOPE OF APPLICATION

This manual is applicable to all State and Federal right-of-way actions including but not limited to the following:

1. All Federal projects including:
 - ITD
 - LPA, State Administered LPA,
 - LHTAC Administered LPA,
 - ACHD Administered
2. All property acquisitions for the above projects including:
 - Fee title acquisitions
 - Temporary and permanent easements
 - Rights of entry
 - Property use agreements
 - Access control Relocations
 - Damage compensations
 - Functional replacement
 - Air rights
3. Scenic enhancements
 - Scenic easements
 - Outdoor advertising control
 - Junk yard control

2 ORGANIZATION

Chapter 2 of the Right-of-Way Manual describes the organizational structure that exists within the Idaho Transportation Department and how the Right-of-Way Section is organized within the Department.

2.1 TRANSPORTATION DEPARTMENT BOARD OF DIRECTORS

Pursuant to Idaho law, the Idaho Transportation Department is administered by a Board of Directors. The Idaho Transportation Board is a seven-member panel of citizens appointed by the Idaho Governor and confirmed by the Idaho Senate. The transportation board is responsible for establishing department policy and hiring the department's director. Board members represent each of the state's six transportation districts and serve staggered, six-year terms on a part-time basis. The seventh member, the board chairman, serves at the pleasure of the governor and votes in the event of a tie.

2.2 EXECUTIVE TEAM –TRANSPORTATION DEPARTMENT

The executive team at the ITD, led by the Director, includes a Chief Deputy Officer, Chief Operations Officer, Chief Administrative Officer, and Chief Human Resources Officer. Collectively, they are responsible for six divisions: Administrative, Aeronautics, Highways, Human Resources, Motor Vehicles, and Transportation Performance.

2.3 RIGHT-OF-WAY ORGANIZATION

The Right-of-Way Section is a component of the Division of Highways and is located at ITD's headquarters in Boise. All right-of-way operations are directed from the headquarters office. The Right-of-Way Section has as its responsibility the acquisition and management of all real properties or interests therein for ITD in accordance with state and federal laws and regulations.

The Right-of-Way Section is staffed to efficiently perform all acquisition, relocation, highway beautification, and property management functions for the Department. No other state or local government agencies are used for these purposes. Most appraisal, acquisition, property management, and relocation services are performed by headquarters right-of-way staff employees. However, these services may be supplemented by fee appraisers, negotiators, relocation agents, and property management firms in accordance with Chapter 6 of this manual.

The Right-of-Way Section is comprised of the Program Manager, Right-of-Way Agents, and Certified General Appraisers. Right-of-Way Agents are generally located at headquarters, but may also be located within any of the department's six districts. Any Right-of-Way personnel which are located within the district offices report to, and perform under the supervision of the Right-of-Way Program Manager at headquarters. The Right-of-Way Program Manager maintains overall responsibility for all Right-of-Way policies and procedures for all functions.

For Right-of-Way Agent positions, the Department uses job classifications that encompass right-of-way and general real estate knowledge, skills and abilities. The specifications are guidelines and are not all-inclusive of the knowledge, skills, and abilities involved in right-of-way work, or the duties that IDT may assign to an employee in a given classification.

The following job classifications are typically used for Right-of-Way Section team employees:

- Right-of-Way Appraiser: Primary responsibilities include conducting appraisal reviews, preparing appraisal reports on properties, and ordering appraisal reports.
- Senior Right-of-Way Agent: The Senior Right-of-Way Agent is well versed in the five major right-of-way functions; titles, negotiations, relocation, procedural review and property management. One of the Section's Senior Right-of-Way Agents will have a designated role as the Local Public Agency (LPA) Liaison.
- Right-of-Way Agent: Primary responsibilities include negotiations with property owners and administrative acquisitions, the management of property acquired by ITD, including the leasing and sale of surplus property, and the administration of scenic enhancement duties.
- Right-of-Way Apprentice: The Right-of-Way Apprentice will research public records and other sources to obtain data, prepare reports, contracts, rental and lease agreements, purchase options, and other legal documents. The Apprentice assists in the various activities and duties of the Right-of-Way Section while receiving formal and rotational on-the-job training in the major functional areas of titles, appraisals, negotiations, relocation assistance, scenic enhancement and compliance review.

Additionally, the Right-of-Way Program Manager may utilize the staff at each of the 6 local Districts for assistance with the following functions:

- Assist in the valuation of properties where the value is estimated to be less than \$10,000
- The identification, management, and deposition of surplus properties
- Provide assistance with Property Management
- Provide research and assistance for condemnation actions
- Outdoor advertising inventory and control

2.4 RIGHT-OF-WAY MANAGER

The Right-of-Way Manager oversees the Right-of-Way Section at Headquarters in Boise. The Right-of-Way Manager performs the following tasks:

- Execute the right-of-way Mission and Vision
- Develop and update right-of-way policies and operating practices
- Establishes program goals and objectives based on the department's mission and goals
- Provides program consultation and coordinates program activities with other department units as well as other agencies and contractors to insure program effectiveness
- Confers with state, federal and department staff about state and federal requirements;
- Is responsible for program compliance with all mandated requirements

- Maximizes the use of program and department resources to support program quality and innovative business practices
- Establishes measurement processes/methods for assessing program outcomes or progress toward goals
- Hires and trains staff and subordinate supervisors
- Assigns work and evaluates performance
- Develops and controls the program budget
- Approves just compensation paid to property owners
- Approve all negotiated settlements on behalf of the Right-of-Way Section
- Approve administrative settlements in excess of fair market value
- Approves all contracts for the hiring of right-of-way consultant services
- Manage outdoor advertising control

2.5 RIGHT-OF-WAY AGENTS

For the most part, Right-of-Way personnel, as Right-of-Way Agents, are well versed in two or more functions such as acquisition, relocation, titles, appraisal, appraisal review, and property management. The multi-disciplinary staff seeks to provide flexibility to service a project workload that varies in scope and scale from year to year.

Responsibilities of the Right-of-Way Agents include, but are not limited to, the following:

- Perform skilled assignments involving one or more right-of-way functions as qualified by training and experience such as negotiations/acquisition, relocation, closings, condemnation and property management
- Attend public meetings for assigned projects as directed by the Program Manager
- Participate with project team members from other disciplines in establishing project scope, budget, and schedule
- Review of right-of-way plans and recommendation of approval
- Ensure that all project details and elements are entered into the right-of-way computer system
- Recommend approval of contract services and administrative settlements
- Prepare certifications for the approval of the Program Manager
- Act as liaison to LPA's (This responsibility will typically be held by the same Right-of-Way Agent designated to Procedural Review.)

Additional responsibilities, as assigned by the Right-of-Way Program Manager, may include the following:

- Assigning appraisals, valuation estimates, and preparing a solicitation for bids by fee appraisers
- Conduct outdoor advertising control activities

2.6 FUNDAMENTAL FUNCTIONS OF THE RIGHT-OF-WAY SECTION

2.6.1 TITLES

The Titles component provides important information at the beginning and end of a project.

When a project begins, the Titles Component provides:

- Procedural and compliance reviews;
- Input to and/or prepares legal documentation;
- Legal documents to obtain clear title;
- Title reports and last deed of record for title transfer;
- Review of right-of-way plans and recommendation of approval
- Coordination and processing of Federal land transfers

When a project is near the end of completion, the Right-of-Way Agent working on the Titles Component provides:

- Approval for payment of title insurance premiums;
- Approval for payment of escrow closing fees;
- Deeds

2.6.2 APPRAISAL/REVIEW

A separation of functions maintains the integrity of the acquiring agency's operations. Thus, the appraisal, appraisal review, and negotiations for a parcel are typically performed by three different individuals. If two or more appraisals are required for a parcel, only one appraisal is assigned to a staff appraiser. The additional appraisals are made by either a separate staff appraiser or a fee appraiser.

Uncomplicated acquisitions of relatively low value (not greater than \$10,000) are identified during plan review by the right-of-way section. ITD's method for doing an appraisal waiver is to complete a Property Compensation Estimate ([ITD 1466](#)). An appraisal is required if condemnation is commenced or when the just compensation indicated is greater than \$10,000 and an appraisal is requested by the property owner.

All other parcels are assigned by the Right-of-Way Manager or designee for appraisal. The Right-of-Way Manager, or designee, determines the type of appraisal report and whether the appraisal is to be done by staff or fee appraisers. Upon satisfactory completion of an appraisal, the report goes to appraisal review.

In order to streamline the Appraisal Process, one Appraiser in the Section may be designated to perform as an Appraisal Coordinator. The duties of an Appraisal Coordinator may include any of the following:

- Reviews and coordinates real property appraisals for highway projects, surplus ITD properties, and State Aeronautical properties
- Provides procedural and compliance review for appraisal activities

- Determines the appraisal complexities of each parcel on every project and determines the appropriate type of appraisal for the parcel
- Assigns appraisals, [ITD-1466](#) Valuation Estimates, and prepares a solicitation for bids by fee appraisers
- Awards contracts to fee appraisers
- Assists, advises, and educates fee appraisers
- Authorizes and makes payment to the fee appraisers
- Provides the appraisal process on a contract basis for counties and cities using federal funding

The Right-of-Way Staff Appraisers responsibilities may include:

- Appraise property desired for acquisition by ITD per the [Uniform Standards of Professional Appraisal Practice](#) (USPAP) and the [Uniform Standards for Federal Land Acquisition](#) (UASFLA, commonly called the “Yellow Book”);
- Communicate and offer information to the property owner about ITD’s appraisal process; and
- Provides training to district personnel on completing [ITD-1466](#) Value Estimates

The Right-of-Way Appraiser also performs appraisal reviews. An appraisal review is performed to ensure that the appraisal for the property was performed correctly, in conformance with all applicable laws and regulations, and acts as a quality assurance check to ensure that the property was appraised correctly.

The Review Appraiser on staff examines the appraisal to ensure its adequacy and accuracy. The Review Appraiser prepares a Statement of Review Appraiser (ITD 1922) that establishes the just compensation to be paid by the state for the needed property and property rights. The just compensation includes amounts for the value of the lands and improvements acquired for the project, damages, and deductions for special benefits.

A Statement of Review Appraiser prepared by a fee Review Appraiser does not authorize just compensation, nor does the fee Review Appraiser declare an uneconomic remnant. Only an employee of the agency can do either of these functions.

The Appraisal Reviewer’s responsibilities may include:

- Performs reviews and coordinates real property appraisals for:
 - Highway projects
 - Surplus ITD properties
 - State Aeronautical properties
- Provides procedural and compliance review for appraisal activities
- Inspects the subject property, when necessary
- Reviews appraisal report for correctness of cost, sales, and income information and for compliance with all State and Federal guidelines
- Evaluates the report
- Makes recommendation on the just compensation to be paid to the property owner

2.6.3 ACQUISITION AND NEGOTIATION

The Right-of-Way Agent(s) responsible for acquisitions is responsible for negotiating the offer of compensation with the property owner.

Once the approved Statement of Review Appraiser or Property Compensation Estimate is available, the Right-of-Way Manager assigns the parcel for negotiations. The Right-of-Way Agent performing the negotiations works with all parties to achieve a negotiated settlement at just compensation for the needed property and property rights. The negotiator makes the state's offer in writing to the property owner or his representative. While an oral offer may be made in addition to the written offer, a written offer is required. The negotiator keeps a diary of all contacts and events in such detail that he can attest to the facts therein. Occupants must be given timely written notice of their right to receive relocation assistance. Therefore, the negotiator immediately notifies the Right-of-Way Manager of the date of initiation of negotiations on the parcel.

Occasionally, an issue may stand in the way of completing a negotiated settlement. If the appropriate authority gives its prior approval, an administrative settlement may be arranged. The justification for an administrative settlement is documented in the parcel file and computer inputs are made. Upon conclusion of satisfactory negotiations, the negotiator obtains execution of necessary instruments and vouchers by all interested parties. The parcel file is reviewed and computer inputs are made.

The Acquisition/Negotiation personnel may have the following responsibilities:

- Researches public records and other sources to obtain data
- Prepares legal documents, contracts, agreements, exhibits, and reports
- Verifies platting of ownership limits on plans
- Reviews project alignments and determines extent and quality of titles
- Reviews final title reports for land parcels
- Determines legal instruments required to release property and obtain clear title
- Verifies completeness of legal instruments, exhibits, plans, and papers for land acquisition
- Obtains market data
- Analyzes area economic conditions, lending practices and real estate trends
- Assembles comparables and correlates factors affecting property values and prepares estimate of fair market value
- Meets with property owners to review project plans, explain appraisal process and negotiate purchase agreements
- Oversees contract administration for independent contractors
- Provides input to and/or prepares legal documentation
- Authorizes acquisition of property when necessary criteria are met
- Negotiates with landowners for the acquisition of real property
- Determines the appropriate types of acquisitions to be secured for each project and determines the corresponding procedures to be followed and supporting documentation to be prepared and saved.

2.6.4 ACQUISITION/CONDEMNATION

Condemnation personnel have the ability to act as a negotiator and can perform acquisition activities, but often specialize in the final attempts to negotiate with property owners. He or she provides coordination and support between the Idaho Transportation Department and the Office of the Attorney General, through the Deputy Attorneys General (DAG) assigned to ITD.

When negotiations are unsuccessful, and all attempts to reach agreement have failed, the Right-of-Way Agent responsible for the parcel will review the acquisition efforts with the Right-of-Way Manager and will prepare a Condemnation Memorandum containing details of the negotiation efforts. The Right-of-Way Manager will then consult with both the District Project Manager and the District Engineer prior to the Right-of-Way Agent transmitting the file to a Deputy Attorney General for condemnation. Condemnation is coordinated with the Office of the Attorney General, through the Deputy Attorneys General (DAG) assigned to the matter.

The Right-of-Way Agent responsible for condemnation functions may have the following duties:

- Ordering and preparing all appropriate court exhibits and copies of the entire parcel file
- The execution of the condemnation, including coordination with the Deputy Attorney General assigned to the matter.
- The final attempt to negotiate with property owners for the purchase of property prior to transmitting for condemnation
- Acting as a liaison between the Office of the Deputy Attorney Generals and the Department to coordinate the pursuit and condemnation actions
- Serving as research and trial assistant to the Office of the Deputy Attorney Generals in condemnation cases

2.6.5 PROCEDURAL REVIEW

The Procedural Review component ensures that all Right-of-Way activities adhere to FHWA and Idaho Code, law and regulation. The Right-of-Way Agent responsible for procedural review also verifies the documentation supporting all right-of-way payments to confirm compliance with state and federal laws, rules, and regulations, and ITD policies and procedures.

The Procedural Review Function may include:

- Ensures no direct payments are processed prior to FHWA's approval of the [ITD 2101](#) (Project Authorization and Agreement)
- Provides procedural and compliance review for appraisal activities
- Oversees contract administration for independent contractors
- Provides input to and/or prepare legal documentation
- Arranges for Federal Highway Administration approval to proceed with projects
- Reviews acquisition and relocation documents for compliance
- Monitors post acquisition activities
- Prepares certifications of right-of-way for projects going to construction
- Monitors and rectifies any projects certified with exceptions
- Performs as the ITD point of contact for LPA's

- Reviews project and parcel documentation of LPA projects, ensuring conformance to ITD procedures and Federal eligibility requirements.

2.6.6 RIGHT-OF-WAY CERTIFICATION

The Procedural Review personnel verifies that the required land (right-of-way) is available for a proposed construction project. Certification must be completed prior to the contract advertisement date. This is done in conjunction with an analysis of the utility and railroad involvements, material source requirements, and the status of dwelling replacements so that a certificate to FHWA in the form of a right-of-way certificate shall be made by the Right-of-Way Manager.

Some projects will be certified with exceptions and are referred to as conditional certifications. Conditional certifications should be rare and approved in advance. Conditional certificates must be followed by a “clear” certification once all acquisitions are complete.

2.6.7 RELOCATION

The Department's Relocation Assistance Program implements the applicable provisions of the [*Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended \(Uniform Act\)*](#), and the associated regulations in the [*Code of Federal Regulations \(49 CFR 24\)*](#).

The Relocation component ensures that ITD provides fair and equitable treatment of persons displaced by a project. Relocation is performed by applying and complying with established Relocation rules, regulations, policies and procedures of the [*Code of Federal Regulations*](#). ITD can advise property owners and provide financial assistance for individuals, businesses, or farm operations that must be relocated as a result of the public acquisition of real property in certain circumstances.

Right-of-Way Agents administering the Relocation function may be responsible for:

- Performing preliminary relocation studies to determine the number of displacements and the availability of suitable replacement housing or business locations
- Attending public meetings on projects where there are displacements
- Reviewing ownership data forms, identifying problems and determining relocation needs
- Providing advisory services to internal and external customers
- Searching the real estate market for available sale and rental properties and developing comparable property lists
- Meeting with displacees to explain the relocation program
- Preparing required written notices in a timely manner
- Ensuring that the persons receive affordable, comparable replacement housing
- Ensuring that the displacees receive appropriate notice to vacate the property
- Computing housing additives, rent supplements, mortgage interest differential payments, and moving payments
- Inspecting replacement properties to ensure they meet decent safe and sanitary conditions.
- Verifying vacancy of replacement properties

- Assisting displaced in claiming their relocation payments
- Advising on relocation appeals
- Performing relocation on property improvements such as signage

The Right-of-Way Agent administering relocation also prepares housing payment determinations and accompanying entitlement letters. These are transmitted under separate cover to the property owner.

The District, at the request of the Headquarters Right-of-Way Section, may verify vacancy and complete the Decent, Safe and Sanitary (DSS) inspection on replacement properties.

2.6.8 PROPERTY MANAGEMENT

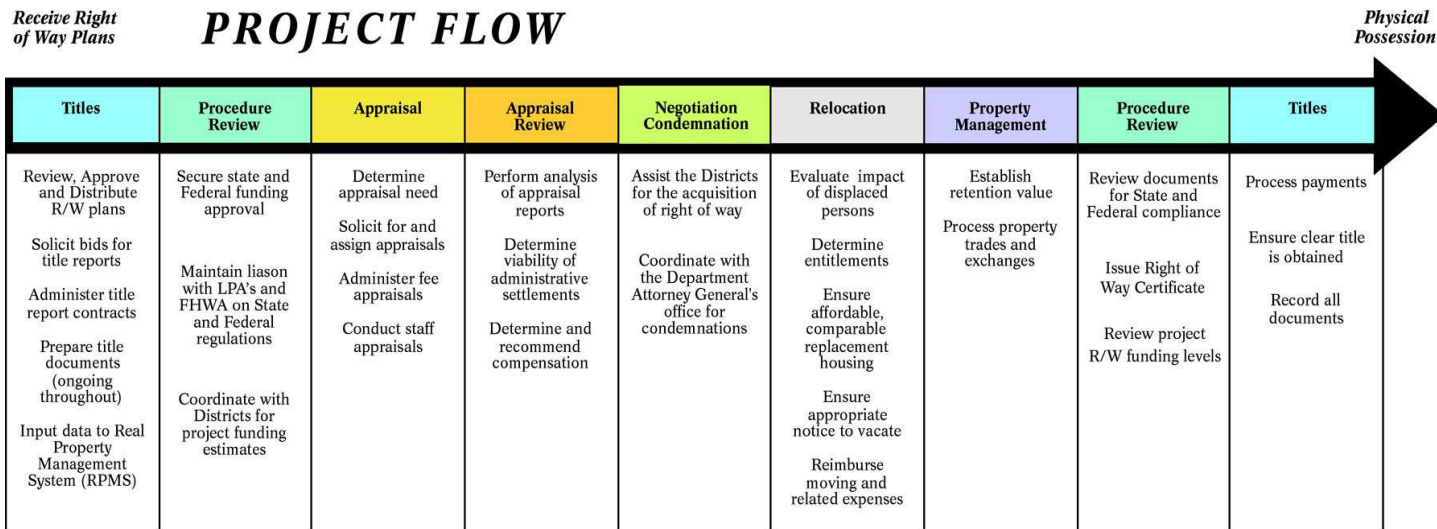
The Property Management Component of the Right-of-Way Section determines ownership of properties and coordinates any leases, rentals, sales, donations or trades of property. The Property Management Unit:

- Provides procedural and compliance advice and reviews for sale of all surplus property and purchases of property for material source or maintenance yard purposes;
- Orders, technically reviews, updates and manages title reports for properties to be purchased;
- Prepares purchases and sales for closing and acts as liaison with title company for all escrow matters;
- After purchases of property, obtains standard Owner's Policy of Title Insurance and confirms accuracy of title matters;
- Maintains a complete and current database inventory of (i) existing surplus property, (ii) annual sales of surplus property, (iii) existing material sources and maintenance yards, and (iv) existing leases and rentals;
- Prepares annual reports to Financial Services regarding all existing surplus property, sold surplus property, purchases of material sources and maintenance yards, and all leases and rentals in conjunction with each District's annual report;
- Determines the retention value of improvements;
- Processes property trades and exchanges in the same manner as sales and purchases;
- Prepares rental agreements, legal notices for disposing of surplus property, advertisements for notices of sales, conveyance deeds, memorandums of sale, and facilitates the financial arrangements for sales, including obtaining and handling cash/checks from purchasers and arranging for term conditions for purchases in accordance with Financial Services guidelines;
- Requests and reviews appraisals when required to confirm fair market value and utilizes such value in preparation of documents for sale and leasing of properties;
- Provides assistance to the Districts for all aspects of Property Management functions;
- Provides scope of work details when requesting legal descriptions of in-house and outside surveyors and monitors, confirms and confers with surveyors on the final product;

- Schedules, attends and facilitates all aspects of public auctions for the sale of surplus property.

2.7 RIGHT-OF-WAY PROJECT FLOW DIAGRAM

After the HQ Right-of-Way Section receives environmental clearance, adequate funding, and approved right-of-way plans, the following diagram depicts the typical right-of-way project flow:



Other Right of Way Areas

Scenic Enhancements	Administration
Monitor outdoor advertising and junkyard control and removal program	Maintenance of R/W file systems
	Word Processing
	Document Processing
	Assistance in R/W budget
	Office Reception
	Inventory and supplies
	Make arrangements for travel & classes

Other Non-Project Related Activities

Titles	Procedure Review	Property Management
Identify and record all ITD Board approved highway relinquishments	Monitor and review LPA projects, including field reviews	Coordinate identification and disposition of surplus property
		Review leasing program
		Maintains database for non-operating property
		Reimburse FHWA for disposed property

3 RIGHT-OF-WAY PLAN DEVELOPMENT

This chapter explains the process by which ITD designs and creates right-of-way plans. The purpose of this section is to be instructive and to promote uniformity and continuity among the Idaho Transportation Department's six district offices. In addition, this section of the manual serves as a beneficial and informational source for acquisition agents, appraisers, and Local Public Agencies.

Official right-of-way plans are required when additional/new right-of-way and/or permanent easements and/or temporary easements are required for the construction of the project. Right-of-way plans serve the Districts, the Right-of-Way Section, and the property owners by clearly depicting each parcel of a project, the project impacts to each parcel, and the overall design of the project.

3.1 IMPORTANCE OF RIGHT-OF-WAY PLANS

Right-of-Way is an important function when real estate interests are required for a project. Right-of-way plans provide the basic authority for the expenditure of public funds for the purchase of land and/or property rights from a property owner. All physical items of value, and the effects these takings will have on the remaining residue, are included in the plan to allow an accurate determination of Fair Market Value of compensation indebted to the owner. In cases that include federal funding, right-of-way plans also serve as records for support in the state's claims for reimbursements.

Official Right-of-Way plans are required when any new right-of-way, including permanent or temporary easements, is acquired. The right-of-way plans are started and developed along with preliminary roadway design plans. In preliminary design, once it has been determined that there is a need to acquire or use property outside the existing right-of-way, the process of preparing the right-of-way plans and Property Use Agreements, if applicable, will begin. Use of Rights of Entry and Property Use Agreements do not require preparation of Right-of-Way plans.

Note: Personal contact with affected property owners for the purposes of negotiation and/or relocation assistance is generally deferred to after NEPA, except as provided in 23 CFR 710.501 and 503 as well as in 203 a3. Refer to Section 3.5 for additional guidance of Owner Contact meetings.

3.2 GENERAL INFORMATION ABOUT RIGHT-OF-WAY PLANS

Right-of-Way Plans are used to show the existing and proposed right-of-way, property necessary for new right-of-way, remaining ownership, proposed easements, section lines, existing and proposed approaches, existing and design alignments, and intersecting roads/streets and related rights-of-

way. A complete list of required items to include in the ROW Plans is found in Form 0131, Plans Requirements Checklist.

3.3 RIGHT-OF-WAY PLAN DESIGN

3.3.1 INITIAL DESIGN PHASE

District Engineers are responsible for overall project development. Project development includes all of the required activities to advance a project from its conceptual stage to eventual advertisement for construction.

The Environmental Section and the Right-of-Way Section should both be notified as early as possible in a project design phase. It is important for the Department to identify and initiate right-of-way activities as early as possible to improve efficiency and avoid delays. The environmental process is started early in the project development to identify all possible areas of concern. In most cases, the process of acquiring right-of-way cannot begin until a project is given environmental clearance (refer to [23 CFR §710.203, Funding and Reimbursement](#).)

If the proposed improvements will be within the existing right-of-way (property already owned by ITD), no right-of-way plans are required. If the proposed improvements require new right-of-way (including permanent or temporary easements), the Districts or their consultants prepare right-of-way plans.

It is critical that the ROW Plans have all the necessary information included, and clearly identified, at the time that the plans are approved. These ROW Plans are used to show the property owner, appraisers, legal counsel, and others how each property is impacted.

The following sheets will be included in a plan set.

- Title Sheet
- Total Ownership Map
- Right-of-Way Plan Sheets

Once approved, the ROW Plans are the starting point for the appraiser, review appraiser, and Right-of-Way Agents to communicate changes and impacts to the affected property owners. For this reason, the plans need to:

1. Be developed enough to enable the appraiser and review appraiser to accurately assess the valuation and damages (i.e., fair compensation) due to the impacted property owners.
2. Be easy to understand for those without developed plan reading skills, such as property owners.

If the design changes after ROW Plans have been approved, then updated ROW Plans are required. This may result in, among other things, revised or additional acquisition areas and changes in property owners. Design changes can be problematic, often resulting in restarting the acquisition process including title work, appraisals, review appraisals, etc., which could cause a change in the

advertising date for the project. Refer to Section 3.9.1 below for additional information regarding Revisions to Official ROW Plans.

3.3.2 OBTAIN PROPERTY OWNERSHIP INFORMATION

Obtain 1) copies of the current county assessor's records for each parcel; and 2) copies of the last vesting deeds of record from the county recorder's office or from a title company (seek assistance from the ROW Staff, if necessary). Refer to Section 3.13 below for additional information about obtaining Title Reports.

3.3.3 REQUEST LOCATION/SURVEY STAFF DO SURVEY WORK/PROVIDE BASE MAP

Provide a copy of the last vesting deeds of record to Location/Survey Staff for their use in preparing the project base mapping.

3.3.4 START THE PREPARATION OF THE ROW PLANS

Designer shall incorporate the ownership information from the last deed of record along with base mapping data and survey information provided by Location Staff onto the ROW Plans; prepare the Total Ownership Table and Map and begin the layout/design of the detail sheets. Property lines are established on the drawings so a record of activities that affect the property and its value can be documented throughout the development process. The replacement/relocation of utilities and/or irrigation facilities within or impacted by the project acquisition and/or construction must be included and addressed on the ROW Plans. If any construction work must be done outside the existing and/or new right-of-way, the boundaries/width/acreage of Temporary Easements and their purpose must be identified on the ROW Plans. Permanent Easements must be included for the construction of items outside the right-of-way if there is a need to install and maintain improvements into perpetuity. The acreage, width and specific use of each Permanent Easement must be noted on the ROW Plan detail sheets. Requirements and Permanent Easement(s) must be depicted on the Right-of-Way Plans with: 1) bearings and distances noted; 2) station and offset calls; and 3) accompanied by an Idaho Professional Land Surveyor stamped legal description. *Note: The Right-of-Way Plans are a fluid document and continue to be refined as the design process continues.*

Refer to the ITD Plans Example Guide for samples of Right-of-Way Plans Sheets

3.3.5 GENERAL ITEMS TO BE INCLUDED IN THE RIGHT-OF-WAY PLANS

- Bar Scales are required on Right of Way Sheets.
- Distances to be calculated to three decimals and shown in two (2) decimal places using the tick mark. (Ex. 208.32').
- Text and line work do not overlap. If necessary, mask around text in an area that does not conflict with design and will allow for necessary data to be shown.
- Common Sense, professionalism and coordination with the ROW Section is critical to ensure quality plans.
- Utilizing the Plans Essential Requirements Checklist (Form ITD-0131) and the Legal Description Essential Requirements Checklist (Form ITD-0130) must be utilized to

ensure that the ROW Plans and the legal descriptions are prepared to ITD standards.

3.3.6 TITLE SHEET

The ROW Plans Title Sheet will include the following information:

- Project Name with Federal Aid Project No., Key Number, Name of County, Drawing Date and ITD District Number.
- Vicinity Map with Segment Code and North Arrow.
- Project Location Map with Map Scale.
 - Begin and End Arrows with Stationing and Mile Posts
 - North Arrow
 - Township and Range indications
- Signature Block
- Plan Sheet Index
 - Title Sheet
 - Right-of-Way Legend Sheet
 - Total Ownership Map
 - Right-of-Way Plans
 - Survey Control Plans
 - Roadway Profile Sheets (if applicable)
- List of Previous Applicable Projects
 - Project No., Project Name, Date, M.P. Limits

3.3.7 TOTAL OWNERSHIP MAP

Total Ownership Map page(s) portray all the parcels of land affected by the highway project, including parcel numbers and landowners.

A Total Ownership Table is to be included with the Total Ownership Map. When designing smaller projects, the Total Ownership Table can be shown on the same page as the Total Ownership Map if the area necessary for the table is available. Otherwise, the Total Ownership Table will be on a separate sheet.

3.3.8 TOTAL OWNERSHIP TABLE

The Total Ownership Table is a parcel summary table used to identify the ownerships necessary to acquire property, overall ownership acreage and remaining acreage, and a column showing the specific page where each parcel is shown.

- Identify in the Total Ownership Table all of the parcel(s) of the project.
- Note that all parcel numbers, landowner names, and requirement areas on the Total Ownership Table must agree with the other summaries, deeds, easements, and ownership records.
- Strike through the parcel(s) on the Total Ownership Table when a parcel is removed from the project.
- As part of a revision process, update the Total Ownership Table to reflect acquisition

areas for parcels which undergo redesign.

Uses of the Total Ownership Table and Total Ownership Map:

- General index map for the Right-of-Way plan sheets created for the project.
- Reference map for identifying all the landowners' contiguous properties, referencing parcel numbers, and access roads.
- Quick reference for agents to find the general location of the project when talking with the landowners.

3.3.9 RIGHT-OF-WAY PLAN SHEETS

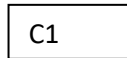
Right-of-Way Plan Sheets are used to show the existing and proposed right-of-way design and highway alignment. ROW Plans contain pertinent information to establish new right-of-way when the project is completed and to identify the parcels and easements acquired for the project. These sheets are used by the acquisition agents during right-of-way negotiations, appraisals, and in condemnation cases.

Right-of-Way Plan Sheets:

- Show and identify Section, Township, Range, Quarters and Quarter-Quarters and Government Lots
- Include a North Arrow
- Identify found and/or not found monuments
- Identify boundaries/demarcation lines of Forest, BLM, National Park, City and County
- Show all canals, streams, rivers, and large ditches
- Show existing and design right-of-way with standard symbols and identification
- Show existing topography, buildings, and physical improvements in grey scale (common sense is necessary when showing existing topography, as to not clutter sheets)
- Show design cut/fill lines
- Show proposed curb and gutter, edge of asphalt, and sidewalk to add clarity for ROW design. (If showing the design creates confusion or clutter on the sheets it may be necessary to remove some of the design lines.)
- Show existing approaches
- Show existing easements within the existing Right-of-Way if impacted by design
- Show Station and Offset for all right-of-way angle points. This includes existing and design locations to allow for complete staking of the project. (Identifying the existing ROW Line is part of the project and its location is pertinent to the staking of the project.)
- Show Station and Offset to all angle points for design easements. Station and Offset for existing easements and/or features may be necessary upon request.
- Revision Block is not to be used until after ROW Plans have become official. (DO NOT use revision clouds or show the revision number within the design area on the ROW Sheet.)
- Complete alignment(s) with bearings and distances, stations, curve data, and station equations, if applicable. (The ROW Plans should stand alone. Re-establishment of the Right-of-Way for the project is dependent on the ability to re-create the alignment or control line.)

- Move stationing text for alignment outside the right-of-way to reduce clutter.
- Label curves with a unique alignment identifier and a number for each curve along the alignment, with numbers incremented up station. Place the identifier inside a capsule shape.

Example:



- Radius and Length is required for curves defining the ROW. Curves defining the ROW which are non-concentric to the control line will have complete curve data.
- Show Project Northing and Easting at Begin Construction and End Construction points.
- Identify ownerships by name and parcel number
- Identify all existing (whether being closed or remaining) and new approaches
- Provide details (enlargements) for areas that need clarity due to overlap, lack of space, or separation of CADD lines is not apparent.
- Identify purpose of Temporary Easements (e.g., Temporary Easement for Approach Construction, or Temporary Easement for Structure Removal, etc.)

3.3.10 COLORING AND HATCHING OF NEW RIGHT-OF-WAY

Ownerships are identified by name and parcel number with each parcel having a distinct color matching between the Total Ownership Map, Total Ownership Table and the Plan Sheets. The parcel number on the plan sheets should be shown in an octagon with matching coloring.

The new right-of-way area is filled in with solid coloring.

Permanent Easements are hatched in the same color. The direction of the hatching for Permanent Easements should remain consistent throughout the set of plans.

Temporary Easements are hatched in an opposite direction from the Permanent Easements with the direction of the hatching remaining consistent throughout the set of plans.

3.3.11 DESIGN MODEL ELEMENTS

The purpose of this section is to show preferences for elements displayed in the ROW Plans.

3.3.12 OWNERSHIP TEXT

The name that is to appear on the drawing is that of the vested owner. Use the name as it appears in the vesting deed when that owner purchased the property. If there is sufficient room, use the legal name shown in the deed. Do not abbreviate company or business names. If more than two people own the property, 'et al.' may be used after the first owner. Example: J. Smith, et al. Show all deed parcel lines. If more than one parcel is owned by a party, include a hook symbol to indicate common ownership.

3.3.13 TOPOGRAPHY

Even though topography is gray shaded in plotting, avoid unnecessary clutter. Below is a list of

commonly shown features on right-of-way drawings.

Topography features to show on drawing:

- Utility poles and anchors
- Manholes, junction boxes, valves, meters, hydrants, etc.
- Luminaire and signal poles
- Controller cabinets
- Junction boxes
- Signs, both public and private
- All drainage features: culverts, ditches, wells, storm sewer, sanitary sewer, drain fields, wetlands, edge of water, etc.
- Buildings, bridges, retaining walls, sound wall, etc.
- Fences and gates
- Vegetation: trees, tree lines, brush lines, etc.
- Edge of pavement, gravel, curb, sidewalk, driveways, guard rail, railroad tracks
- Descriptive text (when needed)

These are guidelines and not hard fast rules. You may want to show a normally turned-off feature or not show a normally turned-on feature. Use common sense in determining what to show. Remember, the ultimate goal is to have all features that are necessary to valuation of the parcel and reduce clutter on the drawing.

3.3.14 DISPOSITIONS

Correctly showing and communicating how all personal property will be handled is one of the most important components of the ROW Plans.

The considerations of the features must be represented consistently on both the construction and ROW plans to ensure all parties (property owner, agents, appraisers, legal counsel, project managers, district personnel and the contractor) understand which features are to be retained and which are to be removed.

The appraisers use the ROW plans to determine the items that need to be accounted for in the appraisal report.

All ROW Plans should include a legend.

Not all profile sheets from the construction plans are required in the ROW plans. Only those that show critical areas, such as bridges, culvert crossings, or where there are significant changes in grades.

3.3.15 PARCEL IDENTIFICATION (ID) NUMBERS

For tracking purposes, ITD assigns a unique parcel identification number to each parcel on the project with one or more acquisition requirements. The Designer provides a copy of the

preliminary Total Ownership Map and preliminary Total Ownership Table to ROW Staff requesting Parcel Identification Number(s) for requirements of additional right-of-way and/or Permanent Easement(s) and/or Temporary Easements. These Parcel ID Number(s) are added to the Total Ownership Map as the plans are developed.

3.3.16 INTERNAL OPERATIONAL MEETING: DESIGN & RIGHT-OF-WAY

Set up and hold a planning/operational meeting with Right-of-Way Staff to review preliminary Total Ownership Map and requirements for the project. Review project schedule, get input, and make plans for the acquisition of the requirements for the project. It is important to identify and initiate right-of-way activities as early as possible to improve efficiency, optimize time, and avoid delays. Environmental document approval must be obtained prior to the acquisition of right-of-way. (Appraisals may be commenced prior to environmental approval if approval is imminent; however, finalization of the appraisals and reviews and subsequent negotiations cannot begin until the environmental document has been approved.)

The District shall consult with the Right-of-Way Section in Headquarters when the preliminary project plans are completed so the engineers, designers, and right-of-way experts can confer on the project choices. The acquisition of additional right-of-way for highway improvements is one of the most costly, contentious, and time-consuming issues undertaken by the Department. The right-of-way requirements for different design alternatives should be carefully evaluated. Often, right-of-way staff can suggest minimal changes to the design which can save the Districts money and time in the right-of-way process.

3.4 FIELD VISITS

Headquarters Right-of-Way Agents will be available for field visits with Project Managers to assess site and project conditions and to share information and observations about issues and conditions from the right-of-way perspective. The Right-of-Way Agent will make observations about affected property conditions and values, potential displacement of businesses and residences, possible land use changes after partial acquisitions, damages from severance, etc. It is important to look for items such as special landscaping, tree lines, fuel tanks, and fences.

3.5 OWNER CONTACTS

Employees from Headquarters Right-of-Way should also join the project engineers and designers in the initial property owner contacts to answer right-of-way questions. Any meetings with affected property owners for the purpose of discussing the right-of-way acquisition and relocation process, and the rights and benefits to which property owners are entitled, needs to be conducted under the direction and control of the Right-of-Way Program Manager. However, no ITD employee is authorized to provide any legal advice or representations to any property owner.

Idaho Transportation Department representatives shall not negotiate with the property owner in any fashion during the initial property owner contact. Any questions about price, exchange, donation, value, or other acquisition issues shall be handled by the official negotiator with specific details being deferred until the official negotiations begin later in the process.

District Design and/or ROW Staff meet with each property owner to:

1. Explain the alignment and design features of the project.
2. Explain the appraisal process to the property owner and the purpose of the appraisal report.
3. Encourage the property owner to take the opportunity to meet and discuss items of value related to the property with the real estate appraiser.
4. Explain to the property owner the acquisition process, and the relocation assistance program if applicable.
5. Get the pertinent information from the property owner to complete the ITD-2009 Property Ownership Data sheet/form.
6. Provide contact information and ITD Property Acquisition brochure to the property owner(s).

3.6 PUBLIC HEARINGS AND MEETINGS

The District will determine the appropriate level of public involvement for the scope of the project. Some projects may need a Public Information Meeting and or Public Hearings to establish the approved alignment.

Designated Right-of-Way Agents will be available, at the request of the Project Manager, to participate at public meetings and hearings. The Right-of-Way Agent will explain the property acquisition and relocation processes at public meetings and answer questions about the right-of-way process as it affects owners and residents in the project area. The Right-of-Way Agent will provide a sufficient supply of right-of-way acquisition and relocation brochures for distribution at all meetings and community involvement activities and will provide contact information including phone number, email address, office location, and hours of operation. ITD employees are not to discuss the legalities and or specific rights of property owners at public hearings or meetings.

3.7 RIGHT-OF-WAY PLAN CHECKLIST

The [ITD 0131, Plans Essential Requirements Checklist](#) is a guiding document for use by anyone preparing right-of-way plans. This list will accompany the plans throughout the development and submittal process.

3.8 SUBMITTAL OF RIGHT-OF-WAY PLANS

Standard Right-of-Way Plans submitted to Right-of-Way Staff for review consist of the following:

- One set of right-of-way plans in 11" x 17" colored format
- Completed [ITD 0131](#), Plans Essential Requirements Checklist

- Completed [ITD 2009](#), Property Ownership Data Sheet for each parcel with a requirement
- Updated [ITD 2839](#), Right-of-Way Cost Estimate form
- Professional Land Surveyor sealed and signed legal description for each requirement, Permanent Easement and Temporary Easement
- Completed [ITD 0130](#), Legal Description Essential Requirements Checklist for each legal description
- ITD-0606 Current Access Purchase determination for each approach and access changed, added, or eliminated in the project

3.9 OFFICIAL RIGHT-OF-WAY PLANS

The right-of-way plans shall generally be prepared separately from the construction plans. Right-of-way plans should be submitted by the District to the Headquarters Right-of-Way Section for review and comments. Upon receipt of a right-of-way plans submittal package, right-of-way staff will review the submittal for compliance and completeness. After the District Engineer has signed and approved the right-of-way plans, ROW will then date/stamp each sheet in the set as “Official ROW Plans.” This set of stamped “Official ROW Plans” becomes the official set of plans utilized throughout the acquisition process on the project, as the same may be revised from time to time as further discussed herein. The approved right-of-way plans not only serves as a visual tool when negotiating with property owners, but may be used as an exhibit in litigation if negotiations are unsuccessful. Detail accuracy is important on this document.

Note: If the submittal package does not comply with requirement standards, ROW Staff will return the entire submittal package with comments and transmittal letter, to District Design. The plans will not be stamped ‘Official’ until all the requirements are met.

Distribution of Official ROW Plans. ROW Staff will place the official set of ROW plans, which have been stamped as “Official” in ProjectWise and will notify the Project Manager and Consultants of completion. ROW Staff uses the Official ROW Plans as a visual aid throughout negotiations and frequently distributes copies of specific plan sheets to the property owners and/or their representatives.

3.9.1 REVISIONS TO OFFICIAL ROW PLANS

After the Official ROW Plans have been stamped as approved, if revisions are needed to all or any of the sheets in the Official ROW Plans, an official written revision request is submitted to ROW Staff. For example: Modifications in design features that come about during ROW negotiations, such as the location of an approach, fence type, etc. require a ROW Plans revision.

Revision Preparation. Designer shall revise the sheet(s) of the Official ROW plans as needed. The revision box on each modified plan sheet shall be completed noting the Revision Number and indicated on the plan sheet in the location of the revision with a triangle or delta with the number of the revision inserted into the delta symbol. Every time a plan sheet is modified, another revision line shall be completed. The Professional Land Surveyor responsible for the original legal description(s) shall prepare revisions if necessary, to the legal description(s). With any modification to a legal description, the new legal description and accompanying sketch shall be updated appropriately and provided to the ROW Staff with the Revision 405 Form. Designer shall complete an ITD 405, Revision to ROW Plans.

‘Official ROW Plans’ Revision Submittal. Official ROW Plans revision submittals shall be transmitted from the Designer to ROW Staff for review/approval. The submittal shall include the following:

- One 11” x 17” colored set of the revised plan sheets (submit only the revised sheets, not a full set the ROW Plans)
- Completed and signed ITD 405, Revision to ROW Plans
- If applicable, revised legal descriptions, and

Revised sheets, when approved, will be stamped/dated as Official ROW Plans and will be inserted as replacements for the revised pages and distributed the same as for the initial Official ROW Plans.

3.10 RIGHT-OF-WAY COST ESTIMATE

The District or the design consultant will provide an initial Right-of-Way Cost Estimate, [ITD Form 2839](#), when submitting right-of-way plans to the Headquarters Right-of-Way Section. If necessary, the [ITD 2839](#) will be revised between the District and Headquarters for use in ensuring adequate funding is programmed. Designer should periodically ask the ROW Staff to review and/or update the ITD-2839 ROW Cost estimate form when acquisition areas are determined or are modified, or when there are possible property market value changes. If funding adjustments are required, they will be completed in a timely manner to ensure that initial title and appraisal costs are able to be paid at the beginning of a project.

3.11 ACCESS PURCHASE DETERMINATION

[ITD Form 606, Current Access Purchase Determination](#), will be completed by the District or design consultant and submitted with the right-of-way plans submittal package to Headquarters Right-of-Way. This form assists the Right-of-Way Section, the appraisers and the negotiators, with information on how each parcel’s access will be treated by the project.

3.12 REQUESTS FOR PARCEL IDENTIFICATION

For tracking purposes, ITD assigns a unique parcel identification number to each parcel on the project with a requirement. During the drafting stages of the right-of-way plans the Designer will provide a copy of the preliminary Total Ownership Map to Right-of-Way Staff requesting Parcel Identification Number(s) to each parcel. This includes one Parcel Identification Number for each parcel no matter the type of acquisitions required for that parcel. These Parcel ID Number(s) are added to the Total Ownership Map and the detail sheets as the plans are developed. If requirement consists of only a Temporary Easement for a particular parcel, the Parcel ID Number shall be composed of the project Key Number, followed by the letter “E” then by the Parcel Number, i.e., 7771E01.

3.13 TITLE REPORTS

The Titles Unit within the Right-of-Way Section will coordinate with the District Project Manager and/or consultant regarding the need for title reports or other documentation for the parcels in the project. Consultant design personnel may obtain title reports as part of their Scope of Work during the preliminary design. If the consultant obtains title reports, the reports should then be provided,

or made available to the ITD Right-of-Way Staff. If the consultant designer does not obtain title reports, the designer will provide a copy of the Total Ownership Map to ROW Staff to request title reports for the parcel(s) with requirements. ROW Staff then obtains the preliminary Title Reports and provides copies of reports to Designer. Designer uses the information in the reports to confirm ownership, establish property boundaries, and locate easement encumbrances on the property(ies). Designer provides a copy of the preliminary Title Reports to Location/Survey Staff for use in preparing the legal descriptions of the requirement areas. Additional information of acquiring title reports can be found in Section 8 of this Manual.

3.14 LEGAL DESCRIPTION PREPARTATION

Legal descriptions for the requirement areas are prepared by or under the supervision of a Professional Land Surveyor licensed in the State of Idaho. The legal descriptions must be sealed and signed by said Professional Land Surveyor. The ITD 0130, Legal Description Essential Requirements Checklist, shall accompany each legal description when the ROW Plans are submitted to ROW Staff for designation as 'Official ROW Plans.'

3.14.1 LEGAL DESCRIPTION ESSENTIAL REQUIREMENTS CHECKLIST REVIEWS

The Professional Land Surveyor prepares a legal description for the property areas to be acquired, including the Permanent Easements and, when warranted as a project decision, the Temporary Easements. The Surveyor completes and initials each element on the ITD 0130, Legal Description Essential Requirements Checklist. The legal description(s) and completed checklist(s) are delivered to the Designer. Upon receipt of the legal descriptions, the Designer shall review and initial approval of each element on the checklist.

If the legal descriptions are in compliance, the Designer will sign and date the checklists for incorporation into the ROW Plans Package submittal, See Subsection 415.50 – Official ROW Plans.

If the legal descriptions are not in compliance, the Designer returns the descriptions to the Surveyor with comments and corrections needed.

3.15 TOTAL OWNERSHIP MAP AND DETAIL SHEET(S) PREPARATION

The ITD 0131, Plans Essential Requirements Checklist, shall be utilized and properly completed throughout the development of the ROW Plans. Use the example ROW Plans in Appendix C, to prepare the ROW Plans. ROW Plans are prepared on standard 11" x 17" sheets of good quality, reproducible material. The ROW Plans must be provided in colored format.

As the plans are being developed, the elements in the checklist will be completed and initialed by the Designer. The elements on the Plans Essential Requirements Checklist are necessary for the purchase of additional ROW, Permanent and Temporary Easements.

3.16 PREPARATION OF CONDEMNATION EXHIBITS

These specialized ROW plan sheets are necessary when negotiations have been unsuccessful and ITD must exercise its power of eminent domain to acquire a needed parcel through court proceedings, commonly referred to as "condemnation." These exhibits are highly detailed and specific to a contiguous ownership (can be more than one parcel).

The Designer shall use the Official ROW Plans, legal description(s), and title report to verify that the ownership boundaries and existing easement(s) and the required ROW are shown on the plans correctly.

The Designer shall utilize all plan sheets (plan & profile) showing the parcel from the current construction plans as the basis for the condemnation exhibits. See example Condemnation Exhibits in Appendix C. The condemnation exhibit plan set shall be a compilation of the following 11" x 17" colored sheets:

- Sheet 1: "Title Sheet" - which is specific to the parcel being condemned

In addition to the Project Name, call out the parcel number(s) and name of property owner(s) in the lower right-hand corner of the title block (left of the County/Key/Sheet block). Do not include mortgagees, trustees, or lien holders. If the property owner is a corporation or partnership, use the full name (i.e., Gambles, Inc., or L & H Company, a partnership). If there are several parties involved, show Gambles, Inc., et al., or Greene, et al. This title block information remains constant on all sheets of the condemnation exhibit set.

Near the Vicinity Map, call-out the following three items in bold print: 1. Condemnation Exhibit, 2. Parcel No. XX, and 3. Record Owner's Name.

- Sheet 2: "Total Ownership Map" – this sheet is a simplified version of the Total Ownership Map from the Official ROW Plans. Its purpose is to show where the parcel being condemned is located on the project and emphasize the ownership boundaries, acreage, requirements, remainders, etc.

Highlight in darker pastel color(s) the parcel(s) being condemned and label the Parcel Number(s) on the plan view. In a tabulated format, replicating the format used in the Official ROW Plans, note Parcel number, Parcel Identification number, Record Owner and acreages.

- Sheet 3, 4, etc.: "ROW Plan" and "ROW Profile" sheets – create a base map for the condemnation exhibits utilizing all construction plan sheets (plan & profile views) showing the parcel being condemned.

On the plan view sheets:

- REMOVE references that relate to other parcels, such as property owner names, colorings, etc.
- RETAIN AND SHOW property features and topography pertaining to the parcel being condemned as shown on construction and Official ROW Plans, such as, but not limited to: irrigation and drainage features, approaches, culverts, septic system, well, property line, fences, buildings, trees, etc.
- If applicable, call out on the plans: subdivision name, lot & block references and

dimensions, existing easements, and their purpose (permanent or temporary), government lot references and boundaries.

- Show requirement area(s) shaded in pastel colors as follows (or similar color shades):
 1. Fee simple requirement color in yellow
 2. Permanent Easement required color in orange
 3. Temporary Easement requirement color in blue
 4. If applicable, prescriptive/existing ROW within requirement area color in light brown/tan
 5. Outline the property boundaries in light green. This will appear as a narrow solid line highlighted over the black P/L line type.
 6. Uneconomic remnant or landlocked tract color in lavender.

- Prepare and show a legend on each plan sheet of the condemnation exhibit set. Legend shall include, but not be limited to, the following:
 1. Project No - Use the project number from the Official ROW Plans if different than construction plans.
 2. Parcel No(s).
 3. Parcel ID No(s) - Obtain this data from Official ROW Plans.
 4. Total Contiguous Ownership - Obtain acreage from Official ROW Plans (via ROW Staff)
 5. ROW to be Acquired - Surveyor's legal description and Official ROW Plans acreages should match.
 6. Public Road - This is referring to any prescriptive right-of-way adjoining the parcel being acquired. This acreage is listed when it has been determined that the owner has an interest in the existing right-of-way, which is referenced in the table on the Total Ownership Map of the Official ROW Plans and also referenced in the Surveyor's legal description of the requirement.
 7. Permanent Easement - Surveyor's legal description and Official ROW-Plans acreages should match.
 8. Temporary Easement - Surveyor's legal description and Official ROW Plans acreages should match.
 9. Owners of Record/Parcel Owner - Obtained from the title report, Official ROW Plans, etc.
 10. Line type examples for centerline, Property Line, Existing R/W, Proposed R/W, access control designation, etc., obtained from Official ROW Plans.
 11. Drawing "bar scale"
 12. Include profile sheet(s) for the roadway directly related to the parcel being condemned.

3.17 ROW THROUGH FEDERAL LANDS

Federal Land Management Agencies, such as the U.S. Bureau of Land Management, the U.S. Forest Service, and the U.S. Fish and Wildlife Service, are responsible for U.S. Public Lands under their jurisdiction and have special requirements for ROW transfers. To initiate the transfer, the Designer prepares ROW (plan view) map depicting the Federal Land needed for the project and transmits it

along with a legal description of the area needed. The legal description shall be prepared by or under the supervision of Professional Land Surveyor licensed in the State of Idaho. The legal description shall be sealed and signed by said Surveyor and accompanied by a completed ITD 0130, Legal Description Essential Requirements Checklist. ROW Staff shall coordinate the Federal Land Transfer request through FHWA.

3.18 FEE SIMPLE vs. EASEMENT

There are financial, maintenance, and inventory benefits to acquiring both Fee Simple and Easement. The Right-of-Way Plan Designer will identify which of these types of taking is most beneficial to both the department and the public on any given project. When determining whether to use Fee Simple or Easement the following should be considered:

- What type of title was the existing right-of-way acquired with?
- Which type is beneficial to both the property owner and the department?
- Are there any property owner conflicts in the project area?

Communication between the Design and the Right-of-Way Section is encouraged when there are questions regarding whether to use Easement or Fee Simple.

3.19 PERMANENT EASEMENTS, TEMPORARY EASEMENTS, AND PUA'S

This section explains how the permanent easements and temporary easements should be marked on the plans, and when a Property Use Agreement (PUA) is appropriate. The right-of-way plans shall reflect the location and size of all temporary and permanent easements and their purpose.

An easement is a right to use property for a designated and limited purpose. Easements are typically acquired for purposes such as:

- Drainage
- Slope maintenance
- Sidewalks
- Landscaping/irrigation
- Construction staging areas

Because permanent and temporary easements are considered a “damage” to the property, they are compensable. The use of a PUA is not damage and thus there is no compensation to the landowner.

The purpose of maintaining a diverse range of easements is to custom match the property rights acquired to the specific needs of the project. The Department is authorized to acquire only land, and rights in land that are needed for the highway facility allowing the least intrusion on continued private use and ownership.

PERMANENT EASEMENTS

Permanent easements are required where there is a permanent transportation improvement or continuing need for maintenance. This instrument should be prepared with great care, as it will be recorded and reflected on an owner's title.

TEMPORARY EASEMENTS

Temporary easements are effective for the duration of the construction project and normally

terminate upon completion of construction (if not sooner). Temporary easements that are of a shorter or longer duration should be identified on the plans.

Temporary easements should never be used if there is any possibility that ITD will have to return to the property covered by the easement in the future. If a temporary easement is used, the property owner has the right after expiration of the easement, to go back on the property.

PROPERTY USE AGREEMENTS

Definition: An agreement between a property owner and the ITD, wherein ITD and/or its contractor is granted permission to temporarily occupy/access a specific area for minor construction activity. The specific temporary use area is located outside of the existing right-of-way and the use of such area provides mutual benefit to both parties.

The area represented in the Property Use Agreement shall be designated as a Work Area on the project construction plans. No compensation will be paid to the property owner for such, nor will the Work Area be condemned. If the particular item that necessitates a Property Use Agreement, such as matching pavement elevation to private driveway, can be eliminated from the project without adverse impacts to the project or to the adjoining property owner(s), and the owner denies signing a Property Use Agreement, the item will be eliminated from the plans and will not be constructed on the project.

A property use agreement (PUA) is appropriate where temporary authorization is needed on short notice for a contractor to enter a property to do work that is exclusively for the benefit of the property owner. A PUA clarifies the rights of the parties involved in the acquisition. PUAs should **not** be marked on the right-of-way plans. The PUA should clearly explain:

- The subject of the agreement (identification of the property, usually by legal description)
- The type of use
- The estimated duration of the agreement
- Any conditions of the agreement

A Property Use Agreement can only be used when the proposed ITD activity is temporary in nature and is exclusively for the benefit of the property owner.

When the use of a Property Use Agreement is applicable, District Design: 1) obtains the last vesting deed of record and a copy of the county assessor's ownership record for the subject property; 2) identifies the area for use; 3) coordinates with ROW Staff for the preparation of the Property Use Agreement which may include drawings such as plan view, profiles, cross section, details, etc.; and 4) makes arrangements with ROW Staff to jointly meet with the property owner, if necessary, to explain the need for the temporary use, and to obtain property owner's signature on the Property Use Agreement. The area for construction use (referred to as the Work Area)

granted by the property owner in the Property Use Agreement is depicted on the Construction Plans and is specifically identified with the boundary and notation specifying the use, i.e. Work Area for driveway pavement match. Property Use Agreement areas are not shown on the 'Official Right-of-Way Plans.' A copy the Property Use Agreement is provided to Construction Staff.

A typical example of a PUA would be when the ITD activity consists of reconstructing an approach and adding fill or removing excess material to match the elevation of the highway. The mandatory criteria for use of a PUA (rather than a temporary easement) is that ITD could still construct the project without accomplishing the work required by the PUA.

It is best to identify the need to enter on property during project design so that the right to enter can be acquired by means of a temporary easement.

All PUAs shall be signed and maintained by the project manager and/or provided to Headquarters Right-of-Way to be placed in the parcel files. For those parcels for which only a PUA is utilized, a copy of that PUA must accompany any request to Headquarters Right-of-Way for a Right-of-Way Certification.

In the absence of the owner's consent (i.e., the property owner refuses to sign the PUA), all ITD activity must stay within the right-of-way boundaries and without trespass on the owner's property.

3.20 Right of Way Plan Preparation Forms and Documents

- ITD 0131, Plans Essential Requirements Checklist
- ITD 0130, Legal Description Essential Requirements Checklist for each Legal description
- ITD 2009, Property Ownership Data Sheet for each parcel with a requirement
- ITD 2839, Right of Way Cost Estimate Form
 - ITD 405, Revisions to Right of Way Plans

4 APPRAISAL AND APPRAISAL REVIEW

This section details how ITD will appraise property, and how it will review the appraisals of property for acquisition.

The function of the appraisal process determines:

- An estimate of the fair market value for all real property interests to be acquired by ITD and damages, if any, to the remaining ownership(s).
- An estimate of the fair market value of all real properties to be disposed of by ITD with a value exceeding \$10,000.

The Uniform Relocation Assistance and Real Property Policies Act of 1970, as amended, along with current federal regulation, provides a framework for the appraisal process. The Right-of-Way Section complies with all applicable laws and regulations in the appraising of real property for acquisition.

JUST COMPENSATION

[The Uniform Relocation Assistance and Real Property Acquisition Policies Act](#) of 1970 expands upon the basic rights of property owners, by requiring a public agency to appraise real property prior to its acquisition as a basis for determining just compensation. The measurement of Just Compensation is typically held to be the fair market value of the real estate acquired. In the case of a partial taking, Just Compensation is the difference in the fair market value of the impacted property immediately before and immediately after the taking, taking into account the contributory value of the part taken as improved, any severance damage, or loss in value to the remainder, and/or any special benefits, or increases in value to the remainder. In the case of a total taking, Just Compensation is typically held to be the fair market value of the entire property. In theory, the value of the real estate remaining after taking plus just compensation is equivalent to the value of the real estate before the taking.

The Right-of-Way Section is charged with the responsibility of determining Just Compensation. That determination is typically based on either the value derived by the Department's value estimate/appraisal waiver process or on the Department's approved appraisal. The process which governs the development of the approved appraisal is the subject of this chapter. The State is obligated by law to offer no less than the approved appraisal as its determination of Just Compensation.

4.1 ORGANIZATION

IDT carries out its responsibility to pay just compensation by establishing the fair market value of all property to be acquired for transportation projects. The fair market value establishes ITD's evaluation of just compensation and is the basis of all offers and payments to owners in accordance with the exercise of its eminent domain authority. The valuation process that ITD uses to establish fair market value fulfills both Constitutional and Statutory obligations. Through its quality and detail, ITD's valuation process also demonstrates fair and equitable treatment for

Idaho citizens who are required to relinquish property for transportation projects that benefit the general public.

IDT's valuation process consists of multiple formats and degrees of documentation that correspond to the type of property being acquired and the complexity of the acquisition. The multifaceted structure, along with the process of appraisal review, insures that the fair market value offer to each property owner is fully supported by market information and analysis that is relevant to the property and the effect of the acquisition. The process also insures that property acquisition is expeditious and that the cost of administering the program is reasonable.

The Right-of-Way Section is comprised of at least one Idaho Certified General Appraiser (CGA). Among other duties, the appraiser, or appraisers, may appraise and review appraisals of property for the Department. Staff appraisers are employees of ITD and shall be under the direct supervision of the Right-of-Way Manager.

In no event shall the appraisal, appraisal review, and negotiation functions all be performed by the same individual.

The only exception to this is [49 CFR 24.102\(n\)](#), (or value estimate- [ITD 1466](#)).

Under direction of the Right-of-Way Manager, a Right-of-Way Appraiser, or one or more designated Right-of-Way Agents, is responsible for managing the procurement of all appraisals of real property acquired or sold by the Idaho Transportation Department (ITD), statewide, including but not limited to:

- Highway projects
- Surplus properties
- Condemnations
- Local highway districts
- Division of Aeronautics

Material sources and stockpile sites shall be valued by the Districts and do not require a formal appraisal. Material source valuation shall be done by following Section 270 in the Materials Manual.

All appraisal assignments, including any fee appraisal contracts and any supplemental contracts, will originate out of the Headquarters Right-of-Way Section.

4.2 RESPONSIBILITIES

The following appraisal tasks may be completed by either a Right-of-Way Appraiser or by a qualified Right-of-Way Agent, as directed by the Right-of-Way Manager:

- Solicit, negotiate, and recommend approval of contracts with fee appraisers and oversee their completion
- Determine the type of appraisal required for each parcel.
- Provide to fee appraisers: identification of real property and fixtures to be appraised; engineering data; information from the environmental impact statement; and/or project design report regarding hazardous/toxic waste and/or asbestos.

The following appraisal and related tasks will be completed by the Right-of-Way Appraiser:

- Evaluating each appraisal for compliance to the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Standards for Federal Land Acquisition (UASFLA) and the ITD Appraisal Guide, also known as a Phase I Review
- Visit with and educate property owners about appraisals and the appraisal process
- Provides training to district personnel on completing [ITD-1466](#) Property Compensation Estimate.

4.3 THE APPRAISAL PROCESS

Once the right-of-way plans which have been provided by the District are approved, the Right-of-

Way Section will ensure that the plans contain the information necessary to appraise the properties (i.e., legal descriptions, title reports, [ITD-2009 Property Owner Data](#) forms.)

Once that information is complete, the appraiser, or appropriate Right-of-Way staff may need to perform a field inspection of the project (accompanied by a District representative if deemed necessary), to identify the types of appraisals required for each parcel and any appraisal issues that could be resolved proactively. Taking video or pictures of the project is recommended. The owner of record or a designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property.

Once the field inspection is complete, and the appropriate type of appraisal is determined, an appraiser from the Right-of-Way Section or a fee appraiser can appraise the property.

Staff and Fee Appraisers shall be notified of their assignment in writing and shall be provided:

- Right-of-way plans, plats, etc.
- Work authorization number
- Control of access feature(s)
- Title information
- Type of report
- Number of parcels to be appraised
- Expected date of completion
- Specific instruction, i.e., signs, fixtures, retention value and economic rent

4.4 CONTRACTING FOR VALUATION SERVICES

ITD valuation services are performed both by fully qualified staff employees and by private consultant (fee) personnel. Consultant Appraisers are employed as required to meet workload needs of the Department or to provide specialized expertise that is not available within the Department.

Contracting right-of-way services is discussed in Section 8. The following is a summary of standards that are pertinent to appraisal and other property valuation services:

Contracted Services

Services that may be contracted are:

1. Preparation of Full Narrative Appraisals, including Before and After Reports;
2. Preparation of Short Format Appraisals;
3. Expert testimony in consultation with the Deputy Attorney General assigned to the matter;
4. Project right-of-way cost estimates;
5. Preparation of the project data package; and
6. Supplemental appraisal services relating to changes in project scope, parcel ownership, unanticipated property impacts or the need to update valuations.

Contracting Modes

The above services may be contracted in the following modes:

1. Individual parcel or project valuation assignment;
2. Contract for valuation services for a specific period of time on a call basis;
3. Combined with other functions such as titles, acquisition and relocation for a combined “turnkey” right-of-way service contract; or
4. Placed in an engineering design or design/build contract for a specific project.

APPROVED APPRAISER LIST

The Approved Appraiser List is the list of Consultant Appraisers who have been pre-qualified to work for ITD. Periodically, on a need basis, the Department will advertise for Appraisers to submit qualifications and an application for inclusion on the List. Appraisers may apply for inclusion on the list at any time by contacting the Right-of-Way Section.

The Right-of-Way Section is responsible for maintaining the Approved Appraiser List. The Staff Right-of-Way Appraiser, or a Right-of-Way Agent, as designated by the Right-of-Way Manager, will review the list along with new applications and then recommend to the Right-of-Way Program Manager any additions or deletions to the List. The List will be updated at least once every 2 years. Applicants to the Appraisal List will be advised in writing of the status of their applications. Persons who are deleted from the List will also be advised in writing if a current mailing address is known. The appropriate Right-of-Way personnel will make a record of its proceedings and decisions.

The Right-of-Way Program Manager, with the assistance of the Staff Right-of-Way Appraiser, will determine the required elements of an application for the Approved Appraiser List.

4.5 APPRAISAL GUIDELINES

Real property shall be appraised, and the determination of just compensation completed, prior to initiation of negotiations.

Negotiations shall not begin until the appraisal is completed and Just Compensation determined.

All appraisals shall meet the criteria and standards set forth in the ITD Appraisal Guide, as well as conform to [Uniform Standards of Professional Appraisal Practice \(USPAP\)](#) and the [Uniform Standards for Federal Land Acquisition \(USFLA\)](#).

Each parcel to be acquired by negotiation must have at least one appraisal except when a Valuation Estimate/Appraisal Waiver has been authorized. Property shall be appraised at market value. Appraisals shall contain sufficient data and analysis to explain, substantiate, and thereby

document the conclusions of the report. The property will be appraised as though free and clear of all liens, bond assessments and indebtedness. The property will be appraised to its highest and best use.

The owner shall be given the opportunity to accompany the appraiser on his or her inspection of the property.

Any variance in the market value of real property prior to the date of valuation, due to project influence, other than that due to physical depreciation within the reasonable control of the owner, shall be disregarded in determining the market value for the property, i.e. if the increase or decrease is caused by:

- The public improvement for which such property is required.
- The likelihood that the property would be acquired because of the public improvement.

Appraisers shall not give consideration to, nor include in their appraisals, any allowance for relocation assistance benefits. Relocation is discussed in more detail in Section 9.

Staff and Fee Appraisers shall include a determination of real property versus personal property, including ownership, as part of the appraisal report. This determination is required to assist the Relocation Unit. When applicable, an on-site meeting of the appraiser and relocation staff may be required.

Except in routine matters, the Staff Appraisers shall not attempt to interpret the law(s) as it applies to the appraisal function. Legal interpretation(s) shall be requested from the Legal Section through the Right-of-Way Manager.

4.6 TYPES OF APPRAISALS

The complexity of the project and parcel shall dictate the kind of report, type and depth of the supporting data needed.

If the established compensation for interest acquired is \$500 or less, ITD shall pay \$500 to the property owner.

In general, one appraisal is sufficient for each parcel. Two appraisals may be required when if the complexities of the appraisal problem would dictate a second appraisal. The types of appraisal reports used by the Right-of-Way Section are detailed as following:

VALUE ESTIMATES/APPRaisal WAIVERS (ITD FORM 1466-IDAHO CODE 54-4105(5))

Idaho Code allows value estimates in lieu of appraisals for non-complex property whose estimated value is \$10,000 or less. The objective of the value estimate/appraisal waiver is to provide a method by which a low value, uncomplicated property can avoid the time delays and costs associated with an appraisal.

Idaho Code permits value estimates to be accomplished by an agent or employee of the Idaho Transportation Department or local highway jurisdiction familiar with the appraisal process, or an individual hired by ITD or the LPA with expertise in the real estate market where property is located, or a licensed or certified appraiser.

ITD reserves the right to designate an “agent” for these value estimates. This shall be done on a case-by-case basis for each project by the Right-of-Way Manager.

All value estimates shall be reviewed and approved by a review appraiser who is an Idaho Certified General Appraiser, as per Idaho State Code § [54-4105](#) (5).

If a value estimate/appraisal waiver is desired, the following criteria must be met:

- The valuation is uncomplicated
- The real property is appraised at less than \$10,000
- Comparable properties are given for each parcel which are approved by an Idaho Certified General Appraiser

The following circumstances negate the use of an appraisal waiver/value estimate:

- The parcel has a written commercial lease
- The parcel has an outdoor advertising structure
- The parcel has 2 or more highest or best uses
- There are proximity issues

If an appraisal waiver/valuation estimate is used, and the negotiations are unsuccessful, a formal appraisal is required for the condemnation process.

LIMITED APPRAISAL IN SUMMARY FORMAT ([ITD-2288](#))

An [ITD-2288, Appraisal Report](#) (Limited Appraisal in Summary Format), shall be used to appraise uncomplicated partial acquisitions where there are no substantial improvements within the proposed right-of-way. The [ITD-2288, Appraisal Report](#), shall conform to USPAP requirements.

NARRATIVE APPRAISAL REPORT

This report shall be used at the request of the Legal Section or for the more complex appraisal of a total acquisition and shall be prepared in narrative format. For an explanation see ITD's Appraisal Guide (Appendix B).

BEFORE AND AFTER APPRAISAL REPORTS

These Appraisals shall be used at the request of the Legal Section, or for complex appraisals of partial acquisitions and shall be prepared in narrative form. The property is appraised as it exists prior to the proposed acquisition (Before Value), and then valued as if the project has been completed (After Value). An [ITD-0017 Summation of Compensation for Before and After Appraisals](#)

must accompany this format. For more information, refer to ITD's Appraisal Guide.

DUAL APPRAISAL REPORTS

Dual Appraisal reports are performed for complicated appraisals that have the likelihood of condemnation ([Administrative Policy 4005](#)).

RESIDENTIAL APPRAISAL

A Residential Appraisal Report (current URAR-approved form) may be used in the appraisal of a total acquisition of improved residential properties (single or multi-family). This report depends upon the availability of reasonably comparable market data requiring limited adjustments.

PRE-LITIGATION APPRAISALS

The Deputy Attorney General assigned to the matter may request either a Before and After Appraisal (if for a partial taking) or a Narrative Appraisal (if a total acquisition) from a Certified General Idaho Appraiser.

If the case is obviously headed to litigation, the Deputy Attorney General assigned to the matter should be involved in the choice of appraiser.

At the time the condemnation is filed, the Deputy Attorney General assigned to the matter shall

contact the Right-of-Way Section to determine whether some or all of the appraisals need to be brought current to the date of filing the Complaint.

The Deputy Attorney General assigned to the matter shall state in writing any justification for additional appraisals.

4.7 APPRAISAL REVIEW

Appraisers in the Right-of-Way Section also perform appraisal reviews. It is the review appraiser's responsibility to determine whether the appraisal complies with recognized appraisal principles and practices. The just compensation established by the review appraiser shall be the basis of negotiations.

The appraisal review is performed in accordance with established standards and guidelines. The review shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Standards for Federal Land Acquisition (UASFLA), the ITD Appraisal Guide and State Statutes.

Appraisal reports shall be reviewed by a Right-of-Way Staff Appraiser, who shall determine the just compensation of the property to be acquired using a Phase Two Review. When the schedule or staffing does not permit a staff appraiser to perform the review, a qualified Idaho Certified General Appraiser can be contracted by ITD as a Fee Review Appraiser. This review shall be completed prior to the beginning of negotiations.

The appraiser performing the appraisal review shall indicate, in writing, his findings and set out the estimated value of the requirements. The estimated value or just compensation will be reported on

an ITD-1922, Statement of Review Appraiser, which will include a Certificate of Review Appraiser.

While the Reviewer is not required to inspect all properties for which an appraisal review is conducted, when a property is not inspected, the Reviewer will document an explanation for why an inspection was not made. The explanation will be included in the appraisal review.

4.7.1 APPRAISAL REVIEWER DUTIES

The duties of the appraisal reviewer may include:

- If the appraisal is more than 90 days past the effective date of valuation, the review appraiser shall examine the appraisal to determine if the valuation has expired.
- Consults with the appraiser outlining any deficiencies and requests corrections or revisions.
- If warranted, the reviewer may conclude an independent market value for the subject requirement based on additional information.
- May submit a request for an additional appraisal to the Right-of-Way Manager.
- Determine that each approach used in the valuation process is applicable to the subject property and that each approach is procedurally correct and properly supported, and that each approach to value has been correlated correctly with a reasonable conclusion of the value established.
- Establishes if there is sufficient documentation to support conclusions.
- Completes an on-site inspection of the subject and the comparable sales used, if needed.
- Verifies the market data with Realtors, buyers and sellers, if needed.
- Monitors consistency of values throughout the project.
- Determines the just compensation which includes the property rights to be acquired and any damages if applicable.
- Determines that non compensable items are not included in the estimate of just compensation.
- Completes a Statement of Review Appraiser for each appraisal reviewed. The comment section will indicate if there are fixtures to be acquired, economic rent, salvage values and other applicable items.
- Completes a Certificate of Review Appraiser.
- Notifies the Right-of-Way Manager about relocation and/or property management activities that may be required.
- Complete a review of all appraisals for all LPA (Local Public Agency) projects

4.7.2 TYPES OF APPRAISAL REVIEW

There are currently four types of Appraisal Reviews performed by ITD staff.

Phase One Review is performed on all appraisals to ensure compliance of all administrative and contractual requirements.

Phase Two Review is a formal written review of an appraisal performed either by staff or a consultant appraiser, signed by the Appraisal Reviewer, which establishes just compensation. This is performed on most appraisals requested by the Department for a project. This review is

performed in order to:

1. Serve as a Quality Assurance check to the Department, Appraiser, and Property Owner that the appraisal follows [USPAP](#) guidelines and is fair and just,
2. Make a fair market value offer to a landowner,
3. Make a fair market value offer to a landowner for appraisals ordered by ITD's Office of Deputy Attorney Generals for condemnation cases where such a formal written review is not requested,
4. Establish the value of surplus property in excess of \$10,000.

Appraisals ordered or obtained by the Deputy Attorney General assigned to the matter will, based on their instructions, be given either a Phase Two or a Phase Three Review. When a Phase Two Review is requested by the Deputy Attorney General assigned to the matter and results in a change in the Appraisal Reviewers' opinion of fair market value, it is the responsibility of the Deputy Attorney General assigned to the matter to offer any compensation that differs from previously made offers to the property owner, in writing.

Phase Three Review (Pre-Litigation Appraisal Review) is performed by an Appraisal Reviewer when an appraisal is requested by the Deputy Attorney General assigned to the matter for a case where a condemnation has been or will be filed and just compensation has previously been established and offered to the landowner, and a formal written review (Phase Two Review) is not requested.

When a Phase Three Review is requested, the Appraisal Reviewer performing the review will examine all appraisals (both the Department's and the landowner's) in order to provide information at one or more meetings between the Right-of-Way Section and the Deputy Attorney General assigned to the matter, as called for in the Memorandum of Understanding between the Sections. The summary should emphasize the strengths and weaknesses of each appraisal and help guide the Deputy Attorney General assigned to the matter in the preparation of its case.

A Phase Three Review requested by the Deputy Attorney General assigned to the matter is considered Attorney Work Product and shall not be provided or produced to any party outside of ITD without the express written consent of the Deputy Attorney General assigned to the matter.

Phase Four Review (Post-Litigation Appraisal Review) is a process review by an Appraisal Reviewer of all parcel files on which appraisals are obtained, including legal settlements and condemnation awards, whether acquired by agreement or court order. The purpose of a process review is to determine which items and what amounts are eligible for federal participation based on the standards established by federal statutes and regulations, if not already accomplished as part of the Phase Two Review. This determination shall be set out in writing.

4.8 APPRAISAL REVIEW OF LOCAL PUBLIC AGENCY APPRAISALS (LPAS)

All appraisals performed by a Local Public Agency (LPA) or appraisal work performed on behalf of an LPA shall be given a Phase One and Phase Two appraisal review by an appraisal reviewer at ITD.

When the schedule or staffing does not permit a staff appraiser to perform the review, a qualified Idaho Certified General Appraiser can be contracted by ITD as a Fee Review Appraiser. This serves as a Quality Assurance check to the appraisal work and ensures that the work is acceptable to the Department. The appraisal reviewer must issue a Certificate of Review Appraiser to the LPA in order for the LPA to proceed with negotiating the property.

4.9 QUALITY ASSURANCE

Quality assurance in the valuation function is a comprehensive process of evaluating performance and developing ways to continuously improve the achievement of program objectives. The Right-of-Way Section will establish goals and provide policy guidance for improving the level of quality in the valuation process. The Staff Right-of-Way Appraiser will propose and coordinate quality assurance activities that will involve all valuation staff, which are scaled to the staff resources and current project workload. Right-of-Way personnel may perform specific quality assurance tasks focusing on one or more of the factors listed below:

1. Effective coordination with Project Team Members responsible for other project development activities;
2. Timely assignment of Staff and Consultant Appraisers;
3. Assessment of appraisal-related training needs of staff personnel;
4. Identification of critical path tasks involving appraisals and valuation to eliminate barriers to timely completion of these activities;
5. Evaluation of Consultant Appraiser performance concerning quality of documentation, analysis of data, and timely delivery of appraisal products;
6. Development and understanding of valuation policy, practices and department forms that support the effective and expeditious acquisition of right-of-way

5 ACQUISITION AND NEGOTIATION

This chapter covers the acquisition, negotiation and condemnation activities of the Right-of-Way Section.

The Right-of-Way Section must make certain that all interests have been acquired to ensure that ITD has adequate title for acquisition.

It is ITD's purpose to:

- Ensure uniform acquisition procedures whereby the owners and tenants of real property being acquired for public use will receive consistent and equitable treatment
- Provide policies whereby, to the greatest extent possible, real property is acquired by agreement, thereby avoiding expensive and time-consuming litigation and to relieve congestion in the courts
- Promote public confidence in land acquisition practices by acquiring agencies

5.1 ACQUISITION AUTHORITY

The Director, or delegate, is authorized to purchase, sell, exchange, and execute corresponding deeds for real estate parcels. The Chief Engineer, or delegate, with the concurrence of the applicable District Engineer, may authorize an administrative settlement of up to \$200,000 over the reviewed fair market value of the property. Refer to Section [5.6.5](#) of this manual for additional information on authority levels for administrative settlement approvals.

The Director is further delegated authority to authorize and execute on behalf of the Board an *Order of Condemnation* for individual parcels of land. The authority to condemn shall be attached at the time projects are approved by the Board and made part of the ITD Project Development Schedule and shall include projects in the preliminary development schedule.

When advantageous to the Department, purchases or condemnations for right-of-way may include uneconomic remnants, landlocked tracts, or the whole of the real property affected. Remainders that are acquired may be traded for other land needed by the Department, used by the Department, or sold in accordance with applicable laws.

The owner of improvements on land that is being acquired for right-of-way shall be allowed the option of retaining the improvements at retention value predetermined by the Department. Salable improvements that are not retained by the owner may be traded for other needed property, or, if not traded, sold or and disposed in accordance with applicable laws.

When a stipulation for possession of a property is agreed to, with the price to be adjudicated thereafter, the Board authorizes the Department to pay the owner, or deposit into a court fund for the benefit of the owner, the amount of the highest offer made to the owner; but in no event shall the amount be less than 100 percent of the fair market value of the property as established by the Department.

The real property interest acquired for all Federal-aid projects shall be adequate for the construction, operation, and maintenance of the resulting facility and for the protection of both the facility and the traveling public.

Real property acquisitions for the Department shall be in fee simple title, except in the following instances when the property can be acquired in easement form:

1. Rights-of-way across United States Government land by DOT Easement Deed
2. Rights-of-way across Indian Reservation or tribal lands by revocable Right-of-Way Permits
3. Rights-of-way across State owned lands
4. Right-of-way crossing or encroaching upon railroad or other utility or irrigation districts rights-of-way
5. Acquisitions for beautification programs
6. Aviation easements for airports
7. Temporary and permanent easements required by construction

RIGHT-OF-WAY AGENT RESPONSIBLE FOR NEGOTIATING

The Right-of-Way Agent is the principal contact between their client, the acquiring Agency (ITD or a Local Public Agency), and the property owner.

The responsibilities of a Right-of-Way Agent assigned to buying include:

- Thorough review of the plans
- Review of the title information
- Review and understanding of the appraisal
- Preparation of offer materials
- Delivery of the offer to the ownership interests with an explanation of the project, plans, and acquisition procedures, either in person or by Certified Mail
- Addressing all of the concerns of the property owner and determining whether plan changes or appraisal reviews are justified
- Preparation of all instruments/documents and obtaining all necessary signatures to provide clear title

Those individuals that the Right-of-Way Agent works with in either acquiring real property or providing relocation assistance, are entitled to all the rights and benefits afforded to them under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) as amended (Uniform Act), and the regulation titled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24).

The Right-of-Way Agent may be assigned to “negotiating” or to “relocation.” Throughout the Acquisition and Negotiating section of the manual, those assigned to buying will simply be referred to as Right-of-Way Agents unless the need to differentiate between the Agent assigned to buying and the Agent assigned to Relocation occurs.

CONFLICT OF INTEREST

The Right-of-Way Section provides proper and adequate controls for separation of functions so that no Right-of-Way employee is faced with a conflict of interest.

In no event shall the appraisal, appraisal review, and negotiation functions all be performed by the same individual.

The only exception to this is [49 CFR 24.102\(n\)](#), which allows for the appraisal (or value estimate- [ITD 1466](#)) and negotiation to be conducted by the same individual where the appraised or estimated value is less than \$10,000.

No employee may negotiate for a property on which they have performed as the appraiser or review appraiser with the following exception: On properties valued at \$10,000 or less, the appraisal and negotiation functions can be performed by the same individual.

5.2 AUTHORIZING PARCELS FOR ACQUISITION

Once the appraisals have been reviewed, the designated Right-of-Way Agent will notify the Right-of-Way Manager of any properties identified in the Appraisal that either contain relocation or have been identified for retention/salvage prior to the property being authorized for acquisition.

5.2.1 THE ACQUISITION PACKET

Upon initiation of negotiations, the acquiring agency shall provide a written statement, and summary of the basis for, the amount established as the just compensation of the proposed acquisition. This shall be provided to the owner of real property to be acquired.

The information for the property owner is assembled into an Acquisition Packet. The packet shall include the following items:

1. A copy of the reviewed appraisal
2. Title passing documents
3. A copy of the Right-of-Way Contract
4. A Summary Statement
5. Property Owner Advice of Rights Brochure/information

At a minimum, the summary statement shall include:

1. The amount established as just compensation.
2. Incentive payment explanation (if applicable).
3. Identification of the real property to be acquired, including the estate or interest being acquired.
4. Identification of improvements and fixtures considered to be part of the real property to be acquired.

5. Where appropriate, an amount for damages to remaining real property.
6. Where appropriate, identify any separately held ownership interest in the property and indicate that such interest is not covered by the offer.
7. The Property Owner Advice of Rights form, in accordance with [Idaho code 7-711A](#) and [54-4105\(5\)](#).

5.2.2 RIGHT-OF-WAY CONTRACT

The acquisition packet will also contain a right-of-way contract. This contract explains the agreement in its entirety and is a legally binding document.

The negotiator is responsible for drafting the right-of-way contract using the template provided by the Right-of-Way Section and approved by the Deputy Attorney General assigned to the matter.

All right-of-way contracts shall be quality checked by a separate member of the Right-of-Way Section or by a Deputy Attorney General assigned to the matter prior to authorization to proceed with the offer.

Negotiators shall perform a peer review on the acquisition packet contents prior to their transmittal to the property owner. The negotiator shall choose an available peer and use the Acquisition Packet Checklist to complete a quality check of the contents.

The negotiator will explain all aspects of the right-of-way contract to the property owner and ensure all questions are answered thoroughly before signing. Once the contract is signed, a color copy will be given to the property owner and the original will be kept at Headquarters in the Right-of-Way Section.

5.3 MAKING AN OFFER

Once the appraisal review is complete, and the appraisal has been finalized, a member of the Right-of-Way Section will prepare the acquisition packet. [Idaho Code § 7-711A](#) gives 30 days for the property owner to respond to the initial offer. In the interest of a timely acquisition, ITD negotiators make every attempt to complete negotiations within 90 days.

COERCION

In no event shall any representative of the acquiring agency take any action coercive in nature in order to compel an agreement on the price to be paid for the property by:

1. Advancing the time of condemnation.
2. Deferring negotiations.
3. Deferring condemnation and the deposit of funds in court for the use of the owner.

If any interest in real property is to be acquired by exercise of the power of eminent domain, the acquiring agency shall institute formal condemnation proceedings. No acquiring agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the real property.

UNECONOMIC REMNANT (INCLUDING LANDLOCKED TRACT)

An uneconomic remnant is a remaining part of property in which the owner is left with an interest that the agency determines has little or no utility or value to the owner.

When the acquisition of real property would leave the owner with an uneconomic remnant or a landlocked tract of land, the acquiring agency shall offer to acquire the uneconomic remnant or landlocked tract.

EFFORT TO AVOID SURPLUS PROPERTIES

In an effort to avoid having the acquiring agency owning any surplus property upon project completion, during negotiations, the negotiator shall present to adjoining land owners those parcels which were acquired but which will be in excess of the project needs.

5.4 ITEMS CONSIDERED IN NEGOTIATIONS

There are items in the state of Idaho that are often appraised and considered during property negotiations. The following is a list of some of those items, and is not inclusive.

IMPROVEMENTS: INTEREST TO BE ACQUIRED

If the acquiring agency acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements to be either located upon the real property, removed from the real property or which it determines will be adversely affected by the future use of the property.

IMPROVEMENTS: JUST COMPENSATION

For the purpose of determining the just compensation to be paid for any building, structure, or other improvement, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired. This is notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the lease.

IMPROVEMENTS: TENANT OWNED

The tenant who owns a building, structure, or other improvement to be acquired shall be paid the greater market value of either:

1. The value which the building, structure, or improvement contributes to the market value of the real property to be acquired, or
2. The market value of the building, structure, or improvement for relocation from the real property.

Nothing in this section shall be construed to deprive the tenant of any rights to reject payment under these sections and to obtain payment for such property interests under Idaho Eminent Domain procedures or other applicable law.

DUPLICATION OF PAYMENT

Payments regarding tenant owned property shall not result in duplication of any payments

otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant.

In consideration for any such payment, the tenant shall assign, transfer, and release to the acquiring agency all right(s), title, and interest in and to such improvements. A separate summary statement shall be provided to such tenant where improvements are being separately acquired.

INCIDENTAL EXPENSE REIMBURSEMENT

The acquiring agency, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses necessarily incurred for:

1. Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency.
2. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
3. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency.

WATER RIGHTS

The values of water rights are established through the appraisal and appraisal review process. Traditionally, water rights are viewed as part of the property and are bought and sold at the same time as the property.

WELLS OR SEPTIC ON THE PROPERTY

The values of wells or septic facilities are established through the appraisal and appraisal review process. If the well or septic is on the property being acquired, the appraiser must determine whether the loss causes any damage to the remainder, and if so, whether a cost-to-cure includes drilling a new well/placing new septic facility (if legally permissible), or connecting the remainder to a public water or sewer system.

If a well or septic facility is disturbed or affected by the proposed acquisition, they are handled as a cost-to-cure damage (assuming the building remains) if:

1. The facility can be relocated on the remainder and
2. The proposed project does not include the installation of equitable water and septic sewer facilities

If the facility cannot be relocated on the remainder property, the appraiser shall contact the Right-of-Way Manager for instructions.

FENCING AND FENCING ALLOWANCES

The values of fencing are established through the appraisal and appraisal review process. The appraiser values the fencing on the basis of its contributory value to the highest and best use of the land, recognizing functional utility, depreciation, and possible interim value. The appraiser will

place a value to replace the fence with a similar type of fencing. The appraiser shall document the replacement costs by obtaining estimates in the local area.

If the property contains livestock, the remainder area should have the fencing restored to prevent animals from entering the operating right-of-way. The appraiser should determine a reasonable amount of money to provide to the owner so the owner or fencing contractor can install the new fencing prior to the removal of the fencing affected by the project.

SALVAGE VALUES

Salvage values are established through the appraisal and appraisal review process. The Right-of-Way Agent prepares the ITD-1478, Retention Value Form, for inclusion in the acquisition package when improvements are located on the real property to be acquired.

No salvage value will be established for outdoor advertising signs located on real property to be acquired. Outdoor advertising signs (signs which advertise something that is not available at the property on which the sign is located – e.g. billboards) are considered personal property and are handled under Relocation benefits. All other signs are considered real property and need to be appraised.

The owner of improvements located on property being acquired by the agency shall be offered the opportunity to retain said improvements at the salvage value established and documented in the Agent's Diary Report.

Owner retention of improvements is defined in 49 CFR § 24.103(c) as follows:

“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.”

RELOCATION HOUSING PAYMENT DETERMINATIONS

Replacement housing payment determinations and accompanying entitlement letters are prepared by the Right-of-Way Agent responsible for relocation and transmitted under separate cover to the property owner. For more information about Relocation, refer to Section 6.

TREES IN THE RIGHT-OF-WAY

Under Idaho law, the abutting property owner is presumed to own the land to the centerline of the highway ([Idaho code section 55-309](#)). By taking or accepting land for a highway, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land, are for the use of the owner or occupant of the land.

Timber on highway right-of-way acquired prior to March 1953 is the property of the abutting property and the abutting property owner has the right to harvest the timber.

If there is highway right-of-way which was acquired after March 4, 1953, which the Department holds less than a fee simple absolute title, then the abutting property owner may have title to the timber.

Timber on right-of-way, which the Department has a recorded fee simple title, is the property of the Department.

The Department has the right to remove trees or shrubs from the right-of-way for safety reasons, beautification, or other legitimate highway purposes.

5.5 REVISING AN OFFER

A revised offer and summary statement of its basis shall be provided in writing to the owner if:

1. The extent of the requirement is revised.
2. The approved estimate of just compensation is revised by the Review Appraiser.
3. An Administrative Settlement has been approved and authorized.

5.6 NEGOTIATIONS

All right-of-way acquisitions will be completed within 90 days of the date of authorization to initiate negotiations, either through negotiated settlements or recommendation for eminent domain condemnation action, unless otherwise approved in writing by the Right-of-Way Manager. Also, all right-of-way acquisition agreements shall be supported by a Right-of-Way Contract and shall reflect all items in such a manner as to be specifically identifiable with the project plans.

In order to ensure that the property owner has received the information about their property, the negotiator shall contact the property owner by phone or email to give notice that the total acquisition packet is available. After initial contact is made, the negotiator can either mail the total acquisition packet under a cover letter via certified mail, return receipt requested, or he/she can deliver it in person. The cover letter shall state the name and phone number of the negotiator so the property owner has a contact in the Right-of-Way Section.

The property owner shall be given a minimum of thirty (30) days, after the initial offer, to consider the offer and obtain professional advice or assistance if so desired.

5.6.1 RECORDS OF NEGOTIATION

The Negotiator shall maintain timely adequate records of negotiation on a parcel basis ([Form 1439, Agent Diary of Negotiations](#)). This diary shall be written with clear and concise language and stored in permanent form (i.e., not email) and updated as quickly as possible after each contact with the property owner.

The information for each contact should include, but is not limited to:

1. The date and place of all contacts, parties of interest contacted,

2. The date and place of all offers made, including dollar amounts,
3. The date and place of all counter offers, including dollar amounts,
4. The reasons settlement could not be reached, and
5. Any other pertinent data

Each page of the report shall be signed and dated by the Negotiator.

5.6.2 SURRENDER OF POSSESSION

No owner shall be required to surrender possession of real property before the acquiring agency pays the agreed purchase price or deposits with the court, for the use of the owner, an amount not less than the agency's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

5.6.3 NOTICE TO VACATE

No person lawfully occupying real property at the time of acquisition shall be required to move from a dwelling, or to move a business or farm operation without at least 90 days written notice from the acquiring agency. Currently, the Relocation Unit issues a 90-day Notice to Vacate after securing legal possession of the property. The Federal requirements allow for the 90-day notice to be issued as soon as at least one comparable property has been available to the property owner. To fulfill this condition, the property owner will have to have appropriate information provided on the availability of comparable properties and have funding made available for acquiring the property (deposit of funds). Once these conditions have been met, the State can issue its 90-day notice irrespective of if having legal possession of the property to be acquired.

The notice shall state a specific date at least 90 days in advance by which the occupant may be required to move. An additional 30-day notice will be provided in advance of the specific date by which the person must move. The 30-day notice may, if necessary, occur within the 90-day period. The 90-day notice must also state that the occupant will not have to move earlier than 90 days after a comparable replacement dwelling is made available (as defined in the Code of Federal Regulations). The 90-day notice shall further state that the occupant will not have to surrender his property until the state has obtained legal possession of the property.

5.6.4 FAIR RENTAL VALUE

If the acquiring agency permits an owner or tenant to occupy the real property acquired (acquisition is the date the state has legal possession) on a rental basis, the amount of rent required shall not exceed the fair rental value of the property. The rent shall be collectible on the first of the following month subsequent to the acquisition payment being received by the property owner, or after the initial 90 day to vacate notice issued by the Relocation Unit whichever is later.

5.6.5 ADMINISTRATIVE SETTLEMENTS

An administrative settlement is a settlement, authorized by the responsible official, in excess of the approved just compensation. Under appropriate circumstances, an administrative settlement may be made to motivate amicable settlement with an owner and thus avoid recourse to legal proceedings.

The responsible official may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the responsible official must give full consideration to all pertinent information set out in 49 CFR 24.102(i): *“Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.”*

The valuation process used by ITD, including the appraisal or Value Estimate and the review appraiser’s determination, assure that every owner is offered just compensation for property acquired for right-of-way. Real estate valuation is a subjective, judgement-based process and there can be room for reasonable disagreement on property values. ITD’s stance is to take note of the property owner’s position and to be open to revising an offer if it is reasonable to do so and would result in settlement and otherwise serve the best interest of the public.

All administrative settlements must serve the public interest in a specifically stated way.

All administrative settlements shall be in writing and explain the justification for settling any parcel above the established Fair Market Value (FMV). The extent of the written explanation should be consistent with the situation, circumstance and amount of money involved. It should utilize, as available, property sales data, owner appraisals and engineer estimates to support why it is in the best interest of the public for ITD to settle a parcel in excess of FMV.

Additional factors to consider should include the following:

1. Basis for owner’s refusal of ITD’s offer
2. Owner’s counteroffers, etc.
3. Status of negotiations on the project, including negotiation cut-off date
4. Condemnation and trial risks
5. Effects upon Relocation Assistance Program entitlements

ITD and Local Public Agencies (LPAs) shall make every reasonable effort to acquire the real property expeditiously by negotiation. If negotiations with the owner reach an impasse and the owner is unwilling to accept an offer of fair market value, the owner may choose to provide a

counter-offer that stipulates an alternative value with adequate supporting evidence.

A written justification documenting the reason for an administrative settlement shall be placed in the parcel file. The justification document explains the rationale for the administrative settlement to an extent consistent with the circumstances and need, the amount of money involved, and is retained as a document in the acquisition file.

Additionally, the Right-of-Way Agent should maintain an informal project log of administrative settlements to aid in evaluating their overall project effectiveness and to assure that their use is not upsetting the overall fairness in ITD's treatment of property owners on the project.

All administrative settlements, including those made by LPA's, shall be in writing and explain the justification for settling any parcel above the established Fair Market Value. The extent of the written explanation should be consistent with the situation, circumstance and amount of money involved. It should utilize, as available, property sales data, owner appraisals and engineer estimates to support why it is in the best interest of the public for ITD or an LPA to settle a parcel in excess of FMV.

The authority to approve administrative settlements on parcels being acquired by the department is as follows:

- The ITD Right-of-Way Agent has authority to approve administrative settlements less than \$10,000.
- The Right-of-Way Manager is responsible for and will approve any administrative settlement between \$10,000 and \$49,999
- The District Engineer and the Right-of-Way Manager are responsible for and will approve any administrative settlement between \$50,000 and \$199,999.

Administrative Settlement Value	Approval Authority
\$1 - \$9,999	ITD Right-of-Way Agent
\$10,000 - \$49,999	Right-of-Way Manager
\$50,000 - \$199,999	District Engineer and Right-of-Way Manager

On a given project, right-of-way consultants may be used to perform some or all of the acquisitions, functions performed by right of way agents as discussed in this chapter. The extent of consultant use and level of responsibility will be detailed in the individual Consultant Contract.

The authorized LPA representative for LPA and Enhancement projects are responsible for and shall approve any administrative settlements up to \$25,000 in value. Any administrative settlement above \$25,000 shall be approved by the Right-of-Way Manager.

The Director or a delegate may authorize an administrative settlement for up to \$200,000 over the reviewed fair market value of properties appraised at up to \$1,000,000. Administrative settlements for appraisals in excess of \$1,000,000 shall not exceed 20% of the reviewed fair market value of the property. Proposed settlements exceeding these thresholds shall come before the Board for approval.

Authorization to proceed with an administrative settlement is given only when it has been determined that such action will not unduly jeopardize the remaining acquisitions on the project.

5.6.6 INCENTIVE PAYMENTS

The primary goal of property acquisition is the delivery of acquired property to meet project construction schedules while complying with all relevant State and Federal laws and regulations. When a project is fast tracked, and the right-of-way process has to be expedited, ITD has the option to offer incentive payments to property owners. The District Engineer determines if an incentive payment is a viable option for the project properties.

All Incentive Programs must follow all Federal and State Laws, Regulations and comply with the Uniform Act as listed in this manual.

Incentive payments shall be offered by the project, not by the property. Thus, if a project has 13 properties that require acquisition, the same incentive payment shall be offered to each property owner. If he or she determines there is just cause, the District Engineer must justify in writing why a property in a project does not receive the same incentive payment as the rest of the properties.

The following are the standard terms of incentive offers:

1. Eligibility period for the incentive payment of 45 days
2. Incentive payment amount of 10% of initial offer or subsequent revised offer
3. Minimum incentive payment amount of \$500.00 and maximum incentive payment amount of \$100,000
4. Items to which incentive payment will not be applied in determining the payment amount include; administrative settlement amounts, cost to cure compensations, possession agreements, and relocation benefits

For those projects involving federal funding, any variations from the above referenced incentive offer terms must have written approval from FHWA.

5.6.7 LEGAL SETTLEMENTS

A legal settlement is any settlement made by the Deputy Attorney General assigned to the matter, which has been authorized by Right-of-Way Manager and which is in excess of the agency's approved just compensation.

The Deputy Attorney General assigned to the matter may make a legal settlement when it is determined by the agency's responsible official that such action is in the public interest. Legal settlements shall be coordinated with and approved by the responsible official of the acquiring

agency having final authority over right-of-way matters, prior to making any settlement. Any legal settlement which exceeds the reviewed Fair Market Value by \$10,000 shall also require the concurrence of the appropriate District Engineer.

The Deputy Attorney General assigned to the matter provides documentation explaining the justification for an administrative settlement in excess of an established amount to the right-of-way file. This document requires the signed concurrence of the responsible Right-of-Way official as well as the District Engineer if the conditions set out above apply.

5.6.8 RESPONSIBLE PARTIES FOR SETTLEMENTS

The responsible party is dependent on the value of the administrative settlement.

1. The Right-of-Way Manager, if the Administrative Settlement is less than \$50,000.
2. The Right-of-Way Manager and the responsible District Engineer for amounts between \$50,000 and \$199,999 of the reviewed Fair Market Value.
3. The authorized LPA representative for LPA and Enhancement projects.

5.6.9 NONCOMPENSABLE ITEMS IN SETTLEMENTS

Should the administrative settlement, legal settlement, or court award include an apparent payment for items considered ineligible for federal participation, as set forth in the CFR or the Federal-Aid Policy Guide, the amount paid for such items shall be determined by the agency and excluded from any claim for federal participation in the settlement or award.

5.7 COMPLETION OF NEGOTIATIONS

The acquiring agency, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses necessarily incurred for:

1. Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency.
2. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
3. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency.

In instances where a court issues an order adverse to ITD's position, ITD may be required to pay the property owner such sums the Court deems appropriate. These sums may include, but are not limited to, attorney fees, expert witness fees, court costs, etc.

5.7.1 PAYMENT AND TITLE CERTIFICATION

It is imperative that those involved in real property acquisition make certain that all interests have been acquired to ensure that adequate title has been obtained.

The Right-of-Way Agent responsible for the procedure review is responsible for inspecting all non-

incidental expenditures for compliance with established policies and procedures. Non-incident expenditures consist of, but are not limited to direct payments to property owners for right-of-way material and maintenance sites, together with relocation payments to displacees.

The Right-of-Way Agent in charge of for title work is responsible for preparing appropriate payment documents.

5.8 BREAKDOWN OF NEGOTIATIONS

When negotiations are unsuccessful and the Negotiator considers further attempts to negotiate to be futile, he or she shall record recommendations for action considered appropriate, including recommendations for administrative or legal settlements.

Prior to closing negotiations, a final owner contact, either by a separate Right-of-Way Agent or by the Right-of-Way Manager, should be made to ascertain that every reasonable effort has been made to reach agreement. This process is known as the dual call contact.

If all attempts to reach agreement fail, the parcel will be transmitted to the Right-of-Way Manager with the concurrence by the District Engineer for condemnation, using an Condemnation Memorandum, Request for Condemnation Action and required attachments. The Right-of-Way Section will work with the Deputy Attorney General assigned to the matter to prepare appropriate court exhibits for each entire parcel file. The Right-of-Way Section will then transmit a copy of the entire parcel file to the Deputy Attorney General assigned to the matter.

LITIGATION EXPENSES

In instances where a court issues an order adverse to ITD's position, ITD may be required to pay the property owner such sums the Court deems appropriate. These sums may include, but are not limited to, attorney fees, expert witness fees, court costs, etc.

5.9 INVERSE CONDEMNATION

The Fifth Amendment to the Constitution of the United States of America requires a government to pay just compensation for private property taken for public use. Inverse condemnation occurs when a property owner can prove to a court a diminution in the value of his/her property as the result of an action taken by the government for which just compensation has not been paid. The governmental action does not need to be a physical taking of the property itself. Regulations, benefits, zoning changes have occasionally been found to be inverse condemnations.

If a court finds in favor of a property owner and against ITD in an inverse condemnation action, the court may order ITD to pay the property owner court costs, legal fees, the amount of the damage, interest thereon, and any other sums deemed appropriate by the court.

5.10 DONATIONS (Ref. 23 CFR 710.505 and 23 USC 323)

Nothing in this directive shall be construed to prevent a person whose real property is being acquired for a federally aided highway project from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, after such person has been fully informed of the right to receive just compensation and of the right to an appraisal by a qualified

appraiser for the acquisition of the property.

A non-governmental owner whose real property is required for a project may donate the property any time during the development of a project, subject to the following:

- Prior to accepting the property, the owner must be informed in writing by the acquiring agency of his/her right to receive just compensation for the property, the right to an appraisal or waiver valuation of the real property, and all other applicable financial and non-financial assistance afforded under applicable federal and state law.
- All donations of property received prior to completion of the project's NEPA document must meet the six conditions specified in Section 5.13 of this manual.
- Where donations of real property are to be credited to the State's matching share of the project:
 - The credit amount shall be based on the fair market value of either the date at which the donation becomes effective or the date at which equitable title to the property vests to the State; whichever occurs first.
 - The fair market value shall not include increases or decreases in value caused by the project.
 - The total credit cannot exceed the State's pro-rata share for the project.
- A property owner may donate property in exchange for construction features or services.
 - The value of the donation is limited to the fair market value of property donated less the cost of the construction features or services.
 - If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the State's share of the project costs.

If the value of donated right-of-way is to be claimed by the governmental entity as in kind match toward federal project participation, the following criteria must be met:

On projects where ALL of the right-of-way is to be donated there still must be right-of-way funds obligated on the [ITD-2101](#), Project Authorization and Agreement. If only a portion of the right-of-way is to be donated and the remaining right-of-way is to be acquired then the right-of-way funds will have been obligated.

Donated parcels whose value exceeds \$10,000 will be appraised in accordance with USPAP standards. Donated parcels whose value is between \$5000 and \$10,000 will be appraised if the landowner requests an appraisal in order to support a charitable contribution on their state and/or federal tax filing. Donated parcels valued either at less than \$5000 or less than \$10,000 where the land owner did not state their intent to claim a charitable contribution, can have the value of the donated land abstracted from other appraisals or based on assessed value or set by other methods commonly used in the appraisal industry to estimate value.

Upon certification of the right-of-way acquisition, Financial Services will be notified of the parcel and their respective values, via an [ITD-500](#) (Department Memo).

Donated properties must have clean title.

Upon certification of the right-of-way acquisition, Financial Services will be notified of the parcel and their respective values, via an [ITD-500](#).

5.11 POSSESSION OF THE PROPERTY

No owner shall be required to surrender possession of real property before the acquiring agency either:

1. pays the agreed purchase price or
2. deposits with the court, for the use of the owner, an amount not less than the agency's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

5.12 IMPROVEMENTS ON THE PROPERTY

The acquiring agency shall treat all improvements on the property with equal interest. For the purpose of determining the just compensation to be paid for any building, structure, or other improvement, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired. The owner of improvements located on property being acquired shall be offered the opportunity to retain said improvements at the established salvage value.

Improvements with any significant value, scheduled for sale, shall be protected and preserved. Promptly after obtaining possession, the Right-of-Way Section will notify the District. District personnel shall then inspect the property and make arrangements to harden the property to protect it against vandalism, theft, fire and other hazards.

The nature of each property shall be the indicator of what action should be taken regarding the disconnection of utilities, winterizing, fastening or boarding up of doors and windows, or surveillance by ITD personnel as well as local law enforcement authorities. All related costs shall be chargeable to the acquisition costs.

A tenant who owns a building, structure, or other improvement required to be acquired shall be paid either:

1. The market value which the building, structure, or improvement contributes to the market value of the real property to be acquired,
2. Or the market value of the building, structure, or improvement for relocation from the real property, whichever is greater.

REIMBURSEMENT FOR INCIDENTAL EXPENSES

Reimbursement for incidental expenses shall be given to the owner as soon as practicable. Practicable is defined as either:

1. the date of payment of the purchase price or
2. the date of deposit in court of funds to satisfy the award of compensation in a condemnation

proceeding to acquire real property, whichever is greater

Incidental expenses are defined as:

1. Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency.
2. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
3. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency.

5.13 STATE AND LOCAL CONTRIBUTIONS (ref. 23 CFR 710.507)

State and local governments may contribute real property to a project with or without credit toward the state or local's match to the project.

- Any credit for such contributions cannot exceed the State or local's matching share for the project for which it is donated.
- Acquisition costs incurred by the State or local to acquire title can be used as justification for the value of the property.
- Credit is not allowed for:
 - Property acquired with any form of Federal assistance or
 - Property already incorporated into existing right-of-way and used for transportation purposes.

All contributions of real property by State and local governments must meet the six conditions of Section 5.16 of this manual.

5.14 FUNCTIONAL REPLACEMENT OF REAL PROPERTY IN PUBLIC OWNERSHIP (Ref. 23 CFR 710.509):

When publicly owned real property, including land and/or facilities, is to be acquired for a federal-aid highway project, in lieu of paying the fair market value, the department may provide compensation by functionally replacing the publicly owned real property and/or facility with another of equivalent utility. Federal participation is subject to FHWA concurrence that the functional replacement is in the public interest and that the additional conditions and limitations of 23 CFR 710.509 have been met.

5.15 ACQUISITION OF RIGHT-OF-WAY FOR FEDERAL-AID PROJECTS (Ref. 23 CFR 710.203):

Except as otherwise allowed for Early Acquisition, Hardship Acquisition, or Protective Buying (see Sections 5.16 and 5.17), the State (or local) may only acquire real property with Federal-aid funds if the following conditions are met:

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

2. The State (or local) has executed a project agreement reflecting the Federal funding terms and conditions of the project.
3. Only preliminary activities (e.g., title search, appraisal, and property map preparations), which qualify as preliminary engineering can proceed prior to completion of the NEPA review.
4. Costs have been incurred in conformance with State and Federal requirements.

5.16 EARLY ACQUISITION OF REAL PROPERTY FOR FEDERAL-AID PROJECTS (Ref. 23 CFR 710.501):

The State (or local) may initiate the acquisition of real property at any time it has the legal authority to do so, however, in order to maintain eligibility for future Federal assistance on a project, the following conditions must be met:

1. The property was lawfully obtained by the State Agency.
2. The property is not land described in 23 USC 138 (i.e., publicly owned land from a park, recreation area, wildlife or waterfowl refuge, or historic site).
3. The acquisition complied with The Uniform Relocation Assistance and Real Property Acquisition Act.
4. The acquisition complied with [Title VI of the Civil Rights Act of 1964](#).
5. The acquisition did not influence the environmental review of the project.
6. The property will be incorporated into the project for which Federal-aid program funds are received and to which the credit will be applied.

The State of Idaho does not currently qualify for the “State Funded – Federally Reimbursed Early Acquisition” option detailed under 23 CFR 710.501(d).

In order for early acquisition to be eligible for immediate Federal participation, the following table outlines additional requirements which will apply.

FEDERALLY FUNDED EARLY ACQUISITION

The basic qualifications and requirements for using FHWA’s Federally-Funded Early Acquisition option detailed in 23 CFR 710.501(e) are as follows:

THE REQUIREMENT:	WHAT IS NEEDED:
Prior FHWA Authorization	State request and FHWA approval of early acquisition (by letter) and subsequent FHWA authorization of such early acquisition is required.
Prior State Certification of Authority to Acquire and That Acquisition Will Not Limit Alternatives, Relocation Benefits, etc.	State certification and FHWA concurrence that the conditions of 23 CFR 710.501(e)(1-4) have been met.
Acquisition Not Subject to Threat of Condemnation	Will be acquired through negotiation without threat of or use of condemnation.
Prior NEPA Approval (for Acquisition Action)	NEPA is required only for the “early acquisition action” only, not the parent project.
Programming of Acquisition Action in STIP	Each “early acquisition project” must be identified as a separate project in the STIP/TIP. (Note: Project can be a single parcel, a portion of a transportation corridor, or an entire transportation corridor)
Uniform Act Compliance	All forms of early acquisition under 23 CFR 710.501 shall be carried out in compliance with all requirements of the Uniform Act.
Title VI Compliance	All forms of early acquisition under 23 CFR 710.501 shall be carried out in compliance with all requirements of Title VI.
Costs Incurred for Acquisition of Real Property Interests	All costs normally eligible for Federal reimbursement, as detailed in 23 CFR 710.203(b), are also eligible under the early acquisition options conducted in accordance with 23 CFR 710.501.
Requires that property be incorporated into a project to be eligible	Eligibility is limited to costs associated with properties actually incorporated into the project per 23 CFR 710.501(g) and 710.203(b).
Acquisition Determined to be Consistent State’s transportation planning process per 23 USC 135	State certification and FHWA concurrence of consistency with planning process.
Restriction on development of acquired property (e.g., construction activity) prior to project NEPA approval.	Property cannot be “developed” in anticipation of a transportation project until all environmental reviews for the transportation project have been completed. Examples of activities restricted include demolition, site preparation, or construction that is not necessary to protect public health or safety.
FHWA Determination that acquisition did not Influence the NEPA evaluation as a condition for reimbursement.	The State certifies that the early acquisition will not prejudice the NEPA decision.

CERTIFICATION

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 specified in 23 CFR 710.501(e) have been satisfied. The State's demonstration that the pre-conditions for authorization to proceed with Federally Funded early acquisition shall consist of a letter from ITD to FHWA certifying to the following:

- (1) The State has authority to acquire the real property interest under State law; and
- (2) The acquisition of the real property interest—
 - (i) Does not involve 4(f) property subject to approval under 23 CFR 774.3;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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;
 - (v) Is consistent with the State transportation planning process under 23 U.S.C. 135;
 - (vi) Complies with other applicable Federal laws (including regulations);
 - (vii) Will be acquired through negotiation, without the threat of, or use of, condemnation; and
 - (viii) 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 ITD's approved STIP.
- (4) The environmental review process for the Early Acquisition Project is complete and FHWA has approved the Early Acquisition Project.

The certification letter shall be from ITD's Right-of-Way Program Manager to the FHWA Idaho Division Office's Right-of-Way Program Manager and receipt of this certification letter shall be a prerequisite to FHWA authorization of Federal funding for acquisition costs. FHWA's concurrence in ITD's certification for a given project shall consist of the approval of ITD's request for Federal funding of early acquisition costs for that project in FHWA's Financial Management Information System (FMIS).

(Note: Supporting documentation to ITD's certification shall be provided when requested by FHWA.)

5.17 STATE/LOCAL FUNDED EARLY ACQUISITION

Two other forms of early acquisition which have traditionally existed as options for States and locals to employ are:

1. State/local funded early acquisition without Federal credit or reimbursement, and
2. State/local funded early acquisition eligible for future credit.

Limitations and procedures for using these two “non-participating” forms of early acquisition are outlined in 23 CFR 710.501(b) and (c) respectively.

5.18 PROTECTIVE BUYING AND HARDSHIP ACQUISITION

In addition to the early acquisition options set out in 5.13, Federal regulations provide for the following two specialized forms of early acquisition, as detailed in 23 CFR 710.503:

Protective Buying:

The early acquisition of a particular parcel or limited number of parcels to prevent imminent development and increased costs on the preferred location; and

Hardship Acquisition:

The early acquisition of a particular parcel or limited number of parcels to alleviate hardship to a property owner or owners on the preferred location.

GENERAL CONDITIONS:

Before FHWA can authorize either protective buying or hardship acquisition, a written request must be provided to the FHWA Division Office which satisfactorily demonstrates that the following conditions have been met:

1. The property acquisition is (or will be) programmed in the STIP. This can be accomplished by one or more of the following actions:
 - a. Identification of the specific protective buying or hardship acquisition(s) in the STIP,
 - b. Identification of the right-of-way phase of the specific project in the STIP,
 - c. Inclusion of the action under a statewide line-item in the STIP for protective and/or hardship acquisition.
2. The State has complied with the applicable public involvement requirements of 23 CFR Parts 450 (Planning) and 771 (Environment). The expectation for prior public involvement in conjunction with protective buying and hardship acquisition is that the general public will have had a reasonable opportunity to be aware of the project for which the property is to be acquired and that sufficient outreach activities have been conducted such that scope of the project and range of alternatives and preliminary alignment locations to be evaluated through the environmental process have been shared with the public. This can be accomplished by one or more of the following activities:
 - a. Corridor studies.
 - b. The metropolitan transportation planning long range plan.
 - c. The metropolitan and/or statewide transportation improvement program.
 - d. A city or county’s comprehensive plan.
 - e. The ongoing environmental evaluation of the project.

3. A determination has been completed for any property subject to the provisions of 49 USC §303 and 23 USC §138, both commonly referred to as Section 4(f) in reference to its original section in the U.S., Department of Transportation Act of 1966. This can be accomplished by either of the following as applicable:
 - a. Documenting that the property in question does not qualify for protection under Section 4(f)
 - b. Providing a 4(f) determination in which the concluding statement specifies that there is no feasible and prudent alternative to the use of the 4(f) property and that the proposed action includes all possible planning to minimize harm to the 4(f) property resulting from such use.

4. Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 USC §470(f) (Section 106 historic properties). This can be accomplished by either of the following as applicable:
 - a. Documenting that the property in question does not qualify for protection under Section 106.
 - b. Providing Section 106 process documents which demonstrate that one of the following applies to the proposed acquisition and subsequent use of the property in question:
 - i. No historic properties will be affected.
 - ii. No historic properties will be adversely affected.
 - iii. The acquisition and use of the property is consistent with the Section 106 Memorandum of Agreement concerning the proposed action.

ADDITIONAL REQUIREMENTS:

Protective Buying:

Protective buying requests must also include documentation which demonstrates that development of the property is imminent and such development would limit future transportation choices. In this regard, a significant increase in cost may be considered as a factor but not the sole reason for justifying the request. Examples of information and documentation to demonstrate that development of the property in question is imminent and that this development will result in the potential loss of alternatives include:

- a. Development requests including plat and building permit requests.
- b. Corridor studies and preliminary environmental documents identifying proposed project alternatives.
- c. City and County comprehensive plans identifying proposed transportation alignments.
- d. Analyses demonstrating the cost impacts on right-of-way if the property were to be developed beyond its current use.

Hardship Acquisition: Hardship acquisition requests must be based on a property owner's written submission and must have been accepted and concurred in by the State. The property owner's request must:

- a. Support 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 with others; and
- b. Document 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.

ENVIRONMENTAL DOCUMENTATION:

The acquisition of property through protective buying or hardship acquisition can qualify as a categorical exclusion per 23 CFR 771.117(d)(12) provided that the acquisition does 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.

Requests and Approval:

All requests for protective buying and hardship acquisition are to be submitted by ITD to the FHWA Idaho Division Office. The requests should be adequately documented as detailed above and be accompanied by an approved environmental document. An evaluation of the request will be conducted by the Division's Right-of-Way Specialist and written response which will specify:

- a. Whether or not it is approved.
- b. If approved, any conditions under which the approval is given.
- c. If not approved, the basis for which it was not approved.

RELOCATION ASSISTANCE

All property owners displaced as the result of early acquisition will be entitled to the relocation services and benefits as provided for under the Uniform Act.

5.19 ACCESS RIGHTS

[IDAPA Rule 39.03.42](#) - Rules Governing Right-of-Way Encroachments on State Rights of Way addresses the management of access to the roadway. These rules regulate the way ITD is to classify, regulate, purchase and sell access control.

When the Department purchases access rights for safety or highway operational reasons, those purchases must be recorded in a deed. Those deeds must have language identifying the access rights purchased and the reservation of any access rights to the property owner, to include location, size and specific purpose of the reserved access right. Any purchased access rights are Department property. The deeds, rather than the regulations set forth in [IDAPA 39.03.42](#), control access to property from which the Department has purchased access rights.

Under [IDAPA Rule 39.03.42](#), all routes on the State Highway System are classified into one of six tiers; Interstate, Freeway, Expressway, Statewide Route, Regional Route, and District Route. Segments of highway are further classified according to whether they are rural, transitional, urban high-speed or urban low-speed.

APPRAISAL OF ACCESS RIGHTS

The Idaho Transportation Department is authorized to acquire property rights along the State Highway System and control access to the roadway through property purchase (deed restrictions). When the owner of land adjacent to a State Highway requests one or more additional access points or a change in use of an existing access point, the department shall identify:

- The highway's classification in accordance with the provisions of [IDAPA Rule 39.03.42](#)
- If the property rights associated with the land were purchased in a deed

- Whether the value of the benefited land will increase from the additional access or change in use
- If the property is located on the Interstate System. (FHWA must be advised of any access control changes on the Interstate System.)

The Director shall preserve the uniformity of the State Highway System by establishing access and property appraisal requirements.

PURCHASING ACCESS RIGHTS

ITD maintains the ability to purchase access rights to any route on the State Highway System. Access rights are property rights, and therefore need to be deeded. Acquisition of such rights shall follow ordinary right-of-way acquisition procedures as defined in the Right-of-Way Manual, whether bought separately or in conjunction with other real property acquisitions.

Properties where access is purchased, sold, or condemned will likely require a before and after appraisal to assess the value of the access. The Districts shall consult with the Right-of-Way Manager before making any representation of the conditions under which the Department would buy or sell access rights. The District or project consultant shall fill out an [ITD Form 606, Current Access Purchase Determination](#), and give it to the Right-of-Way Section in conjunction with right-of-way plans. This form assists the Right-of-Way Section to determine which properties require the purchase of rights of access.

Acquisition of access rights through purchase should be requested only where a traffic operations and/or safety analysis determines that it is in the public interest to do so. Such an analysis may come through a highway project action, or through a specific analysis, but should be documented in writing. Where practical, regulatory access controls alone should be relied upon to preserve the safety and operational efficiency of the State Highway System without unnecessarily restricting economic development opportunities.

If the Department purchased access control and the access point is part of a recorded document, the property owner shall compensate the Department for the access control that was previously purchased (mandatory). The District shall either:

- Require an appraisal if the land's estimated value increases as a result of a new access or change in type of use, and the increase in value is greater than the fee shown on the "*Deed Restricted Access With Minimum Value*" table; or
- Waive the appraisal for change requests that minimally enhance the property value, and charge a compensation fee from the "*Deed Restricted Access with Minimum Value*" table; or
- Waive the appraisal for change requests that change a farm/field approach to a single family residence approach.

The Right-of-Way Section shall coordinate all appraisals required by this policy.

If the Right-of-Way Manager, with the concurrence of a Right-of-Way Appraiser, determines that a new point of access or a change in type of use will add little or no additional value to the property, the appropriate fee schedule may be used to determine the fee in lieu of an appraisal.

If an appraisal is required:

- The landowner making the request must pay the cost of the appraisal and the appraisal review in advance of the appraisal process.
- The appraised value of the benefited property shall be based on the requested future use rather than the present use.
- Any fee shall be paid by the property owner to ITD before access is granted

APPRAISAL AND ENHANCED LAND VALUE FEE SCHEDULES

Access to the Interstate is determined by regulations, design specifications, and construction standards. Additional access is only considered after a thorough review of the roadway use and a construction project is approved by the Idaho Transportation Board.

The following fees do not apply to the Interstate, Freeways or Expressways.

DEED RESTRICTED ACCESS WITH MINIMUM VALUE TABLE

Approach Type	District Route	Regional Route	Statewide Route
Farm/Field	\$500	\$500	\$1000
Single Family Residential	\$500	\$500	\$1750
Multiple Family Residential	\$2500	\$2500	\$2500
Subdivision	\$3000	\$3000	\$3000
Light Commercial	\$3500	\$3500	\$3500
Heavy Commercial	\$4250	\$4250	\$4250

*These fees apply only when the department determines that the change in property value is equal to or less than the cost of an appraisal. Fees shall not be charged for a change in use from a Farm/Field approach to a Single Family Residential approach. Appraisal fees represent reimbursement for a change in property value **only**.

SELLING ACCESS RIGHTS

ITD maintains the ability to sell access rights. Access rights must be designated as surplus property, and their disposal will require determination of Fair Market Value (FMV). In the case that the access rights were purchased with Federal Funding, The Right-of-Way Section will work with Financial Services to determine how proceeds of such a sale will be handled.

The disposal of previously purchased access control shall be in accordance with the Idaho Transportation Departments’ Access Management, Board and Administrative policies. ITD shall charge current fair market value for the use or disposal of access control rights if those rights were acquired utilizing federal funds under Title 23 of the United States Code.

ITD may allow the use or dispose of access control rights, acquired utilizing federal funds, at less than fair market value, with the approval of FHWA, if ITD clearly demonstrates that an exception is in the overall public interest for social, environmental or economic purposes; for nonproprietary governmental use; or for

use under Title 23 of the United States Code, Public Transportation. ITD shall submit requests for such exceptions to FHWA in writing, including NEPA clearance.

ITD may allow the use or disposal of access control rights, acquired utilizing federal funds, at less than fair market value, without the approval of FHWA, if ITD documents that the property will be utilized for one of the following purposes:

- Use by a public utility
- Use by Railroads
- Use for bikeways and pedestrian walkways
- Use for Title 23 transportation projects

5.20 RIGHT-OF-WAY CERTIFICATION

All construction projects require a ROW Certificate. A right-of-way certificate establishes that all of the right-of-way necessary for the project to be constructed has been acquired (including permanent and temporary easements), or the right to occupy and use all such right-of-way has been secured. Right-of-way certificates are a necessary prerequisite to authorization of construction by the FHWA ([23 CFR 635.309](#)).

Prior to advertising and construction, a Right-of-Way Certificate shall be prepared by the local ITD District office, certifying that the right-of-way necessary for the project has been acquired; relocation is completed; a materials are available to the contractor from a state approved commercial source or a state source; that ITD has no knowledge of any hazardous materials use or contamination discovered, on any of the lands to be utilized on the project; and that all utility and railroad work has either been completed or necessary arrangements have been made for it to be completed in coordination with the physical construction schedules (see Exhibits below for ROW Certificate templates). A ROW Certificate is not required for materials purchase projects that do not involve right-of-way, i.e. railroad equipment, trucks, buses, plant mix, etc.

The ITD Right-of-Way Agent responsible for Procedure Review will review the Certificate and the Right-of-Way Manager shall approve the certificate for state and federal aid projects. Upon approval by the Right-of-Way Manager, the Certificate will be sent to the appropriate Project Manager within the District.

CLEAR RIGHT-OF-WAY CERTIFICATE

A clear right-of-way certificate requires:

- 1) Right-of-way is acquired by purchase or possession
- 2) Relocations are completed
- 3) Utility and railroad work and/or agreements are completed
- 4) Interstate projects have provided a letter to the FHWA
- 5) Non-interstate projects have provided a letter to the Chief Engineer of ITD

CONDITIONAL RIGHT-OF-WAY CERTIFICATES

Some projects may be certified with exceptions, and are referred to as conditional certifications. Conditional

certifications should be rare and approved in advance. Conditional certificates must be followed by a “clear” certification once all acquisitions are complete.

A [conditional right-of-way certificate](#) identifies the acquisition status of right-of-way that is required to advance a highway project to construction when such property:

- has not yet been acquired,
- the acquiring agency has not yet obtained right-of-occupancy, or
- future displaces are still residing on such property.

LPA PROJECT CERTIFICATES

LPA’s will complete an [ITD-1983](#), Local Public Agency’s Certificate of Completion of Right-of-Way Activities form. This form will certify that all acquisitions and relocations were performed in accordance with state and federal laws and regulations. Upon completion, the [ITD-1983](#) will be sent to ITD Right-of-Way for the preparation of a Right-of-Way Certification Letter.

A complete explanation of circumstances is required for any request that of project authorization prior to having secured all necessary right-of-way. ITD Right-of-Way will send all LPA conditional certificate requests to FHWA for consideration.

INTERSTATE PROJECTS

On interstate projects, prior to advertising for construction, ITD shall deliver to FHWA a right-of-way certificate which addresses the securing of property and improvements, completion of relocation activities, completion and/or satisfactory coordination of utilities and railroad work, and status of hazardous materials and contamination.

PROCEDURES

Certificate Preparation. District (LHTAC if LHTAC administered) requests Headquarters ROW to prepare a ROW Certificate. ROW Staff confirms utility agreements/waivers are complete, material sources are available, hazardous materials are/are not known, railroad involvement, and confirms displaces are relocated, if any. ROW Staff prepares and the ROW Program Manager signs the ROW Certificate to be submitted along with the submittal for PS&E. Whenever a ROW Certificate is prepared on a LPA project, an ITD 1983, Local Public Agencies Certificate of Completion, must also be submitted.

All Right-of-Way Certificates and Certificate dates are set up in the Right-of-Way Data Base Information System (ROWDI) to allow the OTIS system to search ROWDI for new Right-of-Way Certificate dates during an overnight sweep via an interface between OTIS and ROWDI. A PDF version of an executed Right-of-Way Certificate with the Certificate date is entered into The Right-of-Way Folder for each project in ProjectWise.

Conditional right-of-way certification, which is provided for in [23 CFR 635.309\(c\)\(3\)](#), is sometimes called a “cert 3” or a “work around.” Conditional right-of-way certificates are requested by the Districts and reviewed and approved by the Right-of-Way Manager.

A conditional right-of-way certificate can be submitted to the FHWA Idaho Division Office in 2 unique scenarios:

- 1) Conditional Certifications for Authorizing Funding Only: this scenario addresses projects for which the requested action is limited to the obligation of funds only.
- 2) Conditional Certifications for Authorizing Advertising and Construction: This scenario addresses projects for which the requested action includes not only the obligation of funds, but also approval to advertise for bids, and if so requested, to proceed with construction.

The second scenario is reserved for projects that will, upon authorization, be advertised for bid and advanced to construction. This situation arises when unique and compelling reasons justify the advancement of a project to construction prior to ITD having acquired and/or secured the right to occupy and use all necessary right-of-way. FHWA must receive a conditional right-of-way certificate which clearly documents the protections afforded to the affected property owners and the necessity (in terms of public benefit) for advancing the project under such circumstances.

In addition, if the condition in the certification are still in effect at the time of contract award, an updated notification to FHWA identifying all locations where right of occupancy and use has not been obtained, along with a realistic date when physical occupancy and use is anticipated, shall be provided to FHWA prior to the State issuing a notice to proceed for the construction contract.

Once the conditions in the right-of-way certification have been cleared, Headquarters Right-of-Way (Procedure Review) shall prepare a Revised Conditional Right-of-Way Certificate (Clear) and submit it to the FHWA.

RIGHT-OF-WAY CERTIFICATE WITH NO RIGHT-OF-WAY

When all work will be contained within the existing right-of-way, a Right of Way Certificate is required.. This includes Local Public Agency projects. This certificate is submitted to the Chief Engineer.

Exhibit: Right of Way Certificate for all non-interstate projects

(Print on Department Letter head)			
DATE:		Project No.(s):	
TO:	Name of C.E. Chief Engineer	Key No.(s):	
FROM:	Name of ROW Program Manager Right-of-Way Program Manager	Program ID, County, Etc.:	
RE:	RIGHT OF WAY CERTIFICATE		

This is to certify that all work to be done in connection with the caption project by the IDENTIFY AGENCY will be contained within the existing right-of-way.

The utility facilities owned by *IDENTIFY UTILITIES* are to be relocated at company OR project expense and arrangements have been made to coordinate their activities with the contractor.

Materials are available to the contractor from a state approved commercial source OR a state source.

No persons, families or businesses were displaced as a result of this project.

No railroad coordination or Agreement will be required.

The Environmental document is on file in the district office and in ProjectWise.

Idaho Transportation Department has no knowledge of any hazardous materials use or contamination discovered, on any of the lands to be utilized on this project.

AUTHORIZING INDIVIDUAL
 Right-of-Way Manager

Exhibit: Right of Way Certificate for Conditional Certificates and all Interstate projects

(Print on Department Letter head)

CURRENT DATE

Mr. Peter Hartman
Division Administrator
Federal Highway Administration
3050 Lake Harbor Ln.
Boise, Idaho 83703

RE: Project No.: IM-NH-IMG-IG-IRG-I-2222 (020)
Key No.: 2222
Project Name: Interstate Project Anywhere Idaho

RIGHT OF WAY CERTIFICATE

This is to certify that all work to be done in connection with the caption project by the IDENTIFY AGENCY will be contained within the existing right of way.

The utility facilities owned by IDENTIFY UTILITIES are to be relocated at company OR project expense and arrangements have been made to coordinate their activities with the contractor.

Materials are available to the contractor from a state approved commercial source OR a state source.

No persons, families or businesses were displaced from their dwellings as a result of this project.

No railroad coordination or Agreement will be required.

The Environmental document is on file in the district office and in ProjectWise.

Idaho Transportation Department has no knowledge of any hazardous materials use or contamination on this project.

AUTHORIZING INDIVIDUAL

Right-of-Way Manager
XXX: xxx

6 RELOCATION

6.1 GENERAL INFORMATION

6.1.1 INTRODUCTION

ITD attempts to minimize displacement from homes and businesses during the planning of projects and strives to provide for the fair and equitable treatment of persons displaced. On occasion, the acquisition of property for a highway may cause the displacement of residences, businesses or farms. ITD delivers a complete program of services and benefits to affected individuals when relocation is necessary. These benefits are defined in Federal law and Idaho Statutes and provide assistance in addition to the just compensation paid for acquired property that is required under the U.S. Constitution's 5th Amendment.

The purpose of the relocation program is to perform timely, orderly, and humane relocation of residential displacees and successfully reestablish displaced businesses, farms, and non-profit organizations. ITD provides a reasonable period of time for property owners who may be required to move from property acquired by ITD for highway projects or other transportation-related programs, without causing disproportionate injury as a result of those programs designed for the benefit of the public as a whole.

The instructions in this Chapter will guide the administration of the relocation program in a manner that is equitable, consistent and cost effective. The objective is to insure that displaced persons and households will not suffer disproportionately as a result of ITD's Transportation Improvement Program. Effective relocation program services will also encourage and expedite acquisition by agreement, minimize litigation, promote public confidence and insure that the policies are implemented in an efficient and cost-effective manner.

The requirements of this chapter are applicable to any person who is displaced as a result of a program or project with Federal or State funding in any phase of the project cost. State or Federal funds need not participate in the costs associated with the payment for the property to create eligibility. Property acquired by any State agency, county, town, or local government as a contribution to an ITD-funded project will not be accepted unless all of the payments have been made and all of the assistance and assurance as required by this Chapter are provided.

Any person who qualifies as a displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments provided by this Chapter, the Uniform Act, 49 CFR 24 and Idaho Statute.

Relocation benefits are separate from and in addition to just compensation paid to owners for the acquisition of interests in real estate.

6.1.2 AUTHORITY

Titles I and II of the "[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#)" (Public Law 91-646) and amendments thereto, together with [49 CFR Part 24](#) and Idaho Code §58-1101 *et seq.*, and [IDAPA 39.03.44](#), authorize ITD to perform relocations.

6.1.3 OVERVIEW OF THE RELOCATION PROGRAM

The relocation of residents who have been displaced for highway acquisition is a needs-oriented program. The benefits of the program achieve a replacement housing standard that is at least comparable to the housing before displacement, but that also meets needs-based criteria of cost, income and housing quality.

The following are key provisions of ITD's relocation program:

1. ITD will not require any person to move until at least 1 replacement that is within the financial means of the displaced household dwelling is available for purchase or lease. The replacement must also meet specific qualitative standards of decent, safe and sanitary housing.
2. Persons required to relocate will be provided with 90-days advance written notice of the date they are required to vacate.
3. ITD will ensure displaced persons are provided with advisory assistance to help them locate a replacement and adjust to the move.
4. ITD will provide payments for increased cost of comparable replacement housing and reimburse for moving costs.
5. Persons who disagree with determinations of eligibility or relocation payment amounts have the opportunity to be heard in an administrative appeal process.

Relocation of persons displaced as a result of a federally assisted project will be in accordance with:

- Assurances made by ITD to the FHWA.
- Rules and regulations as promulgated by authority of [49 CFR Part 24](#).
- Procedures established by the ITD Right-of-Way Section

6.1.4 ITD RESPONSIBILITIES

Relocation services shall be provided by the HQ Right-of-Way Section personnel. When the HQ Right-of-Way Section lacks the capacity or personnel to provide the relocation services, experienced contract personnel may be utilized.

An ITD Right-of-Way Agent will be designated to oversee relocations for each project where relocation will exist. All determinations, notifications and payments shall bear the signature of the designated Right-of-Way Agent as assigned by the Right-of-way Manager.

All 90-day notices shall be issued by the HQ Right-of-Way Section subsequent to obtaining legal possession through legal means by ITD's Legal Section.

Staff and Fee Appraisers shall include a determination of real property versus personal property, including ownership, as part of the appraisal report. This determination is required to assist the Right-of-Way Section. When applicable, the appraiser and relocation staff may visit the property together.

The Right-of-Way Section shall provide advisory services, early relocation planning, and estimate the available business and residential sites. Preliminary planning should identify relocation problems and develop solutions.

There is no waiver of relocation assistance or benefits from displacees. A displaced person may refuse the benefits on his or her own initiative.

6.1.5 ELIGIBILITY FOR RELOCATION BENEFITS

The milestone for determining that a move (displacement) is a direct result of the Department's acquisition is the initiation of negotiations for the parcel. Only displaced persons are eligible to receive relocation program benefits. A displaced person is defined as: Any person who moves from real property, or moves personal property from real property, as a direct result of the acquisition of that real property in whole or in part for a program or project undertaken by the Department. Persons who move as a result of a written notice of the Department's intent to acquire the property are also considered displaced persons.

All occupants on a property at the date that ITD presents a written offer to purchase the property are eligible for relocation benefits, subject to the restrictions identified below. For more information on eligibility criteria, see Section 6.7.3 and 6.7.22 of this Section§.

The Department may advance the date of eligibility for benefits to alleviate a hardship. This is done by issuing a letter of intent to acquire the property.

The following is a listing of persons who do not qualify as displaced persons:

1. A person who moves before the initiation of negotiations, unless the Department determines that the person was displaced as a direct result of the project by issuance of a letter of intent to acquire;
2. A person who initially enters into occupancy of the property after the date of its acquisition for the project;
3. A person who has occupied the property for the purpose of obtaining assistance under the *Uniform Act*;
4. A person who is not required to relocate permanently as a direct result of the project. If a tenant-occupant is not displaced but will be required to move temporarily in connection with the project, the temporary housing must be decent, safe and sanitary. The tenant will be reimbursed for all move expenses and increased housing costs during the temporary relocation;
6. An owner occupant who voluntarily sells property to ITD after being advised in writing that ITD will not acquire by condemnation if the property cannot be purchased by amicable agreement. This provision of 49 *CFR* 24.101(a)(1) is only applicable if ITD is purchasing property for purposes other than highway right-of-way. This may include purchase of property for housing of last resort;
7. A person who ITD determines is not displaced as a direct result of a partial acquisition;
8. A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she would not be displaced for a project. This notification will only be issued in a case where a person has not moved. ITD will reimburse expenses incurred to satisfy any binding contractual obligations entered into after the effective date of the notice of relocation eligibility;

9. An owner-occupant who voluntarily sells his or her property, after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached; the Department will not acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the regulations in this part;
10. A person who retains the right of use and occupancy of the real property for life following its acquisition by the Department;
11. A person who is determined to be in unlawful occupancy or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations; and
12. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation benefits as provided in 49 CFR 208.

6.1.6 STANDARDS FOR DECENT, SAFE AND SANITARY HOUSING

Decent, Safe and Sanitary is the term used to indicate basic health and safety standards that are applicable in referring replacement housing to displacees. Also, residential displacees must occupy decent, safe and sanitary replacement housing to qualify for Rent Supplement or owner Replacement Housing Payment.

The term “Decent, Safe and Sanitary” means a dwelling that meets applicable local housing occupancy codes. The following are minimum criteria if any of the following standards are not exceeded by the local code. 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 devices;
3. Contain a heating system that is capable of sustaining a healthful temperature (approximately 70°F) for a displaced person;
4. Be adequate in size with respect to the number of rooms and living space needed to accommodate the displaced person. Have an adequate number of rooms to provide separate bedrooms for children of the opposite gender and meet the requirements of local codes.
5. Have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and toilet, all in good working order and properly connected to appropriate sources of water and to a sewerage disposal system;
6. 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 that is properly connected to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;
7. Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least 2 means of egress;
8. For a displaced person who is disabled, be free of barriers to accommodate reasonable ingress, egress or use of the dwelling by such displaced person. This includes doors of adequate width, ramps, or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks. ITD will consider other items that may be necessary, including physical modifications, based on the displaced person’s needs.

6.1.7 CIVIL RIGHTS

Title VI of the Federal Civil Rights Act of 1964 states that:

No person ... shall, on the ground of race, color, or national origin, be excluded from participation in, be denied

the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

ITD commits to comply with other Federal laws and Executive Orders in administering the Relocation Program. These are listed at 49 CFR 24.8.

Any complaint or inquiry of discrimination in the administration of ITD's relocation program should be brought to the attention of the Right-of-Way Manager by whoever receives it.

6.1.8 ASSURANCES AND CERTIFICATES

ITD has provided assurances to the Federal Highway Administration that is required by Sections 210 and 305 of the Uniform Act. These affirm ITD's commitment to comply with provisions of the Uniform Act and Federal implementing regulations at 49 CFR 24 and 23 CFR 710. The assurances of compliance also apply to any local government that acquires property and displaces persons for projects that are reimbursed with State or Federal funds.

6.1.9 PEOPLE NOT LEGALLY IN THE UNITED STATES

The Uniform Act prohibits relocation payments or relocation advisory assistance to persons who are not legally present in the United States. Each person submitting a relocation claim will be required as a condition of eligibility to certify status as either a citizen or national of the United States or an alien who is lawfully present in the United States. An exception to the denial of benefits is permitted if ITD determines that the denial would result in exceptional and extremely unusual hardship to the person's spouse, parent or child who is a citizen or an alien in legal residence in the United States.

The circumstances involving persons who are not legally present can be complex, and ITD is committed to implementing provisions in a fair and nondiscriminatory manner. Any situation or issue involving persons not legally present in the United States should promptly be brought to the attention of the Right-of-Way Manager for review and determination.

6.1.10 MULTIPLE OCCUPANTS OF A DISPLACEMENT DWELLING

If 2 or more occupants of a displacement dwelling move to separate replacement dwellings, each occupant are entitled to a reasonable prorated share, determined by ITD, of any relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if ITD determines that the occupants maintain separate households within the same dwelling, the occupants will have separate and independent eligibility for relocation benefits.

6.1.11 RECORD KEEPING

Complete and accurate records are essential to a successful relocation program. They are important in computing relocation payments, providing advisory services, issuing required notices and supporting audit reviews and claims for Federal reimbursement. Records should be developed concurrently to the activity being recorded. They should be maintained in a well-organized manner on a parcel basis.

ITD shall maintain adequate records of its displacement activities to demonstrate compliance with FHWA regulations. These records shall be retained for a minimum of three years after each person displaced from the property receives the final payment to which he or she was entitled.

As relocation records may contain personal and financial information, ITD's records will be kept confidential regarding their use as public information, unless applicable state or federal law would provide otherwise. Therefore, the Right-of-Way Agent will store relocation records and files in a locked facility when not in personal control of the Agent responsible for the case. Do not share information from files with any other person, including other ITD employees, except by authorization by management. Refer public or media requests for records to ITD's legal counsel.

The relocation records on federally assisted projects will be available for inspection by representatives of the Federal Highway Administration.

ITD shall submit a report of its displacement activities to FHWA no more frequently than every three years or as the Uniform Act otherwise indicates.

6.1.12 PAYMENT OF CLAIMS

The process for payment of claims for relocation benefits requires diligence and attention to detail. Each displacee may be eligible for 2 to 6 separate benefit amounts, and each may have different eligibility or qualification criteria. The claims may be processed at different times in the relocation process. Reimbursable costs must be confirmed as actual, reasonable and necessary. Claims must be paid and delivered in a timely manner to insure that displacees have the means to purchase or rent replacement housing and pay for moving costs.

ITD will endeavor to make expeditious payment to displacees. If additional documentation is required to support a claim, the displacee is advised promptly and advised specifically what is required.

6.2 RELOCATION PLANNING

6.2.1 GENERAL

The primary goal of ITD's relocation program is the timely and orderly relocation of persons who are displaced by a project. This requires obtaining detailed knowledge of the needs and intentions of displacees. It also requires securing information on available replacement housing and sites for displaced businesses. Relocation planning is a process of obtaining and evaluating information on displacee needs and the recourses required to meet those needs.

All projects involving displacements require relocation planning to be undertaken as a formal process in order to:

1. Insure that sufficient replacement housing will be available;
2. Identify displacees who have special needs (e.g., elderly, disabled, low-income individuals);
3. Determine the need for special relocation services (e.g., language interpretation, transportation to view potential replacement housing);

4. Determine the time required to complete relocation on the project; and
5. Determine relocation staffing

Many ITD projects involve 1 or a few displacements and do not require preparation of a formal relocation plan. However, the process of defining needs and resources discussed in this Section should meet the minimum criteria as determined by the Department for projects having a low scale of displacement.

Relocation planning is only effective if it is performed early in the project development process. This is necessary so that methods and strategies can be developed to alleviate any problems that are identified before displacement occurs. For instance, if last resort housing is needed, it will require additional time to plan and provide the housing. Similarly, large families or low-income households may require additional time to find housing or may need intensive relocation services from ITD.

6.2.2 CONCEPTUAL STAGE RELOCATION PLANNING

Relocation planning should begin as soon as displacees are identified on a project location. This is known as the conceptual stage. At this stage, there may be more than 1 alignment under consideration. Sufficient information is developed at this stage to provide a cost estimate for relocation and to identify the number and type of dwellings and businesses that will be affected.

The information and conclusions developed in conceptual stage planning will be used in the environmental impact statement or the environmental assessment if these documents are required. They will also be used in the public hearings and meetings conducted for the project.

Consider the following elements when developing a conceptual stage relocation plan:

1. An estimate of households to be displaced, including the family characteristics (e.g., minorities, approximate income levels, tenure, elderly, large families);
2. Any divisive or disruptive effect on the community (e.g., the separation of residences from community facilities, separation of neighborhoods);
3. Impact of the displacement on housing availability where relocation is likely to take place;
4. The number of businesses, nonprofit organizations and farms that would be acquired and the estimated number of employees affected;
5. An assessment of the effect the nonresidential displacements will have on the economy and stability of the community;
6. A list of businesses being displaced that will require advance coordination and planning so they can be contacted and advised of the studies being made by ITD and of the opportunities for their input through public hearings and meetings;
7. A description of available housing in the area that is appropriate to provide housing for the types of families to be displaced. Contact may be made with local real estate firms, listing services, newspapers, housing agencies, local community organizations, etc.;
8. A description of special relocation advisory services that may be necessary for identified unusual conditions (e.g., a concentration of elderly displacees);
9. A description of the actions that may be needed to remedy insufficient relocation housing, including, if necessary, housing of last resort;

10. Outcome of consultation with local officials, service agencies and community groups regarding the impact on the community affected; and
11. An estimate of relocation costs, separated as follows:
 - a. Cost of moving personal property for residential units, businesses, farm operations and nonprofit organizations;
 - b. Cost of replacement housing payments (RHPs) for displaced individuals and families, including typical mortgage interest differentials and closing costs incident to the purchase of replacement facilities;
 - c. Cost potentially incurred by businesses, farms and nonprofit organizations in searching for replacement facilities; and
 - d. Reestablishment costs for small businesses, farms and nonprofit organizations.

6.2.3 RELOCATION AT RIGHT-OF-WAY STAGE

The right-of-way stage begins when a location for the project is approved. At this point, the displacements on the project are identified. Relocation planning at this stage identifies the housing needs, desires and intentions of displaced persons, and develops priorities and strategies for meeting relocation needs. If the project has significant relocation, the Department will prepare a formal relocation plan before starting negotiations to acquire property on the project.

A Right-of-Way Agent will be assigned to conduct interviews with displaced households and business operators and examine the real estate market for properties of the type and cost (rent or purchase) that will meet displacement needs.

The relocation planning activity will be scoped to fit the anticipated complexity and nature of the displacement. Whether or not the relocation plan is a formal report, the assigned Right-of-Way Agent will conduct and document the following activities to the extent applicable:

1. Personally interview each household. Information secured will include household composition (e.g., gender, age, and family status), dwelling characteristics, gross family income, employment location, housing cost (e.g., rent, mortgage facts, utilities), desires and intentions for replacement housing, and concerns relating to age and/or disability.
2. Conduct a personal interview with the principal owner of each displaced business. At a minimum these interviews should include the following items:
 - a. The business's replacement site requirements, current lease terms, other contractual obligations, and the financial capacity of the business to accomplish the move.
 - b. Determine of the need for outside specialists who will be required to assist in planning the move, assist in the actual move and reinstall machinery and other personal property.
 - c. Identify and resolve any issues of personal property vs. realty prior to commencing the appraisal.
 - d. Estimate the time required for the business to vacate the site.

- e. Estimate the difficulty in locating a suitable replacement property and estimate the number of suitable business sites available.
 - f. Identify the need for any advance relocation payments required to support the move and determine the ITD's capacity to provide them.
3. Provide a copy of the ITD relocation brochure and discuss points in the brochure that are relevant to the circumstances of the household or business. This serves as the General Information Notice that is required to be provided to each potential displacee.
4. Prepare an inventory of the characteristics and needs of individuals and families to be displaced based on the standard of comparable replacement housing. Also, inventory the businesses, farm operations, nonprofit organizations and personal property to be displaced.
5. Develop an estimate of currently available comparable replacement housing. Include the type of buildings, number of rooms and adequacy of housing as related to the needs of the persons or families to be relocated. Address the type of neighborhood, proximity of public transportation and commercial shopping areas, and distance to any pertinent social institutions (e.g., church, community facilities). This estimate should be developed to the extent necessary to determine whether relocation resources are sufficient to meet displacement needs.
6. Prepare an analysis and correlation of replacement housing needs and resources.
7. Outline the special relocation problems and challenges, particularly relating to income, disability, age and house characteristics needed. Evaluate the possible need for last resort housing.
8. Identify Federal, State and community programs that are active in the project area and discuss contacts with organizations that may be beneficial to project displacees.
9. Identify economic activity or public or private projects in the area that may affect the supply and demand for housing or cause concurrent displacement. Evaluate the effects on project relocation.
10. Estimate the lead-time and staffing required to perform efficient delivery of relocation benefits and carry out a timely, orderly and humane relocation program.
11. Develop an updated relocation cost estimate.
12. Summarize the information above, providing conclusions and recommendations for consideration of ITD management.

6.3 RELOCATION ADVISORY SERVICES

6.3.1 PURPOSE

Relocation advisory services are the elements of direct personal assistance that are provided to displacees to assist them in locating comparable replacement housing or replacement sites for businesses. In addition, advisory services are the means to provide information to displacees on program benefits, and assist them in

completing claims and provide help in adjusting to relocation. This Section provides guidance in determining the scope and level of services to be provided and in planning and delivering these services to displacees.

The Department performs relocation assistance advisory service that insures that displaced persons will receive services relevant to their needs and are delivered without regard to race, color, religion, sex or national origin. The services are intended to assist each displacee to relocate to Decent, Safe and Sanitary (DS&S) housing that meet the displacee's specific needs. The services are provided by personal contact. If personal contact cannot be made, the assigned Agent will record the efforts made to make personal contact and offer services.

6.3.2 ELIGIBILITY FOR ADVISORY SERVICES

Relocation assistance advisory services will be offered to the following persons:

1. Displaced persons as defined in Section 6.1.5;
2. Any person occupying property that is adjacent to the real property acquired, when the Right-of-Way Agent determines that a substantial economic injury to that person will result from the acquisition;
3. Any person who, because of the acquisition of real property used for his or her business or farm operation, moved from other real property used for a dwelling or moves his personal property from such other real property; and
4. Any person who occupies property after acquisition by ITD on a short-term basis subject to termination when the property is needed for the project

6.3.3 ADVISORY SERVICE REQUIREMENTS

The Department's relocation assistance advisory services program includes the following measures, facilities and services that are provided consistent with each displacee's needs and circumstances as determined in the relocation planning phase:

1. Determine the relocation needs, preferences and intentions of each person to be displaced.
2. Explain the relocation eligibility requirements that pertain to benefits that are applicable to the class of displacement. Advise displacees that payments are not considered income for tax purposes.
3. Provide current and continuing information on the availability, purchase prices and rental costs of comparable replacement dwellings. Explain that no one can be required to move unless comparable replacement dwelling is available.
4. Inform the person of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of relocation payments. The basis for the

determination should be explained.

5. Provide reasonable opportunity to minority persons to relocate to DS&S replacement dwellings that are not located in areas of minority concentration and that are within their financial means. However, the Department will not provide a higher payment than is otherwise needed to enable a person to relocate to a comparable replacement dwelling.
6. Offer all displacees, especially the elderly and disabled, transportation to assist in finding replacement housing. Transportation options can include cab or bus fare, providing rides in a state owned or personally owned vehicle, or reimbursing a displacee friend or relative on a per mile basis. Reimbursement rates will be at the state mileage rate.
7. Provide current and continuing information on the availability, purchase prices and rental costs of suitable commercial properties and locations for businesses.
8. Assist any person who is displaced from a business or farm operation to obtain and become established in a suitable replacement location.
9. Minimize hardships to persons adjusting to relocation by providing counseling and advice as to other sources of assistance that may be available. Provide other help as may be appropriate.
10. Where feasible, inspect housing before referring it to the displacee to insure that it meets applicable standards.
11. Provide persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other similar programs administered by Federal, State and local agencies. Agencies that can be contacted include social welfare agencies, urban renewal agencies, redevelopment authorities, and public housing authorities, the Department of Housing and Urban Development, the Veterans Administration and the Small Business Administration.
12. Advise any individuals that may be eligible for government housing assistance at the replacement dwelling that such assistance could limit the size of the replacement dwelling. Also advise the displacee relative to the long term nature of a rent subsidy, vs. the limited 42 month duration of the relocation assistance rental payment.
13. Maintain contact with local information sources on private replacement properties, including real estate brokers, real estate boards, property managers, apartment owners and operators, and home building contractors.

Advisory services will be offered on a basis commensurate with the displacee's needs. This may require only minimum assistance when displacees are well informed and mentally, physically and financially able to manage their displacement, and neither need nor desire ITD's assistance. A much greater degree and

intensity of services and assistance will be provided to those who are elderly, infirm, immobile or otherwise unable to cope with their displacement or economic problems.

The Right-of-Way Agent must offer assistance to every displacee. The displacee may specifically state that there is no need for assistance, other than providing payment offers and processing claims. Even then, the Agent must make a subjective judgment as to the ability of the displacee to competently locate, acquire and occupy a DS&S replacement dwelling. If the Right-of-Way Agent does not feel that the displacee possesses the ability to relocate without help, the Agent should make efforts to furnish assistance or refer other service providers having specialized knowledge, skills and programs.

6.3.4 PUBLIC INFORMATION

To insure that the public has adequate knowledge of the relocation program, the Department will present information and provide an opportunity for discussion of relocation services and payments at public hearings and meetings, provide copies of the relocation brochure and give full and adequate public notice of the relocation assistance program.

In an area where a language other than English is predominant, public information will be published in the predominant language as well as in English, unless the Department determines this is not necessary and an alternative means (e.g., interpreters) is used for the displaced person who is unable to communicate effectively or comfortably in English.

ITD relocation brochure describes the Department's relocation program and the replacement housing policy contained in this Manual. The brochure will be distributed at all public hearings and separately to interested or affected individuals and organizations. The brochure states where information about State policies implementing the relocation assistance program can be obtained.

6.3.5 OCCUPANCY CRITERIA FOR BENEFITS

Relocation advisory services are intended to assist persons in relocating and must be offered to all displacees on the project. They may also be offered to all persons occupying property that is immediately adjacent to the real property acquired if the Department determines that the occupant suffers a substantial economic injury due to the acquisition. The Department's intent is to liberally apply this provision so that any person approximate to the project requesting assistance will be considered for this service on the merits of the person's need.

Questions on eligibility frequently arise during advisory service discussions. The following points summarize the basic criteria for benefits:

1. Move cost reimbursement is available to all displaced owners and tenants including those in occupancy less than 90 days prior to initiation of negotiations who thereby do not qualify for replacement housing benefits. The only exclusion would be persons who move into a property after the property is legally transferred to ITD.

2. A residential owner-occupant must have owned and occupied the displacement dwelling for not less than 90 days immediately prior to the initiation of negotiations to be eligible for a payment up to the maximum allowable amount.
3. RHPs for residential tenant-occupants will be available to tenants who were renting at least 90 days prior to the initiation of negotiations. On occasion, a payment could be made to a tenant with less than 90 days occupancy in order to avoid a financial hardship under the last resort provisions.
4. There is no RHP eligibility for those residential tenants who take occupancy subsequent to initiation of negotiations unless they are determined to qualify under the last resort provisions for reason of housing not being available within financial means.

6.4 RELOCATION NOTICES

ITD will provide written notices to displacees at critical points in the relocation process. The purpose of the notices is to fully inform each displacee of the significant actions being taken by ITD and of their eligibility for relocation payments and services. These notices provide the supporting information necessary to claim relocation benefits and enable displacees to plan their relocation.

The written notices described in this Section must be furnished to each displaced person.

6.4.1 NOTICE OF RELOCATION ELIGIBILITY

All persons who the Department determines will be displaced are promptly notified of their eligibility for applicable relocation benefits. Eligibility begins on the date of the initiation of acquisition for the occupied property. The following information is furnished at the initiation of acquisition if it has not been furnished previously:

- Relocation Brochure
The Relocation Brochure is provided to all affected people at the earliest time it is known that relocation may be required. It advises the recipient of the possibility of displacement for a project and summarizes the benefits available from ITD to assist in relocation. The Right-of-Way Agent will explain particularly relevant sections at the time it is presented and invite the displacee to ask questions about the relocation process, project effects, and project schedule.
- An explanation of the relocation services that are available and where they may be obtained

General information about relocation is also provided at public hearings and meetings for the project. General availability of the brochure at the public meetings will not substitute for personal delivery and discussion with each individual household.

6.4.2 NOTICE OF INTENT TO ACQUIRE

The purpose of a Notice of Intent to Acquire letter is to establish eligibility for relocation assistance before initiation of negotiations for the parcel. This occurs when the Department decides to advance the date of

eligibility in order to relieve a hardship circumstance. The hardship may arise from a change in employment requiring a move, illness or infirmity making it difficult to continue to live in the property, or financial hardship from inability to continue to pay ownership or tenant housing costs.

The Notice of Intent to Acquire is a written communication in the form of a letter notifying the person to be displaced of ITD's intent to acquire the property. Provide a copy of the relocation brochure with the letter. When a Notice of Intent to Acquire is provided to an owner, also provide a Notice within 15 business days to all tenants on the property. When a Notice of Intent is provided to a tenant, provide a copy of the Notice to the owner at the same time.

The Notice will contain the statement of eligibility and any restrictions thereto, the anticipated date of the initiation of negotiations for acquisition of the property, and contact references to obtain additional information about relocation payments and services.

Advanced acquisitions and corridor preservation acquisitions tenants will not be eligible for relocation assistance until the project for which the property was acquired is approved for actual construction. At that time, the tenant if still in legal occupancy will receive a notice of eligibility.

6.4.3 STATEMENT OF REPLACEMENT HOUSING OR RENT SUPPLEMENT AMOUNTS

Displacees will be notified of the specific maximum amount of replacement housing and moving benefits at the time of initiation of negotiations, or at a time thereafter that they are actively looking for replacement housing. The notification should identify the available comparable property that was the basis for the maximum purchase price supplement determination. Other comparable properties should also be provided. Right-of-Way Agents will inform each displacee of the amount of the maximum eligible purchase price supplement or maximum rent supplement.

The Statement for tenant-occupants will include a maximum amount of Rent Supplement, monthly rent and utility cost for the comparable on which the Rent Supplement determination is based, and a list of other comparable properties used in the analysis.

Confirm the housing units used to determine the replacement housing amount are available before the listings are used in the replacement housing determination.

Owners typically want to know their total acquisition and relocation amounts early in the process. The total settlement package includes a combination of the fair market value and RHP amounts. Every effort should be made to present the statement of eligibility with the initiation of negotiations.

6.4.4 NOTICE TO VACATE

Residential and business displacees are entitled by law to at least 90-days advance notice of the earliest date they will be required to move. No person lawfully occupying real property at the time of acquisition shall be required to move from a dwelling, or to move a business or farm operation without at least 90 days written notice from the acquiring agency. The Notice to Vacate is delivered on or after ITD has informed the residential displacee of a specific comparable replacement dwelling that is available for occupancy that is

within his or her financial means. Normally the 90-day notice is provided with the Notice of Eligibility.

ITD uses a 2-phase notification process. The 90-Day Notice may be delivered any time after the above qualifying criteria are met. It should be further coordinated with the project schedule. The ITD 90-Day Notice provides that the recipient will be required to move no earlier than 90 days from the date of its delivery. The 90-Day Notice further advises that the displacee will receive a subsequent 30-Day Notice to Vacate letter that will provide a firm date by which the property must be vacated. The 30-Day Notice will not be given until ITD has legal control of the property.

The two phase 90/30-Day Notice provides the most effective consideration of displacees' need for information about required move date and offers flexibility to the Department in managing delivery of right-of-way for project construction.

The 90/30-Day Notices are applicable to displaced occupants of businesses, farms and nonprofit organizations as well as displaced residential occupants. Notices are also applicable to owners who are not displaced, but are required to move personal property that is within a partial taking. However, ITD is not obligated to offer replacement site locations to nonresidential displacees. Best efforts in providing relocation advisory services to nonresidential displacees are required.

6.5 RESIDENTIAL MOVING COSTS

6.5.1 PURPOSE

Residential displacees are entitled to reimbursement for reasonable, actual and necessary costs to move household property from the displacement to a replacement dwelling. There are several cost elements and reimbursement options available. Also, there are certain requirements to document and support claims. This Section discusses important aspects of residential moving costs.

6.5.2 BASIC ELIGIBILITY CONDITIONS

Any owner or tenant occupying a residential unit who qualifies as a displaced person as described in Section 6.1.5 is eligible to receive payment for moving personal property from the displacement site. The length of occupancy at the acquired property does not determine eligibility for moving expense payment. All displaced people qualify for residential moving cost reimbursement.

The displacee has the choice of being paid based on the actual reasonable moving expenses of the move or a fixed payment that is based on the ITD room count schedule.

The following general rules apply to all residential move reimbursement claims:

1. **Single Move**
The displaced person is entitled to one move except in the rare instance where ITD determines a subsequent move is necessary in the public interest. An example is a voluntary move to temporary housing to accommodate project construction schedule with a subsequent move to permanent replacement housing. The displacee must voluntarily agree to such a situation unless permanent comparable housing had previously been offered and refused.

2. **Reimbursement Limited to 50 Miles**
There is no limitation on the distance a displaced person moves and can be interstate or intrastate. The actual cost move claim maximum is limited to the amount that will be charged for a move up to 50 miles. ITD may extend this limit on determining that the move could not be accomplished within the 50-mile distance. This type of exception may only be allowed to the nearest available comparable property.
3. **Time Limit for Filing Claim**
A displacee must file a written claim with ITD on the ITD form to receive payment. The claim must be filed within eighteen months after either of the following dates, whichever is later:
 - a. The date the displacee moves from real property or moves their personal property from real property.
 - b. The date of acquisition is complete and payment for the acquisition is made to the owner or deposited in court.
4. **Claim Payment**
Moving expense payments will be made only after the move is complete unless ITD determines that this will create a hardship. Arrangements can be made for advance payments or installment payments in hardship cases. Generally all moving expense payments are made directly to the displacee, however, the displacee, the mover, and ITD can arrange in advance for ITD to make a direct payment or assignment of claim to the mover. An invoice from the moving company must be filed with ITD within 3 days after the move has been completed regardless of when the payment is made.
5. **Multiple Occupancy**
Each occupant is entitled to a reasonable prorated share of any payment that would have been made if the occupants moved together when two or more occupants of a displacement dwelling move to separate replacement dwellings. The occupants may claim separate moving payments if they have maintained separate households within the same dwelling. The Right-of-Way Agent will make the determination called for in this provision based on indicators such as income capable of supporting separate households, eating meals separately, splitting household and rent expenses, occupancy of all space in common, etc. This determination is subject to review and approval by the Right-of-Way Manager.
6. **Owner Retention**
The cost of moving the dwelling onto remainder or replacement land is not eligible for reimbursement as a part of the cost of moving personal property when an owner retains the dwelling for removal from the ITD acquired site. The cost of moving personal property may be considered eligible for reimbursement if the displacee chooses to use the dwelling as a means of moving personal property. Payment in these cases will be on a fixed schedule basis.

6.5.3 ELIGIBLE MOVING COSTS

A displaced individual or family meeting the basic eligibility conditions above may be entitled to receive a

payment for moving personal property. This includes the following costs:

1. Reasonable cost associated with the preparation of moving bids;
2. Transportation costs not to exceed a distance up to 50 miles;
3. Packing, crating, unpacking and uncrating of personal property, including materials and labor costs;
4. Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;
5. Reconnection of utilities, including phone, cable and electric service;
6. Storage of personal property for a period not to exceed 12 months, unless ITD determines that a longer period is necessary;
7. Insurance for the replacement value of the personal property in connection with the move and necessary storage;
8. Replacement value of property lost, stolen or damaged in the process of moving, unless by fault or negligence of the displaced person, agent or employee. This is only applicable where insurance covering the loss is not reasonably available;
9. Transportation of the displaced person including any special services (e.g., an ambulance to transport disabled persons to replacement dwelling); for a distance not to exceed 50 miles unless ITD determines that relocation beyond 50 miles is justified.
10. Other moving-related expenses that are not listed above as ITD determines to be reasonable and necessary. The Right-of-Way Agent will consult with the Right-of-Way Manager before approving other moving costs for reimbursement.

6.5.4 INELIGIBLE MOVING COSTS

The following costs are not eligible for reimbursement:

1. Cost to move any structure or other real property including swimming pools, landscaping, and outbuildings that were identified in the appraisal as part of the real estate.
2. Interest on a loan to cover moving expenses.
3. Search costs for a replacement dwelling.
4. Legal fees or other professional costs associated with reviewing the claim for a relocation payment or for representing the displaced person in a relocation appeal.
5. Personal injury experienced during the move.
6. Cost of storing personal property on real property that is already owned or leased by the displacee.
7. Refundable Security and Utility Deposits

6.5.5 RESIDENTIAL MOVING EXPENSES

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods. Self-moves based on the lower of two commercial mover bids or estimates are not eligible for reimbursement under this section. The following will apply to an actual cost move:

1. **Move Performed by Commercial Mover**
The Displacee will obtain proposals, bids, or estimates from two reputable moving companies if a displaced individual or family desires to have a move performed by a commercial mover. ITD will pay the cost of obtaining bids or estimates if necessary. The agent will ensure that all

proposals received are on the same basis. This means the proposals are based on equivalent move specifications and the same personal property inventory. The maximum ITD reimbursement amount will be the lowest responsible bid or estimate.

The displaced person has the right to engage the services of any moving company. ITD will pay the amount of receipted bills not to exceed the amount of the approved low bid or estimate. Exception may be approved for unanticipated work or conditions during the move that differ from the assumptions in the estimates.

ITD will make a separate payment for costs that are not included in a mover's claim such as reconnection of utilities.

ITD may pre-select two or more qualified commercial moving firms to submit proposals for residential moves if there are multiple residential relocations on the project.

2. Self-Move
Moves may be performed by the displaced person in one or a combination of the following methods:
3. Fixed Residential Moving Cost Schedule.
4. Actual Cost Move – Supported by receipted bills for labor, materials, 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. The displacee may rent equipment and purchase moving materials such as boxes, pads, etc. Move helpers may be hired to perform the move. ITD will only reimburse actual costs incurred based on receipted bills. This type of move will not be administered on the basis of the lower of two bids or estimates. All actual costs incurred must be reasonable, necessary, and sufficiently documented by receipts invoices or cancelled checks etc.

6.5.6 FIXED MOVING COST

A displaced individual or family may elect moving cost reimbursement based on the ITD moving cost schedule as an alternative to or in combination with an actual cost move described above. The schedule amount reflects the number of furnished rooms in the dwelling unit plus basements, attics, and garages. ITD's schedule is revised from time to time to reflect current actual costs within the State.

The Right-of-Way Agent should advise the displacee of the amount of the fixed schedule payment at the initial relocation visit. The displacee should also be advised of the number of rooms in the displacement dwelling. This will enable the displacee to make an informed decision as to the reimbursement option.

If the displacee elects to accept the fixed cost reimbursement based on schedule, there is no additional payment for items such as utility reconnection because these costs are included in the move cost schedule.

The displacee does not have to account for how the fixed payment schedule amount is spent. If the actual cost

of move is less than the schedule amount, the displacee may retain the difference. However, there will be no additional reimbursement if the actual move cost exceeds the schedule amount.

Personal property in mobile homes may be moved together with the mobile home as a unit. Payment may be made on the basis of the room count schedule for these moves.

6.5.7 MOVES FROM A MOBILE HOME

Individuals and families who are displaced from a mobile home used as a dwelling are entitled to be reimbursed for the same eligible moving costs as listed in the Eligible Moving Costs Section outlined above for other residential moves. A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the same methods used by other residential moves, that is a commercial move or a self-move that can be one or a combination of an actual cost move or a fixed residential moving cost payment based on ITD's moving cost schedule. Self-moves based on the lower of two commercial mover bids or estimates are not eligible for reimbursement under this section. Required documentation is the same as for other residential moves.

If an owner-occupied mobile home is moved as personal property and used as the replacement dwelling, then the displacee is also eligible for the following expenses:

1. The reasonable cost of disassembling, moving and reassembling any appurtenances attached to the mobile home, such as porches, decks, skirting, and awnings which were not acquired, anchoring of the unit and utility "hookup" charges.
2. The reasonable cost of repairs and /or modifications so that the 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 if the ITD determines that the payment of the fee is necessary to effect relocation.

6.5.8 MOVES OF PERSONAL PROPERTY (DWELLING NOT DISPLACED)

Moving expenses are reimbursable for eligible people who are required to move personal property from real property but are not required to move from a dwelling, including a mobile home.

The acquiring Agency may obtain estimates from qualified movers to use as the standard in determining the payment if a question arises concerning the reasonableness of an actual cost move.

6.6 NON-RESIDENTIAL MOVING COSTS

6.6.1 GENERAL

Any business, farm operation or nonprofit organization which qualifies as a displaced person may be entitled to receive payment for the following categories of actual moving expenses and related costs associated with moving that ITD determines to be reasonable and necessary:

1. Moving costs for relocating all personal property including machinery and equipment including

disconnect/reconnect costs;

2. Related nonresidential business expenses for:
 - a. connection from available nearby utilities from the right-of-way to replacement improvements;
 - b. professional services to determine replacement site suitability for the business operation prior to purchase or lease;
 - c. impact fees or one time assessments for heavy utility usage, as determined necessary by ITD.
3. Search costs for a replacement location not to exceed \$2,500; and
4. Reestablishment expenses not to exceed \$25,000 for federally funded projects and \$20,000 for State funded projects.

The reimbursable actual moving expenses for a contract move, self-move, or combination thereof and the fixed payment in lieu of moving expenses are explained in detail in the following Sections.

6.6.2 CRITERIA – ACTUAL, REASONABLE, NECESSARY

Nonresidential moves are reimbursed on the basis of costs incurred in moving. The basic criteria that apply to moving costs are that they be actual, reasonable and necessary. Actual moving and related expenses are factual and documented. ITD determines if costs are reasonable and necessary. These are defined as follows:

1. Actual. True incurred costs as opposed to estimated or potential costs. The actual cost of a move is indicated by a receipt, invoice or canceled check.
2. Reasonable. Not extreme or excessive, not conflicting with reason. This is a judgment determination in response to the question “Would most people agree that something is reasonable given all the facts?”
3. Necessary. Logically unavoidable costs. Are the costs obligatory? Could the move have been conducted in a way that the cost factors would not have been incurred?

The 3-part test and, in particular, the elements of reasonableness and necessity, can be difficult to implement in certain cases. However, they are basic program criteria and Right-of-Way Agents are obligated to apply them to business relocation claims. It is important to apply them consistently and fairly. One way to achieve this is to discuss borderline situations with the Right-of-Way Manager.

6.6.3 ELIGIBLE MOVING COSTS

The following items are eligible for reimbursement as moving costs if actually incurred during the moving process, and if ITD determines they are reasonable and necessary:

1. Transportation costs for moving personal property. The transportation charges will normally be reimbursed for up to the first 50 miles of travel. When the move exceeds 50 miles, all estimates will be prepared and claims paid based on a move of 50 miles. Similarly, the mover’s bill must be detailed to show transportation costs for the first 50 miles as well as the cost for

the remainder of the distance. When ITD determines that the business cannot be relocated within a 50-mile limit, reimbursement will be allowed to the nearest adequate and available site.

2. Packing, crating, unpacking and uncrating the personal property.
3. Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property. This includes connections to utilities available within the building. It also includes modification of the personal property necessary to adapt it to the replacement structure including those mandated by governmental law, code or ordinance, the replacement site or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing utilities from the right-of-way to the building or improvement are excluded as a move cost but may be eligible as a related nonresidential expense.
4. Storage costs, including moving property in and out of storage. Storage cost reimbursement is limited to 12 months unless ITD determines that a longer period is necessary. Costs for storage of personal property on a site owned, leased or controlled by the displaced person are not eligible for reimbursement.
5. Insurance for replacement value due to the loss, theft or damage to the personal property in connection with the move and necessary storage. Where insurance is not reasonably available, the replacement value of property lost, stolen or damaged in the process of moving shall be paid unless the loss results from fault or negligence of the displaced person or his or her agent or employee.
6. Cost of any license, permit or certification required at the replacement location. The payment will be based on the remaining useful life of the existing permit, license or certification.
7. Professional services, which ITD determines to be actual, reasonable and necessary, for planning the move and moving and installing personal property at the replacement location. This can include the time of the displacee or employees provided the claim is supported by time logs and ITD monitoring.
8. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation that is not relocated from the displacement site.
9. Purchase of substitute personal property to replace an item of property that is used as part of a business or farm operation that is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site.
10. Cost of re-lettering signs that are made obsolete as a result of the move.
11. Replacement cost of stationery, advertising and promotional items on hand at the time of the move that are made obsolete by the relocation.
12. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

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 ITD, 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 ITD.
14. Other moving-related expenses that are not listed as ineligible in the following section (Ineligible Moving Expenses), as ITD determines to be reasonable and necessary.

6.6.4 INELIGIBLE MOVING EXPENSES

The following items are not eligible for reimbursement as moving costs:

1. Any additional expense incurred because of operating at a new location except as provided as a business reestablishment expense;
2. Cost of moving structures, improvements or other items of realty retained by the owner;
3. Interest on loans to cover moving expenses;
4. Loss of goodwill;
5. Loss of trained or skilled employees;
6. Loss of business or profits;
7. Personal injury;
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before ITD;
9. Physical changes to the real property at the replacement location of a business, farm operation or nonprofit organization, except eligible actual moving expenses and eligible reestablishment expenses;
10. Costs for storage of personal property on real property already owned or leased by the displaced person; and
11. Refundable utility and security deposits.

6.6.5 SEARCH EXPENSES

A displaced business, farm operation or nonprofit organization is entitled to reimbursement for actual expenses and time spent in searching for a replacement location, as ITD determines to be reasonable. This payment may not exceed \$2,500.

Documentation for a search expense claim will include expense receipts and logs of times, dates and locations related to the search and any receipts or paid invoices for services or travel.

6.6.6 SUBSTITUTE PERSONAL PROPERTY AND DIRECT LOSS OF PERSONAL PROPERTY

A business, farm, or nonprofit organization may suffer an economic loss if the owner elects not to relocate an item of property to the replacement site. This may occur if the item is at the end of its useful life, obsolete, or

installed so that it cannot be moved economically. It may be reasonable not to move the item in any of these circumstances but to abandon it or sell it as salvage and replace it with a newly purchased item at the replacement site. The business may decide not to replace the item if it is not critical to continued business operations after relocation.

ITD will pay the displaced the lesser of the cost of replacing property that was not moved including substitute personal property or for loss due to salvage sale or abandonment of the item (direct loss of personal property) and the estimated cost of relocating the items not moved including detach and reinstall expenses depending on the situation at the displacement site.

6.6.7 RELATED NONRESIDENTIAL ELIGIBLE EXPENSES

The following expenses in addition to those provided for moving personal property of a displaced business or farm operation are reimbursable if ITD determines that they are actual, reasonable and necessary:

1. Connection of available nearby utilities from the right-of-way to improvements on the replacement site.
2. 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, marketing and feasibility studies (excluding any fees or commissions directly related to the purchase or lease of such site). At ITD's discretion a reasonable pre-approved hourly rate may be established. If a question arises as to what is a "reasonable hourly rate", ITD should compare the rates of other similar professional providers in the area.
3. Impact fees or one time assessments for anticipated heavy utility usage as determined necessary by ITD.

6.6.8 REESTABLISHMENT EXPENSES

A small business, farm, or nonprofit organization may be eligible to receive a payment for expenses that are actually incurred in reestablishing operations at a replacement site. Under Federal law the reestablishment payment may not exceed \$25,000. The new limits, for relocation purposes, are assumed to be effective as of the date of displacement providing that the date of displacement was on or after May 5, 2008. This benefit is in addition to reimbursement for moving expenses.

6.6.9 MOVES OF PERSONAL PROPERTY ONLY (BUSINESS NOT DISPLACED)

A person who is required to move personal property from real property, but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization may be eligible for relocation cost reimbursement. Examples of personal property only moves might be: personal property that is located on the portion of property that is being acquired from a partial acquisition but the business or residence will not be acquired and can still operate after the acquisition such as a sign or yard light; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired.

Additional examples of personal property only moves might be:

1. Personal property that is located on a portion of property that is being acquired but the business will not be taken and can still operate after the acquisition
2. Personal property that is located in a mini-storage facility that will be acquired or relocated
3. Personal property that is stored on vacant land that is to be acquired.

To be eligible for a move payment, the personal property must be within the area acquired. No moving cost can be paid for personal property that is an encroachment partially or entirely within the limits of the existing right-of-way.

For a non-residential personal property only move, the owner of the personal property has the option of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, ITD may obtain estimates from qualified movers to use as the standard in determining the payment.

The owner of the personal property for a nonresidential personal property only move has the options of moving the personal property by using a commercial mover or a self-move. ITD may obtain estimates from qualified movers to use as the standard in determining the payment if a question arises concerning the reasonableness of an actual cost move.

6.6.10 FIXED PAYMENT IN LIEU OF MOVING EXPENSES

A displaced business (including a farm operation or non-profit organization) may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, search expenses and actual reasonable reestablishment expenses. Except for payment to a non-profit organization it is a lump-sum payment equal to the average annual net earnings before taxes of the displaced business or farm operation, but not less than \$1,000 nor more than \$40,000 maximum.

The fixed payment is an alternative to all other relocation payments for which the displacee would otherwise be eligible. The recipient of a fixed payment is not eligible for actual moving costs and non-residential related expense, search expense or reestablishment expense reimbursements.

6.7 REPLACEMENT HOUSING PAYMENTS (RHP) FOR RESIDENTIAL OWNER-OCCUPANTS

6.7.1 GENERAL

Displaced homeowners of more than six months tenure are assured under the relocation program that they will have the opportunity and the means to purchase a comparable replacement home. The relocation program provides an additional payment to enable the purchase of a replacement without incurring additional mortgage debt or use of personal funds if the funds received as compensation for the acquired home are not sufficient. The relocation program provides for payment of incidental expenses on a replacement home and compensates for the loss of favorable mortgage financing. This Section describes the process of determining the payments associated with purchase of replacement housing.

6.7.2 OWNER OCCUPANTS OF 90 DAYS

Residential displacees who have owned the displacement dwelling that they occupy for at least 90 days before the initiation of negotiations are eligible for consideration for the following replacement housing financial benefits:

1. A payment to compensate for the additional cost, if any, after acquisition of purchasing a comparable replacement dwelling (purchase supplement (PS))
2. Compensation for the additional cost, if any, of a higher interest rate mortgage on a replacement dwelling, called the Mortgage Interest Differential Payment (MIDP).
3. Incidental or closing costs associated with the purchase of a replacement dwelling.

The combined payments above comprise the Replacement Housing Payment (RHP). The maximum amount of the RHP, represented by the sum of the above three items, may not exceed \$31,000 unless the provisions of Last Resort Housing (see Section on Last Resort Housing below) apply to the relocation case.

Refer to Section 6.7.22 on “Owner-Occupant of 90 Days or More Who Rents Replacement Housing” for detailed guidance if an eligible owner decides to rent.

6.7.3 ELIGIBLE CRITERIA –90-DAY OWNERS

A 90-day owner as defined above is eligible for a computed RHP when the displacee purchases and occupies a Decent, Safe, and Sanitary (DSS) replacement housing.

The displacee purchases the replacement dwelling when:

1. An existing DSS dwelling is acquired. The dwelling may be a conventional house, a condominium or co-op unit, a life estate in a dwelling, or a mobile home.
2. A life estate in a retirement home is purchased. The actual cost will be an entrance fee plus any other monetary commitments to the home. This does not include periodic service charges. The RHP is limited to the reasonable cost of purchasing a comparable replacement dwelling less the acquisition cost of the acquired dwelling.
3. A dwelling previously owned or acquired is relocated, rehabilitated, or both. The basis for determining the Purchase Supplement will be the current value of the dwelling at the time of relocation.
4. Construction is completed or contracts have been executed for the construction of a new dwelling on a site that is owned or acquired. The actual cost provision limits the reimbursable construction cost to only those costs necessary to construct a dwelling that is comparable to the one acquired. The costs of adding new features that clearly exceed comparable features in the displacement dwelling are not eligible for reimbursement. Eligible costs of the site will be limited to the current residential fair market value of the replacement site rather than what the displaced person actually paid for it.

A displacee who owns the replacement dwelling previous to ITD’s acquisition of the displacement dwelling is eligible for a RHP if the replacement dwelling meets DSS standards. The current fair market value of land and

dwelling will constitute the “actual cost” in the replacement housing determination.

The displacee occupies the replacement dwelling as of the date the displacee takes title to the dwelling intending it to be a permanent place of residence.

The displacee, as a condition of eligibility for RHP, must purchase and occupy a DSS dwelling within a one-year period from the later of:

1. The date on which the owner received final payment for all costs of the acquired dwelling.
2. The date on which the displacee moves from the displacement dwelling.

6.7.4 DECENT, SAFE, AND SANITARY STANDARDS

The displacee is not required to purchase and occupy comparable housing. To qualify for a RHP, the displaced homeowner-occupant must purchase and occupy a dwelling meeting DS&S standards as defined in Section 9.1.6.

ITD will inspect the replacement dwelling before purchase by the displacee and verify that it meets DS&S criteria. The Right-of-Way Agent will advise the displacee to promptly notify ITD when a contract to purchase is signed. The agent will also advise the displacee to write the following condition or words of the same effect in any contract:

“This contract is conditioned on inspection of the property by ITD representative by (date 10 days forward) and certification that it meets ITD Decent, Safe, and Sanitary standards.”

A qualified ITD employee, a local code inspector or a private contractor hired by ITD, may perform the inspection and certification. If it is not practical to perform the inspection because the displacee has moved out of State, a request may be made to the DOT in that State to perform the inspection as a reciprocal service courtesy. If an inspection is not practical, a self-certification from the displacee that DS&S housing is occupied may be accepted.

The DS&S inspection is exclusively for the purpose of qualifying for payment of a relocation claim. It does not certify for any other purpose, and ITD does not guarantee the condition or performance of the dwelling or its systems. The displacee should be encouraged to obtain a home inspection of the property and include that as a contingency in the purchase contract. The cost of this inspection is reimbursable to the displacee as an incidental expense.

DS&S deficiencies must be corrected before a RHP claim is paid. However, a RHP may be made, provided that there is a holdback from the total purchase price supplement pending correction of the deficiencies and an ITD final inspection. The cost to the displacee of correcting a deficiency may be added to the cost of the replacement dwelling for the purpose of determining the claim amount, but may not be reimbursed at a rate exceeding the maximum eligible purchase price supplement based on an existing DS&S listing.

When available comparable replacement properties are limited a RHP can be computed based upon an available property having minor DS&S deficiencies, provided the deficiencies can be corrected for a

reasonable amount. Use of non-DS&S properties with minor deficiencies should be limited to situations where a windfall or excessive expenditure can be avoided and/or where housing of last resort is needed to relocate the displaced homeowner-occupant to comparable housing. The payment computation must reflect the cost to correct the deficiencies. If the housing is used to meet the “make available” requirement, the housing must be available and be DS&S at the time of the move.

6.7.5 PERSONS NOT LAWFULLY PRESENT IN THE UNITED STATES (49 CFR 24.208)

The Uniform Act provides that persons who are not legally present in the United States are not eligible for relocation payments and assistance. To implement this provision, ITD may require that each person or head of household applying for payment or assistance certify that the individual or, in case of a family, each family member, is either a citizen or a national of the United States, or an alien who is legally present in the United States. No payment will be made to a person or household that does not so certify. The certification may be included as part of the claim for relocation payments when filed with ITD.

Payment may be made to household members who are legally in the United States but who reside with non-legal residents. The payment amounts will be computed for the household based on the number of eligible household members.

ITD may exempt people from denial of benefits if it determines that the denial will result in an exceptional or extreme and unusual hardship to the illegal alien’s spouse, child, or parent who is legally in the United States.

The agent will present all relevant facts and circumstances to the attention of the Right-of-Way Manager at the earliest time that a Right-of-Way Agent becomes aware that a relocation case may involve people who are not legally in the United States. The Right-of-Way Manager will direct all further actions in the case.

The purpose of the eligibility restriction is the administration of the relocation program not enforcement of immigration law. ITD representatives will not research alien status beyond the certification called for in this Section. Personal information secured by ITD representatives during the relocation process should not be disclosed to any outside party unless as provided by law or ordered by a court and authorized by ITD management.

6.7.6 PAYMENTS – “SPEND TO GET” REQUIREMENT

Replacement Housing Payments are reimbursement for actual costs incurred in the purchase of replacement housing. The displacee must “spend to get” the amount determined as the maximum eligible Purchase Supplement. The purchase price of the DS&S replacement dwelling must equal or exceed the amount ITD determined as the estimated cost of comparable dwelling, or the claim will be reduced to the amount actually paid. In addition, the full amount of the payment must be applied to the cost of housing. This may be ensured by the RHP check being made available for disbursement at closing on the replacement dwelling, or payment of the amount into an escrow account.

6.7.7 DETERMINATION OF PRICE DIFFERENTIAL

Price differential or Supplemental Housing Payment is the difference between the purchase price of the acquired dwelling and the lesser of:

1. The reasonable cost that is necessary to purchase a comparable replacement dwelling as determined by ITD, or
2. The purchase price actually paid to purchase and occupy a DS&S replacement dwelling by the displaced homeowner-occupant.

The probable selling price of a comparable dwelling is determined by analyzing at least one and preferably three properties that are available on the open market for sale and that meet the criteria of a comparable replacement dwelling.

Encourage the displaced person to consult with a real estate agent who will represent them in the search for a replacement home of their choice and to assist with the actual negotiations for the purchase of the replacement home selected. The relocation agent should consult with the displaced person throughout the process as needed leaving the actual negotiations for the purchase to the displacee and the displacee's real estate agent.

If available, at least 3 comparable replacement dwellings that are available on the open market will be examined and the purchase price supplement computed on the basis of the available dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. . The selection of the most representative comparable replacement dwelling will be made by careful consideration of all factors in the dwellings being considered and the needs of the displacee with reference to the elements in the definition of comparable replacement housing. To the extent feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher. Less than 3 comparables may be used for this determination when fewer comparable dwellings are available. The Right-of-Way Agent performing the determination must provide a full explanation supporting the determination, including a discussion of efforts to locate more than 1 comparable.

6.7.8 MAJOR EXTERIOR ATTRIBUTES – METHOD

The dwelling selected in computing the Purchase Supplement may be comparable except it lacks major exterior attributes present at the displacement property such as a garage, outbuilding, or swimming pool. The appraised value of these items will be deducted from the acquisition cost of the acquired dwelling for purposes of computing the Purchase Supplement. It is not appropriate to add the value of the exterior attribute to the comparable.

The cost of actually building an exterior attribute at the replacement property occupied may be added to the acquisition cost provided that the attribute built has the same function as the one at the displacement property.

6.7.9 HIGHEST AND BEST USE OTHER THAN RESIDENTIAL

When the acquired dwelling is located on a site where the fair market value is established on a highest and best use generating a greater value than residential, the Purchase Supplement maximum amount will be determined by deducting the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land that represents a tract typical in size for the area from the probable selling price of the most comparable listing.

6.7.10 MIXED-USE PROPERTY

When the acquired dwelling is a unit in a structure that also includes space used for nonresidential purposes, the amount of the Purchase Supplement offer will be determined by using only that portion of the fair market value that is attributable to the residential use of the acquired property.

When the replacement property is a structure that includes space used for nonresidential purposes, only that part of the total cost that relates to the value of the owner's living unit will be used to determine the Purchase Supplement.

When the replacement property contains buildings other than the residence that are used for nonresidential purposes, the value of these buildings must be carved out of the entire purchase price of the replacement property in order to determine the residential use value. The residential use value will represent the amount paid for replacement housing when determining the Purchase Supplement payment amount. See Figure 9-4.

A family displaced from a single-family house with an acquisition value of \$90,000 and a Purchase Supplement of \$15,000 contracts to purchase an operating chicken farm for \$250,000. They will live in the farmhouse, which has an estimated value separate from the farm of \$100,000. The displaced family submits a claim for the full \$15,000 maximum Purchase Supplement amount.

The family is eligible to receive \$10,000, not \$15,000, as a Purchase Supplement payment. Before processing the claim for payment, the Relocation Agent must determine the value of the farmhouse on a normal lot for residential use in the area. This will determine the payment ceiling. The part of the purchase price attributable to the farm operation (\$150,000) will not be considered in the claim. This should be explained to the displaced family before they search for replacement property.

FIGURE 9.4 – Mixed Use Property (Example 2) Displacee Purchases Mixed Use Replacement Property

6.7.11 PARTIAL TAKE OF A TYPICAL RESIDENTIAL SITE

The following rules apply to partial takes of typical residential sites:

1. **Remaining Buildable Site**
ITD may offer to purchase the entire property if the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder

is a buildable residential site. The fair market value of the remainder will be added to the acquisition cost of the acquired property for the purposes of computing the maximum Purchase Supplement payment if the owner refuses to sell the buildable site to ITD. The adjusted amount will become the base value for relocation purposes.

2. Remaining Uneconomic Remnant

The value of the take and damages to the remainder will be used in computing the Purchase Supplement if the owner declines to sell the residue that is an uneconomic remnant to ITD. An uneconomic remnant is a remaining part after ITD acquisition that has little or no value to the owner. The determination of uneconomic remnant is an appraisal decision.

Example of a Partial Acquisition with an Uneconomic Remnant

Example: The site is a 1.5 acre parcel with a homeowner-occupied single family dwelling. After the partial acquisition the, the remainder is an uneconomic remnant. The value before the acquisition is \$190,000. The value of the remainder after the acquisition is \$5,000. Hence, the value of the part acquired and damages if any is \$185,000. A comparable dwelling has been found with a listing price of \$210,000.

Owner Wishes to Sell

Cost of Comparable	\$210,000
Less: Payment for Acquired Property	\$185,000
Less: Value of Uneconomic Remnant	<u>\$ 5,000</u>
Equals: Price Differential	\$ 20,000

3. Larger Tract than Normal

The maximum Purchase Supplement is the asking price of a comparable replacement dwelling on a tract that is typical in size for residential use, less the acquisition price of the acquired dwelling, and the portion of the site that represents a typical size residential lot in the area if the acquired property is a dwelling on a significantly larger site than is typical for residential use in the area.

Example of Partial Acquisition from Larger than Typical Residential Site

The displacement dwelling is on a 4-acre site. One-acre lots are typical in the area. The house and 3 acres are being acquired. The appraised value is \$125,000 (no remainder damage). The Appraiser valued the land at \$6,000/acre. A comparable house on 1 acre is available and listed for sale for \$125,000.

Comparable property	\$ 125,000
Value of Acquisition	\$125,000
Less Value of 2 acres in excess of typical residential site (\$6,000/acre)	<u>\$ 12,000</u>
LESS: Displacement property	<u>\$ 113,000</u>
Maximum Purchase Supplement.....	\$ 12,000

6.7.12 PAYMENT TO OCCUPANT WITH PARTIAL OWNERSHIP

When a displacement dwelling is owned by several persons and occupied by only 1 of the co-owners, the RHP will be the lesser of:

1. The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement, or
2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by ITD as necessary to purchase a comparable dwelling.

Generally, the circumstance of partial homeowner-occupants arises when the ownership comes from a family inheritance, where 1 or more but not all of the heirs occupy the property.

Example of a Homeowner – Owner Occupant having a Partial Interest

Ms. Jones occupies the house. She shares ownership with her 2 sons who live elsewhere. ITD acquires the property for \$120,000. A comparable house is available for \$130,000. Ms. Jones relocates to a condo unit costing \$60,000.

Mrs. Jones' share of the proceeds from the sale to ITD is \$40,000. Applying the 2 part rule in Items #1. and 2. above, the applicable Purchase Supplement is \$10,000 (Rule #2.).

The homeowner-occupants with a partial ownership interest must spend their share of the acquisition payment plus the computed supplemental payment in order to receive the maximum payment.

If unusual circumstances would create an unintended hardship on homeowner-occupants with a partial ownership, ITD may apply an alternative method.

6.7.13 HOMEOWNER – OCCUPANT RETAINS DISPLACEMENT DWELLING

The displaced homeowner may retain the dwelling and move and reoccupy it on a relocation site. The Purchase Supplement in an owner-retention situation will be determined as the lesser of the sum of the four items below, or the amount determined using the comparable method:

1. The cost of moving and restoring the dwelling to a condition comparable to that prior to the move;
2. The cost of curing any DS&S deficiencies (i.e., no payment may be made unless the replacement dwelling meets DS&S standards); and
3. The current fair market value for residential use of the replacement dwelling site, unless the displaced homeowner-occupant rented the displacement site and there is reasonable opportunity to rent a suitable replacement site; and
4. The retention value of the dwelling, if the retention value was reflected in the ITD acquisition cost used when computing the replacement housing payment.

ITD will develop the Replacement Housing Payment based on the comparable method and make the offer to the displaced homeowner-occupant. This serves as the estimated maximum replacement housing amount. If an owner salvages and relocates the displacement dwelling, ITD will determine the actual RHP as above.

6.7.14 REVISIONS TO PURCHASE SUPPLEMENT AMOUNT

Replacement housing must be available to the displacee at a price that is not higher than the selected comparable dwelling. If the original comparable dwelling is no longer available, ITD must assure itself that

equally comparable dwellings are still available in the same price range. Where comparable housing is no longer available within the amount initially established, ITD will review the housing market and establish a revised replacement housing amount. However, a Purchase Supplement amount previously offered will not be reduced as a result of this review, unless the displaced homeowner-occupant has made little or no effort to acquire a replacement dwelling, after a reasonable period of time, it would be permissible to reduce the offer if a less-expensive, comparable dwelling becomes available. If ITD elects to lower a payment offer, it will document the files with the rationale and make every effort to avoid acting in a coercive manner.

6.7.15 MORTGAGE INTEREST DIFFERENTIAL PAYMENT (MIDP)

Increased interest payments are provided to compensate a displaced homeowner-occupant for higher increased interest costs required for financing a replacement dwelling. The increased interest payment will be allowed only when the dwelling acquired by ITD was encumbered by a bona fide mortgage that has a valid lien on the dwelling for not less than 90 days before the established eligibility date, usually the initiation of negotiations date.

Home equity loans are valid mortgages on residential real property regardless of how the proceeds from the loans are used. They must be included in the computation. The unpaid balance in the case of a home equity loan will be that balance that existed 90 days before ITD's initial offer to purchase or the balance on the date of acquisition, whichever is less. The mortgage interest rate that is current on the property as of the date of acquisition will be used in the computation when the property is secured with an adjustable rate mortgage.

The displaced person will be advised of the approximate amount of the MIDP as soon as the facts relative to the person's current mortgages are known. The payment will be made at the time of closing on the replacement dwelling so that the new mortgage can be reduced.

6.7.16 MIDP PAYMENT COMPUTATION

The computation of the payment for increased interest costs will be the amount that will reduce the mortgage balance on the replacement dwelling to an amount that can be amortized with the same monthly payment for principal and interest as that for the mortgages on the displacement dwelling. The amount of the increased interest payment will be computed using:

1. The unpaid mortgage balances on the displacement dwelling. The payment will be prorated and reduced accordingly in the event the person obtains a smaller mortgage than the mortgage balance computed in the buy down determination.
2. The remaining term of the mortgages on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage, which cannot exceed the most favorable available loan rate. This is 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. Points and origination or service fee that may be added as reimbursable to the displacee if they are typically charged, actually paid, and are not reimbursed as incidental expenses.

Reimbursement is limited to charges that will apply to the outstanding balance of the mortgage on the displacement dwelling.

6.7.17 TO WHOM PAYMENT IS MADE

The increased interest amount will be paid to the mortgagee at the date of closing, if all required information is provided sufficiently in advance. However, if the homeowner-occupant provides evidence of payment or evidence of a replacement mortgage that would qualify for a MID payment, the Department may reimburse that person directly. Upon specific request, ITD can make an advance payment into escrow prior to the homeowner-occupant moving.

6.7.18 PARTIAL ACQUISITION

When the displacement or the replacement dwelling is located on a tract that is larger than normal for residential use in the area, the interest payment will be reduced to the percentage ratio that the respective acquisition price bears to the value of the part of the property that is normal for residential use property, except the reduction will not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

Where a dwelling is located on a tract that is larger than normal for residential use in the area, the total mortgage balance will be reduced to the percentage ratio that the value of the residential portion bears to the before value for computational purposes. This reduction will apply whether or not it is required that the entire mortgage balance be paid.

6.7.19 MULTI-USE PROPERTIES

The interest payment on the multi-use properties will be reduced to the percentage ratio that the residential value of the multi-use property bears to the before value.

6.7.20 HIGHEST AND BEST USE OTHER THAN RESIDENTIAL

If the dwelling is located on a tract where the fair market value is established on a highest and best use other than residential, and if the mortgage is based on residential value, the interest payment will be computed as provided in the appropriate Section above. However, if the mortgage is obviously based on the higher use, the interest payment will be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value.

6.7.21 INCIDENTAL EXPENSES/CLOSING COSTS

Incidental expenses, also called closing costs, are those reasonable expenses that are actually incurred by the displacee related to the purchase of a replacement dwelling.

An owner occupant displacee is eligible for reimbursement of incidental expenses whether or not there is a price differential between the displacement and replacement housing.

Incidental expenses may be claimed based on the lender's Good Faith Estimate or ITD's estimate prepared before closing. The displacee will be required to submit a copy of the Final Settlement Statement (or HUD 1 Statement) to ITD immediately upon closing. An adjustment may be necessary to reflect actual incidental expense items and amounts paid. Overpayments will be returned to ITD or offset against unpaid claims.

6.7.22 OWNER-OCCUPANT OF 90 DAYS OR MORE WHO RENTS REPLACEMENT

An owner-occupant who is eligible for a Purchase Supplement and who elects to rent a replacement dwelling is eligible for a Rent Supplement not to exceed the amount of the purchase RHP if the rental computation supports the supplement. Income is not considered when calculating a rental assistance payment for a 90-day owner electing to rent.

The amount of a Rent Supplement will also not exceed the amount the displaced family would have received had they purchased replacement housing. The method of determining the Rent Supplement is addressed in Section 9.8, except the \$7,200 limit will not be applicable as outlined in the preceding paragraph.

An owner-displacee retains eligibility for a Purchase Supplement if a replacement unit is purchased within one year after the later of the date of final payment for the displacement dwelling or the date the owner was notified by ITD of the availability of replacement housing. Eligibility to submit a claim for relocation benefits extends for eighteen months from the later of the date of displacement or the date of payment of the acquisition value of the acquired property. An owner who initially rents replacement housing may later purchase and qualify for a Purchase Supplement. The total amount of the Rent and the Purchase Supplements will not exceed the amount that would have been received if the displacee had initially moved to owner replacement housing.

The amount of a Rent Supplement payment previously paid to the owner-occupant will be deducted from the amount to which the owner-occupant is entitled under this Section.

6.8 RENT SUPPLEMENT PAYMENTS – RESIDENTIAL TENANTS

6.8.1 GENERAL

A residential tenant who occupied the displacement dwelling for 90 days or more before the initiation of negotiations is eligible for consideration to receive a Rent Supplement Payment to enable relocation to comparable replacement rental housing.

Alternatively, a tenant or an owner as described above may elect to receive an amount that can be applied toward the down payment and incidental expenses on a Decent, Safe, and Sanitary (DSS) replacement dwelling.

The payment amount for either a Rent Supplement or a Down Payment Supplement is limited to a maximum of \$7,200. This limitation does not apply if the relocation comes under the criteria for last resort housing as discussed in Section 6.10.

6.8.2 RENTAL SUPPLEMENT - COMPUTATION

The rental replacement housing determination is 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities including electricity, gas, other heating and cooking fuels, water, and sewer for a comparable replacement dwelling.
2. The monthly rent and estimated average monthly cost of utilities for the DSS replacement dwelling actually occupied by the displaced person.

6.8.3 BASE MONTHLY RENTAL - DEFINED

The base monthly rental of the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities (e.g., heat, electricity, water, sewer) at the displacement dwelling for a reasonable period prior to displacement as determined by ITD (for a homeowner-occupant, use the fair market rent for the displacement dwelling. For a tenant who pays 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
2. 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. Current low income limits for Idaho can be found at: https://www.fhwa.dot.gov/real_estate/policy_guidance/low_income_calculations/index.cfm.
3. 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.

Housing must be available within a displacee's financial means.

6.8.4 RENT SUPPLEMENT – METHOD

The Relocation Agent will determine the rental rates of comparable housing by use of the three comparables method. Note that there will not be adjustment of the asking rent of available rental dwellings.

The Right-of-Way Agent will use three available rental properties to determine the Rent Supplement. The Right-of-Way Agent may determine the payment from one or two comparables and will document the file as to efforts made to locate three comparables if fewer than three comparables are available. All rental properties must meet DSS standards and must be comparable to the displacement dwelling in essential characteristics.

Utility costs of electricity, gas, other heating and cooking fuels, water, and sewer must be included in both the displacement and the selected comparable rent. Reasonable efforts should be made to secure accurate information. The displacee's utility bills or a statement from the utility company is best. A reasonable estimate should be made based on size and type of unit and other factors if actual costs are not available.

The most comparable rental will be selected as the basis of the determination. The Relocation Agent will record an explanation of the selection. The displacee will be advised of the location of the comparable property on which the Rent Supplement amount is based. The Right-of-Way Agent should confirm the continued availability before providing the Rent Supplement information to the displacee.

Example 1 Non-Low Income Rent Exceeds 30 % of income.

Jim Smith lives in Canyon County and has a gross income of \$4,000/month. Canyon County low income limit for a 1 person household is \$27,250/year. Jim's monthly rent and utilities are \$1,500 per month. An available comp is \$1,700/month.

Jim's rent supplement is $\$1,700 \text{ minus } \$1,500 = \$200 \times 42 = \$8,400$.

A redetermination is not required as long as there are comparable dwellings available on the market that are within the financial means of the displacee including the amount of the computed Rent Supplement if the comparable dwelling on which the Rent Supplement is based ceases to be available after an offer is made to a displacee. A redetermination based on current available market data is required if market conditions change to remove availability within the range of the computed Rent Supplement.

6.8.5 SECTION 8 HOUSING ASSISTANCE PROGRAM

Housing Choice Voucher Program (formerly referred to as Section 8) is a rent subsidy program funded by the U.S. Department of Housing and Urban Development (HUD) to enable low-income families to rent privately owned DS&S housing. Section 8 is administered by local housing agencies. Landlords receive a subsidy representing the difference between 30% of an eligible tenant's adjusted gross household income and reasonable housing rent as determined under program rules. Section 8 benefits are normally portable, meaning the benefit moves with the recipient.

Example 2 Low Income Rent Exceeds 30 % of Income

Sally Smith lives in Canyon County and has an income of \$2,000/month. Canyon County's low income limit for a 1 person household is \$27,250/year. Her monthly rent and utilities are \$650/month.

A comparable rental is available at \$700/month.

30% of her monthly income is \$600/ month ($\$2,000 \times 0.30$). Since this is less than her actual rent, it becomes the basis for the rent subsidy calculation.

Thus, $\$700 \text{ minus } \$600 = \$100 \times 42 = \4200 .

Section 8 assistance has a feature that is superior to the relocation rental assistance payment in that it is not limited to 42 months but continues as long as the recipient household is income eligible. The Relocation Agent should make every effort to relocate existing Section 8 recipients to units in which their Section 8 benefits will continue. If a normal relocation RAP is paid, the local housing agency may consider this income and disqualify the displaced household from eligibility for Section 8. It may be difficult to reenter the program, as there is usually a long waiting list.

In order to transfer Section 8 benefits, the recipient must relocate to a DS&S unit in which the owner agrees to participate in this program. Local housing agencies generally maintain current lists of participating owners and properties.

A tenant cannot be required to accept a Section 8 rent subsidy in lieu of a Rent Supplement payment under the relocation program.

6.8.6 ELIGIBILITY AND DISBURSEMENT OF RENT SUPPLEMENT

The displaced residential occupant must relocate to a DS&S replacement dwelling to qualify for Rent Supplement payment. To qualify for full RS, the replacement dwelling rent and utilities must at least equal the determined comparable rent.

The amount of the rental payment will be paid in a lump sum unless ITD determines that it is in the public interest to make periodic payments over the 42-month term of the benefit. However, the full amount of the rental assistance payment vests immediately whether or not there is any later change in the person's income or rent.

6.8.7 \$7,200 BENEFIT LIMIT

Rent Supplement payment offer is limited to \$7,200 under normal program authority. ITD has an overriding responsibility to enable tenant displacees to rent replacement housing within their financial means. The special authority under last resort housing provisions is applicable if the payment computation exceeds \$7,200. See Section 6.10 for information on last resort housing.

6.8.8 CHANGE OF OCCUPANCY

If a residential occupant, after moving to a DS&S dwelling, relocates within the 1-year period of continued eligibility to a higher cost rental unit, another claim may be presented for the amount in excess of that amount that was originally claimed, but not to exceed the total RS originally computed.

6.8.9 DOWN PAYMENT BENEFIT – 90-DAY TENANTS

A displaced residential occupant eligible for a Rent Supplement, who elects to purchase a replacement dwelling in lieu of accepting a rental assistance payment, may elect to apply the entire computed payment to the purchase of a replacement dwelling and allowable incidental expenses.

As a matter of ITD policy, a down payment assistance payment that is less than \$5,250 will be increased to \$5,250 provided the entire amount is applied to incidental expenses and the purchase price of a DS&S

replacement dwelling. ITD will follow this policy in a uniform and consistent manner so that eligible displaced persons in like circumstances are treated equally.

ITD has a responsibility to enable a residential occupant to relocate to housing of the same tenancy or ownership status as was occupied before displacement. Efforts will be made through advisory assistance and the down payment benefit to assist a tenant to move to ownership, but the achievement of ownership by tenants is not a program requirement.

The down payment will be limited to the cost of the dwelling should the amount of the rental assistance payment exceed the purchase price of the replacement dwelling for the purpose of this section. This means that the calculation of the down payment is not limited to a minimum conventional loan down payment amount.

6.8.10 OCCUPANTS WHO DO NOT MEET LENGTH OF OCCUPANCY CRITERIA

Displaced residential occupants who began occupancy at the displacement property fewer than 90 days before ITD initiated negotiations for the property but before ITD acquired the property are eligible for the following relocation benefits:

1. Advisory services to assist in locating adequate replacement housing;
2. Moving expenses, and
3. Last resort housing provisions, but only if comparable rental housing is not available at rental rates within 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 provisions of this paragraph are applicable only to persons who occupy a dwelling at the date the Department acquires the property.

6.9 RELOCATION – MOBILE HOMES

6.9.1 GENERAL

Mobile home occupants are entitled to the same relocation benefits as those that apply to residential occupants from conventional housing. However, mobile homes have unique legal and physical characteristics that require separate consideration in methods of determining replacement housing benefits. These special characteristics relate to the potential for the mobile home unit to be either realty or personalty, and the potential for the occupant to have owned the dwelling unit and rented the site or vice versa. This Section provides guidance in determining replacement housing and moving cost benefits that are applicable to mobile home occupancy.

The term mobile home as defined by Federal regulations includes manufactured homes and recreational vehicles used as residences.

6.9.2 MOBILE HOMES – PERSONALTY vs REALTY

ITD must determine if mobile home occupants are displaced from their mobile home for a project, applying the following considerations. This determination should be made uniformly to ensure an orderly and equitable relocation of all displaced residents. A mobile home may have legal status as either real estate or personalty depending on the following factors:

1. The permanency of its fixture to the ground,
2. Its condition,
3. The intention of the owner in placing the mobile home on its present location, and
4. Custom and practice in the community where it is located.

The mobile home will normally be considered real estate if it is permanently fixed to the site on a concrete foundation with basement. The distinction is not clear and an administrative decision is necessary in some cases. The Right-of-Way Manager should be consulted in all questionable cases. The personal property/realty decision will be completed before the property appraisal is ordered. The Right-of-Way Agent may provide input in this process for questions that involve the feasibility of relocating the mobile home unit, the availability of replacement sites, or the consistency with decisions made on similar situations encountered in the past or anticipated on the same project or in the local area.

The mobile home will be moved to a replacement site and all costs will be reimbursed as moving expense if the displacement mobile home unit is personal property and not acquired. The occupants will be eligible for replacement housing benefits pertaining to the purchase or rental of a replacement site only.

The occupants will be considered displaced from the mobile home unit and will be considered for a replacement housing benefits pertaining to displacement from the site and the mobile home unit if the mobile home cannot be relocated for any of the following reasons. The mobile home unit will be purchased by ITD as constructively being real estate.

1. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost.
2. The mobile home itself is not and cannot economically be made a Decent, Safe, and Sanitary dwelling.
3. The mobile home cannot be relocated because there is no available comparable replacement site.
4. The mobile home cannot be relocated because it does not meet mobile home park entrance requirements.

The eligible price differential payment for the purchase of a comparable replacement mobile home if ITD 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 the requirements of this section is the lesser of:

1. The displaced mobile homeowner's net cost to purchase a replacement mobile home including purchase price of the replacement mobile home less trade-in or sale proceeds of the displacement mobile home.
2. The cost of the ITD's selected comparable mobile home less the ITD estimate of the salvage or trade-in value for the mobile home from which the person is displaced.

6.9.3 REPLACEMENT HOUSING PAYMENTS (RHP) – OWNER/TENANCY STATUS OF MOBILE HOME AND SITE

A characteristic that is unique to mobile home occupancy is that there may be divided ownership of the dwelling unit and its site. A mobile home occupant may own the dwelling but rent the site. Conversely, an occupant may own the site and rent the dwelling unit.

The status of the displacee with regard to the mobile home unit and the site must be separately considered when determining replacement housing benefits, both in the displacement and in the replacement dwellings. There may be a replacement housing benefit for the mobile home unit and for the site, as presented in the following rules:

1. Maximum Payment Eligibility (\$31,000 or \$7,200) The ownership or rental status of the displacee with regard to the mobile home dwelling unit, not the site, determines the maximum payment amount that is applicable. The maximum eligibility is \$31,000 for the unit and site if the displacee owned the mobile home unit at the displacement site for 90 days before the initiation of negotiations. The maximum eligibility is \$7,200 for the unit and site if the displacee rented the displacement dwelling unit for at least 90 days before the initiation of negotiations.
2. Displacee Owns Mobile Home Unit – Rents Site There is eligibility for a Purchase Supplement to acquire ownership of a replacement mobile home unit if the displacee owns the displacement mobile home unit but rents the site. There is also eligibility for a Rent Supplement (maximum \$7,200) to enable the displacee to rent a replacement site. The maximum total for the two components is \$31,000. The rental assistance payment related to the site may be used to lease a replacement site, may be applied to the purchase price of a replacement site, or may be applied with any replacement housing payment attributable to the mobile home, to the purchase of a replacement mobile home or conventional decent, safe, and sanitary dwelling.
3. Displacee Rents Mobile Home – Owns Site There is eligibility for a Rent Supplement to enable renting a mobile home unit and a Purchase Supplement to enable purchase of a replacement site if the displacee rents the displacement mobile home but owns the site. The maximum total for the two components is \$7,200 (see Item 1 above).
4. Displacee Owns Both Mobile Home and Site There is eligibility for a Purchase Supplement (maximum \$31,000) to enable purchase of a unit and site if the displacee owns both the displacement mobile home unit and the site. This situation is the same as a Purchase

Supplement on acquisition of a conventional dwelling.

5. Displacee Rents Both Mobile Home and Site There is eligibility is for a Rent Supplement (maximum \$7,200) to enable rental of a replacement unit and site if the displacee rents both the displacement unit and the site. This situation is the same as for a tenant-occupant of a conventional dwelling.
6. All Regular Program Eligibility Rules Apply The normal term of occupancy (90 days) applies in each of the ownership/rental situations above with the clarification that the term of occupancy pertains to occupancy of the mobile home on the site that is acquired by ITD. The other eligibility criteria apply to mobile home displacees including replacement housing DSS standards and legal residence in the United States.

6.9.4 COMPARABLE HOUSING AVAILABILITY

If a comparable replacement mobile home is unavailable, the Purchase Supplement or Rent Supplement amount may be based on the reasonable cost of a conventional comparable replacement dwelling. The comparable conventional dwelling will be selected based on the property most similar in size and features to the mobile home.

The following examples provide additional guidance on the types of mobile homes and manufactured housing that can be found acceptable as comparable replacement dwellings for people displaced from mobile homes. A recreational vehicle that is capable of providing living accommodations may be considered a replacement dwelling if the following criteria are met:

1. The recreational vehicle is purchased and occupied as the “primary” place of residence
2. It is located on a purchased or leased site and connected to or have available all necessary utilities for functioning as a housing unit on the date of the ITD’s inspection
3. The dwelling, as sited, meets all local, State, and Federal requirements for a decent, safe, and sanitary dwelling.

The regulations of some local jurisdictions may not permit the consideration of these vehicles as decent, safe, and sanitary dwellings. The recreational vehicle will not qualify as a replacement dwelling in those cases.

6.9.5 MOVING AND RELATED EXPENSES

Displaced persons who move the mobile home units are entitled to payment of the actual, necessary costs of moving the mobile home unit and its contents to a replacement site. This may include the following items:

1. Dismantling and disconnecting utilities, removing tie downs and skirting, reconnections at the replacement site, and reassembling any appurtenances (e.g., porches, decks, skirting, awnings);
2. Reasonable, customary and nonrefundable mobile home park entrance fees;
3. Moving of personal property contents of the separately from the mobile home on an actual cost or a schedule reimbursement basis. The contents may also be moved in the mobile home unit and the occupants reimbursed on the basis of the move cost schedule; and/or

4. Transportation and temporary lodging for the occupants, if ITD determines that this is necessary for the mobile home unit to be relocated and set up for occupancy.

Transportation costs may be reimbursed up to 50 miles unless this limitation is extended by ITD in advance for good reason.

6.9.6 ADDITIONAL RULES APPLICABLE TO MOBILE HOME DISPLACEMENTS

Repairs to Mobile Home Unit

Repairs necessary to move the mobile home, cure DS&S deficiencies or qualify the mobile home for mobile home park acceptance criteria may be reimbursed as move cost expenses as ITD determines is reasonable.

Person Moves Mobile Home

A displacee who is reimbursed for moving the mobile home unit is not eligible to receive a Purchase Supplement or Rent Supplement for the purchase or rental of a replacement unit, but may be eligible for a payment to assist in the purchase or rental of a comparable mobile home site.

Partial Acquisition of a Mobile Home Park

The acquisition of a portion of a mobile home park may leave a remaining part of the property that is not adequate to continue the operation of the park. ITD may determine that a mobile home located on the remaining part of the property must be moved as a direct result of the project. The occupants of the mobile home will be considered displaced persons eligible for full relocation benefits.

Person Eligible to Move Mobile Home but elects not to do so

The owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home if the ITD 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 eligible for moving costs described above and any replacement housing payment for the purchase or rental of a comparable site as described above as applicable.

Last Resort Housing (LRH)

Displaced persons from mobile homes are eligible for consideration under provisions of last resort housing.

6.10 REPLACEMENT HOUSING OF LAST RESORT

6.10.1 GENERAL

A displaced person will not be required to move until a comparable replacement dwelling is made available that is within the financial means of the household. Comparable replacement housing may not be available because of any of the following circumstances:

1. Available housing is not Decent, Safe and Sanitary.
2. A competing demand for housing causes temporary unavailability, which would delay timely advancement of the highway construction schedule.

3. Displacees have special needs relating to the definition of comparable replacement housing that is not met by the available housing stock.
4. Housing is available but its cost exceeds the financial means of displacees after application of maximum replacement housing benefit amounts (\$31,000 and \$7,200).
5. A displacee has not met the length of occupancy requirements for normal relocation benefits (e.g., occupant for 90 days prior to initiation of negotiations). Benefits for low income tenants will still be calculated using the 30% of income rule. For others, the calculation will be rent to rent.

If any of the above circumstances apply, the Department is authorized to a broad range of measures to make housing available. These measures, which are outside normal relocation benefit limits, are called collectively last resort housing.

ITD will act expeditiously to prevent personal hardships and avoid increased costs due to project delays if any of the above circumstances apply. The ITD Right-of-Way Section will consider all feasible measures to make housing available and will select a method that meets the needs of the displacees in a cost effective and timely manner. Most Last Resort Housing situations involve one displacee with special housing needs. The Right-of-Way Agent will advise the Right-of-Way Manager as soon as a case is identified where housing will not reasonably be available through normal program means.

The Last Resort Housing recommended solution should also be pre-approved in extraordinary cases by the Right-of-Way Manager, and on Federally participating projects, by the designated Right-of-Way Officer with the Federal Highway Administration.

6.10.2 REPLACEMENT HOUSING STANDARD

ITD is committed to enabling persons, who are displaced as a result of acquisition for transportation projects, to relocate to comparable replacement housing that is within their financial means. When this cannot be accomplished within the limits of normal relocation program benefits, last resort housing program provisions are used.

Comparable replacement housing is by definition, functionally equivalent to the displacement dwelling. It performs the same function, provides the same utility and is capable of contributing to the same style of living as the displacement dwelling. Consistent with this definition, housing may be provided that does not possess every feature of the displacement dwelling and differs in certain space and physical characteristics. For example, housing may be provided that is smaller but is upgraded in qualitative respects to adequately accommodate persons who have been displaced from substandard or functionally obsolescent housing.

ITD will offer to provide housing that is the same ownership or tenancy status as that which the person had before displacement. There is no requirement to enable a displacee to change status by use of last resort housing. However, ITD may cooperate in a displacee's desire to change status when it is less costly for the Department to do so. For example, ITD may provide down payment assistance that is less than a determined Rent Supplement under last resort housing.

6.10.3 LAST RESORT HOUSING METHODS

Last resort housing authority allows a broad range of methods to be considered for providing housing of the type and on terms needed by project displacees. Select a method that provides comparable housing at the most reasonable cost within the time constraints of highway project scheduling and the urgency of the displacee's need.

Methods include, but are not limited to, the following:

1. A Replacement Housing Payment (RHP) greater than \$31,000 for a displaced owner or \$7,200 for a displaced tenant.
2. Rehabilitation, modification, or addition to an existing replacement dwelling to accommodate the displacee's needs.
3. Construction of a new replacement dwelling.
4. Relocation and rehabilitation if necessary of an existing non-DSS dwelling.
5. Purchase of land or a replacement dwelling and subsequent sale, lease to, or exchange with a displaced person.
6. Acting as a mortgagee in financing a displacee's purchase of housing.
7. A provision of features including entrance ramps, wide doors, etc., that will make a dwelling accessible to a disabled person.

6.10.4 JUSTIFICATION FOR USE

Any decision to provide last resort housing must be adequately justified either: (1) on a case-by-case basis for good cause, or (2) by a determination that there is little if any comparable replacement housing available to displaced persons within the project area and therefore last resort housing is needed for the area as a whole.

In making the above determinations, give consideration to:

1. The availability of comparable housing in the project area,
2. The resources available to provide comparable housing, and
3. The individual circumstances of the displaced person.

Or by a determination that:

1. There is little, if any, comparable replacement housing available within the entire project area.
2. The project cannot be advanced to completion in a timely manner without last resort housing assistance.
3. The method selected is cost effective considering all elements that contribute to the total program or project cost. For example, will a project delay justify waiting for less expensive comparable replacement housing to come on the private market?

Place the detailed justification for use of last resort housing in the Project and Parcel Files.

6.10.5 COOPERATIVE AGREEMENTS

The Department may enter into agreements with any Federal, State or local agency or contract with any individual, firm, corporation or nonprofit association for services in connection with these activities. ITD may,

if practicable, use the services of Federal, State or local housing agencies or other agencies having experience in the administration or conduct of similar housing assistance activities.

6.10.6 CONSEQUENTIAL DISPLACEMENT

Any person, who is displaced because of the acquisition of real property for a last resort housing project under ITD's power of eminent domain, including amicable agreements under the threat of such power, is entitled to all eligible benefits under the relocation assistance provision. This provision is not applicable to an owner-occupant who voluntarily acts to sell the property to the State of Idaho for last resort housing and the owner certifies the same in a statement that will be retained in Department files.

6.10.7 LAST RESORT HOUSING DISBURSEMENTS

Rental assistance payments made to displacees who rent replacement housing under this section will, at ITD's discretion, be paid either in a lump sum or in annual installments directly to the displacee or to the provider of housing. Other payment options will be arranged if ITD determines that a direct payment or annual payments to a displacee would not be prudent and in the public interest. Whenever special payment options are invoked, provide documentation in the file with the reasons.

A displacee may not be required to accept last resort housing in place of a Rent Supplement or a Purchase Supplement for which they may be eligible under normal program provisions. A displacee may choose to accept a conventional Purchase or Rent Supplement in lieu of a last resort housing solution. This is on the condition that all eligibility criteria are met, including rental or purchase and occupancy of a DS&S dwelling.

A displacee who receives a housing or financial payment under last resort housing will be required to certify that the displacee accepts the housing or benefit in lieu of the Rent Supplement or Purchase Supplement for which they would otherwise be eligible.

6.10.8 COMPLIANCE WITH OTHER STATUTES

The development and implementation of last resort housing projects will comply with the applicable provisions of the following, including the amendments and regulations issued pursuant thereto:

1. Section 1 of the Civil Rights Act of 1966 (42 UCS 1982 et. seq.)
2. Title VI of the Civil Rights Act of 1964 (42 UCS 2000d et. seq.)
3. Title VIII of the Civil Rights Act of 1968 (42 UCS 3601 et. seq.)
4. The National Environmental Policy Act of 1968 (NEPA) (42 UCS 4321-4347)
5. Executive Order 11063 (Equal Opportunity in Housing) 3 CFR Comp. 1959-1963, page 652
6. Executive Order 11246 (Equal Employment Opportunity) 3 CFR Comp. 1964-1965, Page 339 or Federal Laws, Regulations and Materials Relating to the Federal Highway Administration, Page IV-41
7. Executive Order 11625 (Minority Business Enterprise) 3 CFR Comp. 1971, Page 213

7 PROPERTY MANAGEMENT

This Chapter details the functions of the Property Management Unit in the Right-of-Way Section and describes the various scenarios a property owner can experience in the right-of-way process.

Right-of-Way Agents performing property management duties help determine ownership of properties and coordinate any leases, rentals, sales, donations or trades of property. They also maintain a statewide inventory of real property.

[Idaho Statute 40-311](#) authorizes the Board to acquire real property for highway purposes.

[Board Policy 4005](#), Management of Department Owned Property, guides the Property Management Unit in delegating authority to purchase, lease, otherwise acquire, dispose, sell or exchange Department-owned real and personal property.

7.1 AUTHORITY TO ACQUIRE REAL PROPERTY

The Director or a delegate is authorized to purchase, lease, and exchange real property, to execute deeds, easements, and agreements for all real estate property transactions, and to execute on behalf of the Board an *Order of Condemnation* for individual parcels of land.

All state-funded real property purchases for right-of-way require an appraisal. This appraisal is required to correctly identify the authority thresholds listed in Board Policy 4005.

Real property acquisitions for the Department shall be in fee simple title, except in those instances when the property can be acquired in easement form per the Right-of-Way Manual. When advantageous, purchases or condemnations may include uneconomic remnants, landlocked tracts, or the whole of the real property affected. Remainders that are acquired may be traded for other land needed by the Department, used by the Department, or disposed of per [Idaho Code 58-335A](#).

7.2 DEPARTMENT OWNED PROPERTY

Department employees shall not purchase or procure (either directly or indirectly, through any person acting on his/her behalf, or for his/her benefit) any properties or materials owned, sold, surplused or scrapped by the Department. This includes Department-owned real property (land) that the Department offers for sale to the public as surplus property pursuant to [Idaho Code 58-335A](#), any other real property that is sold or exchanged by the Board and the Department pursuant to [Idaho Code 40-311](#), or personal property (all property belonging to the Department other than real property) offered for sale to the public as surplus.

Department-owned personal property, regardless of the value, shall not be taken, salvaged or used by employees for any personal purpose.

The Department shall recover all readily determinable costs associated with the sale of Department-owned materials, supplies, equipment and services to other government agencies per the Financial Accounting Manual and the Business and Support Management (BSM) Manual.

Department employees may purchase properties or materials offered for sale through public auction by other State agencies where there has been no Department involvement in the disposal. This includes surplus maintenance yard properties under the control of the Board of Land

Commissioners or surplus administrative facilities properties under the control of the Department of Administration which, pursuant to [Idaho Code 58-335A](#), may be purchased by a Department employee when the property is offered for competitive bidding and the employee is the successful bidder.

The Right-of-Way Manager, in coordination with the District Engineers, shall maintain a current inventory of all real properties owned by the State of Idaho and controlled by the Department ([Administrative Policy A-03-11](#)).

Disposition of surplus real property shall be a function of HQ Right-of-Way Section.

INVENTORY

An inventory of all real property improvements shall be developed on each project.

Likewise, an inventory of all significant fixtures shall be developed on a parcel basis at various stages of the right-of-way function through the use of the ITD-5204, Fixture/Personal Property Inventory.

1. Appraisal - Any significant fixture included as a portion of the acquisition shall be inventoried by the Appraiser inspecting the parcel and this inventory shall be made a part of the appraisal report.
2. Possession - At the time of acquisition an inventory shall be prepared jointly by the negotiator and grantor and/or tenant. It shall show all items purchased as per the ITD-363, Right-of-Way Contract and shall be submitted to headquarters with the acquisition documents.
3. Lease - Should ITD-owned fixtures become a part of a Lease Agreement or Rental Arrangement, an inventory prepared jointly by the District Property Manager and proposed tenant shall become an addendum to the agreement. The items shall be inventoried in a like manner upon termination of the agreement and any variance of items listed shall be accounted for.
4. Update - Periodically, as activities indicate, an update of the inventory may become necessary. An updated inventory shall be submitted following a break-in, theft, fire, other casualty loss, or other appropriate occasion.

DETERMINATION OF VALUE

In estimating retention value, Right-of-Way personnel shall be aware of the following:

1. For a building or fixture to have value, it must be usable, movable and in good condition.
2. It must be economically feasible to remove it from its present site.

7.3 STATE AND LOCAL CONTRIBUTIONS (ref. 23 CFR 710.507)

State and local governments may contribute real property to a project with or without credit toward the state or local's match to the project.

- Any credit for such contributions cannot exceed the State or local's matching share for the project for which it is donated.

- Acquisition costs incurred by the State or local to acquire title can be used as justification for the value of the property.
- Credit is not allowed for:
 - Property acquired with any form of Federal assistance or
 - Property already incorporated into existing right-of-way and used for transportation purposes.

All contributions of real property by State and local governments must meet the six conditions of Section 5.16 of this manual.

7.4 PROPERTY DISPOSAL (ref. 23 CFR 710.403 and 710.409)

Surplus property is land under the jurisdiction of ITD, which is determined as not needed or is no longer useful or usable for any current or future ITD purpose. Surplus property may originate from the following actions:

1. Purchase of total takes where a part is required for right-of-way, leaving uneconomic remainders;
2. Changes in highway design plans after right-of-way acquisition;
3. Reconstruction of roads where portions of the existing right-of-way are not needed;
4. Removal of IDT facilities such as maintenance yards, storage yards, rest areas and materials sites; and
5. Purchase of right-of-way that ultimately is not needed because of location or design changes or abandonment of project. May require payback of participating funds if acquired with Federal funding.

The Director or a delegate is authorized to sell, exchange, or dispose of surplus real property per [Idaho Code §40-311](#) and [Idaho Code 58-335A](#). Surplus real property must be sold or exchanged at a value that is not less than the fair market value of the property as established.

The Department cannot directly dispose of surplus real property which is an administrative facility or a maintenance yard site per [Idaho Code §58-335A](#). Such surplus property must be transferred to the State Board of Land Commissioners for disposal.

Further 23 CFR 710.409(b) has special requirements for property that was purchased with federal aid funding:

Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.

Prompt disposal of improvements minimizes any liabilities or expenses. The district shall anticipate the possession of properties and recommend the disposal to the Right-of-Way Section. As a general rule, disposal shall be accomplished promptly following possession.

In no event shall improvements be disposed of, regardless of the method employed, prior to being vacated by the occupant(s).

The Right-of-Way Manager, or designated representative, shall be the auctioneer responsible for conducting the auction and shall always be assisted by a cashier who shall receive all proceeds. An employee of ITD not involved in right-of-way activities shall be provided by the district to serve as cashier.

ITD shall charge current fair market value for the disposal of surplus real property if the property was acquired utilizing federal funds under Title 23 of the United States Code.

ITD may be allowed to dispose of surplus real property, acquired utilizing federal funds, at less than fair market value, subject to FHWA written approval, where the property disposal fits the following circumstances or uses:

1. It is in the overall public interest based on social, environmental or economic benefits, or is for a nonproprietary governmental use
2. Use by a public utility
3. Use by Railroads
4. Use for bikeways and pedestrian walkways
5. Use for public transportation projects
6. Use for Title 23 eligible transportation projects

In accordance with IDAPA 39.03.45, surplus property shall first be offered to contiguous property owners. If more than one (1) contiguous property owner is interested in the property, a private auction will be held between those contiguous owners wishing to purchase the property.

If not purchased by a contiguous owner, the Department shall then offer the property for sale or exchange at the appraised value to the following: state agencies, the county in which the property is located, the city in which the property is located, the highway district in which the property is located. State agencies are given first priority to acquire the property, county second, city third and highway district fourth. Other tax supported entities not enumerated will not specifically be notified, but will have the fifth priority to purchase the property. The sale price shall include any administrative fees established by the Department.

If none of the public agencies referenced above wishes to purchase the property at the appraised value, the Department may negotiate a sale or exchange of the property at less than the fair market value to any tax-supported agency or political subdivision of the state of Idaho, excluding state agencies, in whose jurisdiction the property resides. If property is sold or exchanged for less than the fair market value it must be used exclusively and in perpetuity for a public purpose. Any surplus Department property originally purchased using federal funds must receive the approval of the Federal Highway Administration prior to being sold or exchanged for less than the appraised value.

If no public agency expresses an interest in purchasing the surplus property, then it will be offered to the general public by either a sealed bid or public auction.

Earnest money may be collected by ITD when a private party requests sale of property. All administrative costs must be recouped in the sale of all surplus property (i.e. appraisals, surveys, etc.) regardless of the value.

RELINQUISHMENT OF OPERATING RIGHT-OF-WAY

The relinquishment of any right-of-way is the responsibility of Headquarters' Transportation Planning Section, who will obtain FHWA approval.

Prior to disposing of operating right-of-way, the district must provide a written explanation as to why:

1. The land will not be needed for highway purposes in the foreseeable future.
2. The right-of-way retained is adequate under present day standards for the facility involved.
3. The disposal won't adversely affect the highway facility.
4. The property being disposed isn't suitable for retention to restore, preserve, or improve scenic beauty.

In addition, the district must provide a plan that identifies the right-of-way proposed for disposal in relation to construction features and to the remaining right-of-way.

SURPLUS PROPERTY IMPROVEMENT FUND

The Surplus Property Improvement Fund (SPIF) is established to assist the districts in the disposal of surplus properties. This fund is to be used only in situations that substantially increase the value of the surplus property after considering the improvement cost and the district does not have the funds or the resources.

Some examples of eligible expenditures are acquiring access or improving the access to the surplus property, fencing, earthwork or surveying.

The written request to use the SPIF must be submitted to the Property Management Unit including a description and estimated value of the surplus property prior to the improvement, the proposed improvement and estimated improvement cost and the estimated value of the surplus property after the improvement.

The Property Management Unit will review the request and with the concurrence of the Right-of-Way Manager will respond with a written approval or denial. There will be no expenditure of the Surplus Property Improvement Fund without prior written approval.

7.5 PROPERTY TRADES

Per [Idaho Code §40-311](#), the Idaho Transportation Board is authorized to exchange any real property, either in fee or in any lesser estate or interest, rights-of-way, easements and other rights and rights of direct access from the property abutting highways with controlled access, deemed necessary by the board for present or future state highway purposes.

Further, Idaho Code 58-335 gives the Idaho Transportation Department authority to sell or exchange any ITD-owned property to any tax-supported agency or political subdivision of the State of Idaho (excluding

the State of Idaho or its agencies). Properties organized for exchange must be appraised prior to sale.

The Board has delegated the responsibility outlined in 7.5 to the Director of the Transportation Department via Board Policy 4005.

Exchange property is land acquired or owned by ITD which has been declared as having value for purposes of trade due to its monetary equivalency. Property owned by ITD may be traded as full or partial payment for other properties needed by ITD.

The Idaho Transportation Board is empowered to exchange real property. Lands that are no longer needed by ITD may be traded for lands that are needed. All lands involved shall be appraised and trades shall normally be at or near market value.

Differences in value may be paid or received in cash. If a net payment is due ITD, the transaction shall constitute a sale.

7.6 ITD RETENTION OF PROPERTY

Should either the district or headquarters desire to obtain any improvements or fixtures for operations purposes, the following must be accomplished:

District budget capabilities and management approval must be acquired, and Acquisition authority funds must be appropriately credited, with a Journal Voucher, by the amount so established by the Property Management Unit.

If it is consistent with Highway Design, any portion of right-of-way may be used for green strips, small parks, play areas, parking, or other highway-related public use. Normally ITD should retain supervision and jurisdiction over such lands, but it can enter into agreements with local political subdivisions and non-profit organizations concerning such property.

7.7 DEMOLITION

When a sufficient quantity of demolition work is available to attract competitive bidding, the District Property Manager shall request the initiation of a contract. A request shall be in written form to the District Engineer with a copy to the Property Management Unit listing the items to be included.

Demolition contracts shall be processed by the district in the same manner as a construction contract, except that expenses and/or payments shall be chargeable to the acquisition cost.

If a formal contract cannot be justified or is not feasible because of safety or aesthetics, improvements may be demolished by ITD forces. Costs shall be chargeable to the acquisition costs.

7.8 MAINTENANCE AND ADMINISTRATION OF ITD-OWNED PROPERTY

The physical inspection and maintenance of any ITD-owned real property shall be the responsibility of the District. The headquarters building and site shall be an exception and shall be the responsibility of the Division of Administrative Services, Division Administrator, who shall be responsible for maintenance and administrative control.

The district shall be charged with the responsibility of maintaining its offices, sheds, their related sites and all operating property. It shall also be the district's responsibility to pay any charges incurred during this maintenance. Repair or maintenance on non-operating real property or property within the right-of-way of pending construction may be required. The District Engineer may authorize such work with the concurrence of the Right-of-Way Manager. In such cases, the district shall inspect the work to verify that it was performed satisfactorily and forward the billing statement to the Right-of-Way Manager for payment. Any utility charges, including irrigation water and drainage assessment, for these properties shall also be processed by the districts.

All property and casualty insurance coverage carried by ITD shall be administered through the Bureau of Risk Management, Department of Administration.

The Division of Administrative Services, Division Administrator, shall be responsible for the ITD insurance program and shall delegate the Financial Services Section to act as coordinator between ITD and the Bureau of Risk Management.

All ITD-owned buildings shall be fully insured except those purchased for Right-of-Way or non-operating purposes. These structures may be added to the policy at any time by Financial Services, providing they are specifically requested to do so by the Property Management Unit. Should insurance be desired, the Property Management Unit shall report to Financial Services the structure's type, location and the insured value necessary. The insured value shall be representative of the acquisition costs, except in those situations which indicate a need to insure the structure for replacement cost.

7.9 AIRSPACE MANAGEMENT AND LEASING (ref 23 CFR 710.405)

Property Use Agreements (formerly "Airspace Agreements") cover the range of leases for highway air rights describing that area at, above or below the plane of the transportation facility and located within the right-of-way boundaries. The right to use this area by public entities or private parties for interim non-highway uses may be granted in a property use agreement, as long as such uses will not interfere with the construction, operation or maintenance of the facility or anticipated future transportation needs. Private or public uses of airspace may occur, but the preservation of the highway capacity is essential.

A property use agreement may range from a short-term use with few or no tenant improvements to a long-term use with substantial structures.

Airspace may be located on a federal highway or state system.

This section shall apply only to airspace which is improved and utilized for, or in conjunction with, a commercial, for-profit activity whose annual fair-market rental value as established by ITD is \$120 a year or greater.

This section shall apply only to:

1. leases entered into after adoption of this section and
2. otherwise qualifying properties presently occupying airspace under encroachment permits at the time of permit renewal.

This section shall not apply to railroads and public utilities which cross or occupy highway rights-of-way, bikeways, pedestrian surface cross walks, access accommodations (except on full control of access facilities) and land owned by a government agency (unless used in a proprietary manner).

Any proposed property use agreement must receive environmental approval from ITD's Design Section as to the lease's impact on the transportation facility and surrounding area.

Prior approval must be obtained from FHWA on property use agreements on the Interstate System.

ITD and FHWA must approve any changes in use, which are on the Interstate System. Further, no property use agreement (or air space lease) can be transferred, assigned, or conveyed without prior approval of ITD.

Proposals may involve coordination with multiple offices within ITD such as Planning, Environmental, Traffic Operations and Maintenance. Details of required approvals should be incorporated into the airspace agreement as appropriate.

APPLICATION FOR PROPERTY USE AGREEMENTS

Application for property use agreements requires a letter addressed to the District Engineer, with a copy to the Right-of-Way Manager, requesting a lease of specified property.

The application request letter and/or application form must include the following information:

- 1) Identification of the party responsible for developing and operating the proposed use;
- 2) A general statement of the proposed use;
- 3) A description of why the proposed use would be in the public interest;
- 4) Information demonstrating the proposed use would not impair the highway or interfere with the free and safe flow of traffic;
- 5) The proposed design for the use of the space, including any facilities to be constructed;
- 6) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility;
- 7) Provision for vertical and horizontal access for maintenance purposes;
- 8) A description of other general provisions such as the term of use, insurance requirements, design limitations, safety mandates, accessibility, and maintenance as outlined further in this section; and
- 9) An adequately detailed three-dimensional presentation of the space to be used and the facility to be constructed if required by FHWA or the grantor. Maps and plans may not be required if the available real property interest is to be used for leisure activities (such as walking or biking), beautification, parking of motor vehicles, public mass transit facilities, and similar uses. In such cases, an acceptable metes and bounds description of the surface area, and appropriate plans or cross sections clearly defining the vertical use limits, may be furnished in lieu of a three-dimensional description, at the grantee's discretion.

The property use agreement contents will depend on the complexity and improvements on the parcel. Utilization of an [ITD-2702](#), Airspace Lease, is required. Terms and conditions unknown at the time of application may be omitted from the agreement at the time of initial application.

Provisions addressing the following must be included in the proposed agreement:

- 1) Ensure the safety and integrity of the federally assisted facility;
- 2) Define the term of the agreement;
- 3) Identify the design and location of the non-highway use;
- 4) Establish terms for revocation of the ROW use agreement and removal of improvements at no cost to the FHWA;
- 5) Provide for adequate insurance to hold the grantee and the FHWA harmless;
- 6) Require compliance with nondiscrimination requirements;
- 7) Require grantee and FHWA approval, if not assigned to SDOT, and SDOT approval if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for any significant revision in the design, construction, or operation of the non-highway use; and
- 8) Grant access to the non-highway use by the grantee and FHWA, and the SDOT if the agreement affects a Federal-aid highway and the SDOT is not the grantee, for inspection, maintenance, and for activities needed for reconstruction of the highway facility.
- 9) Additional terms and conditions appropriate for inclusion in ROW use agreements are described in FHWA guidance at https://www.fhwa.dot.gov/real_estate/right-of-way/corridor_management/airspace_guidelines.cfm. The terms and conditions listed in the guidance are not mandatory requirements.

CONDITIONS OF AIRSPACE USE

Use of airspace beneath the established grade line of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation and safety of the highway facility. ITD and FHWA personnel shall be allowed access for inspection purposes.

The proposed use of airspace above the established grade line of the highway shall not, at any location between two points established 2 feet beyond the two outer edges of the shoulder, extend below the horizontal plane which is at least 16 feet 6 inches above the grade line of the highway, or the minimum vertical clearance plus 6 inches as approved by ITD, except as necessary for columns, foundations or other support structures.

Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the grade line of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, may be considered.

Piers, columns, or any other portion of the airspace structure shall not be erected in a location that will interfere with visibility, reduce sight distance, or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by ITD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when ITD determines that such medians or outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to ITD. No supports shall be located in the ramp gores or in a position that would interfere with the signing

necessary for the proper use of the ramp.

The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance and operation features.

Consideration shall be given to seismic design criteria to assure the future safety of the highway facility and of the airspace use.

Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways unless the plans therefor contain adequate provisions for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

Any airspace facility shall be fire-resistant in accordance with the provisions of the applicable local building codes. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation that is a hazard to highway or non-highway users. Proposals involving the construction of improvements in airspace should be approved by the state authority responsible for fire protection standards. In cases where ITD questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation. ITD shall determine such lengths for each particular case. Exceptions may be considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by ITD.

The design, occupancy and use of any structure over or under a highway facility shall be such that the use, safety, appearance, or enjoyment of the highway will not be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind.

On-premise signs, displays, or devices may be erected on structures occupying highway airspace but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by ITD with respect to number, size, location and design.

Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing high-way without prior approval by ITD.

Where ITD is of the opinion that the proposed use of airspace requires changes in or additions to the existing highway facilities for the proper operation and maintenance of highways, such facilities shall be

provided without cost to federal funds. There may be an exception to this policy when the proposed use is for highway-related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs.

Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance and reconstruction, when necessary.

Permission shall not be granted for any use of airspace that does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

Approval for the use and occupancy of highway Right-of-Way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

- Parking design or arrangement to ensure orderly and functional parking.
- Plantings or other screening measures to improve the esthetics and appearance of the area.
- Surfacing, lighting, fencing, striping, curbing, wheel stops, pier protection devices, etc.
- Access for fire protection and fire-fighting equipment.

AIRSPACE INVENTORY

ITD shall maintain an inventory of all authorized uses of airspace. This inventory, which shall be available for review by appropriate federal and state agencies, shall include, but not be limited to, the following items for each authorized use of airspace:

- Location by project, survey location, or other appropriate method.
- Identification of the authorized user of the airspace.
- A three-dimensional or metes-and-bounds description.
- As-built construction plans of the highway facility at the location where the use of airspace was authorized.
- Pertinent construction plans of the facility authorized to occupy the airspace.
- A copy of the executed airspace agreement.

8 RIGHT-OF-WAY ACTIVITIES PERFORMED BY OTHERS UNDER THE SUPERVISION OF THE IDAHO TRANSPORTATION DEPARTMENT

When appropriate, the Headquarters Right-of-Way Section can contract right-of-way services with consultants.

Contracting for all activities required in support of State right-of-way programs through the use of private consultants and other services shall conform to both ITD's procedures and requirements for the contracting and procurement of services and the Federal requirements of 2 CFR 200.317.

Regardless of whether work is performed by ITD Right-of-Way staff or by ITD's consultants, all work shall be performed in accordance with all applicable law and ITD's policies and procedures.

ITD can perform any or all the duties of right-of-way acquisition for an LPA or LHTAC upon request, by drafting and executing a State-Local Agreement.

8.1 INTRODUCTION

ITD maintains a fully qualified and experienced professional right-of-way staff consisting of personnel who deliver right-of-way for scheduled projects, and administer the right-of-way functions with ITD programs. The ITD Right-of-Way staff is sized to accommodate normal project workload demands and acquisition complexity. However, at times it is necessary to contract with outside supplemental resources to meet production demands. This process is generally known as outsourcing.

Factors which influence the decision to outsource include:

- a. In-house capacity to perform the work, in the required skill areas, within the allotted period of time,
- b. Complexity of the job, and
- c. Overall efficiency of operations.

Utilization of outsourcing allows ITD to:

- a. Deploy its own staff on the most critical assignments
- b. Insure its own staff is fully occupied
- c. Manage periodic work overflow
- d. Maintain flexibility in assignments to accommodate changing priorities
- e. Ensure timely delivery of projects

8.2 SELECTION OF PROFESSIONAL SERVICES

The areas where professional services might be required include:

- Appraisal
- Appraisal Review
- Supplemental appraisal services
- Negotiation and acquisition services

- Relocation assistance
- Property management
- Titles

Contracts for such professional services shall be obtained in accordance with [Idaho Transportation Board Policy 4001](#). LPA's will follow the same processes and requirements when obtaining professional services from outside sources and, specifically, must use approved vendors from ITD's appraisal, negotiator, title, and relocation vendor lists.

The Right-of-Way Section will consult with a Deputy Attorney General prior to entering into contracts for professional services for Appraisals, Negotiation Services and Relocation Services. Right-of-Way contracts with consultants are to be approved and executed by the Right-of-Way Manager.

8.3 APPROVED CONSULTANT LIST FOR RIGHT-OF-WAY SERVICES

Because eminent domain real estate services are unique, it is useful to maintain a list of approved consultants that can be utilized when existing right-of-way staff is unavailable to provide these services. All individuals who are consultants or staff of consultant firms who carry out right-of-way activities on federally funded projects, or on projects that may be later submitted for federal funding eligibility, must meet the minimum qualifications established by ITD (if a qualified list has been established by the Right-of-Way Section for the discipline area, the consultant's name must appear on that list). It is the responsibility of any individual on an approved list to keep current with required minimum qualifications and reapply as necessary.

The approved consultant lists will be administered and maintained by the Right-of-Way Section and will be updated at least once every three years.

In order to establish a list of qualified sources once every three years, a register of qualified area property appraisers, review appraisers, negotiators for property acquisition and relocation specialists will be established by the Right-of-Way Section. A solicitation notice, for addition to the approved consultant list, will be sent to qualified consultants every two years. New applications for the approved consultant list will be reviewed by ITD Right-of-Way personnel with expertise in that particular discipline.

Vendors chosen to perform right-of-way work on behalf of an LPA or ITD must be licensed in the State of Idaho for that work.

Bids for specialized services, such as moving costs, sign relocation estimates, and salvage values, may be obtained without competitive bids.

DBE PARTICIPATION:

ITD has an annual goal for Disadvantaged Business Enterprise (DBE) participation on its federal-aid projects. To learn more about the DBE Program, its current goal and how to become DBE-certified, visit <http://apps.itd.idaho.gov/apps/ocr/ocrDBEPROGRAM.aspx>.

8.4 APPRAISAL AND VALUATION SCOPE OF SERVICES

ITD contracts regularly for appraisal services on a parcel or a project basis as this is a continuously recurring activity that is subject to broad workload fluctuations.

As appraisal review is inherently a review process, this will not typically be contracted. In the event in-house staff cannot be made available to perform this function, appraisal review work may be performed by consultants with the prior approval of the Right-of-Way Program Manager.

When obtaining valuation and appraisal services, the following will apply:

1. Any individual completing a Value Estimate/Appraisal Waiver ([ITD-1466](#)) must be pre-approved, in writing, by the ITD Right-of-Way Program Manager.
2. Short Form Appraisal Report ([ITD-2288](#)). This report is used to appraise uncomplicated partial acquisitions where there are no substantial improvements within the proposed right-of-way.
3. Before and After Appraisal Reports. These Appraisals shall be used at the request of the Legal Section, or for complex appraisals of partial acquisitions and shall be prepared in narrative form. The property is appraised as it exists prior to the proposed acquisition (Before Value), and then valued as if the project has been completed (After Value). An ITD-0017 Summation of Compensation for Before and After Appraisals must accompany this format. For more information, refer to ITD's Appraisal Guide.
4. Residential Appraisal. A Residential Appraisal Report (current URAR-approved form) may be used in the appraisal of a total acquisition of improved residential properties (single or multi-family). This report depends upon the availability of reasonably comparable market data requiring limited adjustments.

See Chapter 4 for additional details regarding appraisal reports.

8.5 FUNCTIONS NOT ALLOWED TO BE CONTRACTED

While the above functions may be contracted, ITD is responsible for and must perform the following:

- Determination of just compensation;
- Right-of-way certifications;
- Determination of payees (title verification) for property and relocation payments;
- Approval of administrative and legal settlements;
- Approval of relocation payments

8.6 METHODS OF PROCUREMENT

The purpose of the right-of-way contracting procedure is to set forth a consistent, equitable and effective process to assess contracting needs, evaluate qualifications, contract for services and provide guidance and oversight of Consultants.

The most common methods of procurement are set forth below. This does not preclude other methods allowed by state law.

Proposals may be sought through solicitation of qualified firms in the following instances:

1. When more than one source of outside professional services exists,
2. Conditions are not appropriate for the use of formal advertising,

This may be accomplished either by the Right-of-Way Section or through ITD's Contract Administration Section as a part of a full service project engineering solicitation. Firms, as well as their staff, must have experience acquiring real property in compliance with the requirements of

Title 23 and Title 49 of the Code of Federal Regulations. When the Right-of-Way Section solicits services, selection will be based on the following criteria:

1. Experience, qualifications and technical competence in the type of work required stating the roles and responsibilities individuals will assume on the project solicited;
2. Ability to meet anticipated schedules;
3. Past performance either with ITD or other state DOT's on similar projects;
4. References and resumes including those for sub-consultants;
5. Resumes including statements of ability and relevant experience of the firms personnel who will be used on the project with particular regard for the Project Manager and key staff;
6. The firm's delivery approach and responsiveness to ITD;
7. Present and projected workload;
8. Cost factors.

8.7 QUALIFICATIONS OF CONSULTANTS

Only firms with the ability to manage and complete each of the necessary elements of the right-of-way project, which may include but is not limited to appraisal, appraisal review, negotiation, relocation, property management and title services, shall be considered. Although sub-consultants may be used to accomplish one or more of the necessary right-of-way elements, the consultant firm must contain qualified key staff with the expertise and experience to undertake and accomplish contract tasks on time, within budget, in accordance with applicable state and federal standards, meeting both technical standards and quality expectations. Sub-consultants shall satisfy the same standards and qualifications as consultant firms.

All appraisals and appraisal reviews must be accomplished by Idaho licensed Certified General Appraisers from a list approved by ITD. Title services must be performed by a title company operating within the county where the real property being acquired is located and licensed by the State of Idaho through the Idaho Department of Insurance.

8.8 DESIGN-BUILD CONTRACTS

The Federal Guidelines that regulate Design-Build are [23 CFR 710](#) (Right-of-Way and Real Estate).

The Idaho State guidelines that regulate Design-Build are:

- [Idaho Code §40-902](#) (describes the contracting process for Design-Bid-Build (DBB) projects)

- Idaho Code [§40-904](#) and [§40-905](#) (allows the Department to use Design-Build (DB) and Construction Manager/General Contractor (CMGC) contracting methods under certain circumstances.)

This section outlines the right-of-way process for design build projects. The Right-of-Way Section shall work closely with the Contracting Services Unit on all design build projects.

8.8.1 EXPLANATION OF THE DESIGN-BUILD PROCESS

Design-build is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design-builder or design-build contractor. Design-build relies on a single point of responsibility contract and can minimize risks for the project owner and reduce the delivery schedule by overlapping the design phase and construction phase of a project.

When done correctly, the design-build process can accelerate project delivery.

8.8.2 DESIGN-BUILD AND RIGHT-OF-WAY

In a typical design-build project, the right-of-way process is not the responsibility of the design-build contractor; although in certain circumstances it can be done. For most projects with right-of-way needs, the Right-of-Way Section shall either perform the right-of-way process, or will contract with right-of-way consultants on behalf of the Department.

IF RIGHT-OF-WAY ACQUISITION IS INCLUDED IN THE DESIGN-BUILD CONTRACT

If the Contracting Services Unit and the Right-of-Way Section agree, and at the approval of the appropriate District Engineer, the right-of-way acquisition and clearance services may be incorporated into the design-build contract. The contract shall include language that either:

- provides that construction will not commence until all property is acquired and relocations have been completed; or
- the construction could be phased or segmented to allow right-of-way activities to be completed on individual properties or a group of properties, thereby allowing certification in a manner satisfactory to ITD's Right-of-Way Section for each phase or segment.

The contractor shall discuss the right-of-way to be purchased with the Right-of-Way Section, ensuring that he/she purchases right-of-way on behalf of the Department **only for the project purpose**. Land or easement purchases for material sources, construction staging, and temporary needs shall be purchased by the contractor with contractor's funds.

If ITD elects to include right-of-way services in the design-build contract, the provisions outlined in [23 CFR Part 710.309](#) must be addressed in the request for proposals document.

The contractor is required to prepare a right-of-way acquisition plan for the project for review and approval by the Project Manager, Contracting Services Manager, and Right-of-Way Manager. This shall include:

- A relocation plan in accordance with Chapter 6 of this Manual, which shall include
 - Time estimates for relocation based on individual displacement needs

- Housing availability
- Regulatory notice to move requirements

- Identification of buildable segments of right-of-way that may proceed to construction when right-of-way acquisition and relocation are complete and independent of right-of-way status on other project segments
- A complete set of right-of-way plans in accordance with Chapter 3 of this manual
- A proposed time schedule that prioritizes activities and the performance of acquisition and relocation
- A cost estimate for each proposed phase of right-of-way acquisition for which the contractor is responsible
- A right-of-way tracking system to provide ongoing status on appraisals, acquisitions, and relocations
- A quality control system to assess the services and payments to owners and occupants
- A plan showing how breakdowns in negotiations will be handled (such as, given to the Right-of-Way Section for condemnation)

The Right-of-Way Section shall approve all appraised values, just compensation amounts, contracts, administrative settlement amounts, relocation benefit amounts, and proposed use of Last Resort Housing for displacees.

The Right-of-Way Manager shall designate a member of the Right-of-Way Section to serve as the internal project manager/contact for each project.

SEGMENTING A PROJECT

In order to expedite the right-of-way process for Design-Build contracts, a project can be segmented and approached piece by piece. The segments will be assigned by the design-build contractor or the Contracting Services Unit, with input from the Right-of-Way Section. If the project is federally funded, the segments must be approved by the FHWA.

Construction cannot begin on a segment until all of the right-of-way for that segment is purchased ([23 CFR 710.309](#)).

RIGHT-OF-WAY PLANS FOR DESIGN BUILD

Right-of-way plans shall follow all of the requirements outlined in Chapter 3. Plans for a design build project can be provided by segment for approval by the Right-of-Way Section at the request of the Contracting Services Unit and approval of the Right-of-Way Manager.

RIGHT-OF-WAY CERTIFICATION

Right-of-way certification is regulated by [23 CFR 635.309](#). For a design-build project, with FHWA approval, the right-of-way certificate can be issued if there is NEPA clearance either:

- at the beginning of a project
- for segments of the project

In order for the FHWA to authorize right-of-way certification for federally funded projects, they must have:

- A cost estimate
- The project is listed in the STIP
- The NEPA is complete
- Complete right-of-way plans

The initial authorization of a design-build project is typically under a conditional right-of-way certificate. However, before construction can be authorized, there shall be amended right-of-way certifications to show that the right-of-way has since been acquired (or at least in possession) and that the relocations have been completed (or at least reasonably accommodated).

ENVIRONMENTAL CONCERNS

The design-build contractor can begin preliminary design work prior to obtaining NEPA clearance with approval from the Contracting Services Unit and the Right-of-Way Manager and FHWA.

[23 CFR 636.109](#) provides information on the risks associated with proceeding with the project prior to NEPA clearance, and the guidelines that the contractor must comply with in order to proceed.

RELOCATION

The design-build contractor is responsible for providing a written relocation plan with reasonable timing. This plan must be approved by the Right-of-Way Section Manager.

8.9 NONCOMPETITIVE CONTRACTING

When it is in the best interest of ITD, noncompetitive contracting is an option. Justification for noncompetitive (sole source) contracting will be generated to the file on an [ITD-500](#) by a Right-of-Way Section staff member and must be dated and approved by the Right-of-Way Manager.

A contract can be awarded when the following circumstances exist:

- Small projects (less than ten parcels and the total cost of the appraisals is less than \$25,000) when time constraints and cost considerations determine a sole source would best serve the public interest. Documentation with justification must accompany this method.
- The services are available only from a single qualified source.
- Public exigency or emergency precludes a competitive solicitation process.

8.10 SELECTION COMMITTEE

A committee consisting of the Right-of-Way Manager and two Right-of-Way Section employees will review appraisal and appraisal review contracts and agreements. The Right-of-Way Manager shall have the final approval of all Right-of-Way contracts.

For those routine contracts or agreements exceeding \$200,000 total payment, the evaluation committee will submit recommendations and justification to the Chief Engineer, Development for Idaho Transportation Board consideration. If approved by the Idaho Transportation Board, the contract or agreement can be solicited for and executed by the ITD Director or Chief Engineer. For those contracts or agreements not needing Idaho Transportation Board approval, the Right-of-Way section shall execute the contract.

Approval must be obtained from Internal Review prior to entering into contracts of \$200,000 or more.

8.11 OVERSIGHT AND REVIEW

In order to qualify for and maintain accountability for Federal funding, ITD is required to “...be adequately staffed, equipped, and organized to discharge real property related responsibilities.” [23 CFR 710.201(a)] ITD is also required by 23 CFR 710.201(h) to oversee the work performed by other public land organizations (e.g., local agencies) and private consultants. Failure to perform the required oversight can result in a variety of sanctions, including but not limited to loss of Federal funds on a parcel or project and/or withdrawal of Federal participation from future projects.

The system of oversight and review will be to review not less than a representative sample of files and documents, as determined by the review individual or team, and may include interviews with consultant staff to clarify findings from the initial file reviews. Typically, these reviews will be conducted on-site where the files and documents are located.

The Right-of-Way Manager, or a designee, ensures that consultants are in compliance with the contract, the Uniform Act, and this Manual. In order to ensure that property owners and occupants are provided the same services, benefits, and protections as they would under the traditional ITD process, the Right-of-Way Section will monitor and review the project work of the consultant as well as monitor all contract activities and payments for compliance.

The Right-of-Way Section will notify the contracted consultant of the ITD contact person who will serve as both an information resource as well as the individual responsible for reviewing the work of the consultant. The ITD contact person will be available to interpret policies and procedures which are to be followed. This person will generally be a Senior Right-of-Way Agent and will be appointed by the Right-of-Way Manager.

In order for the review team to carry out its responsibilities, consistent with ITD’s oversight commitment to FHWA and State requirements, the consultant must be available during regular business hours and the files must be readily accessible for review.

9 LOCAL PUBLIC AGENCIES (LPAS) ACQUISITION

The citizens of the State of Idaho and its local communities benefit from the local administration of right-of-way acquisition. Local officials are closest to affected property owners and know the needs and concerns of citizens. ITD strives for collaboration with local public agencies where the authority and responsibility for projects lies with the local agency while providing assistance, support, and oversight as necessary.

ITD is responsible for all Federal-aid highway projects under 23 USC 302, whether administered by ITD or by an LPA. ITD Right-of-Way shall provide guidance and coordination concerning state and federal requirements and monitor LPA activities during the acquisition phase. Through the Stewardship agreement between ITD and FHWA, ITD is responsible for monitoring the acquisition activities of local agencies and for ensuring that these projects are carried out in compliance with federal statutes, regulations, and policies. The state-local agreement also outlines the responsibilities of the parties, including the purpose of the project and the financial responsibilities.

ITD's Right-of-Way section often works with Local Public Agencies on their projects, assisting upon request and lending expertise when needed.

This chapter is to be used by ITD and Local Public Agencies for guidance and oversight of right-of-way projects that will require certification by the Federal Highway Administration (FHWA). For local public agency (LPA) projects which use FHWA funding for any phase or stage of the project development or construction, ITD's procedures and requirements for the LPAs, their contractors, and their representatives shall apply. In addition, all project monitoring and oversight roles and responsibilities by ITD and its representatives shall apply.

This chapter also explains the requirements and conditions to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. It describes and explains the critical steps in the property acquisition process. The objective is to enable local officials to proceed with confidence that they are conforming to all requirements of the law, reducing the amount of time devoted to the research and study of procedures and rules.

9.1 AUTHORITY

Through the Stewardship Agreement between ITD and FHWA, ITD is responsible for ensuring that all aspects of LPA projects are carried out in compliance with federal statutes, regulations, and policies.

The following Federal statutes and Federal regulations apply to the administration of local agency projects:

- **United States Code**, Title 23, Sections 302 and 323
- **Code of Federal Regulations**, Title 23, Part 710 and Part 635.105, Title 49, Part 1, Section 1.48(b), Part 2 and Part 24

9.2 DELEGATION OF RIGHT-OF-WAY ACTIVITIES TO LPAs

The delegation of right-of-way activities to LPAs may be made by ITD or LHTAC when it has been determined that the LPA has proper qualifications and capacity to satisfactorily carry out such responsibilities. However, this delegation is limited in scope. The Ada County Highway District (ACHD) is currently the only LPA in Idaho for which program-wide responsibility for the development, administration and oversight of projects has been delegated by ITD. Aside from ACHD, an LPA is delegated the authority to acquire right-of-way only after the LPA, or its consultant(s), have demonstrated a level of expertise and knowledge of ITD right-of-way policies and procedures, attained under previously monitored projects coordinated by an ITD Right-of-Way Liaison. Acquisitions by an LPA or their consultants will be monitored by the ITD Right-of-Way Liaison.

Currently, the right-of-way activities for Idaho's LPA projects may be undertaken through one of the following three tracks:

1. ACHD Administered Projects.
2. LHTAC Administered Projects.
3. ITD Administered LPA Projects.

ACHD Track:

ITD has delegated to the Ada County Highway District (ACHD) the responsibility for the development, administration, and oversight of its projects. Under this arrangement, ACHD is responsible for project level right-of-way activities conducted by ACHD and its consultants. ITD is responsible for program level monitoring and oversight.

LHTAC Track:

The Local Highway Technical Assistance Council (LHTAC) is responsible for the coordination and oversight of most rural and some urban LPA projects. Under this arrangement, the LPA conducts the project level right-of-way activities, to the extent it is approved to do so, and LHTAC is responsible for the coordination and oversight of the LPA's work. LHTAC may delegate any or all administration of right-of-way activities to an LPA under this track, based upon a review of the qualifications of the LPA. The delegation may be either on a project by project basis or on a programmatic basis under a 5-year renewal cycle. ITD is responsible for program level monitoring and oversight of the LPA's right-of-way activities.

ITD Track:

For those LPA projects not covered by either the ACHD Track or the LHTAC Track, ITD is responsible for the administration and oversight of all right-of-way activities. ITD may delegate any or all administration of right-of-way activities to an LPA under this track, based upon a review of the qualifications of the LPA. The delegation may be either on a project by project basis or on a programmatic basis under a 5-year renewal cycle. For those LPAs approved by ITD for delegation of right-of-way activities, ITD will continue to be responsible for program level monitoring and oversight of the LPA's right-of-way activities.

9.3 LPA PROCEDURES AND REQUIREMENTS FOR DELEGATED PROJECTS

The following tables outline the procedures and requirements for those right-of-way activities delegated to the LPAs:

ROW PLAN PREPARATION AND APPROVAL	
State/Local Agreement	Project development is initiated when ITD and the LPA execute the State/Local Agreement (Project Development). The ITD Local Project Coordinator (LPC) or LHTAC, as applicable, will be the LPA's contact regarding the agreement (ref. ITD Design Manual, Section 700). Donations and contributions to be used toward match on local projects must be documented in the State/Local Agreement (see "Other Right-of-Way Actions" in this table for further details on early acquisition, donations and contributions).
Preliminary Right-of-Way Plans and Legal Descriptions	The LPA prepares the Preliminary Right-of-way Plans, legal descriptions and total ownership map. It is recommended that ITD Design Manual, Section 415 is followed.
Initiation of Title Work	Title reports are requested along with last deeds of record from a title company. Obtain assessors printout for the parcels from the County Assessors/Recorders Office.
ROW Cost Estimate.	It is recommended that the LPA prepare a Right-of-Way Cost Estimate showing the estimated costs associated with the project. The right-of-way acquisitions should be analyzed for any recommended changes to the project plans.
Meet With Affected Property Owners	The LPA Meets with property owners to discuss project design features and to collect necessary data.
Preparation of final Right-of-Way Plans	Plan preparation continues in accordance with Section 415 of ITD's Design Manual; and complies with Form ITD-0131 , Plans Essential Checklist. The legal descriptions will comply with Form ITD-0130 , Legal Description Essential Requirements Checklist.

Right-of-Way Plans Package	<p>The LPA prepares a consisting of the following:</p> <ul style="list-style-type: none"> • One set of color coded right-of-way plans. • Property Owner Data Sheets for all parcels. • Right-of-Way Cost Estimate. • Legal descriptions (stamped, signed, and dated by PLS) for all parcels. • Legal descriptions in electronic format. • ITD-0130, Plans Essential Requirements Checklist and ITD-0131, Legal Description Essential Requirements Checklist
Submittal and Approval of the “Official Right-of-Way Plans”	<p>The completed Right-of-Way Plans Package is submitted by the LPA to ITD or LHTAC, as appropriate, for review and final approval. (Note: ACHD has been delegated ROW Plan Approval authority and so is not subject to this requirement.)</p>
Funding of Right-of-Way Acquisition	<p>The LPA is not to commence right-of-way acquisition prior to posting of the authorization on an ITD-2101. The LPA verifies that the environmental document is approved and funding for RW (Right-of-Way) and LP (Land Purchase) is initiated using ITD 2101 Project Agreement.</p>
<p>APPRAISAL AND APPRAISAL REVIEW</p>	
Appraisal Services	<p>The LPA may use ITD appraisers, fee appraisers, or their own staff appraisers (if approved by ITD).</p>
Securing Fee Appraisal Services	<p>The LPA will contract a Fee Appraiser from ITD’s term agreement list. The selection of appraiser(s) will be on a competitive basis unless circumstances of the project allow for a noncompetitive contract as detailed in Section 300.2.5.6 of ITD’s Right-of-Way Procedures Handbook.</p>
Appraisals: Standards and Documentation	<p>An appraisal of each parcel to be acquired will be conducted in accordance with USPAP standards. Limited appraisals may be used where damages to the remaining property may be easily determined. Limited appraisals will be documented using Form ITD-2288, Appraisal Report. Complete appraisals will be required on acquisitions in which property valuation and damages are complex in nature. These completed appraisals will include a “before and after” report which will be summarized on Form ITD-0017, Format For Summation of Compensation.</p>

Appraisal Waivers and Value Estimates	The use of value estimates by the LPA may be approved by ITD in lieu of an actual appraisal under certain, limited circumstances and pre-conditions. ITD's approval will be on a project-by-project basis and will specify the individual(s) approved for conducting such work.
Appraisal Review: Procedures and Documentation	Appraisal reviews will be conducted by ITD unless otherwise approved by ITD. The appraisal reviews will be conducted in accordance with ITD's procedures per Section 301.1.5 of ITD's Right-of-Way Handbook and documentation of the review will include a completed form ITD-1922, Statement of the Review Appraiser and a completed Certificate of Review Appraiser.
ACQUISITION	
Negotiators	The LPA may use either ITD negotiators, fee negotiators, or their own staff negotiators (if approved by ITD).
Securing Fee Negotiator Services	Contracted fee negotiators must be from ITD's term agreement list and the work must be performed in accordance with the specified provisions of ITD's Fee Consultant Agreement – Negotiations (ref. 200-09 of ITD's Right-of-Way Procedures Handbook).
Establishment of Minimum Compensation and Administrative Settlement Process	The LPA must establish a minimum payment amount and an administrative settlement procedure must be provided to the negotiators. All administrative settlements shall be approved by the LPA in writing and must contain detailed justification of the settlement amount.
Authorization to Commence Negotiations	An authorization letter is sent by the LPA to the consultant indicating acceptance of the Fair Market Value, timeframe for the initiation of negotiation and the completion of acquisition. All acquisitions are recommended to be completed within ninety days of the date of authorization unless otherwise approved by the LPA.

<p>Preparation of Title Passing Documents.</p>	<p>A formal offer packet (Exhibit 11) is prepared including:</p> <ul style="list-style-type: none"> • Offer letter • Duplicate originals of the Right-of-Way Contract • Conveyance documents. • IRS W-9 form • A copy of applicable portions of the right-of-way plans. • ITD’s Acquisition Brochure. • ITD’s Property Owner Advice of Rights form ITD-644, Acquisition and Relocation Packet Cover or equivalent. • Preparation of the above documents shall include a review and comparison with the Official Right-of-Way Plans, the title commitment, and the reviewed appraisal reports to verify consistency and accuracy of ownership name, acreages, access and stationing.
<p>Offers To Property Owners</p>	<p>The negotiator is to contact the property owner to establish their preference to the formal offer presentation; mail or personal presentation. The file must document receipt by the property owner. If the offer is made by mail, the offer packet will be sent by US Postal Service, Certified Mail – Return Receipt Requested. If the offer is made in person, signature and of the property owner receiving it must be documented.</p>
<p>Negotiation</p>	<p>The negotiator will, at a minimum, discuss the following with the property owner:</p> <ul style="list-style-type: none"> • Read and explain the documents in the offer packet; • Point out the right-of-way requirements on the plans and, if necessary, on the ground; • Explain the effects of the construction as to grades, access, drainage, and irrigation; • Discuss any subsurface facilities not addressed in the appraisal or on the plans and follow up with project designers; • Explain the right to retain any improvements within the right-of-way requirement at the at the established retention values; • Discuss any liens, leases, and other interests identified in the title report, and unrecorded encumbrances, and any parties of interest, and or encumbrances, secure the signature of the property owner on the associated request form. • Explain the obligation of the property owner for the payment of real taxes and the process to claim a pro rata refund; • Discuss the option of an in lieu of construction payment as an alternative for construction items; • Discuss the time frame of the payment process and possession dates; and

	<ul style="list-style-type: none"> • Inform the property owner that the value ascribed to the land, improvements, permanent easements, and administrative settlements will be reported to the IRS and recommend consultation with their tax consultant. • Discuss with the property owner the procedure to receive refund for prorated share of property taxes. <p>If any personal property or improvements are located within the right-of-way requirement, the negotiator shall coordinate all relocation activity with ITD or an ITD approved relocation agent.</p> <p>If a well is located within the parcel requirement area, and the property owner is not being paid a cost to cure amount for the replacement of the well, the Negotiator shall hire a well drilling consultant to test the quality of the well water and the flow capacity of the well and secure bids to have the well replaced.</p>
Right-of-Way Agent’s Diary of Negotiations	The negotiator must maintain an up to date diary including complete, accurate, and detailed information.
Successful Negotiations: Closing of acquisition.	The LPA or consultant will conduct or contract out the closing of each property acquisition. Documentation of the closing including title transfer papers and proof of payment are to be included in the project file.
Unsuccessful Negotiations: Possession Agreement	In the event that negotiations reach an impasse, the LPA’s negotiator may discuss the possibility of the property owner granting the LPA an agreement for possession. The value in the agreement will be the fair market value from the reviewed appraisal and interest shall be determined by the amount published by the Secretary of State’s Office. Documentation of the possession including the agreement and proof of payment are to be included in the project file. Consultation should be made with the LPA’s legal staff.
Unsuccessful Negotiations: Condemnation	In the event that the LPA is unable to obtain a signed possession agreement from the property owner, the LPA will proceed with preparations to acquire the property through condemnation.
Payment	For each parcel the LPA commences the payment process and documents this action in the project file.
Completion of Right-of-Way Acquisition	At the completion of right-of-way acquisitions, the LPA completes a form ITD-1983 , Local Public Agency Completion of Right-of-Way Activities, and submits it to the ITD Headquarters Right-of-Way, Procedure Review, ITD Roadway Design and LHTAC if applicable.

Right-of-Way Certification	Headquarters Right-of-Way receives requests for Right-of-Way Certificates from the LPA, LHTAC or District Staff from an email request or a notification of a request from a link to ProjectWise. The ITD Right-of-Way Agent responsible for Procedure Review verifies all project information required for the Right-of-Way Certification and prepares the Right-of-Way Certificate which is then submitted to the Right-of-Way Program Manager for his/her approval.
RELOCATION	
Relocation – By ITD	Unless otherwise approved by ITD, all relocation activities will be performed by ITD in accordance with Chapter 500 of ITD’s Right-of-Way Procedures Handbook.
OTHER RIGHT-OF-WAY ACTIVITIES	
Protective Buying and Hardship Acquisition	Protective buying and hardship acquisition are tools by which property may be acquired with Federal-aid funds prior to completion of the environmental process for the parent project. Protective buying and hardship acquisition are intended to be used for a particular parcel or limited number of parcels for the purposes of preventing imminent development and to alleviate hardship to property owners on the preferred location of a project. A request for protective buying or hardship acquisition must be initiated by the LPA and coordinated through LHTAC (where applicable) to ITD. ITD is responsible for submitting all requests for protective buying or hardship acquisition to FHWA for approval. See ITD ROW Manual Section 5.17 for further details.
Early Acquisition	The LPA may initiate the acquisition of real property at any time it has the legal authority to do so. However, acquisition costs incurred prior to authorization by FHWA may, under certain conditions also be eligible for Federal-aid funds or credit towards the non-Federal share of the project. The LPA’s intentions to utilize early acquisition in conjunction with a project must be documented in State/Local Agreement. See ITD Right-of-Way Manual Section 5.16 for further details.

Donations	A non-governmental owner whose real property is required for a Federal-aid project may donate the property to the LPA. Prior to accepting the property, the LPA must inform the owner of his/her right to receive just compensation for the property and the right to an appraisal of the property. Donations may qualify as credit towards the non-Federal match (see “Contributions”, below). Donations may also be made in exchange for construction features or services. See ITD ROW Manual Section 5.10 for further details.
Contributions	Real property owned by the LPA that is incorporated into the project, including property donated to the LPA, can be used as credit towards the non-Federal match. The LPA’s intention to apply property contributions towards the non-Federal share of the project must be documented in State/Local Agreement. See ITD Right-of-Way Manual Section 5.13 for further details.
Functional Replacement	When publicly owned real property is to be acquired for a Federal-aid highway project, an option to paying the fair market value for the property is to provide compensation by functionally replacing the property with another facility which will provide equivalent utility. Prior approval by ITD is required for functional replacement. To request functional replacement, the LPA (through LHTAC if appropriate) must coordinate the proposed functional replacement with ITD Headquarters. The ITD must determine that the proposed functional replacement is in the public interest. In addition, ITD must coordinate with FHWA for its concurrence in the public interest determination. See ITD Right-of-Way Manual Section 5.14 for further details
Federal Land Transfers	The LPA coordinates any necessary Federal land transfer acquisitions through the ITD Right-of-Way Section, FHWA and the affected Federal land agency.

9.4 OVERSIGHT ROLES/RESPONSIBILITIES

The ITD Right-of-Way Program Manager assigns a liaison representative from the Right-of-Way Section to advise and consult on project right-of-way issues and problems and to coordinate and brief the LPA with right-of-way requirements. The individual performing the function of liaison will be an experienced Right-of-Way Agent with broad experience in all areas of right-of-way work. The assigned ITD liaison will provide practical advice that conforms to applicable law and regulations. In addition, the ITD representative will strive for program consistency so that citizens are treated fairly and equitably, without regard to the part of the State they live in or the nature of their occupancy or type of acquisition.

The Guidelines for Local Federal Aid Right-of-Way Acquisitions is provided here as a resource. Additionally, ITD Right-of-Way Headquarters staff is available to consult with local staff on project-specific issues.

For all property acquired, whether acquired by the LPA or ITD, it is ITD's ultimate responsibility to insure that the acquisition is accomplished in accordance with all applicable State and Federal laws, regulations, and policy. Coordination between ITD and the local agency can be an essential element in providing that assurance. The designated ITD liaison will closely monitor the acquisition activities of the agency on a regular and ongoing basis.

The Department may perform the following activities with regard to locally administered right-of-way acquisition projects:

- Provide current and continuing advice on the application of State and Federal laws and regulations concerning right-of-way acquisition to specific project and parcel problems and situations.
- Provide revisions and updates to regulations, policies, procedures and guidance material.
- Provide training to local staff that are or will be engaged in right-of-way acquisition.
- Monitor the performance of right-of-way activities.
- Provide referrals of approved and experienced private service providers in right-of-way functions, including appraisal, negotiations, relocation, and title work.
- Monitor and review property acquisition activities in order to ascertain that right-of-way is acquired in accordance with the provisions of State and Federal laws and as required by Federal Highway Administration directives.
- Consult with local officials to identify the scope, schedule and cost of right-of-way acquisition.

PROJECT REVIEWS

Random project reviews are a proactive measure intended to reduce the risk that LPAs engage in improper practices that result in irrevocable problems or compliance issues that could delay or prohibit right-of-way certification or risk federal funding on current or future federal aid projects. It is the intent of the acquisition file review process to ensure that the LPA has completed the right-of-way acquisition process in compliance with federal regulations prior to ITD's certification to FHWA.

The ITD Right-of-Way Liaison will perform random project reviews on selected federal aid projects. The number of project reviews will depend on the scope of the project, the complexity of acquisitions, the LPA's level of experience, and the LPA's past performance. At a minimum, the ITD Liaison should conduct random project reviews on at least 25 percent of the annual active LPA projects throughout the State.

Random project reviews should be conducted prior to the completion of the project with the ITD liaison focusing on the actions taken by the LPA for compliance with URA. By completing a random project review before the project is complete, regulatory issues can often be caught early enough in the process so that corrective actions can be taken. The ITD Liaison will identify and assist the LPA in correcting issues during the acquisition process, and shall involve the ITD Right-of-Way Manager on any regulatory issues. The ITD Liaison will provide timely feed back to the LPA the results of the project reviews.

Reviews shall be documented on forms developed for Project Reviews.

Factors and risks which should be considered in developing the frequency of the project reviews may include:

1. The nature and location of the property
2. Occupancy of the property
 - Owner, tenant, business, farm, etc.
 - Relocation assistance
3. Complexity of appraisals
 - Unique improvements, tenant owned improvements, etc.
4. Experience level of LPA/Consultant staff with real estate acquisition under the URA
5. LPA/Consultant past record of issues with URA compliance
6. Nature of property ownership (Individual, corporation, public entities, etc.)

The ITD Liaison should perform spot check reviews prior to receiving the request for right-of-way certification from the LPA to ensure there are no surprises at certification.

9.5 LOCAL PUBLIC AGENCY TRAINING

The ITD liaison provides/facilitates annual structured training open to all LPAs and consultants that address the requirements for a federal aid project. If requested, or the ITD liaison determines the need, the ITD liaison provides one-on-one or group project-specific training to LPAs on the URA and the right-of-way process on federal aid projects and/or any projects wishing to preserve federal aid eligibility. This training should be tailored for the project according to the LPA's approved procedures and the right-of-way acquisitions needed for the project.

9.6 COMPLIANCE WITH FEDERAL UNIFORM RELOCATION ACT

Local agencies must comply fully with the acquisition and relocation requirements of the Federal Uniform Relocation Act. The mandated services and benefits in the Federal law must be provided and the procedural requirements followed as a condition of Federal reimbursement on the project.

Substantial noncompliance may result in the loss of Federal funding for the entire project if it is not correctable, including construction cost. It is important that local agency staff know the Uniform Act requirements, that consultants hired for the project be experienced, and that the agency oversee consultant work as it progresses.

The publication, Real Estate Acquisition Guide for Local Public Agencies is a valuable resource which provides practical guidance and answers to many questions that may arise on the project level.

Copies of the Guide are available as a pdf file and can be downloaded from the FHWA website under the Office of Real Estate https://www.fhwa.dot.gov/real_estate/local_public_agencies/lpa_guide/index.cfm

The following are Federal Uniform Relocation Act requirements for property acquisition. A more complete description of these requirements can be found in other sections of this Manual and in the Real Estate Acquisition Guide for Local Public Agencies referenced above.

- **Offer to Accompany Appraiser**
The owner must be offered the opportunity to accompany the appraiser when inspecting property. The appraiser should either send the owner a letter with offer to accompany at inspection or make a file note if offer is made on phone or in person.
- **Just Compensation**
Just compensation cannot be less than the approved appraisal or the amount of the approved “value estimate.” See the Appraisal Section of this Manual for more information on the valuation process and the compensation estimate procedure.
- **Written Offer to the Owner**
The written offer must include a description of the real property interests acquired. A summary statement must be provided that explains the basis for the offer and enables the owner to make an informed judgment concerning the amount of the offer.
- **Opportunity for Owner to Consider the Offer**
The agency may not insist on an immediate response to an initial offer. The agency should make at least three contacts with sufficient intervals to allow the owner to reflect on the offer and consult with others. ITD recommends that an owner be given at least 30 days to consider the offer.
- **Non Coercion**
The negotiator may not insist on a decision at the time of initial offer or use condemnation as a threat to induce settlement, advance the date of filing condemnation, or delay deposit of funds. All of these acts are coercive in nature.
- **90 Day Notice**
People displaced by acquisition must be provided 90 days advance written notice of the date they are required to vacate the property. This has important implications for scheduling construction. Project delay could result if issuance of notices is not managed carefully. See Chapter Nine for policy on issuance of notices.
- **Payment Before Possession**
The agency approved fair market value amount must be paid to the owner or deposited in District Court for the benefit of the owner before the agency may take possession of the property.
- **Uneconomic Remnants**

The agency must offer to purchase any remainder that the agency determines will have little or no utility or value to the owner because of agency acquisition of the larger portion.

9.7 LPA CERTIFICATION

After completion of the right-of-way acquisition phase, the LPA provides an executed [ITD-1983](#), the LPA’s Certificate of Completion of Right-of-Way Activities, to ITD Right-of-Way. The [ITD-1983](#) documents the scope and status of the right-of-way acquisition and relocation work necessary for the project. ITD then prepares the actual right-of-way certification letter for the project.

9.8 LPA CLAIM FOR PRO-RATA REIMBURSEMENT OF FEDERAL FUNDS

In order to be reimbursed, the LPA submits a reimbursement packet to Headquarters Right-of-Way (Procedure Review) which includes:

- 1) Copies of the Right-of-Way Contract
- 2) Invoices
- 3) Warrant

4) Negotiator's Diary

Progress reimbursements may be made on very large projects at the discretion of the Right-of-Way Manager.

9.9 LPA FINAL REPORT REQUIREMENTS

After all reimbursements are completed, the LPA shall notify HQ Right-of-Way (Procedure Review) that all reimbursement requests have been submitted.

9.10 FORMS

The local authority may use its own forms for right-of-way acquisition but ITD forms are recommended. Use of ITD forms will assure that all required program and claim data is recorded. ITD forms will encourage consistent application of underlying ITD policies on a statewide basis.

9.11 RECORDS RETENTION

The local public agency will submit all documentation to ITD Right-of-Way which supports compensation to property owners and relocation benefits to project displacees. Records remaining in possession of the local agency must be retained for a period of three years following the payment of the Federal final voucher on the project. The local government will provide access to records for audit by representatives of ITD.

FILE DOCUMENTATION REQUIREMENTS

- The LPA must maintain copies of all general correspondence.
- The LPA must maintain copies of consultant hiring process and contracts.
- The LPA must maintain a copy of appraisal and appraisal review for each parcel.
- The LPA must maintain a copy of offer letters, the negotiator diary, Right-of-Way contract, any administrative settlement justification, any title transferring documents and all verification of payment.
- The LPA must submit the LPA Certificate of Right-of-Way and requests for reimbursement after completion of all right-of-way acquisitions through the Right-of-Way Section.
- The LPA must retain all records of right-of-way activities for a minimum of three years from the date on which the final claims for reimbursement of costs of the property have been submitted for payment.

10 SCENIC ENHANCEMENT

ITD ensures that there is effective state control of outdoor advertising signs and junkyards in areas adjacent to the Interstate System, Primary Highways, the NHS (National Highway System) roads, and other Control Routes within the State of Idaho in compliance with Federal and State Law in order to:

- Promote the maximum safety, convenience, and enjoyment of public travel and the free flow of interstate commerce.
- Protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the Interstate System.
- Control the use of, preserve the natural beauty, and improve areas adjacent to that system.
- Prohibit, restrict or limit the erection of unauthorized signs, billboards or structures within the right-of-way of any state highway, and to remove any unauthorized signs.

10.1 OBJECTIVES

The Scenic Enhancement Program consists of the following primary functions:

- Maintaining an inventory of all outdoor advertising signs along the highway systems, including the State's NHS routes.
- 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.
- Removing, or causing to be removed, any signs not legally erected or maintained.
- Issuing Licenses to individuals or entities participating in Outdoor Advertising or the Operating of Junkyards
- Coordinate OAC (Outdoor Advertising Control) with local jurisdictions for non-State-system NHS routes.

10.2 APPLICABLE LAWS

Outdoor Advertising and junkyards adjacent to interstates and primary highways and the NHS (National Highway System) are regulated by:

- The [Highway Beautification Act](#) signed on October 22, 1965,
- [Public Law 89-285](#) including amendments thereto,
- [23 USC 131](#) and [23 CFR 750](#),
- the [Federal & State Agreement of June 2, 1971](#),
- FHWA Memorandums,
- Regulations promulgated by the Idaho Transportation Department Board of Directors,
- *Idaho Code, Title 40, Chapters 1, 3 and 19*,
- IDAPA Rules Nos. [39.03.60](#), [39.03.61](#) and [39.03.40](#)

10.3 OUTDOOR ADVERTISING CONTROL

The ITD Outdoor Advertising Program is charged with monitoring, controlling, or causing to be controlled, advertising signs on all NHS routes throughout the State. The controlling of these signs includes regulating, among other things, the size, lighting, and spacing of said signs.

This segment of the Right-of-Way Manual contains general information governing the Outdoor Advertising portion of the Scenic Enhancement Section of the Right-of-Way Manual.

Outdoor Advertising does not include signs located within the state right-of-way, including traffic signs or logo signs.

Each outdoor advertising sign must have a permit assigned to it. Specific State of Idaho and Federal laws provide the authority and direction as to how the program functions.

A sign includes any structure, message, message, display, etc., that is designed to attract or inform the public. It does not have to be a commercial advertisement. These do not include:

- Official notices issued by any court or public body or officer
- Notices posted by any public officer in performance of a public duty or by any person giving legal notice
- Directional, warning, or informational structures required by or authorized by law, informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers and above cable closures
- An official or public structure erected near a city or county, and within its territorial or zoning jurisdiction, with contains the name of such city or county, provided the same is maintained wholly at public expense

The responsibility for the administration of the Scenic Enhancement and Outdoor Advertising program is under the authority of the Right-of-Way Section. Issuance of permits, control, and inventory will be functions handled by delegated persons under the direction of the Right-of-Way Manager.

All permit applications must be reviewed by the Right-of-Way Section which will assign a permit number and must issue an Outdoor Advertising License prior to the issuance of permits.

All final determinations, permits and licenses shall bear the signature and approval/denial of the Right-of-Way Manager or designee.

INDIAN RESERVATION LAND

The State of Idaho does not regulate outdoor advertising within the boundaries of Indian Reservations.

SCENIC BYWAYS

Federal Law precludes the State from permitting new outdoor advertising on NHS routes which have been designated as a Scenic Byway. While existing signs are allowed to remain, new signs may not be erected or permitted.

Subsection 131(s) in Title 23 United States Code provides that if a state has a scenic byway program, the state may not allow the Erection along any highway on the Interstate System or any Federal-Aid Primary Highway which is designated as a scenic byway of any Sign, display, or device which is not in conformance with subsection 131(c). New Signs allowed under 131(c) include directional and official Signs and notices, sale or lease Signs, on-property Signs and free coffee Signs.

10.4 PROCEDURES FOR SIGNS REQUIRING PERMITS ALONG CONTROLLED ROUTES

APPLICATIONS FOR NEW SIGNS

Sign applications (Outdoor Advertising Sign Application and Permit. [ITD-1850](#), along with all required documentation, are to be submitted to the Right-of-Way Section in Boise for processing. The Right-of-Way Section accepts the new permit and license applications, reviews the applications for completeness, process the applications, and makes determinations on approval or denial.

As part of the application review, District personnel may be asked to inspect the proposed sign location.

Applicants with sign applications which will not be able to meet the specific criteria following review by the Right-of-Way Section, shall be notified in writing. The application will be returned along with any accompanying documents along with instruction on why the sign permit cannot be issued. If minimal additional information or documentation is required to complete a sign application, the applicant may be contacted by the Right-of-Way Section to provide said information in order to complete the application. Sign applications submitted with no accompanying documentation will be returned to the applicant.

Following final review by the Right-of-Way Section, if the new sign application meets all criteria for its sign classification, the Right-of-Way Section will issue a permit identification tag along with the approved permit. These will be sent by the Right-of-Way Section to the owner of the new sign permit.

For new construction signs, permit holders shall notify the Department in writing when the sign structure has been erected. Once construction is complete and the sign has been inspected, an identification tag will be issued.

APPEAL OF DENIED APPLICATION

If an applicant wishes to appeal the denial of an outdoor advertising permit application, the applicant should submit in writing a request to appeal the decision. The request to appeal should be submitted to the attention of the Right-of-Way Program Manager.

Upon receipt of an appeal, the Program Manager will notify the DAG office at ITD that an appeal has been submitted so that an Administrative Hearing can be scheduled. The Director of the Department, through the DAG Office, will appoint an Administrative Hearing Officer and schedule a hearing where testimony may be submitted.

SIGNS ERECTED ILLEGALLY WITHOUT A PERMIT

If the sign is eligible for a sign permit, and the sign owner can be determined, the Right-of-Way Section will notify the sign owner of the requirement to obtain a permit for the sign.

If the owner of a sign has not obtained a sign permit, and the ownership of the sign cannot be determined, the Right-of-Way Section shall notify the property owner by certified letter or by personal delivery that a sign permit must be obtained within 30 days or the sign must be removed.

After 30 days, if the sign owner or property owner has not complied by obtaining a sign permit, or the property owner has not advised the Department of the sign owner's name, the process of removing the illegal

sign will begin and will be administered by the Right-of-Way Section.

DUTIES OF THE RIGHT-OF-WAY SECTION INCLUDE THE FOLLOWING:

- Review applications for new signs and issue new sign permit, if appropriate.
- Review all information on illegal signs to determine the course of action to be taken.
- Maintain a consistent sign inventory, including maintaining records of illegal signs that have been removed or are the process of being removed.
- Surveillance of the controlled highways. During surveillance, the designated personnel needs to look for new signs erected without a sign permit, modifications to conforming signs without first obtaining a permit, and illegal changes to nonconforming signs (changes other than routine maintenance.)
- Perform billing for Sign permits and for Outdoor Advertising Licenses
- Coordination with local jurisdictions on Outdoor Advertising Control for non-State-system NHS routes.
- Propose/recommend changes to State legislation as necessary to support ITD's role on providing control of outdoor advertising.

THE DISTRICTS ROLE IN OUTDOOR ADVERTISING SIGN CONTROL

- When inspections of proposed signs locations are necessary, District personnel may be enlisted to assist with an inspection.
- District maintenance personnel may assist with the surveillance of the controlled highways by reporting to the Right-of-Way Section, any observation of illegal signs, new signs which have been erected without a sign permit, modifications to conforming signs without first obtaining a permit, and illegal changes to nonconforming signs.
- District personnel may be requested by the Right-of-Way Section to post the Order to Remove Outdoor Advertising Displays and assist with the removal of illegal signs.

10.5 SIGN INVENTORY

An inventory of outdoor advertising signs will be maintained by the Headquarters Right-of-Way Section. The sign inventory will be maintained with a joint effort between each District and the Right-of-Way Section. The inventory records contain the inventory of all conforming and nonconforming signs. The inventory is updated when the Right-of-Way Section receives notification from a permit holder, or when either the Right-of-Way Section or a District discovers changes during field review.

The inventory is to be updated when:

- A new permit is issued
- Revisions are made to existing permitted signs, including changes in sign size, milepost location, sign owner/permit holder, or sign removal
- Existing permits are revoked or cancelled
- A District notifies the Right-of-Way section of a newly created non-conforming or illegal sign

A yearly inventory review of the controlled highways will be conducted, along with an ongoing effort, throughout the year, of policing and surveillance.

The Right-of-Way Program Manager, or designee, creates a sign status report annually for Board review. The Right-of-Way Section also provides requested information (FOIA) for sign companies.

SIGNS ON LOCAL JURISDICTION NHS ROADWAYS

The *National Highway System Act* of 1995 (NHS) extended highway advertising control to all NHS routes. The Right-of-Way Section will maintain an inventory of outdoor advertising signs along NHS roadways. Although the control of such signs may be the responsibility of the local jurisdiction or agency, the Right-of-Way Section is committed to providing technical assistance to a local agency when requested. Periodically, Right-of-Way personnel conduct a review of local NHS routes to assure that the size, lighting and spacing requirements of that zoning authority are being enforced and that the department's inventory is up to date.

10.6 RECORD KEEPING

ITD shall maintain adequate records of its outdoor advertising program activities and junkyard control in sufficient detail to demonstrate compliance with FHWA regulations and [ITD Administrative Policy 5528 Records and Forms Management](#). These records will be retained for the life of the junkyard and for each sign maintained on the state's inventory.

Records of illegal signs are maintained for a minimum of three years after removal. The inventory records will be maintained by the Right-of-Way Section.

ITD's records will be maintained in such a manner to demonstrate compliance with FHWA regulations and to be available for use by the FHWA, ITD and for public information [ITD 0013, Request for Public Record](#), except that confidential information pursuant to laws, rules and procedures, in, but not limited to, the following:

The Idaho Transportation Department *Public Records Handbook*, [Administrative Policy 5009](#), [Board Policy 4009](#), [Idaho Code § 9-337](#) through [9-350](#) and [Idaho Public Records Law Manual](#).

ITD will submit a report of its sign and junkyard activity to FHWA every three years.

10.7 NON-CONFORMING SIGNS

As defined by IDAPA 39.03.60, a non-conforming sign is one which was lawfully erected, but does not comply with the provisions of State law or State regulation passes at a later date or which later fails to comply with State law or State regulation due to changed conditions. Illegally erected and/or maintained signs are not non-conforming signs.

Non-conforming off-premise advertising signs are issued permits, as applicable. Non-conforming signs are included in the sign inventory, and considered when evaluating available space for additional sign structures.

10.8 CHANGE OF SIGN OWNERSHIP

The Headquarters Right-of-Way Section must be notified of a change of sign and permit ownership for written permit reassignment and to facilitate inventory updating. There is no fee to the permit owner(s) for a permit transfer.

10.9 SIGN RELOCATION

When an existing permitted sign is intended for relocation, the sign owner must submit a new permit application and permit fee and the Right-of-Way Section will review the new location for approval.

The Right-of-Way Section will rescind the permit for the existing sign intended for relocation upon approval of the new permit.

10.10 REMOVAL OF ILLEGAL SIGNS

Any sign without a current permit can be considered illegal and is subject to removal under the state's police power. This is accomplished by a two-phase program of postings by the district and legal action carried out by ITD's Legal Counsel.

After all attempts have failed to encourage the interested parties to remove an illegal sign, the following procedures will be initiated:

- An [ITD-2311](#), Notice to Remove Outdoor Advertising Display, will be appropriately completed by the Right-of-Way Section and signed by the District Engineer or an authorized representative.
- A copy of the notice will be posted upon the illegal sign and the certificate of posting and mailing will be sent to the owner or owners of both the offending sign and the sign site's land owner via certified mail with a receipt by the Right-of-Way Manager or an authorized representative. The original shall be retained in the Right-of-Way Section at Headquarters as proof the procedures were followed.

Subsequent to expiration of the appropriate time limitation for an appeal by the interested legal parties to the Board, the District may remove the illegal sign in accordance with the terms of the order and hold the signage materials at the site so designated. This should only be done upon notification to, and in coordination with, the Right-of-Way Section.

The district will hold the signage material at the site so designated by the order for a minimum of 30 days.

Any signs that have been removed will be so indicated on an Outdoor Advertising Inventory Record sheet. District personnel may be requested to assist with follow-up inspections. Any further changes noted by District personnel during routine inspections will be reported to the Right-of-Way Section.

10.11 JUNKYARDS

It is the objective of the Department to control, or caused to be controlled, junkyards and dumps placed and maintained in areas within 1,000 feet of all NHS routes controlled by ITD through a permit process, inventories and periodic surveillance in accordance with [IDAPA 39.03.40](#).

PROCEDURES FOR JUNKYARDS REQUIRING PERMITS

Applications for new Junkyards

New junkyards adjacent to routes controlled by ITD are required to obtain a License prior to beginning operation. Junkyard applications (Application for Junkyard or Dump License, [ITD-1853](#)), along with all required documentation, are to be submitted to the Right-of-Way Section in Boise for processing. The Right-of-Way Section accepts the license applications, reviews the applications for completeness, process the applications, and makes determinations on approval or denial.

As part of the application review, District personnel may be asked to inspect the proposed junkyard location.

DUTIES OF THE RIGHT-OF-WAY SECTION:

The Right-of-Way Section has the final responsibility for maintaining the permanent inventories. The Right-of-Way Section also issues the licenses, issues renewal notices, and works with the Attorney General's office on legal issues.

The Right-of-Way Section is responsible to:

- Maintain a current inventory through surveillance and inspections.
- Coordinate and consult with ITD's legal counsel on legal issues.
- Enter junkyard information into the computer system and keeps the inventory up to date.
- Issues a Junkyard Business license and renewals each year.
- Negotiate agreements for screening or removal and monitor compliance with agreements.

All final determinations, notifications and licenses shall bear the signature and approval/denial of the Right-of-Manager or an authorized representative.

THE DISTRICTS ROLE IN JUNKYARD CONTROL

The District Office:

- Notifies the Right-of-Way Section of any property which has an accumulation of wrecked or dismantled automobiles or other items which would constitute a junkyard as defined by Idaho State Statutes and IDAPA Rules.
- Recommends projects for screening or removal.

DISCOVERY OF UNLICENSED JUNKYARD OR DUMP

Upon notification from a District Office of a property which has an accumulation of wrecked or dismantled automobiles, or other items that constitute a junkyard or dump, the Right-of-Way Section will contact the owner advising them that they have 30 days to remove the items or make application for a junkyard permit.

The Right-of-Way Section should provide the owner with a copy of the Rules Governing Junkyards and Dumps along with an Application for Junkyard or Dump License ([ITD 1853](#)).

The Right-of-Way Section will coordinate with the District for follow-up inspections to ensure conformity to the Rules. The District will notify the Right-of-Way Section if the owner fails to either remove the junk or apply for a Junkyard or Dump License within 30 days.

JUNKYARD SCREENING OR FENCING

Junkyard screening is ruled out only by topography or economic unfeasibility. The status of the operation of the junkyard is not a determining factor for whether or not it must comply (junkyards whose owners have quit, or if the property is a non-functioning junkyard, must still be made to look clean). Where a junkyard is relatively inactive and only marginally profitable, elimination of the junkyard may be possible. The Right-of-Way Section would need to work with cities and counties to eliminate a non-functioning junkyard.

RELOCATING JUNKYARDS DUE TO CONSTRUCTION PROJECTS

Suitable sites for relocation are usually difficult to find. Transferring a nuisance is not a good solution, even though the new location may be legal. Every effort should be made to find replacement sites where adverse effects will be minimal.

Upon approval of a project by the Right-of-Way Section, the Right-of-Way Program Manager, or designee, will contact the owner and explain the fencing proposal.

After approval of the specifications by the Right-of-Way Section, the Program Manager, or designee, will obtain at least two bids from local fencing contractors. Once the bids have been obtained, a legal description and title report are then collected. The Right-of-Way Section will then prepare an easement agreement, a Right-of-Way contract, and a claim for payment.

Upon completion of the fencing, the Right-of-Way Section will request the District to verify that the work has been completed in accordance with specifications.

10.12 HIGHWAY SIGNS FOR THE TRAVELING PUBLIC

Tourist Oriented Directional Signs (TODS) and Logo Signs

The intent of the TODS program is to provide tourist oriented directional signing in the form of facility name and directional information to the traveling public. It is **not** the intent of this program to promote outdoor advertising as defined in Idaho Code Title 40, Chapter 19.

The April 2007 publication titled "Standards and Procedures for Tourist Oriented Directional Signs (TODS) for Motorist Service Facilities Along the State Highway System Except Fully Controlled Access Highways" provides regulations for the installation and administration of tourist oriented directional signs (TODS) on the State right-of-way or primary and secondary highways for motorist service facilities.

Applications for TODS and Logo signs ([ITD - 0275](#)) are provided by the District Offices. Completed applications should be returned to the District office for review and approval.