



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

West Virginia Division

December 31, 2018

154 Court Street  
Charleston, West Virginia 25301  
Phone (304) 347-5928  
Fax (304) 347-5103

**IN REPLY REFER TO:  
HAD-WV**

Thomas J. Smith, P.E.  
Secretary of Transportation/Commissioner of Highways  
West Virginia Division of Highways  
Charleston, West Virginia 25305

Dear Mr. Smith:

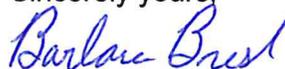
We completed our review of the Right of Way (ROW) manual changes submitted, initially on August 21, 2018, and then in revised installments in September and November, 2018. We approve your manual for immediate use pursuant to 23 CFR §710.201 (c) (2) (i).

I recognize and applaud the great effort your Right of Way manual review committee put into this update. Regular update of program manuals helps all who use them. Please continue to submit proposed ROW manual and form changes for review and approval prior to use.

Thank you for the combined efforts of all involved in the preparation of this edition of the Right of Way Manual.

If you have further questions regarding this matter, please contact me, or have one of the appropriate persons at WVDOH contact Mr. Jeff Robinette, at (304) 347-5931, or Jeffrey.Robinette@dot.gov.

Sincerely yours,

*for*   
Edward E. Stephen, P.E.  
Division Administrator



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

**Division of Highways**

1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • (304) 558-3505

Thomas J. Smith, P. E.  
Secretary of Transportation/  
Commissioner of Highways

December 20, 2018

*VIA HAND DELIVERY*

Edward E. Stephen, P.E.  
Division Administrator  
Federal Highway Administration  
West Virginia Division  
154 Court Street  
Charleston, WV 25301

**RE: WVDOH Right of Way Manual- MAP-21 Submission**

Dear Mr. Stephen:

Enclosed please find a jump drive which contains the final version of the WVDOH Right of Way Manual.

Producing this document has been a team effort, and I commend all of the staff in the Right of Way and Legal Divisions for their efforts. I would also thank the staff in your Division Office, who has provided guidance in completing this project.

Please accept this submission as the approved Right of Way Manual for the West Virginia Division of Highways. As always, I appreciate your continued interest in highway matters. Should you have any questions, please feel free to contact my office.

Best regards,

A handwritten signature in blue ink that reads "Thomas J. Smith".

Thomas J. Smith, P. E.  
Secretary of Transportation/  
Commissioner of Highways

TJS:Hh

Enclosure



**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION**

**Division of Highways**

1900 Kanawha Boulevard East • Building Five • Room 110  
Charleston, West Virginia 25305-0430 • (304) 558-3505

Thomas J. Smith, P. E.  
Secretary of Transportation/  
Commissioner of Highways

**December 20, 2018**

***VIA HAND DELIVERY***

**Edward E. Stephen, P.E.  
Division Administrator  
Federal Highway Administration  
West Virginia Division  
154 Court Street  
Charleston, WV 25301**

**RE: WVDOH Right of Way Manual- MAP-21 Submission**

**Dear Mr. Stephen:**

**Enclosed please find a jump drive which contains the final version of the WVDOH Right of Way Manual.**

**Producing this document has been a team effort, and I commend all of the staff in the Right of Way and Legal Divisions for their efforts. I would also thank the staff in your Division Office, who has provided guidance in completing this project.**

**Please accept this submission as the approved Right of Way Manual for the West Virginia Division of Highways. As always, I appreciate your continued interest in highway matters. Should you have any questions, please feel free to contact my office.**

**Best regards,**

**ORIGINAL SIGNED BY  
Thomas J. Smith**

**Thomas J. Smith, P. E.  
Secretary of Transportation/  
Commissioner of Highways**

**TJS:Hh**

**Enclosure**

**Cc: CH, HD, DR, GL (all without enclosures)**

**WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS**



***RIGHT OF WAY MANUAL***

**LOG SHEET**  
**RIGHT OF WAY MANUAL CHANGES**

DATE OF CHANGE	MATERIAL USED			MATERIAL SUPERCEDED			DATE FILED	FILED BY
	Chapter	Pages	Exhibits	Chapter	Pages	Exhibits		
7/17/2019	2		2-3	2		2-3	7/17/2019	CP
7/17/2019	4		4-6	4		4-6	7/17/2019	CP
7/17/2019	4		4-10	4			7/17/2019	CP
7/17/2019	5		5-30	NEW FORM			7/17/2019	CP
7/17/2019	8		8-13	8		8-13	7/17/2019	CP
7/17/2019	8		8-19	8		8-19	7/17/2019	CP
7/17/2019	8		8-23	8		8-23	7/17/2019	CP
7/17/2019	12		12-14A	12		12-14A	7/17/2019	CP
7/17/2019	12		12-14B	NEW FORM			7/17/2019	CP
11/12/2019	2		2-5	NEW FORM			11/12/2019	CP
11/12/2019	4		4-6	4		4-6	11/12/2019	CP
11/12/2019	5		5-20	5		5-20	11/12/2019	CP
11/12/2019	5		5-28	5		5-28	11/12/2019	CP
11/12/2019	6		6-3	6		6-3	11/12/2019	CP
11/12/2019	6		6-4	6		6-4	11/12/2019	CP
11/12/2019	6		6-5	6		6-5	11/12/2019	CP
11/12/2019	9		9-13	NEW FORM			11/12/2019	CP
11/12/2019	9		9-14	NEW FORM			11/12/2019	CP
11/12/2019	9		9-15	NEW FORM			11/12/2019	CP
8/12/2020	8		8-1	8		8-1	8/12/2020	CP
8/12/2020	8		8-13	8		8-13	8/12/2020	CP
8/12/2020	8		8-19	8		8-19	8/12/2020	CP
8/12/2020	8		8-21	8		8-21	8/12/2020	CP
8/12/2020	8		8-23	8		8-23	8/12/2020	CP
7/15/2021	1	4 & 5		1	4 & 5		7/15/2021	CP
7/15/2021	4	1, 2, & 3		1	1, 2, & 3		7/15/2021	CP
7/15/2021	6	1, 2, 4, & 12		6	1, 2, 4, & 12		7/15/2021	CP
7/15/2021	7	10 & 12		7	10 & 12		7/15/2021	CP
7/15/2021	8	4, 5, 13, 15, & 16		8	4, 5, 13, 15, & 16		7/15/2021	CP



U.S. Department  
of Transportation  
Federal Highway  
Administration

West Virginia Division

July 17, 2019

154 Court Street  
Charleston, West Virginia 25301  
Phone (304) 347-5928  
Fax (304) 347-5103

**IN REPLY REFER TO:  
Right of Way Manual  
Amendment Approval**

Ward Lefler, Director  
Right of Way Division  
West Virginia Department of Transportation  
Charleston, West Virginia 25305

Dear Mr. Lefler:

In accordance with the provisions of 23 CFR 710.201 (c) (3), our office has received your office's document, "Corrections and Additions of Forms to the Right of Way Manual Approval Request," dated July 11, 2019. This document reflects some minor amendments, corrections and substitutions to your Right of Way Manual since last year's overall manual update completed by your office.

After reviewing this information, we approve the requested changes which you wish to make to manual sections and relevant forms, as outlined in your July 11, 2019 approval request document. The requested changes are consistent with the needs and purposes of your agency and are in compliance with 23 CFR Part 710 and 49 CFR Part 24.

For additional information, please contact me, Jeff Robinette, at (304) 347-5931 or via email at [Jeffrey.Robinette@dot.gov](mailto:Jeffrey.Robinette@dot.gov).

Thank you.

Sincerely yours,

Jeffrey T. Robinette  
Realty/Civil Rights Specialist



U.S. Department  
of Transportation  
Federal Highway  
Administration

West Virginia Division

November 7, 2019

154 Court Street  
Charleston, West Virginia 25301  
Phone (304) 347-5928  
Fax (304) 347-5103

**IN REPLY REFER TO:  
Right of Way Manual  
Amendments Approval**

Ward Lefler, Director  
Right of Way Division  
West Virginia Division of Highways  
Charleston, West Virginia 25305

Dear Mr. Lefler:

In accordance with the provisions of 23 CFR 710.201 (c) (3), our office has received your office's document, "Corrections and Additions of Forms to the Right of Way Manual Approval Request," dated October 17, 2019. This document reflects some minor amendments, corrections and substitutions to approximately ten (10) forms found in your Right of Way Manual. These corrections and additions are updates since last year's overall manual update completed by your office.

After reviewing this information, our office approves the requested changes which you wish to make to the relevant forms, as outlined in your October 17, 2019 approval request document. The requested changes are consistent with the needs and purposes of your agency and comply with 23 CFR Part 710 and 49 CFR Part 24, as applicable.

For additional information, please contact me, Jeff Robinette, at (304) 347-5931 or via email at [Jeffrey.Robinette@dot.gov](mailto:Jeffrey.Robinette@dot.gov).

Thank you.

Sincerely yours,

Jeffrey T. Robinette  
Realty/Civil Rights Specialist



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

West Virginia Division

August 12, 2020

154 Court Street  
Charleston, West Virginia 25301  
Phone (304) 347-5928  
Fax (304) 347-5103

**IN REPLY REFER TO:**  
Request to Approve  
Right of Manual  
Amendments; Appendices 8-1,  
8-13, 8-19, 8-21, 8-23

Ward Lefler  
Director  
Right of Way Division  
West Virginia Division of Highways  
Charleston, West Virginia 25305

Dear Mr. Lefler:

This is in reply to the submission of your office's request letter, dated August 5, 2020. The letter was received in our office on August 5, 2020. Your request is for approval of five (5) forms found in the WVDOH Right of Way Manual, to conform with a new State of West Virginia requirement that agency forms referencing real estate parcels contain longitude and latitude information for those parcels.

The five (5) documents are: Appendix 8-1, Building Record; Appendix 8-13, ROW Inventory PM Report; Appendix 8-19, Circulation Request; Appendix 8-21, Property Management Checklist; Appendix 8-23, Request for Property Insurance.

Our office concurs in this request to approve the requested amendments to the Right of Way Manual.

If you have further questions regarding this matter, please contact me at (304) 347-5931, or Jeffrey.Robinette@dot.gov.

Sincerely yours,

Jeffrey T. Robinette  
Realty Specialist



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

West Virginia Division

July 15, 2021

154 Court Street  
Charleston, West Virginia 25301  
Phone (304) 347-5928  
Fax (304) 347-5103

**IN REPLY REFER TO:**  
Request to Approve  
Right of Manual  
Amendments; Chapters 1, 4,6,7,8

Chad J. Toney  
Director  
Right of Way Division  
West Virginia Division of Highways  
Charleston, West Virginia 25305

Dear Mr. Toney:

This is in reply to the submission of your office's request letter, dated June 29, 2021. The letter was received in our office on July 1, 2021. Your request is for approval of changes to five (5) separate chapters of the Right of Way Manual.

The amendments add additional procurement options for the services of appraisers and right of way consultant services providers. Additionally, the amendments to Chapter 8 clarify the process for District personnel to secure properties purchased for the agency and to conduct asbestos inspection reporting.

Our office concurs in this request to approve the requested amendments to the Right of Way Manual.

If you have further questions regarding this matter, please contact me at (304) 347-5931, or Jeffrey.Robinette@dot.gov.

Sincerely yours,

**JEFFREY**  
**ROBINETTE**

Digitally signed by  
JEFFREY ROBINETTE  
Date: 2021.07.15  
16:34:59 -04'00'

Jeffrey T. Robinette  
Realty Specialist

cc: File 410.14, Reading, JEW-e, JTR-e  
JTR:071521 (j:\400-499\410.14\2021\2021 07 15 ROW Manual Amendments)

<b>1</b>	<b>GENERAL PROCEDURES, ORGANIZATION, AND FEDERAL AID PROGRAMMING</b>
<b>2</b>	<b>DESIGN-BUILD</b>
<b>3</b>	<b>ESTIMATE AND FIELD REVIEW</b>
<b>4</b>	<b>LEGAL SECTION</b>
<b>5</b>	<b>ACQUISITION SECTION</b>
<b>6</b>	<b>APPRAISAL SECTION</b>
<b>7</b>	<b>RIGHT OF WAY CONSULTANT SERVICES</b>
<b>8</b>	<b>PROPERTY MANAGEMENT SECTION</b>
<b>9</b>	<b>ADMINISTRATIVE SECTION</b>
<b>10</b>	<b>RESERVED FOR FUTURE USE</b>
<b>11</b>	<b>CEMETERIES</b>
<b>12</b>	<b>RELOCATION ASSISTANCE AND PAYMENTS PROCEDURES</b>

**CHAPTER 1**

**GENERAL PROCEDURES, ORGANIZATION, AND FEDERAL AID PROGRAMMING**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 1.00	General .....	1
Section 1.10	Project Designation Prefix Letters .....	1
Section 1.11	Numbering of Projects on the Primary & Secondary Systems .....	1
Section 1.12	Numbering of Projects on the Interstate System .....	2
Section 1.13	Federal Highway Administration Stewardship Agreement .....	3
Section 1.20	Responsibilities .....	3
Section 1.21	Organizational Status & Structure .....	3
Section 1.22	Director .....	6
Section 1.23	Legal Section .....	6
Section 1.24	Administration Section .....	6
Section 1.25	Acquisition Section .....	7
Section 1.26	Relocation & Property Management Section .....	7
Section 1.27	Appraisal Section .....	7
Section 1.28	District Offices .....	7
Section 1.30	Steps in Right of Way Acquisition .....	9
Section 1.40	Federal Aid Programming .....	11
Section 1.41	Phase Project Approvals .....	12
Section 1.42	Federal Project Match Credits .....	12
<b>Exhibits .....</b>		
Exhibit 1.1	WVDOH Organizational Chart .....	4
Exhibit 1.2	ROW Division Organizational Chart .....	5
Exhibit 1.3	Simplified ROW Acquisition Concept .....	8

## **CHAPTER 1**

### **GENERAL PROCEDURES, ORGANIZATION, AND FEDERAL AID PROGRAMMING**

#### **1.00 - GENERAL**

The actual construction of a highway is the result of extensive planning and effort of all the divisions of the West Virginia Department of Transportation, Division of Highways (hereinafter referred to as WVDOH). One important and necessary phase of the road program is the acquisition of right of way for the highway.

A right of way project normally follows steps which begin when the project is placed on the WVDOH's schedule and ends when the project is certified clear for construction. When Federal-aid is involved, the project ends when the Federal Highway Administration gives approval of the final vouchers.

After the need for the highway has been established, the project is placed on the WVDOH's schedule and the priority is established for the year in which this project is planned. All interested Divisions, including Right of Way, receive a copy of this schedule and files are activated on the proposed project. The Engineering Division, based upon priorities established in the schedule, prepare plans and conduct surveys.

Projects are categorized as either Central Office or District designed projects. For Central Office designed projects, the Right of Way Division assists the Engineering Division in the determination of the proposed location of the new roadway. This assistance consists of field review estimates of cost of the proposed right of way, an estimate of the families and business to be displaced, and suggestions for minimizing right of way impacts. This data is incorporated into corridor and design public hearings, and the environmental document. District designed projects essentially use the same procedures, although the work is principally performed by the Districts.

#### **1.10 - PROJECT DESIGNATION PREFIX LETTERS**

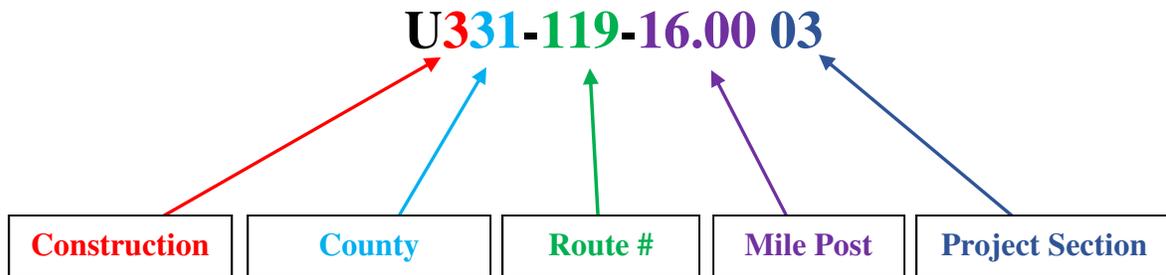
Project prefix designations and project numbers are used to identify projects and are assigned by the Programming Division. These designations depend on the funding and the highway system involved.

#### **1.11 - NUMBERING OF PROJECTS ON THE PRIMARY AND SECONDARY SYSTEMS**

1. The first step in project numbering is to designate and assign numbers to route sections. Route sections are subdivided at logical points, such as intersections, stream crossings, county lines, or municipal boundaries.
2. The route sections are to be numbered consecutively along each route.

3. All Federal-aid improvement projects located within any route section must be identified by the same number as the route section, followed by a number in parenthesis (agreement number) to indicate in sequence the number of improvements financed with Federal-aid funds within the route section regardless of class of funds. For example, improvements on route section 317 within an urban area would be numbered U317(1), U317(2), U317(3), etc.

**EXAMPLE:**



E = Emergency  
S = Service Life Improvements  
T = Technical Service  
U = System Upgrade  
X = System Expansion

### 1.12 - NUMBERING OF PROJECTS ON THE INTERSTATE SYSTEM

1. The interstate project number shall consist of five elements, e.g. **I-70-1(6)0**.
2. The appropriation symbol, **I**, is as defined above.
3. The route number, **70**, is officially designated by the American Association of State Highway and Transportation Officials (AASHTO). Where routes have been designated as East, West, North, or South, the letters E, W, N, S, as appropriate, shall be used as suffixes to the route numbers without hyphen.
4. The route section number, **1**, is the number of the subdivision of the main route. No more than nine sections shall be selected on any one route within a state. These numbers shall start and terminate at some logical point, such as a state or county boundary, beginning (or ending) of a route within a state, intersection of interstate routes, stream crossing, or other appropriate point. The sections are to be numbered consecutively along the route, from west to east, or from south to north.
5. The agreement number, **(6)**, is the chronological number of the improvement project programmed within the route section.

6. The post mileage, **0**, is the distance in miles, less any fraction, measured along the route easterly or northerly from (1), the point where the route enters the State, or (2) from the beginning of a route that originates within the State to the western or southern end of the project, and has no relation to the length of the project. Use of the post mileage as a part of the project has no connection with the mileposts on Interstate system routes.

### **1.13 - FEDERAL HIGHWAY ADMINISTRATION STEWARDSHIP AGREEMENT**

The WVDOH, in accordance with 23 CFR §710.201(c), operates under the current Federal Highway Administration Stewardship Agreement. (See Appendix 1-2)

### **1.20 – RESPONSIBILITIES**

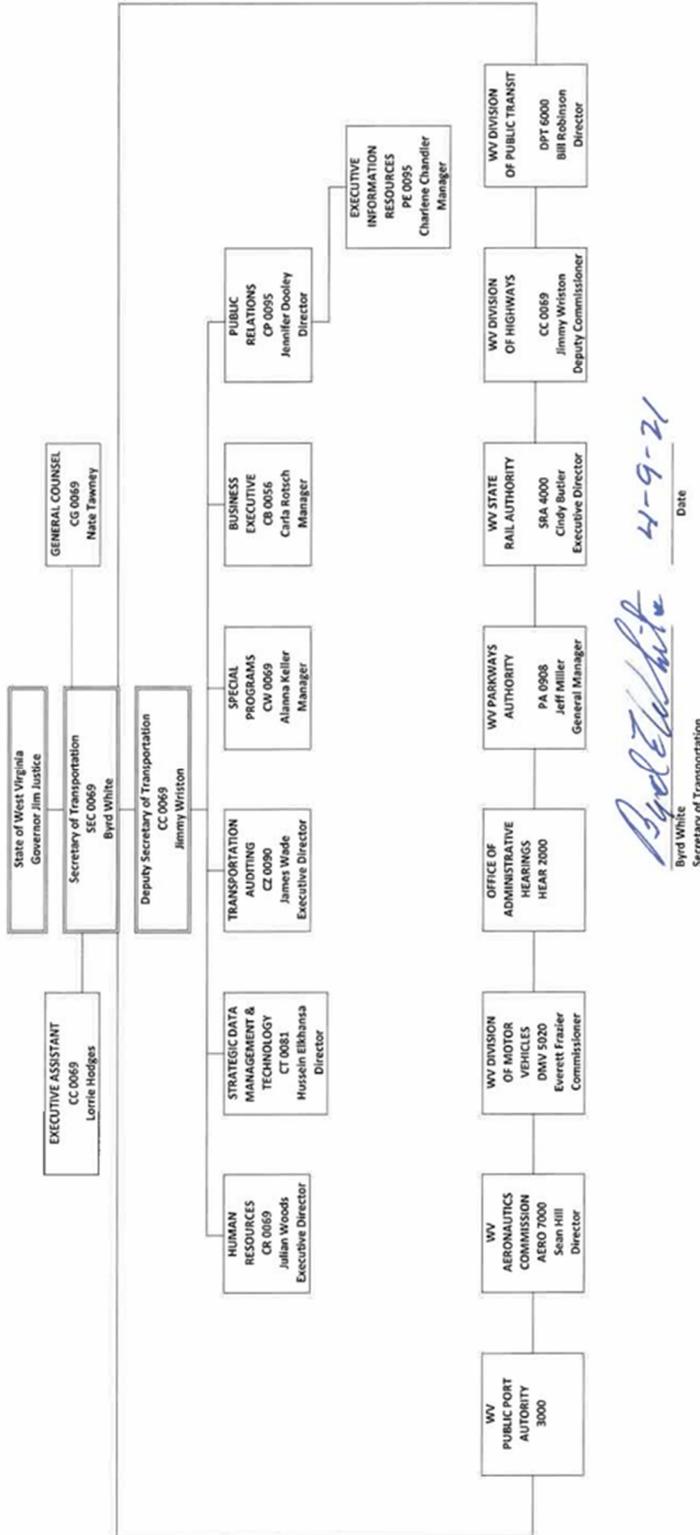
The Right of Way Division's primary duty is to acquire all real estate necessary for the construction and maintenance of all public roads and highways under the jurisdiction of the WVDOH. WVDOH is responsible for related functions and responsibilities including, but not limited to: procuring all necessary waste and borrow pit agreements; removal, sale, or demolition of buildings and other improvements which are on the right-of-way; offering relocation services and payments to each family or business affected by construction of public roads; and relocation of any graves or cemeteries located within the proposed highway right-of-way.

### **1.21 - ORGANIZATIONAL STATUS AND STRUCTURE**

The Right of Way Division is under the authority of the State Highway Engineer and reports directly to the Deputy State Highway Engineer/Construction Development. Exhibit 1.1 depicts the organizational structure of the DOT; and Exhibit 1.2 depicts the organizational structure of the Right of Way Division.

Exhibit 1.1

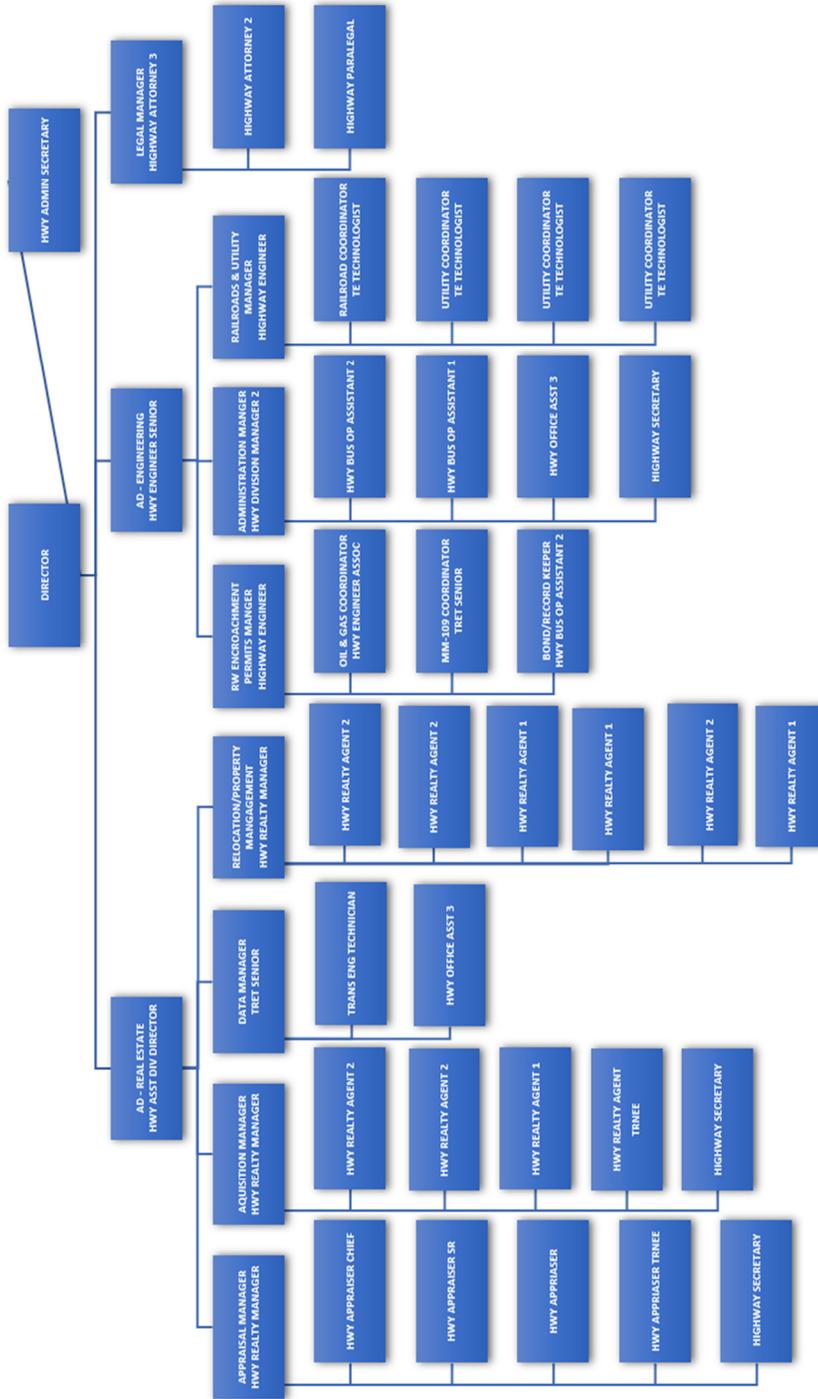
West Virginia Department of Transportation  
Organizational Chart



*Byrd White*  
Byrd White  
Secretary of Transportation  
Date 4-9-21

Exhibit 1.2

RIGHT OF WAY DIVISION  
ORGANIZATIONAL CHART



## **1.22 - DIRECTOR**

The Right of Way Division Director is experienced in right of way acquisition and project management. The Director manages all activities of the Right of Way Division and coordinates with Directors of other Divisions of the WVDOH.

Responsible to the Director are the managers of the functional sections within the Right of Way Division. These sections include Administration, Acquisition, Legal, Relocation & Property Management, and Appraisal.

## **1.23 – LEGAL SECTION**

The Legal Section is supervised by a Right of Way attorney who has three principal functions:

- The Abstract and Closings function requires review of title reports and closing papers for all WVDOH's acquisitions by deed; provides legal assistance to the districts as required, providing staff counsel for title examination and closing; establishing procedures for abstracting and closing; and supervising the execution and uniform performance of the work.
- The Legal Section is also responsible, as requested for the review of agreements, deeds, leases, and other related legal instruments used in right of way acquisition and property management.
- Oil and Gas Leasing under state roads.

## **1.24 – ADMINISTRATION SECTION**

The Administration Section of the Right of Way Division is headed by a manager experienced in financial matters, human resources, and general management.

The Administration Section Manager oversees pre-auditing invoices submitted to the Right of Way Director; prepares and maintains fiscal records of all real property purchased by the Division (and incidental costs connected therewith), conducts the accounting and review of right of way claims for reimbursement from the Federal government; maintains current fiscal reports on right of way projects; and coordinates the Division budget with the Director and expense accounts.

Additionally, the Administration Section:

- Is responsible for processing and maintaining all personnel documents; recruiting personnel as needed and interviewing applicants when requested.
- Maintains right of way records in the central office filing system.
- Initiates and administers consultant contracts for various right of way services. See also Chapter 7 of this Manual which fully addresses right of way consultant contracts.

## **1.25 – ACQUISITION SECTION**

The Acquisition Manager is charged with the overall task of acquiring the necessary real property interests to facilitate construction and maintenance of the West Virginia highway system.

The Acquisition Manager monitors and reports on the status of central office projects within the State that require the purchase of right of way. The Acquisition Manager may utilize realty agents from a joint pool shared with the Relocation Assistance & Property Management Manager.

The Acquisition Manager and support staff are responsible for the preparation of all right of way cost estimates for proposed highway projects. For projects which may cause persons to move from the right of way, the Acquisition Manager is also responsible for preliminary relocation studies.

## **1.26 – RELOCATION AND PROPERTY MANAGEMENT SECTION**

The Relocation Assistance and Property Management Manager is responsible for all relocations and property management functions of the WVDOH.

The relocation program provides services and payments when persons are displaced by a highway project. The manager determines the need for relocation assistance, determines appropriate policy, and supervises the application of relocation assistance statewide.

When the WVDOH acquires real property, this Section is responsible for the management of those assets.

## **1.27 – APPRAISAL SECTION**

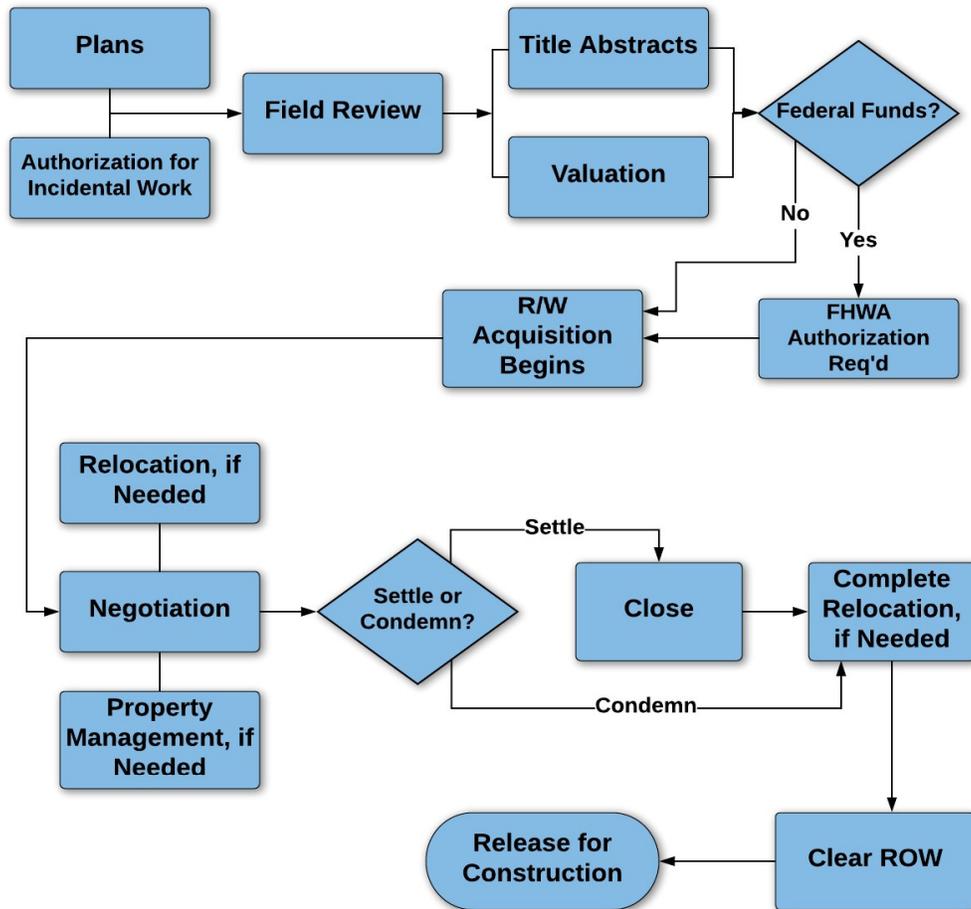
The Appraisal Manager is charged with supervision of all appraisal and appraisal review activities. The manager must assure that appraisals prepared offer just compensation and meet all regulatory and legal requirements. Appraisals may be produced in-house or by contractors and all must be independently reviewed.

## **1.28 – DISTRICT OFFICES**

In addition to the Central Office located in Charleston, there are ten District Offices throughout West Virginia. Each District Office is supervised by a District Right of Way Manager under the administrative control of the District Engineer/Manager. The District Right of Way Manager has a number of assistant right of way agents and administrative help depending upon the size of the District and the amount of acquisition and related activity in the District.

**Exhibit 1.3**

**Simplified Right of Way Acquisition Concept**



### **1.30 – STEPS IN RIGHT OF WAY ACQUISITION**

The steps followed in right of way acquisition for Central Office projects are presented below in their normal sequence of occurrence:

1. The Engineering Division will provide preliminary right of way plans to the Right of Way Division. The Acquisition Section will then prepare right of way cost estimates. Utility relocation estimates are prepared by the Utility Section of the Engineering Division. This data is compiled for preparation of the State Authorization. On a Federal-aid project, this data is also given to the Programming Division to send the necessary information to the Federal Highway Administration for authorization and project agreement.
2. When preliminary authorization has been issued, the Director of the Right of Way Division will authorize the District Right of Way Manager by letter to proceed with the preliminary work incident to the acquisition of right of way. (See Chapter 5.)
3. The District Right of Way Manager, upon receipt of the approval letter, will then obtain the questionnaires on in-house design projects (Acquisition Chapter 5, Form RW 5.01) on all properties involved in the project. The copy of the questionnaire along with copies of subdivision plats, surveys, maps, and deeds are transmitted to the Right of Way Division's Central Office which are transmitted to the Engineering Division for preparation of RW-3 plans. One other copy of the questionnaires is provided for the use of the assigned abstractor.
4. The District Right of Way Manager, upon receipt of the approval letter, will then obtain the questionnaires on in-house design projects (Acquisition Chapter 5, Form RW 5.01) on all properties involved in the project. The copy of the questionnaire along with copies of subdivision plats, surveys, maps, and deeds are transmitted to the Right of Way Division's Central Office which are transmitted to the Engineering Division for preparation of RW-3 plans. One other copy of the questionnaires is provided for the use of the assigned abstractor.
5. The Right of Way Attorney, upon receipt of the copy of the letter, will proceed with the assignment of necessary abstractors to obtain a title report for each affected property. (See Chapter 5.)
6. The Appraisal Manager, upon receipt of the copy of the letter, if appraisals are necessary, will proceed with the assignment of necessary appraisers and review appraisers. (See Chapter 6.)
7. For Engineering Division's in-house designed projects, the district checks property lines and submits copies of the questionnaire along with copies of subdivision plats, surveys, maps, and deeds along with marked plans are transmitted to the Right of Way Division's Central Office which are transmitted to the Engineering Division for preparation of RW-3 plans. It is necessary that title reports and questionnaires be available for the Engineering Division to complete right of way plans and descriptions. (See Chapter 5)

8. Near the completion of the plans, a joint field review is made, and the Engineering Division oversees the revision and corrections to the plans. These revisions reflect any changes that resulted from the field review. After these changes and corrections are made and approved, the Engineering Division revises the right of way plans accordingly to include calculation of areas of taking and residue. (See Chapter 3.)
9. Upon receipt of completed RW-3 plans, the Right of Way Division notifies the District Right of Way Manager that full authorization has been given and that they may now proceed with acquisition policies upon receipt to the approved appraisals and titles for negotiations.
10. The District Right of Way Manager then assigns right of way agents to purchase the right of way. It is their responsibility to make an earnest endeavor to reach an amicable agreement with all the property owners involved based upon the just compensation value as determined. (See Chapter 5.)
11. If amicable settlement between WVDOH and the property owner is reached, the District Right of Way Manager initiates the closing procedure.

The District Right of Way Manager prepares an invoice to secure the State warrant for payment to the property owner and requests a closing attorney if necessary. The closing attorney is responsible, among other things, for determining that the deed and title report are correct, and seeing that all liens are cleared and taxes paid. The District Right of Way Manager also delivers the net balance paid for the property to the property owner if necessary. (See Chapter 9.)

12. Should it appear impracticable to reach an amicable agreement, the District Right of Way Manager recommends to the Director of the Right of Way Division that condemnation proceedings be instituted.

Upon approval of the condemnation by the Right of Way Director, the District Right of Way Manager and the Director of the Legal Division are notified. It is then the responsibility of the Legal Division to file the petition and deposit the estimated just compensation with the Court to gain immediate entry to the property. (See Chapter 5.)

13. In conjunction with negotiations, it may be necessary for Relocation services to be offered to a property owner. In such case, an Agent contacts all persons living or having a business on the project. It is that Agent's responsibility to inform the individuals of their eligibility for relocation services, payments, and moving costs. In addition, the Agent informs the individual of available properties to which they may be relocated. Subsequently, the Agent provides any necessary assistance to aid the relocatees in moving from acquired property to satisfactory replacement property. (See Chapter 12.)
14. Upon gaining entry, and after all persons living or conducting business on the project have moved, the WVDOH proceeds with clearance of the right of way. These structures

and improvements may be moved by either owner retention, public auction, demolition, or left for the highway contractor. (See Chapter 8.)

15. If a cemetery or gravesites are found in the project area, the Right of Way Division coordinates the relocation of any remains to a reinternment site. (See Chapter 11.)
16. The District Right of Way Manager makes a final check of the right of way and notifies the Right of Way Division Central Office that the right of way is clear for construction. The Central Office of the Right of Way Division will then certify that the Right of Way is clear.
17. The WVDOH advertises and receives bids for the construction of a project and after the successful bidder is awarded the contract, the Contracts Administration Division coordinates a preconstruction meeting either in the district office or at the project site.

#### **1.40 – FEDERAL AID PROGRAMMING**

The Right of Way Division will typically prepare a BF-98 for submission to the Programming Division so they may prepare a form for submission.

(See Appendix 1-1)

The Programming Division will determine whether Federal funds will be requested to participate in any phase of a particular project. Regardless of whether there is Federal participation, all basic right of way acquisition and relocation assistance activities will follow a similar process. When federal funding is participating in any phase of a project, Federal representatives will have the opportunity to review project files with reasonable notice.

Federal personnel may not independently access WVDOH files, and a Right of Way Division representative will retrieve whatever relevant files are requested. Any copies of documents will be made by Right of Way Division representatives. Depending upon the nature of the document, Right of Way Division representatives (with legal concurrence) may restrict removal of original or copies of documents from WVDOH premises.

There may be occasional situations where a waiver of Federal regulations is warranted due to an unusual situation which prevents fair property owner treatment. Anytime Federal input is involved in a project action, such input must be documented in writing in the project file. In order for Federal participation to be eligible for any specific project activity, there must be documentation available that the following actions have occurred:

1. The proposed activity can be found described in the approved Statewide Transportation Improvement Plan (STIP), in the proper category and timeframe;
2. The proposed activity must have an approved NEPA Environmental Document; which may be on a project basis or on an independent action basis (such as acquisition of right of way); and

3. The proposed activity must have been approved and entered into the federal funding agency funding system. For the FHWA, this funding system is known as the Fiscal Management Information System (FMIS).

Federal funds may participate in the purchase of designated uneconomic remnants but will not typically participate in the purchase of excess right of way which is not needed for project purposes. Whenever excess and non-project related right of way is being purchased in conjunction with normal acquisition activities, the Federal Aid Unit should communicate such circumstance to the Program, Planning and Administration Division for coordination.

The State/Federal Stewardship Agreement, as referenced in paragraph 1.13, provides guidance on when various federal approval and oversight actions are required.

#### **1.41 - PHASE PROJECT APPROVALS**

Federal authorization to proceed with right of way activities may be given on either a project wide basis, or by individual phase authorizations.

In order for federal funds to participate in any phase of a WVDOH project, any real property acquisition rights must have been purchased in compliance with all applicable Federal and State regulations.

If acquisition activities are occurring in advance of the commencement of normal project development activity, the early acquisition procedures must be followed as set out in Federal Regulations at 23 CFR 710.501 and 710.503. These regulations are further described in the early acquisition section of Chapter 8 of this Manual.

#### **1.42 - FEDERAL PROJECT MATCH CREDITS**

With regard to previously acquired right of way, project match credits can be based upon the value of the real property rights at the time the credit is applied, or it can be based upon the historic and actual acquisition cost. For purposes of consistency, the WVDOH will typically base any project-related credit on the current appraised value of the real property rights. In unusual circumstances, and with Federal approval, the credit may be based upon the historic acquisition cost.

The current market value of the real property rights at the time of the credit match may be determined by any valuation technique that is approved by the FHWA. This includes valuation by WVDOH appraisal staff.

**CHAPTER 2**  
**DESIGN-BUILD RIGHT OF WAY PROCESS**

**TABLE OF CONTENTS**

---

<u><b>SECTION</b></u>	<u><b>SUBJECT</b></u>	<u><b>PAGE</b></u>
Section 2.00	Introduction .....	1
Section 2.01	Phase I Steps .....	2
Section 2.01.1	Phase I Steps .....	2
Section 2.01.2	Phase I Steps .....	2
Section 2.01.3	Phase I Steps .....	2
Section 2.01.4	Phase I Steps .....	2
Section 2.01.5	Phase I Steps .....	3
Section 2.01.6	Phase I Steps .....	3
Section 2.01.7	Phase I Steps .....	3
Section 2.02	Phase II Steps .....	3
Section 2.02.1	Phase II Steps .....	3
Section 2.02.2	Phase II Steps – Title Work .....	4
Section 2.02.3	Phase II Steps – Appraisals .....	4
Section 2.02.4	Phase II Steps – Review Appraisals .....	4
Section 2.02.5	Phase II Steps – Waiver Valuation .....	4
Section 2.02.6	Phase II Steps – Negotiations .....	4
Section 2.02.7	Phase II Steps – Closings .....	4
Section 2.02.8	Phase II Steps – Condemnation .....	4
Section 2.02.9	Phase II Steps – Relocation .....	5
Section 2.02.10	Phase II Steps – Property Management .....	5
Section 2.02.11	Phase II Steps – Right of Way Certificates .....	5
Section 2.02.12	Phase II Steps – Final Documentation .....	5
Section 2.02.13	Phase II Steps – WVDOH Responsibility .....	5
Section 2.02.14	Phase II Steps .....	5

## CHAPTER 2

### DESIGN-BUILD RIGHT OF WAY PROCESS

#### **2.00 – INTRODUCTION**

It will be the responsibility of the District Right of Way Manager to ensure that all parties involved, WVDOH, the contractor and consultant, follow the requirements necessary for the acquisition of right of way that are required by the WVDOH procedures and by law. The RFP (Request for Proposal) will have a section dedicated to all right of way activities. (See Appendix 2-1.) The language should specifically instruct that the contractor shall employ, as part of their team, the services of a Right of Way consultant familiar with the requirements of the Uniform Act, 23 CFR Chapter 1, Subchapter H, and 49 CFR Subtitle A, Part 24 in order to conform with both Federal and State law. The selection of the consultant by the design-builder shall be reviewed by the WVDOH and their work will be subject to the review by the WVDOH. Any Right of Way consultant that is being considered for project purposes, must be competent regarding eminent domain actions and activities. Only those firms or individuals on the approved list of Right of Way consultants provided by WVDOH Central Office Right of Way can be used by the contractor.

The FHWA has specific regulations applicable to design-build projects, and these regulations are set out at 23 CFR 710.309. Some of the basic provisions of the regulations include:

1. The Right of Way must be acquired and cleared in accordance with the Uniform Act and the WVDOH Right of Way Manual approved by FHWA.
2. The WVDOH shall submit a Right of Way Certification in accordance with 23 CFR 635.309(p) based upon information provided by the design-builder when requesting FHWA authorizations.
3. The WVDOH must ensure that right of way is acquired prior to the start of construction on individual properties.
4. The decision to advance a right of way segment to construction stage shall not impair the safety or in any way be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of project right of way.
5. If a design-build project includes right of way activities in the scope of work, the following provisions must be addressed in the request for proposals document:
  - a. The design-builder must certify that it will comply with the provisions of the WVDOH Right of Way Manual approved by FHWA.
  - b. The design-builder will provide a Right of Way project manager who will serve as the first point of contact for all Right of Way issues. Note the WVDOH will also provide a Right of Way contact to coordinate with the design-builder's Right of Way project manager.

- c. Any additional required provisions in 23 CFR 710.309(d).
6. Construction may not commence until all property has been acquired and relocations have been completed; or phased construction may be permitted in a manner satisfactory to the WVDOH. Right of Way Certifications will be prepared for each phase or segment.

The following information pertains to the initial stage of a design-build project. It is critical that the District Construction Division take the responsibility of ensuring that these design-build projects are administered in a manner to assure compliance and success. It will be the responsibility of the District Right of Way Manager to ensure that right of way procedures are followed. WVDOH must be proactive as the Federal Regulations require the management of the process regardless of the performance of the Construction Division.

As discussed below, the responsibilities of the Right of Way Division are divided into two phases.

## **2.01 – PHASE I STEPS**

**2.01.1** – A Right of Way Certificate is issued for the contract to be advertised. This certificate does not allow the contractor to begin construction. (See Appendix 5-19)

**2.01.2** – After the contract is awarded, the District Construction Division should arrange for an initial introductory meeting between all of the District Departments involved and the Contractors. At this meeting, District Right of Way personnel will begin their working relationship with the contractor, the engineering design subcontractor and especially, the Right of Way consultant.

**2.01.3** – At some point, a conference will be held between the Right of Way consultant, hereinafter called the “consultant” and the District Right of Way staff. It is required that the consultant follows the WVDOH procedures for the acquisition of Right of Way. To facilitate this effort, the consultant is given a copy of the WVDOH Right of Way manual, a copy of all forms necessary in the acquisition of Right of Way and any other information that will be pertinent to help them in their efforts. At this meeting, Scope of Work details will be established.

**2.01.4** – After the first meeting, the consultant will prepare “Letters of Interest” to be given to prospective property owners. This is the 1<sup>st</sup> time that the District Right of Way Manager will be required to participate in the “signature” process. The standard letter of interest used by the WVDOH will be modified in a manner that will introduce the consultant to the property owner. (See Appendix 2-2.) A point of contact in the District Construction Division will be established and will have the responsibility of the handling of documents and notices with the engineering consulting firm.

**2.01.5** – The engineering consultant will produce TWO preliminary full-sized sets of Right of Way plans accompanied by ONE set of questionnaires and related documents (deeds, leases, etc.). These will be given to the point of contact and then delivered to District Right of Way. District Right of Way will review these plans and make any corrections, additions, or deletions necessary for the production of the RW-3 plans. This is the **2nd** time that the District Right of Way Manager will be required to participate in the signature or recommendation process. These corrections will be documented in a narrative and illustrated by showing correction marks **IN RED** on the submitted preliminary plans. These will be transmitted to the point of contact and the engineering consultant. District Right of Way will typically have 10 days to review and return the preliminary right of way plans with comments and corrections. Failing to respond to the request within the contracts timeframe may waive WVDOH's ability to provide comments and corrections.

**2.01.6** – The point of contact will submit two sets of full-size RW-3 plans and two 8.5" x 14" sets of the Division of Land and Streams plat, if applicable to this project, to District Right of Way. District Right of Way will review and approve the submission of the RW-3 plans by written documentation sent to the point of contact. This is the **3rd** time that the District Right of Way Manager will be required to participate in the signature or recommendation process. District Right of Way will have 10 days to review and Approve (or return) the RW-3 Right of Way plans. Failing to respond to the request within the contracts timeframe may waive WVDOH's ability to provide comments and corrections.

**2.01.7** – The point of contact now will have the responsibility of obtaining the proper signatures on the title sheet of the RW-3 plans. The process of obtaining the signatures is documented in Appendix 2-3. When these signatures have been obtained and made a part of the RW-3 plans, the District Right of Way Manager will issue a written notice to proceed to the point of contact and the Right of Way Consultant. This is the **4th** time that the District Right of Way Manager will be required to participate in the signature or recommendation process.

## **2.02 – PHASE II STEPS**

All Phase II steps will require the WVDOH District Right of Way Manager to participate in the signature or recommendation process on all matters that require the establishment of values and costs where payment to the property owner is required.

**2.02.1** – At this point, the consultant is in a position to obtain the necessary title work, appraisals, relocation documents and any other required items necessary for the parcels involved in the project. It is advisable to have a full staff meeting between the consultant and the District Right of Way office staff involved in the project. At this meeting, any questions concerning how to approach any of the issues particular to the project can be discussed. Also, expectations of the performance, timing, and compliance will be determined.

**2.02.2 – Title Work:** All parcels on the project will require title work. The consultant will engage an attorney from the approved WVDOH attorney title list for title work. A copy of the complete title work will be furnished to the District Right of Way Manager to forward to the Central Office Legal Section for review.

**2.02.3 – Appraisals:** If appraisals are necessary, the consultant will engage the services of an appraiser from the approved list provided by the WVDOH. (See Form RW 6.06)

**2.02.4 – Review Appraisals:** If appraisals are necessary, the consultant will engage the services of a review appraiser from the approved list provided by the WVDOH. The appraisal and the review appraisal must be submitted to the District Right of Way Manager for processing. This requires the manager to forward the appraisal and review to Central Office Appraisal Section Manager for review and administrative concurrence. (See Form RW 6.10-C)

**2.02.5 – Waiver Valuation:** The consultant may employ the waiver valuation method to determine value on projects for parcels where the acquisition of the Right of Way will be less than \$25,000. The consultant is required to support and fully document their findings for this waiver on Form RW 5.13 and it must be submitted to the district Right of Way Manager. The District Right of Way Manager must provide administrative concurrence that meets the requirements of the contract. (See Chapter 5 for Waiver Valuation Criteria) (See Appendix 2-4)

**2.02.6 – Negotiations:** The consultant is responsible for all areas of negotiations, including obtaining letters of entry, releases, acquisition deeds, and any other necessary documents. When an appraisal and a review appraisal is used in acquiring right of way for a parcel the just compensation indicated on the review appraisal must be used to make the offer. Any requests above and beyond the appraised or waiver amount must be considered as an **ADMINISTRATIVE SETTLEMENT** and must be approved by the District Right of Way Manager when it is determined that such action is in the best interest of the public. In doing so, the District Right of Way Manager/Director gives full consideration to all pertinent available information.

**2.02.7 – Closings:** All deeds and Statements of Just Compensation (Form RW 6.11 and Form RW 5.13) must be reviewed by the District Right of Way Manager. It is advisable to instruct the consultant that all properties with a value exceeding \$10,000 should be handled by a closing attorney. The consultant will engage an attorney from the approved WVDOH attorney closing list.

**2.02.8 – Condemnation:** The consultant does not possess the ability to exercise the power of eminent domain. After no less than 3 negotiations attempts within 30 days with the property owner, failure to reach a negotiated settlement will require such parcel to be returned to the District Right of Way Manager. The parcel is then handled by the WVDOH in accordance with Chapter 5, Section 5.50 of the Right of Way Manual. Any requests for an extension for further negotiations

beyond the 30 days must be submitted to the WVDOH District Right of Way Agent in writing to be approved.

**2.02.9 – Relocation:** All parcels requiring relocation services will be the responsibility of the consultant. This shall include Replacement Housing Appraisals, residential and business moves, and all relocation services required by the Uniform Act and 23 CFR Chapter 1, Subchapter H and 49 CFR Subtitle A, Part 24. Included in this process is the distribution of all mandatory documents &/or information that must be given to the relocatee. This includes obtaining estimates, signatures on relocation forms and any document related to securing entry and title to the parcel. If Replacement Housing is necessary, The Replacement Housing Payment Appraisals must be approved by the District Right of Way Manager. Any other relocation claim forms requiring payment must be approved by the District Right of Way Manager.

**2.02.10 – Property Management:** When the acquisition is completed the consultant will be responsible for performing property management functions in accordance with Chapters 5, 8, and 12 of the Right of Way manual. These duties will include securing the property purchased in regards to safety, public health, appearance, and protection of assets. These items are further described in Chapter 8. (See Chapter 8, Sections 8.12, 8.12.1, 8.13, 8.14, 8.10)

**2.02.11 – Right of Way Certificates:** Right of Way Certification will be issued by the Director of Right of Way under the same directives as described in Chapter 5, Section 5.82 of the Right of Way Manual. Until the WVDOH has issued a clear Right of Way Certificate, the consultant has no authority to enter on to properties to begin construction. (See 23 CFR 710.309(c))

**2.02.12 – Final Documentation:** The WVDOH Right of Way Division will be provided the opportunity to audit all documents related to negotiations or relocation as requested. The acquisition and relocation files compiled by the Design-Build Consultant are the property of the WVDOH. All acquisition files must be provided to the WVDOH within two weeks of closing. All relocation files must be provided to the WVDOH within two weeks after the final relocation payment or sooner if requested. If documents are not provided to the WVDOH, it will be considered a breach of contract.

**2.02.13 – WVDOH Responsibility:** If the Design-Build project requires that the WVDOH acquire the right of way, then normal procedures described throughout this manual are followed.

**2.02.14** – Notwithstanding any provision of this manual, when a payment is made by the contractor to a parcel owner, WVDOH must provide administrative concurrence.

**CHAPTER 3**  
**ESTIMATE AND FIELD REVIEW**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 3.00	General .....	1
Section 3.02	Preliminary Relocation Program Plan Conceptual Stage .....	1
Section 3.03	Design Report Studies .....	1
Section 3.04	Frontage & Access Road Studies .....	2
Section 3.04.1	Other Mitigation Studies .....	2
Section 3.05	Program Estimate .....	2
Section 3.06	Right of Way Cost Estimates for Acquisition .....	2
Section 3.07	Field Reviews .....	3
Section 3.08	Initial Site Analysis of Contaminated Properties .....	3

## **CHAPTER 3**

### **ESTIMATE AND FIELD REVIEW**

#### **3.00 - GENERAL**

Estimates and Field Reviews are headed by the Acquisition Manager. This section furnishes or reviews all right of way cost estimates for use in determining the estimated costs of highway locations, and other estimates as may be required. In addition, the Acquisition Manager is responsible for the reviewing of initial and preliminary engineering and Design Studies.

A representative of this section should be present at all preliminary field reviews and when necessary at future field and office reviews, which are conducted in connection with preliminary or final contract plans. The Director of the Right of Way Division is notified of pending field and office reviews by the responsible Division, i.e., Engineering Division, Planning Division, etc.

#### **3.02 – PRELIMINARY RELOCATION PROGRAM PLAN CONCEPTUAL STAGE**

The first step begins when the Right of Way Division receives a notice from the lead or initiating division that a corridor public hearing has been scheduled. The Engineering Division provides appropriate preliminary engineering reports and maps or plans detailing the proposed alternate corridors, if any, to be considered. The Acquisition Section, in coordination with the Relocation Section of the Right of Way Division, prepares and submits to the Environmental Section of the Engineering Division, the Conceptual Stage Survey and Report. This report contains but is not limited to the following:

1. Approximate number of individuals, families, businesses, farms, and nonprofit organizations that would be displaced.
2. The probable availability of decent, safe, and sanitary replacement housing within the financial means of those displaced.
3. The basis upon which the above findings are made.

#### **3.03 - DESIGN REPORT STUDIES**

Upon request from the responsible Division, a Right of Way cost estimate is furnished by the Acquisition Section to assist in the determination of alignments to be used within approved corridors. Aerial contour maps are normally used to show improvements by super-imposing thereon the designation of the centerline, right of way limits, and the various property lines. Preliminary information for access studies is compiled at this stage for use in connection with controlled access projects.

The Acquisition Section is to be present at the Initial and Preliminary Design Field

Reviews as well as providing right of way cost estimates with all information available from the responsible division.

### **3.04 - FRONTAGE AND ACCESS ROAD STUDIES**

To establish a system of controlled access highways, primary consideration is given to providing alternate access to abutting properties. The decision whether to provide such access is based upon an economic analysis and a comparison between the value of the properties involved and the estimated cost necessary to provide such access.

These studies are initially made for inclusion in the design report. However, these may be reevaluated during the development of contract plans.

An Access Road Analysis (Form RW 3.01) is normally used for this study. The Engineering Division initiates such forms and supplies all pertinent construction costs. The Estimate and Field Review Unit of the Right of Way Division estimates or reviews all right of way costs and completes that portion of the form which is relevant. The complexity of the analysis will depend upon the individual aspects of each situation.

#### **3.04.1 - OTHER MITIGATION STUDIES**

Studies concerning other construction items, such as walls, walks, cattle passes, stairways, etc., are handled in much the same way as access studies except a form is not used. Construction cost figures are provided by the Engineering Division and right of way damages are transmitted to the Engineering Division by memorandum. The final decision on these mitigation studies is the responsibility of the Engineering Division.

### **3.05 - PROGRAM ESTIMATE**

Upon request from the Federal Aid Program Section of the Programming Division, information is provided to program the project for Federal Aid. The estimate covers preliminary engineering for right of way, railroads, and utilities; property costs, acquisition incidentals; all costs required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and utility relocations.

### **3.06 - RIGHT OF WAY COST ESTIMATES FOR ACQUISITION**

When adequate plans are received by the Right of Way Division for a particular phase or phases of right of way activities, cost estimates are furnished to the Federal Aid Unit of the Right of Way Division for submission to the Programming Division with a request to authorize such activities. Such estimates are made from current preliminary right of way plans on a parcel by parcel basis.

### **3.07 - FIELD REVIEWS**

The Right of Way Division is notified by letter from the responsible division when a field review of a project is scheduled. These reviews may be held during the planning phase, design report, or contract plans stage of the project.

Upon receipt of this letter, the Acquisition Manager notifies the appropriate District Manager or other interested persons within the Right of Way Division of this pending review. Representatives of the Acquisition Section should attend all preliminary field reviews in each stage of the project development in order to make recommendations concerning right of way lines, access points, and to furnish such information as might be requested by the Division conducting the review.

Representatives of this Section should attend subsequent field reviews during the contract plans state if it is believed such attendance is necessary.

### **3.08 - INITIAL SITE ANALYSIS OF CONTAMINATED PROPERTIES**

The Estimate and Field Review Unit completes an Initial Site Analysis Hazardous Waste Form (Form RW 3.02) for each parcel and/or project where, upon inspection, the potential for contaminated property is observed. This Initial Site Analysis Hazardous Waste Form is furnished to the Acquisition Manager to request a more detailed investigation and testing.

**CHAPTER 4**  
**LEGAL SECTION**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 4.00	General .....	1
Section 4.01	Title Reports .....	1
Section 4.02	Deeds & Leases .....	2
Section 4.03	Closings .....	2
Section 4.04	Condemnation .....	4
Section 4.05	Payment of Taxes & Tax Proration .....	4
Section 4.05.1	Current & Delinquent Taxes .....	4
Section 4.05.2	Proration for Total Acquisition .....	4
Section 4.05.3	Proration for Partial Acquisition .....	5
Section 4.06	Oil & Gas Leasing .....	5

## CHAPTER 4

### LEGAL SECTION

#### 4.00 - GENERAL

The function of the Legal Section of the Right of Way Division is to act as that Division's house counsel to prepare and approve documents relating to acquisition and disposition of real property and real property rights by the WVDOH. It offers continuing counsel to right of way personnel on legal questions arising in the performance of their duties and it acts as a liaison between the attorney for the property owner or prospective purchaser of property and the WVDOH. It conducts closings and title searches and procures by contract legal services relating to the acquisition and disposition of real property by the WVDOH.

#### 4.01 - TITLE REPORTS

Title report requests are generally initiated by the District Right of Way Manager requesting a title report from the Legal Section. A completed questionnaire with title documents collected by the District should accompany each request for a title search. The Legal Section will then assign the title search to an approved attorney (the "Title Attorney") and enter into a contract for the performance of that work within a specified time limit. (Form RW 4.01 and Form RW 4.01A). A log of title work assignments and completed title searches are kept at the Legal Section. When an extension of time is requested by the Title Attorney and is granted by the Central Office, the District Right of Way Manager is notified by the Legal Section. Upon completion, the Title Attorney will send the title opinion to the Central Office in the format prescribed by Appendix 4-3. The Legal Section will then review the report and forward it to the district office, a copy to the Acquisition Section in the Right of Way Division, and a copy to the section in the Engineering Division responsible for the right of way work. A copy will also be retained within the Legal Section.

Contract attorneys performing title report services are paid according to a fee schedule approved by the State Highway Engineer.

The Title Attorney examines records in the Office of the Clerk of the county in which the property is located in accordance with standard title examination practice of West Virginia title practitioners and instructions from the Legal Section. (Form RW 4.03) The invoice for title work must be submitted in the form prescribed by Appendix 4-4.

When a proposed acquisition involves a) a temporary easement, or b) minor part of the owner's entire property and the value is estimated to be below Ten Thousand Dollars and Zero Cents (\$10,000.00), the requirement for a title opinion may be waived by the Acquisition Manager (Central Office Project) or District Right of Way Manager (District Project). In that case, the Acquisition Manager, or designee, or an experienced Right of Way Manager, or designee, respectively, researches the courthouse records to ascertain the name(s) of the owner(s) of record. In permanent acquisitions, there is a preference for title examinations.

Title reports for mineral title may be necessary as indicated by information collectively determined by Right of Way Sections and Engineering Division.

#### **4.02 - DEEDS AND LEASES**

The District prepares all deeds which convey land rights to the WVDOH using a form pre-approved by the Legal Section. Any changes to the form deed must be pre-approved by the Legal Section. The Legal Section will assist the District in preparation of any deed upon request.

Conveyances of real property rights by deed to the WVDOH, are made normally with either general warranty of title or special warranty of title, regardless of whether the owner is conveying an easement for highway purposes or fee simple title.

Conveyance from the WVDOH are made with no warranty of title, as a quitclaim deed.

A request for a deed or lease will be made by memorandum to the Property Management Section of the Right of Way Division accompanied by information sufficient to prepare the deed or lease. That information includes, for a deed: correct legal name of the purchaser, a description of the property, survey plat and the interest being conveyed, and a copy of the source deed by which the WVDOH acquired the property and the consideration paid for the property.

The District prepares all leases using a current form lease pre-approved by the Legal Section. Any changes to the form lease must be pre-approved by the Legal Section. Information required for a lease includes: the correct legal name of the lessee(s), documentation identifying authorized designee or agent, in the case of a legal entity, the lease number and Property Management (PM) number, the effective date of the lease, the use the lessee will make of the property, the rental amount with documentation that supports that rental amount, the term and any rights the parties may have to extend the term, a description of the property, surveyed plat, rights of termination, and any special terms needed in the lease.

#### **4.03 - CLOSINGS**

Upon notification that the state warrant for the purchase of property is available, the District Right of Way Manager will forward the closing information and documents to the Legal Section. Contract attorneys who are assigned to conduct the closing (the "Closing Attorney") must enter into a contract in the form prescribed by Appendix 4-5. Contract attorneys are compensated at an hourly rate for closings as approved by the State Highway Engineer. State warrants for closings expire after six months. The Closing Attorney must complete the closing within the time specified in the contract and return any warrant for a closing which cannot be timely completed at least twenty days prior to its expiration in order to facilitate canceling and reissuing the warrant. The invoice for closing work must be submitted in the form prescribed by Appendix 4-9.

The recorded deed is returned to the District Office by the Clerk of the County Commission. The District Office must then forward the original copy of the recorded deed to the Central Office. The State Warrant Receipt (Form RW 9.04), Closing Certificate (Form RW 4.06), and Closing Statement (Form RW 4.05) must be returned to the Legal Section by the attorney.

On transactions handled entirely by the District Office, the file remains at the District Office with only the original deed being sent to the Central Office.

The Closing Attorney is responsible for:

1. Determining that the deed is executed and acknowledged by the proper parties; contains the approved description; recites the correct consideration; contains any special provision or limitation identified in the transmittal information; it contains appropriate language to address the mandatory withholding requirements for sale of real property by nonresidents pursuant to the provisions of West Virginia Code § 11-21-71b, and it is in all respects legally sufficient to accomplish its purpose and is in recordable form.
2. Updating the title report to the time of closing.
3. Seeing to the release of any liens and clearing of objections to the title.
4. Requiring that all real property taxes have been paid, which are due and payable at the time of closing.
5. Delivering the net balance of the purchase money to the property owner.
6. Complying with the provisions of West Virginia Code § 11-21-71b and West Virginia State Tax Department Publication TSD-389 regarding West Virginia withholding requirements for sales of real property by nonresidents.
7. Recording the deed in the Office of the Clerk of the County Commission.
8. Preparing and returning the properly completed forms detailing the transaction (Form RW 4.05, Form RW 4.06, Form RW 4.07, Form RW 9.04).
9. Delivering to the property owner a copy of Form RW 4.05.

Closing of property valued at \$10,000 or less may be handled by the Right of Way Manager. Closing of property valued above \$10,000 may be delegated to the District when authorized by the Director of the Right of Way Division.

#### **4.04 - CONDEMNATION**

Condemnation suits are prosecuted by the Legal Division of the WVDOH where property cannot be acquired by negotiation and deed. See Chapter 5, Sections 5.50-5.55 for additional information regarding condemnation.

#### **4.05 – PAYMENT OF TAXES AND TAX PRORATION**

##### **4.05.1 – CURRENT AND DELINQUENT TAXES**

All property taxes, including delinquent taxes, that are due and payable at the time of closing must be paid at or before closing by the property owner.

1. The Closing Attorney will ensure that the following information is obtained from the appropriate tax office prior to closing and documented in the closing file.
  - a. The amount of taxes due, current and delinquent, if any;
  - b. The amount necessary to redeem any tax certificates; and
  - c. The name of the person providing this information and the date the information was provided.
2. Taxes paid by the property owner outside of closing must be evidenced by a receipt or documentation from the tax office indicating amounts and date received. The receipt must be provided to the Closing Attorney by the property owner prior to closing and will be maintained by the Closing Attorney in the closing file with a copy provided to the Legal Section.
3. Payment for taxes received from the property owner at closing should be in the form of a check, bank check, or money order payable to the appropriate tax office. Tax payments presented at closing for current year taxes must be promptly delivered to the tax office by the closing attorney.

##### **4.05.2 – PRORATION FOR TOTAL ACQUISITION**

1. When the right of way acquisition requires a total acquisition, and the real property taxes are not yet due and payable for the current year, the Closing Attorney will base the tax proration on the tax amount from the previous year or the current year, if available.
2. The property owner is responsible for payment of taxes from the beginning of the tax year through the day before closing. This amount should be represented as a deduction to the compensation paid to the owner on the closing statement.
3. The Closing Attorney is responsible for holding this amount and paying it to the appropriate tax office when due. The Closing Attorney will maintain evidence of payment by a receipt or documentation from the tax office indicating amount and date maintained in the closing file with a copy provided to the Legal Section.

### **4.05.3 – PRORATION FOR PARTIAL ACQUISITION**

1. When the right of way acquisition requires a partial acquisition, and the real property taxes are not yet due and payable for the current year, the Closing Attorney will base the tax proration on the tax amount from the previous year or the current year, if available.
2. The calculations include the value of the buildings acquired and the value of the land acquired. Severance damages, cost to cure items, landscaping, etc. are not considered in the proration.
3. The property owner is responsible for payment of taxes for the partial acquisition from the beginning of the tax year through the day before closing. This amount should be represented as a deduction to the compensation paid to the owner on the closing statement.
4. The Closing Attorney is responsible for holding this amount and paying it to the appropriate tax office when due. The Closing Attorney will maintain evidence in the closing file with a copy to the Legal Section of payment by a receipt or documentation from the tax office indicating amount and date received.

### **4.06 – OIL AND GAS LEASING**

The Legal Section shall be the contact point for all requests to lease oil and gas under state roads. The Legal Section shall work cooperatively with the West Virginia Department of Revenue to implement processes and procedures mandated by the Department of Revenue for leasing oil and gas under state-owned property. Districts shall not enter into oil and gas leases. Legal Section will coordinate with Central Office Property Management for maintaining files and appropriate databases.

**CHAPTER 5**  
**ACQUISITION SECTION**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 5.00	General .....	1
Section 5.10	Qualifications of Realty Trainees & Agents .....	1
Section 5.20	Questionnaires .....	1
Section 5.21	Information for the Purpose of Negotiating .....	2
Section 5.21.1	Early Acquisition Activities .....	4
Section 5.21.2	Federal Participation in Early Acquisition .....	4
Section 5.21.3	Functional Replacement .....	5
Section 5.21.4	Federal Land Transfers .....	6
Section 5.21.5	Negotiation for Property via “Waiver Valuation” .....	7
Section 5.22	Negotiation Sheets .....	8
Section 5.23	Discussion with Owners & Occupants .....	9
Section 5.23.1	Land Transactions with Churches (and other religious institutions) .....	9
Section 5.24	Denial of Access .....	9
Section 5.25	Personal Contact .....	10
Section 5.26	Methods of Contact .....	10
Section 5.30	Negotiators Explanation of Just Compensation .....	11
Section 5.31	Negotiators Explanation of Settlement Policy .....	11
Section 5.32	Breakdown of Individual Values .....	12
Section 5.33	Administrative Settlements .....	12
Section 5.40	Contact with Representative .....	12
Section 5.41	Contact with Numerous Parties .....	12
Section 5.42	Option Form Controlled & Noncontrolled Access .....	13
Section 5.43	Option Changes .....	13
Section 5.44	Execution of Option .....	13
Section 5.45	Retention of Major Improvements .....	13

Section 5.46	Retention of Minor Improvements .....	14
Section 5.47	Invoice for Payment & Acceptance of Option .....	14
Section 5.47.1	Delivery of Payment .....	14
Section 5.47.2	Closing by District Right of Way .....	15
Section 5.48	Design-Build Projects .....	15
Section 5.50	Request to Condemn .....	15
Section 5.50.1	Authorization to Condemn .....	16
Section 5.50.2	Preparation of Petition .....	16
Section 5.50.3	Right of Entry .....	16
Section 5.51	Advance Payment into Court .....	17
Section 5.51.1	Form for Advance Payment into Court .....	17
Section 5.52	Date for Appointment of Commissioners .....	17
Section 5.52.1	Manner of Selecting Commissioners .....	17
Section 5.52.2	Selection of Date for Hearing .....	17
Section 5.52.3	Supervision of Commissioners' Hearing .....	17
Section 5.52.4	Inspection of Parcel before Condemnation .....	18
Section 5.52.5	Local Witnesses .....	18
Section 5.52.6	Engineer as Witness .....	18
Section 5.52.7	Commissioners' Hearing .....	18
Section 5.52.8	Conduct During Commissioners' Hearing .....	18
Section 5.52.9	Use of Court Reporter at Commissioners' Hearing .....	19
Section 5.52.10	Commissioners' Report .....	19
Section 5.52.11	Exceptions to Report of Commissioners .....	19
Section 5.52.12	When WVDOH Files Exceptions .....	19
Section 5.53	Request for Settlement Before Trial .....	19
Section 5.53.1	Documentation for Settlement Purposes .....	20
Section 5.54	Jury Trial .....	20
Section 5.54.1	Preparation for Trial .....	20
Section 5.54.2	Selection of Jury .....	20
Section 5.54.3	Re-Inspection of Condemned Parcel .....	21
Section 5.54.4	Conference with Witnesses .....	21
Section 5.54.5	Attendance of District Manager at Trial .....	21

Section 5.54.6	Policy of WVDOH .....	21
Section 5.54.7	Documentation at Conclusion of Trial .....	21
Section 5.70	Railroad Properties .....	22
Section 5.71	Right of Way for Utility Relocations .....	22
Section 5.72	Relocation of Non-Utilities .....	22
Section 5.73	Permits for Private Relocations .....	23
Section 5.80	Right of Entry to Obtain Data (Tests, Drillings, Soundings, etc.) ...	23
Section 5.82	Right of Way Certificates .....	23
Section 5.91	Acquisition Control Section Records .....	25
Section 5.92	Reporting & Recording .....	27
Section 5.93	Negotiator’s Progress Report .....	27
Section 5.94	Project Monitoring & Problem Resolution .....	27
Section 5.95	Closing a Project from the Status .....	27

## CHAPTER 5

### ACQUISITION SECTION

#### 5.00 – GENERAL

The policies and procedures for the Right of Way Division of the West Virginia Department of Transportation, Division of Highways (hereinafter referred to as WVDOH), in all negotiations are at all times directed to accomplish the end result of paying the property owner the just compensation to which they are entitled.

Prior to the beginning of negotiations, the letter of intent must be provided to the property owner by certified mail, with return receipt requested.

Also, prior to the beginning of negotiations, the amount of replacement housing, when applicable, will have been calculated and the estimated just compensation will have been approved.

The monitoring of all acquisition is the responsibility of the Acquisition Manager of the Right of Way Division. The Acquisition Manager assures that appropriate Federal Highway Administration authorization has been received.

See Appendix 5-1 for the Operating Policy and Procedures of the West Virginia Department of Transportation, Division of Highways, for Compliance with Title III of Public Law 91-646.

See Appendix 5-10 (Form RW Checklist-AQ) for the Acquisition Checklist that lists each item needed throughout the negotiation and acquisition process.

#### 5.10 - QUALIFICATIONS OF REALTY TRAINEES AND AGENTS

All negotiations must be conducted by qualified staff employees or consultants. Qualifications have been established for Realty Trainee, Realty Agents I, II, III, IV and Realty Manager and approved by and on file with the West Virginia Division of Personnel.

#### 5.20 – QUESTIONNAIRES

The Questionnaire provides title information, which in most instances is not available from any other source. It is important that the names and addresses of the owners, spouses of each, names and birth dates of any infant owners, tenants, leases, or agreements not of record at the courthouse, mineral interests and owners, and any other information affecting the legal status of ownership (i.e. any property owner that is incapacitated or in military service, etc.) be included in the Questionnaire. **The information to be included in the Questionnaire shall be obtained through personal contact with the owner, tenant, or lessee, as applicable, and not solely from court house records or plan sheets.**

In most instances, the responsibility for Right of Way Questionnaires, (Form RW 5.01) can either be the District Right of Way Agent or the consultant. The District Right of Way office is responsible for Questionnaires on district design projects, maintenance projects, category 6 bridges, 3R category projects and projects designed by the Central Office Engineering Division. Requests for the preparation of Right of Way Questionnaires will be furnished to the District Right of Way Office by the Acquisition Manager.

## **5.21 - INFORMATION FOR THE PURPOSE OF NEGOTIATING**

The negotiation staff should familiarize themselves with each parcel they expect to acquire. They should collect all available information concerning the project and properties, which will be affected by the project. Only after the negotiator is well informed as to the project and the property to be purchased, should they attempt to talk with the property owner. To accomplish this, the negotiator should have available:

1. A complete set of plans of the project.
2. The approved appraisals, where applicable, of the properties they are to acquire with the Review Appraiser's finding of fair market value.
3. Statement of Just Compensation
4. A complete title report, where applicable, of the property to be purchased.
5. A properly prepared option or deed of the property to be purchased which includes a description of the property by metes and bounds.
6. Any other information, including the Fixture Inventory (Chapter 8), which will help explain to the property owner the project and its effect on his or her property, and to answer any questions the property owner may have.
7. A United States Department of Treasury, Internal Revenue Service Form W-9. This form is to be presented to the property owner, along with associated written instructions, for the property owner to execute. If the property owner cannot execute the W-9 form, only a legal guardian or a designated legal power of attorney can execute the form for them. If the property owner is not an individual, any designated representative of that entity can execute the form. In all instances whereby, a legal guardian or designated legal power of attorney executes the W-9 form for the property owner, all appropriate copies of the attesting legal documents should be attached.

In the event a parcel is being acquired from a property owner or entity that is an out-of-state resident or an out-of-state entity, West Virginia Code §11-21-71b (West Virginia Personal Income Tax Code) requires that the person responsible for closing the transaction “withhold income tax on sales or exchanges of West Virginia real property and associated tangible personal

property.” The amount to be withheld shall be 2.5% of the total payment to a “nonresident or entity.” The acquisition agent should inform the out-of-state resident or out-of-state entity of these withholding requirements. For additional information, reference is made to the West Virginia State Tax Department Publication TSD-389. This does not apply to any Temporary Easements.

If it is necessary to acquire mineral rights from other than the surface owners, these rights are appraised and acquired in conjunction with real property rights ownership procedures.

Federal government owned lands are acquired through the Central Office in accordance with procedures set forth in federal regulations at 23 CFR 710.601 and 710.603.

The valuation of signboards/billboards and the associated property interests involved are in accordance with procedures established and set forth in Chapter 6 of this Manual. The subsequent acquisition follows the regular negotiation procedure.

In accordance with Title III Assurances, if the appraisal shows an uneconomic remnant, the agent must make an offer to acquire the remnant. The property owner may either accept or decline the offer to acquire the uneconomic remnant. Caution should be made with uneconomic remnants, as the West Virginia Supreme Court of Appeals, in the case of West Virginia Department of Transportation v. Dodson, 218 W. Va. 121, 624 S.E.2d 468 (2005), ruled that in certain circumstances the establishment of an uneconomic remnant is a question for the jury, rather than the Agency.

If a displacement is occurring on a property that is owner-occupied, the negotiator must have the replacement housing determination at the time the first offer to acquire the property is discussed. A Relocation Agent should also be available to discuss relocation benefits. Tenants will be contacted separately by a Relocation Agent as soon as possible after the acquisition offer has been presented to the real property owner.

Negotiators and/or Relocation Agents follow the same relocation procedures on improved properties, whether owner-occupied or tenant-occupied. Refer to Chapter 12 of this Manual.

If the offer cannot be made within a reasonable period of time after the establishment of fair market value (as determined by the Appraisal Section), the negotiator advises the District Manager of the reason for the delay and requests the District Manager to determine if the appraisal is still current or is representative of just compensation on that date. If the appraisal has to be updated, negotiations will proceed in the normal fashion upon receipt of the new appraisal.

A property owner may donate some or all of the real property necessary for right of way purposes after being advised in writing of their right to receive just compensation for the acquisition of their property and after signing a statement to that effect.

### **5.21.1 - EARLY ACQUISITION ACTIVITIES**

The WVDOH may initiate acquisition of real property at any time it has the legal authority to do so based on program or project considerations. The WVDOH may undertake early acquisition for corridor preservation, access management, or other purposes.

An acquisition is considered to be an “early acquisition” when the acquisition occurs prior to completion of a project level NEPA environmental document. Early acquisition includes “hardship acquisitions” and “protective purchases”. The acquisition is treated as a “hardship acquisition” if the action is initiated by the real property owner due to a perceived hardship if acquisition is delayed. The acquisition is treated as a “protective purchase” if it is initiated by the WVDOH. All early acquisition activity must be authorized by the Director of the Right of Way Division. (See 23 CFR 710.501 et seq and 710.305)

Early acquisitions may occur in a variety of real property interest formats, such as;

1. Fee title acquisition which would involve permanent acquisition of underlying title.
2. Permanent easements which would involve permanent use for a stated purpose.
3. Options to purchase would pay compensation for the right to purchase property at a stated value at a future date, at the discretion of the WVDOH.
4. Protective Leasing would pay a rental fee for a stated period of time.

All manner of early acquisition payments will be based on a valuation appraisal or a “waiver valuation” at the discretion of Acquisition Manager in coordination with the Director of the Right of Way Division. (See Appendix 5-11)

Condemnation authority will not typically be utilized in conjunction with an early acquisition, unless approved in writing by WVDOH legal representatives.

### **5.21.2 – FEDERAL PARTICIPATION IN EARLY ACQUISITION**

In order for federal participation in any phase of a WVDOH project, any property acquisition must have been completed in compliance with all applicable federal and State regulations. It is often prudent to purchase certain property rights in advance of the normal project development process. When this early acquisition activity occurs, the following procedures must be followed:

1. If the WVDOH desires federal participation in the proposed acquisitions at either the time of the acquisition or when normal activities commence, then the acquisition must be approved in writing by the FHWA as either an “early acquisition, a “protective purchase,” or a “hardship acquisition” as defined by federal regulations at 23 CFR 710.501 and 710.503.

2. If the WVDOH does not desire federal participation in the acquisition but would desire to be eligible for project match credit at a later date, then advance federal approval is not required; however, all applicable regulations and procedures must be followed. Under this procedure, a federal project match credit will be allowed only for those real property rights incorporated into the eventual project operating right of way. It is important to note that a project match credit is available only for the value of the real property rights and does not include relocation assistance payments or miscellaneous administrative expenses.
3. Project match credits may be based on either the value of the real property rights at the time the credit is applied, or it can be based upon the historic actual acquisition cost. For purposes of consistency, the WVDOH will typically base any project related credit on the current appraised value of the real property rights. In unusual circumstances, and with FHWA approval, the credit may be based upon the historic acquisition cost.
4. The current market value of the real property rights at the time of the credit match may be determined by any valuation technique that is approved by the FHWA. This includes valuations prepared by the WVDOH appraisal staff.

### **5.21.3 – FUNCTIONAL REPLACEMENT**

Functional replacement is the concept of providing compensation for real property which will be acquired by the WVDOH with real property providing equivalent utility. Under existing Federal Regulations, property to be considered as eligible for functional replacement must be in public ownership (public schools, city playgrounds, county parks, etc.).

In the early stages of plan development, it is determined whether public property is to be acquired for highway use. At this point, the Director of the Right of Way Division, after the recommendation from the Acquisition Manager, will determine if it may be in the public interest to make functional replacement of the property in question. Upon this determination, representatives of the Acquisition Section will arrange meetings between the Division officials and the owning agency. If an agreement is reached in the meeting that the functional replacement concept is appropriate, the owning agency will furnish to the WVDOH the following:

1. Formal request for functional replacement and a full explanation of why it would be in the public interest.
2. Evidence of ownership of the property to be acquired by the WVDOH (copy of deed or recordation data).
3. A waiver of its rights to have a just compensation appraisal if that is their desire.

Notification to the property owner of his or her right to receive just compensation must be in writing. (See 23 CFR 710.509(b)(4))

If the WVDOH agrees to functional replacement, and there is federal participation in the acquisition, this Acquisition Section prepares a request for approval to the Federal Highway Administration. This request contains copies of material submitted by the owning agency, cost estimates relative to the functional replacement (Functional Replacement Worksheet, Form RW 5.04), and an explanation of the basis for the request. If there is no federal participation in the acquisition, no Federal Highway Administration approvals are necessary.

Should the owning agency opt for functional replacement and the owning agency does not have land on which to relocate the facilities, a substitute site must be acquired by WVDOH. The request to the Federal Highway Administration must also include a statement that replacement property will be acquired in accordance with provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Upon concurrence received from the Federal Highway Administration, if necessary and approval of the NEPA document, authorization may then be obtained for acquisition of the replacement site and for the owning agency to proceed with the development of plans, specifications, and estimates of the replacement facilities. Prior to approval of Plan, Specification and Estimate (PS&E) by Engineering Division, an agreement is entered into between the WVDOH and the owning agency in regard to the obligations and duties of each party as to the acquisition of the replacement site and construction of replacement facilities. This agreement also sets forth how the cost of the new facilities is shared between the parties. The WVDOH is responsible only for just compensation of the land or replacement of the land when that option is used, and the equivalent utility of the facilities being acquired. Any increase in size or other betterments, other than those required by codes, laws, zoning regulations, and those related to reasonable prevailing standards for the types of facilities being replaced, is at the cost of the owning agency. The Acquisition Section will be responsible for arranging for appropriate inspection during construction of the facilities.

Upon completion of the PS&E, they, along with a copy of the executed agreement, are submitted to the Federal Highway Administration (only in Federal Aid Projects) for review and approval. Procedures of the owning agency may be utilized in advertising for bids and letting construction contracts if acceptable to the WVDOH and the Federal Highway Administration. If the procedures of the owning agency are not acceptable, the standard procedures of the WVDOH are used. Where the owning agency may not have the expertise or personnel to handle the construction, the WVDOH may elect to affect the construction in accordance with its standard procedures.

(See 23 CFR 710.509 et. seq.)

#### **5.21.4 - FEDERAL LAND TRANSFERS**

Title 23 U.S.C., §§ 107(d) and 317, provide for the transfer of lands or interests in the lands owned by the United States to the WVDOH or its nominee for highway purposes. The regulations which prescribe the procedures relating to Federal land transfers are found in 23 CFR 710.601 et seq.

If lands or interests in lands owned by the United States are needed for highway purposes, the WVDOH or its nominee should first file a land transfer application with the Federal Highway Administration. The exception to this process is when such lands or interests therein are managed or controlled by an agency with independent transfer authority such as the Army, Air Force, Navy, Veterans Administration, or Bureau of Indian Affairs. Transfer applications are made directly to these agencies or their land acquisition agents.

Information on the contents of the application, the deed for conveying the lands or interests and other details on the transferring of lands can be found in the “Attorney’s Manual for Public Land Transfer and Federal Condemnation.” The “Manual for Federal Land Transfers for Federal-Aid Projects”, dated February 27, 2009, provides the WVDOH or its nominee with step-by-step procedures for transferring federal lands as well as examples of the applications and the conveyance deeds.

Often the WVDOH or its nominee works out the details of a project with the local office of the Federal agency (e.g. National Forest or Park) from which the land is sought prior to submitting the formal application to the Federal Highway Administration. This eases the application process and minimizes delays and surprises.

When the need for the lands or interests therein no longer exists the WVDOH must notify the Federal Highway Administration and the concerned Federal agency. Control of the lands or interests will revert to the Federal agency or its assignee from which they were appropriated (23 U.S.C. § 317(c)).

Where authorized by Federal Law, a Federal agency, and the WVDOH may enter into a separate agreement to release the reversion clause and make alternative arrangements for the sale, restoration, or other disposition of the lands no longer needed.

Direct Federal Acquisition policies are located in 23 CFR 710.603.

#### **5.21.5 - NEGOTIATION FOR PROPERTY USING APPRAISAL WAIVER (AKA “WAIVER VALUATION”) CRITERIA**

Negotiations for property using the Appraisal Waiver Criteria will be, in most instances, those projects that are small with few uncomplicated acquisitions.

The District or Central Office Engineering Division should work closely with the designer on these small projects to ensure that right of way plans comply with design directives are provided, and request revisions if necessary.

The District Manager, or their designated representative, should make a market analysis in the area of the project in order to have knowledge of the values of comparable properties that have recently been sold. This is essential in order to establish values for the properties to be acquired. The value offered under Appraisal Waiver Criteria should be representative of and be at least the amount the owner would have received if a formal appraisal were prepared.

An appraisal is not required if the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated, and the fair market value of the take is estimated at \$25,000 or less, based on a review of available data. An appraisal waiver may **NOT** exceed \$25,000 even when cost to cure or minor damages are included. Reference is made to Chapter 6, Subsection 6.25 of this Manual. If the value of the appraisal waiver offer exceeds \$10,000, the property owner may request a formal appraisal by checking the “yes” box on the “Notification of Waiver Valuation and Request for Appraisal” letter (See Appendix 5-29) that is presented to the property owner at the time of the offer when the estimate of just compensation has been valued by the Waiver of Appraisal method. If the property owner does not desire a formal appraisal, then the “No” box must be checked, and the letter signed by the property owner.

The District Manager, or their designated representative, shall make an examination of the courthouse records of the properties to be acquired, to ascertain apparent ownership.

When negotiations are initiated for these nominal takings, Form RW 5.02C, Form RW 5.02D, and Form RW 5.13 shall be used.

When negotiations are successful using the appraisal waiver criteria, the invoice package shall include a memorandum indicating that the parcel is being acquired under the appraisal waiver criteria.

When negotiations are unsuccessful using the appraisal waiver criteria, the request for condemnation shall include a memorandum indicating that the parcel has not been successfully negotiated under the appraisal waiver criteria.

Upon completion of negotiations, procedures as outlined in Section 5.22 of this Chapter shall be followed. (See Form RW 5.13)

## **5.22 - NEGOTIATION SHEETS**

The negotiation procedures must comply with the Federal Highway Administration's policies and procedures in the acquisition of properties and the relocation of displacees.

Upon the first contact with the property owner for the purpose of negotiating, the negotiator prepares their negotiation sheet immediately after their visit but not in the presence of the property owner. This initial contact is reported on Form RW 5.02A, First Visit and all subsequent contacts are reported on Form RW 5.02B, Follow Up Visit. The negotiation sheets indicate the date of each visit, the time and place of each visit, with whom the negotiator discussed subject matter and full particulars of the conversation, the initial impressions of the manner in which the offer is received including any counteroffer presented to the negotiator, all other pertinent data required by the negotiation sheet, and the signature of the negotiator. The final negotiation sheet must accompany invoice for payment of the agreed consideration.

After a series of unsuccessful negotiation sessions, the negotiator should consider recommending condemnation. However, if there are legitimate reasons for delay in negotiations,

the negotiator should consider a review to determine the necessity of an updated appraisal.

After completing the negotiation process, the negotiator files a Negotiator's Certification, (Form RW 5.24), with all other pertinent documents, which will be part of the invoice package.

### **5.23 - DISCUSSION WITH OWNERS AND OCCUPANTS**

During negotiations, the negotiator discusses the purchase of the property with the landowner and with any persons who may occupy the property under a lease if the parties involved so desire, since the agreement of one party may influence the other. It is important that the negotiator obtain a copy of the lease to confirm any statements that are being made by either party.

In some instances, the negotiator may decide that a discussion with the landowner and with the leaseholder at the same time would not be desirable for a variety of reasons. The negotiator must use their own judgment as to how to proceed.

#### **5.23.1 – LAND TRANSACTIONS WITH CHURCHES (and other religious institutions)**

West Virginia Code §§ 35-1-1, et seq., contains procedures for acquiring property from Churches and other religious institutions.

If a Church is conveying real property to the WVDOH, then there must be documentation that the proposed conveyance was read to the congregation at two consecutive meetings, and this documentation must be signed by the trustees, and or, the bishops as governing officers.

Anytime the proposed acquisition is from a Church or other religious organization, the negotiator must coordinate with the Acquisition Manager to assure that proper procedures are being followed.

### **5.24 - DENIAL OF ACCESS**

The negotiator must be familiar with the entire project so that they can tell the landowner if he or she will be denied all access rights to the property or have access by means of a frontal road or if, in fact, he or she may access his or her property directly from the new road or any other access which may be provided. The negotiator must never commit the WVDOH to the location of any ramps, drop curbs, entrances, intersection facilities, or any other features that are not shown on the plans.

## **5.25 - PERSONAL CONTACT**

Each resident property owner should be contacted personally if possible. The negotiator explains the full effect of the taking and presents a copy of the Statement of Just Compensation, (Forms RW 6.11 or Form RW 5.13) showing the fair market value. This must be done prior to the negotiator's second contact. All owners are to be given an explanation in writing of the steps available to them if they elect to reject the WVDOH's offer. This is accomplished by delivering to the owner a copy of the WVDOH's pamphlet entitled *Right of Way - A Guide For Property Owners and Tenants*. In addition, the property owner is provided with the Relocation Brochure (see Chapter 12); the Replacement Housing Determination (see Chapter 12); a copy of the Option, Form RW 5.03; or Deed, the 90 day and 30 day letter, if applicable, (See Appendix 5-26 and 5-27), and IRS W-9 Form. If any change occurs in the fair market value, the owner is provided with a revised Statement of Just Compensation.

## **5.26 - METHODS OF CONTACT**

Personal contact may be made, where practical, with owners who are not residents of West Virginia. If it is not feasible to contact the owner personally or by telephone, the negotiator writes a letter to be sent by certified mail, return receipt requested, providing all pertinent information and enclosing all required documents (Right of Way Pamphlet (See Appendix 5-9), Relocation Brochure, Option or Deed, Statement of Just Compensation, and colored plan sheet outlining the property). If there is no reply within a reasonable period of time, the negotiator writes again. If there is still no response, within ten days, another letter is written by the negotiator advising the owner that condemnation proceedings will be initiated to acquire the property. Condemnation proceedings cannot be recommended until 30 days have passed from when the initial offer was made. (See 24 CFR Appendix A – Part 24.102(f))

If the property owner is not in residence in the United States, any appropriate courier service may be utilized to deliver the documents, as long as proper verification of delivery can be assured.

Personal contact and delivery of the pamphlet need not be made to resident owners if they cannot be located after a reasonable search or in cases where it is not practical, including but not limited to, incompetents, infants, unknowns, convicts, or persons not to be contacted for health reasons.

Once initial contact has been established, future contacts can be made by e-mail or any other electronic means if so desired and agreed to by the property owner.

Electronic communication from a property owner must be printed out and made part of the acquisition file.

### **5.30 – NEGOTIATOR’S EXPLANATION OF JUST COMPENSATION**

The negotiator shall explain to the property owner that the Right of Way Division of the WVDOH has adopted and uses the firm price policy and that the offer made to them for the purchase of their property is the full amount established by the Right of Way Division's Review Appraiser. It is important that the owner understands that this "one price" policy is for their protection as well as for that of the rest of the taxpayers of the State of West Virginia, and that when the offer of settlement has been made, no other offer will be made except in the following circumstances: Additional information indicates that the original appraisal does not reasonably reflect the true market value; some item of damage has not been considered in the appraisal; or for other good cause which may merit administrative consideration. The negotiator shall inform the property owner, when a formal appraisal is necessary, that the report is a very detailed summary of the value of the property, represents an analysis of a thorough examination of their property, sets forth the just compensation value as defined by law, and has been reviewed by the Review Appraiser. The negotiator also shall explain to the property owner that after the completed report is received in the District Office, it is reviewed for accuracy and to determine if all the elements of damage were considered before the property owner was approached for negotiation. **The negotiator shall not, under any circumstances, provide the property owner a copy of the Right of Way Divisions appraisal.**

When there is a partial acquisition, the negotiator may request that the acquisition area be staked out for visual reference, if it appears that this may assist in the negotiation process. If the negotiator believes that it may be helpful, a project engineer may be asked to assist in explaining the project impacts.

### **5.31 – NEGOTIATOR’S EXPLANATION OF SETTLEMENT POLICY**

On projects where formal appraisals are obtained, it is made clear to the negotiators that when the one-price system is used, a great deal of skill is required of the negotiator because he or she must overcome the extremely human tendency to bargain, as is often the case in the open real estate market. The firm price system requires greater care in reviewing the appraisal since condemnation is the only recourse if a settlement can't be reached.

A property owner may order and pay for an appraisal by a Certified Appraiser, who is experienced in Eminent Domain and submit it to the WVDOH for review. The Review Appraiser may approve the fair market value from the property owner's report as long as it meets the requirements of West Virginia eminent domain law and the "Uniform Standards of Professional Appraisal Practice" (USPAP).

The property owner shall be told of his or her rights to refuse any offer made by the Division and of his or her right to require the WVDOH to condemn the land to have the market value determined by the County Land Commissioners and/or Jury.

### **5.32 - BREAKDOWN OF INDIVIDUAL VALUES**

Occasionally, a property owner will ask that he or she be given a breakdown of the values established for individual items in the appraisal report. To attempt to advise the owner of the value assigned each improvement can lead to disagreement since some items have high intrinsic value but may detract from the whole, while other items may add more than their nominal cost. Many individual items of improvement do not exhibit their true value unless considered as part of the entire property. **Therefore, the negotiator may not break down the offer beyond the information reflected in the "Statement of Just Compensation."** (See Chapter 6.)

### **5.33 – ADMINISTRATIVE SETTLEMENTS**

The Director of the Right of Way Division is authorized to approve administrative settlements. The Director may approve an administrative settlement when it is determined that such action is in the best interest of the public. In doing so, the Director gives full consideration to all pertinent available information. If there is any concern regarding FHWA participation in the administrative settlement, the Director may request FHWA prior concurrence.

If a parcel has been recommended for condemnation, primary responsibility shifts to the Legal Division of the WVDOH. Any contact with the property owner, or their representative, after the responsibility has shifted to the Legal Division is the responsibility of the assigned attorney. The attorney may utilize the expertise of Right of Way Division personnel in evaluating any new evidence in preparation for any legal action.

Following the filing of a condemnation proceeding any negotiated settlement must be by final order dismissing the case, setting forth the compensation.

### **5.40 - CONTACT WITH REPRESENTATIVE**

If an owner is represented by an attorney at law, attorney in fact, agent, or committee, the written offer, personal contact, and delivery of the Pamphlet, Relocation Brochure, and related documents may be made to such representative, at the written request of the property owner.

### **5.41 - CONTACT WITH NUMEROUS PARTIES**

When there are numerous owners, each owner must be contacted or their representatives.

#### **5.42 - OPTION FORM CONTROLLED AND NONCONTROLLED ACCESS**

If the acquisition involves control of access, the negotiator must be sure that the option clearly states this. (See Option Form RW 5.03). The form is clearly marked at the paragraph indicating control of access taking. If the acquisition does not involve controlled access, the negotiator must be sure that the paragraph for controlled access is not marked.

#### **5.43 - OPTION CHANGES**

All options must be completed in their entirety. The property owner must initial any changes, additions, or deletions to the option.

#### **5.44 - EXECUTION OF OPTION**

If the landowner agrees to sign the option, the negotiator:

1. Completes the option in its entirety, being sure there is an understanding as to date of vacation of structures, if any, or date of removal of structures, if any. Any changes made in the option, including provision for retention and removal, are initialed by the property owner. (See Sections 5.45 and 5.46.)

Should the owner wish to retain any buildings, structures, equipment, etc., Form RW 5.03A, Addendum "A", is to be attached to the Option.

2. Has all parties sign the option in the presence of a Notary Public (the negotiator may act as the Notary Public).
3. Advises the property owner that his or her check should be issued within approximately 4 to 8 weeks.
4. Informs the property owner, where applicable, that a closing attorney will contact him or her to determine the closing date.
5. Informs the property owner who wishes to remain in occupancy after closing of the WVDOH's rental procedure (see Chapter 8).

#### **5.45 - RETENTION OF MAJOR IMPROVEMENTS**

As a general rule, the negotiator will affect an outright purchase of the necessary right-of-way, but occasionally the property owner may wish to retain improvements, which lie within the right-of-way. The owner of improvements or appurtenances on lands being acquired as right-of-way, with the concurrence of the WVDOH, has the option of retaining his improvements or appurtenances at a retention value determined by the Appraisal Section. Retention value

determinations for total improvements should be made prior to the start of negotiations. Appurtenance retention values are established during negotiations upon request.

(See Chapter 8, Sections 8.11 and 8.11.1)

#### **5.46 - RETENTION OF MINOR IMPROVEMENTS**

The District Right of Way Manager, subject to the approval of the Director of the Right of Way Division, may permit the owner to retain minor improvements located on the land taken provided: the improvements are not significant in value as to the overall consideration of the acquisition; the owner agrees to promptly remove such improvements at his or her own expense; and that the District Right of Way Manager has determined that the improvements have little or no salvage value.

The owner or owners must sign a release indemnifying the WVDOH.  
(See Appendix 8-3)

Retention of major or minor improvements is only an option if negotiations are amicable, and if project scheduling will not be adversely affected. Retention is not an option if condemnation proceedings are instituted.

(See Chapter 8, Sections 8.11 and 8.11.1)

#### **5.47 - INVOICE FOR PAYMENT AND ACCEPTANCE OF OPTION**

All executed options are delivered to the District Office immediately for processing and transmitted to Central Office for payment, with invoice Form RW 10.01 and with the proper documentation, including Form RW 5.21, Certificate of Acquisition, (See Chapter 9).

When the option is accepted by the Director of the Right of Way Division, the acceptance Form RW 5.05, is returned to the District Right of Way Manager for delivery to the property owner by registered mail with return receipt requested. At this time, the District Property Manager is made aware of the status of any improvements located on the subject parcel.

##### **5.47.1 -DELIVERY OF PAYMENT**

In conformance with federal regulations, payments are not delivered by those who appraised or negotiated for the property interest being acquired. This applies to appraisers, review appraisers, negotiators, attorneys who settle condemnation cases, and similar personnel. It is the responsibility of the District Manager to be certain that this requirement is strictly adhered to.

### **5.47.2 - CLOSING BY DISTRICT RIGHT OF WAY**

A District Right of Way Manager may close transactions when the cost of acquisition does not exceed \$10,000.00. Before the closing may be completed, the applicable courthouse records are to be searched to determine that the WVDOH will acquire sufficient title to the property in question. An attorney need not be hired to provide a complete title report unless there are serious concerns about the adequacy of the title.

**The negotiator can neither close the transaction nor make final payment.**

### **5.48 – DESIGN-BUILD PROJECTS**

See Chapter 2 in this Manual for the procedures and policies for Design-Build Projects.

### **5.50 - REQUEST TO CONDEMN**

If the property owner and negotiator cannot reach an agreement and the property owner refuses to sign an option or deed, the negotiator so states on his or her negotiation sheet and recommends to the District Manager that condemnation proceedings be instituted. If, after a review of the case, the District Manager believes an executed option or deed cannot be obtained, the District Right of Way Manager prepares a letter to the Director of the Right of Way Division requesting authority to institute condemnation proceedings. This letter, Form RW 5.25, sets forth all pertinent events that have occurred during the negotiations for the property.

One copy of the following documentation, at a minimum, must be submitted to the Director of Right of Way Division to institute condemnation proceedings:

- Form RW 5.25 – Formal Request to Authorize Condemnation
- Form RW 5.02A, B, C, & D – Negotiation Sheets
- Form RW 5.22 – Certificate Advancement of Compensation
- Right of Way Questionnaire
- Title Report with Supporting Documents (Deeds, Tax Records, etc.) and Title Notes
- Appraisal Report or Form RW 5.13 – Waiver Valuation
- Appraisal Review Report / Statement of Just Compensation
- Original Legal Description on disc or emailed in Word Format
- Original Plat/Plan Sheets printed on 11 x 17

Note: The Condemnation Checklist must be signed and included as a part of the condemnation request sent to Central Office.

If certain items are not provided with the original condemnation packet request, please attach supporting documentation to the Condemnation Checklist explaining why those items were not included. All incomplete condemnation packet requests sent to Right of Way Central Office will be sent back to the District Manager to complete and provide the required information

before the request for condemnation is approved.

(See Appendix 5-20 – Condemnation Packet Checklist)

### **5.50.1 - AUTHORIZATION TO CONDEMN**

If the request for condemnation is approved, the Director of the Right of Way Division notifies the District Right of Way Manager and the Legal Division of such authorization and sends a copy of the Request to Institute Condemnation Packet to the Legal Division for proper legal action.

### **5.50.2 - PREPARATION OF PETITION**

The eminent domain proceeding begins with the preparation of a petition by the staff or fee attorney. The petition states the names of the owners, their respective interests, the names and addresses of any lien holders or persons having a claim to the property, the nature and extent of their lien or claim, a description of the property, or other interests sought to be taken, and the use to which the property appropriated is to be put.

Those persons named in the petition as owners, lienors or claimants are entitled by statute to ten (10) days' notice that an application will be made for the appointment of County Land Commissioners. If the owners, lienors, or claimants are unknown or nonresidents of the State, then notice is given by publication once a week for two (2) successive weeks in a newspaper published in the county in which the property is located; or, if no newspaper is published in the county, then in a newspaper of general circulation in the county. This notice may be given either before or after the petition has been presented to the circuit court and filed with the circuit clerk of the county in which the land sought to be taken is located.

If the parcel to be condemned was unsuccessfully negotiated under the appraisal waiver criteria, the District Manager should prepare a memorandum to the Director of the Right of Way Division requesting that a formal appraisal be prepared for court testimony.

### **5.50.3 - RIGHT OF ENTRY**

The WVDOH will move the court for right of entry after filing the petition, depositing an amount not less than the WVDOH's approved estimate of just compensation with the circuit court and satisfying the court that the property sought to be condemned is for public purposes. This gives the WVDOH, its agents, employees, or contractors access to the land and permission to use it for the purposes stated in the petition.

At the initiation of negotiations, or at any point in time during the negotiation process, the negotiator may ask the property owner to grant a letter of entry to the WVDOH. Such granting of the letter of entry will be completely voluntarily on the part of the property owner

and may not be requested in any way that could be considered to be coercive. See Letter of Entry Example in Appendix 5-28.

## **5.51 - ADVANCE PAYMENT INTO COURT**

In conformity with federal regulations concerning availability of money to the property owner(s) prior to surrendering physical possession of the property, advance payment is deposited when the order vesting defeasible title is entered by the Circuit Court of the county in which the property is located.

### **5.51.1 - FORM FOR ADVANCE PAYMENT INTO COURT**

Upon notice from the Legal Division of the date scheduled for right of entry the Administrative Section requests the advance payment.

## **5.52 - DATE FOR APPOINTMENT OF COMMISSIONERS**

At the time the petition is filed, a request is made, in the order filing the petition that the court set a day and time for the appointment of County Land Commissioners.

### **5.52.1 - MANNER OF SELECTING COMMISSIONERS**

On the date fixed by the court and at the time set, the court nominates thirteen (13) disinterested real property owners, of the county in which the property sought to be taken is located.

From the list of thirteen freeholders, the applicant strikes four (4) names, the defendant strikes four (4) names, and the five (5) remaining serve as County Land Commissioners.

### **5.52.2 - SELECTION OF DATE FOR HEARING**

The parties to the proceeding then agree on a date for the County Land Commissioners to meet. The County Land Commissioners are notified and directed to appear by an order entered by the court.

### **5.52.3 - SUPERVISION OF COMMISSIONERS' HEARING**

The court may, and upon motion of any party to the proceeding shall, preside over and supervise the Commissioners' Hearing or appoint for that purposes one of the courts' own Commissioners or a Special Commissioner to be known as a Court Commissioner, who shall

supervise the hearing held by the County Land Commissioners. This Court Commissioner shall have full power to issue subpoenas for witnesses, swear in the witnesses to tell the truth, rule on all questions of evidence, instruct the County Land Commissioners as to the applicable law, and otherwise exercise all functions of a Judge in the trial of a civil action. Where this is deemed appropriate, the WVDOH will request of the Judge a Special Commissioner to preside over the Commissioners' Hearing.

#### **5.52.4 - INSPECTION OF PARCEL BEFORE CONDEMNATION**

Prior to the date set for the hearing before County Land Commissioners, the agent handling the negotiations, the attorney, and the appraiser may inspect the land to be taken and the comparables used by the appraiser in order to be thoroughly familiar with the evidence to be presented by the WVDOH.

#### **5.52.5 - LOCAL WITNESSES**

The agent and the attorney may also seek assistance from individual property owners in the neighborhood who would be qualified witnesses as to the fair market value of the property.

#### **5.52.6 - ENGINEER AS WITNESS**

Provision may be made in advance of the hearing to have the property involved staked out by an engineer and to have an engineer available to testify as to the land involved and as to the construction work to be done.

#### **5.52.7 - COMMISSIONERS' HEARING**

On the date set by the Court, the County Land Commissioners and the parties meet, at which time the County Land Commissioners must take and sign an oath. Although five County Land Commissioners are appointed by the Court, any three County Land Commissioners may act. County Land Commissioners are charged with the duty of hearing witnesses, other property evidence concerning the just compensation to the persons entitled thereto, and are empowered to administer oaths to witnesses and issue subpoenas.

#### **5.52.8 - CONDUCT DURING COMMISSIONERS' HEARING**

Although hearings before County Land Commissioners are usually conducted informally, they are nonetheless important. The air of informality may be dispelled at the insistence of the attorney by asking that the County Land Commissioners remain together as a group, that they refrain from discussing the matter with interested parties individually, and that they hear all the evidence at the same time. Any misconduct should be considered as grounds

for a motion to set aside the report of the County Land Commissioners.

#### **5.52.9 - USE OF COURT REPORTER AT COMMISSIONERS' HEARING**

If in the opinion of the attorney the amount involved in the proceeding is sufficient to warrant it or if there are matters likely to be raised that may present an unusual legal problem, the use of a court reporter at the hearing before County Land Commissioners should be considered. By using a court reporter, the witnesses of the defendant are prevented from changing their testimony in the event of a jury trial. The testimony of those witnesses can be carefully examined, and steps taken to refute it.

#### **5.52.10 - COMMISSIONERS' REPORT**

After hearing evidence and viewing the property, the County Land Commissioners then make a report in the form prescribed by the Code setting forth their opinion, in dollars and cents, of the just compensation to which the owners, lienors, or claimants are entitled for the land taken plus damage to the residue, if any, less all benefits.

#### **5.52.11 - EXCEPTIONS TO REPORT OF COMMISSIONERS**

A party not satisfied with the amount found by the County Land Commissioners as just compensation may file exceptions to the report of Commissioners within ten (10) days after the report has been filed, and demand that the compensation to be paid be determined by a jury of twelve (12) freeholders or property owners of the county.

#### **5.52.12 - WHEN WVDOH FILES EXCEPTIONS**

At this point, if the award of the County Land Commissioners exceeds the amount for negotiation, it then becomes the responsibility of the Attorney who is handling the proceeding files exceptions to the award of the County Land Commissioners within the ten (10) day period prescribed by law.

Settlement is not precluded by the filing of exceptions when the award exceeds the approved negotiation figure. The right to a trial by jury is also preserved pending presentation or recommendation by the Legal Division to the Right of Way Division on a decision as to whether an appeal is to be made.

#### **5.53 - REQUEST FOR SETTLEMENT BEFORE TRIAL**

The attorney submits a brief report (Condemnation Report II) of the hearing before Commissioners. This report should include the general testimony of the defendant's and

WVDOH's witnesses, specifically including the range of their testimony, the attorney's impression of the witnesses for both sides, the occupations of the County Land Commissioners, information concerning awards by the same or other County Land Commissioners on the project, awards by juries for similar properties on the project, and the attorney's personal recommendations and reasons therefor. After the Legal Division reviews the report submitted by the attorney, it is forwarded, together with the Legal Division's recommendations, to the Right of Way Division for a decision.

### **5.53.1 – DOCUMENTATION FOR SETTLEMENT PURPOSES**

Documentation for the settlement of condemnation proceedings must be sufficiently clear and supported so that, in the opinion of the Director of the Right of Way Division, the settlement is thought to be in the best public interest.

### **5.54 - JURY TRIAL**

If the award of County Land Commissioners is substantially in excess of the approved appraisal and a settlement cannot be justified, then a jury trial must follow. Here again, the agent and the attorney should work as a team to prepare the case for trial.

#### **5.54.1 - PREPARATION FOR TRIAL**

Ordinarily, by the time a condemnation proceeding has been docketed for trial by the Circuit Court, most of the parcels on the project will have been acquired by negotiations or County Land Commissioners' Awards, and construction is either well underway or has been virtually completed. If there were buildings within the area of the take, they have usually been removed. Therefore, the appraisers' photographs should be examined thoroughly and if, in the opinion of the agent or the attorney additional photographs are necessary, they should be procured. This is especially important for buildings that will be moved or demolished prior to either the Commissioners' Hearing or the jury trial.

#### **5.54.2 - SELECTION OF JURY**

As in the case of the Commissioners' Hearing, adequate preparation for jury selection is essential. The agent can be extremely helpful in the selection of the jury. In many instances, the attorney handling the trial does not reside in the county. Also, many circuit courts do not make available to the parties a list of jurors and their addresses and occupations. The agent, through investigation, can obtain this information, which is an invaluable aid in selecting the jury. Investigation, too, should be made into the defendant's background to determine their occupation, financial status, and general standing in the community.

### **5.54.3 – RE-INSPECTION OF CONDEMNED PARCEL**

Before trial, the agent, attorney, and appraiser may re-inspect the property to note any changes and, if construction is in progress, to be sure that the appraiser is well informed as to the work to be done and resulting damages, if any. If local witnesses have been obtained, they should also be taken to the property involved to acquaint them with what has occurred on the property immediately prior to trial, and so that they may be better prepared for both direct and cross-examination.

### **5.54.4 - CONFERENCE WITH WITNESSES**

In addition to the inspection of the property by the witnesses, a meeting of the witnesses should be held in which their testimony may be reviewed. They should be apprised of what to expect on cross-examination, and any other pertinent matters should be discussed.

### **5.54.5 - ATTENDANCE OF DISTRICT MANAGER AT TRIAL**

The District Manager and the negotiator who handled the particular transaction present during the trial. This will permit ready consultation with those who are most familiar with the entire transaction. If the District Manager personally handled the negotiations, one of his or her assistants may be present to help search records, etc., if necessary.

### **5.54.6 - POLICY OF WVDOH**

During the conduct of the trial or hearing, it should be kept in mind that the WVDOH is neither looking for bargains in dealing with property owners nor attempting to take unfair advantage of them. On the other hand, the WVDOH does not wish to see any property owner unjustly enriched or permitted to make a profit at the WVDOH's expense.

### **5.54.7- DOCUMENTATION AT CONCLUSION OF TRIAL**

At the conclusion of the jury trial, the trial attorney files a report of the trial (Condemnation Report II) with the Director of the Legal Division and the Director of the Right of Way Division. This report consists of a signed statement by the trial attorney containing among other things, (1) explanation of any substantial difference between the reviewing appraiser's determination of value and the amount of the WVDOH's testimony; (2) a brief factual account of the trial, including a range of testimony by each party and major issues; (3) comments on availability of material legal errors, or other basis for appeal; and (4) explanation of action regarding motions for remittitur or new trial or the making of an appeal.

On the basis of this information, a determination is then made by the Director of the Legal Division as to whether or not there are grounds for seeking a new trial, remittitur or appeal

in the case. If there is no basis for seeking a new trial for any of the foregoing reasons, the case is brought to an immediate conclusion, when concurrence is received from the Director of the Right of Way Division. In the event that there is probable reversible error in the trial of the case, then steps to seek a new trial, or an appeal are undertaken by staff attorneys in the Legal Division or fee attorneys who handled the trial of the case, provided that the Director of the Right of Way Division and the Director of the Legal Division are of the opinion that the verdict is unfavorable to the WVDOH.

## **5.70 – RAILROAD PROPERTIES**

Right of entry on highway rights of way that affect operating railroad property is obtained by the Utilities Section of the Engineering Division under a railroad agreement. The District is responsible for obtaining proper instruments for title transfer for those properties not transferred as part of the railroad agreement in accordance with agreed compensation. Properties that do not involve the company's railroad operations are handled as an acquisition in accordance with regular acquisition policies and procedures.

## **5.71 - RIGHT OF WAY FOR UTILITY RELOCATIONS**

Normally, replacement of right of way for utilities that directly or indirectly serve the public or any portion thereof is acquired by the utility company as part of an agreement between the company and the WVDOH.

If it is necessary to acquire replacement right of way on behalf of a utility that directly or indirectly serves the public or any portion thereof, the acquisition maybe made part of the project.

## **5.72 - RELOCATION OF NON- UTILITIES**

When the lines or facilities to be relocated or adjusted because of highway construction do not directly or indirectly serve the public or any portion thereof, these relocations are handled as a right of way settlement in accordance with provisions set forth in the Federal-Aid Policy Guide, Chapter 49 CFR 24.

In unusual circumstances, the District Right of Way Manager may make recommendations with justification to consider relocation of lines and facilities which do not directly or indirectly serve the public or any portion thereof, by a utility company or by the highway construction contractor.

### **5.73 - PERMITS FOR PRIVATE RELOCATIONS**

The District Right of Way Manager provides assistance to property owners involved in highway construction contract projects in order to expedite their applications for permits to enter upon and under State roads for relocating facilities that do not directly or indirectly serve the public or any portion thereof during the acquisition stage. Permits are processed through the usual channels of the Highway Operations Division as provided for in Section 6, Article 16, Chapter 17, West Virginia Code, 1931.

### **5.80 - RIGHT OF ENTRY TO OBTAIN DATA (TESTS, DRILLINGS, SOUNDINGS, ETC.)**

Negotiations for the right to enter upon private property for the purpose of obtaining data are conducted by representatives of the Right of Way Division through the Acquisition Manager upon request of the Engineering Division or the Materials Control, Soil and Testing Section of the Contract Administration Division.

Execution of agreements for right of entry and releases are secured by Right of Way Agents from the landowners on Forms RW 5.15 and RW 5.16. (See Appendix 5-16 thru 5-18)

In the event agents are unsuccessful in obtaining right of entry, a legal notice is prepared by the District Right of Way Division for execution by the District Engineer, or their delegated authority, to be served upon the property owner, by certified mail with return receipt requested, of the WVDOH's intention to bring necessary or desirable machinery, equipment, and tools upon any property, waters, and premises to make thereon such inspections, examinations, investigations, tests, soundings, and drillings as the WVDOH deems necessary or desirable for this purpose pursuant to Chapter 54, Article 1, Section 3 or 3a of the West Virginia Code, "Entry on lands".

Entry upon the property can be made three days subsequent to the serving of the notice.

### **5.82 - RIGHT OF WAY CERTIFICATES**

Prior to advertising projects for construction during the PS&E stage, the Director of the Right of Way Division furnishes a right of way certificate which is forwarded to the Federal Highway Administration as part of the PS&E package certifying that all right of way has been obtained or legal right of entry acquired on all parcels in accordance with the 23 CFR §635.309(c).

With the exception of design-build projects, a statement is received from the WVDOH certifying that all individuals and families have been relocated to decent, safe, and sanitary housing or that the WVDOH has made available to residential displaced persons adequate replacement housing in accordance with the provisions of 49 CFR part 24 and that one of the following has application:

1. All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way, but all occupants have vacated the lands and improvements and the WVDOH has physical possession and the right to remove, salvage, or demolish these improvements and enter on all land.
2. Although all necessary rights-of-way have not been fully acquired, the right to occupy and to use all rights-of-way required for the proper execution of the project has been acquired. Trial or appeal of some parcels may be pending in court and on other parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the WVDOH has physical possession and right to remove, salvage, or demolish these improvements.
3. The acquisition or right of occupancy and use of a few remaining parcels is not complete, but all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. Under these circumstances, the WVDOH may request the FHWA to authorize actions based on a conditional certification as provided in this subsection 5.82, paragraph 3.
  - a. The WVDOH may request approval for the advertisement for bids based on a conditional certification. The Federal Highway Administration (FHWA) will approve the request unless it finds that it will not be in the public interest to proceed with the bidding before the acquisition activities are complete.
  - b. The WVDOH may request approval for physical construction under a contract or through force account work based on a conditional certification. The FHWA will approve the request only if FHWA finds there are exceptional circumstances that make it in the public interest to proceed with construction before acquisition activities are complete.
  - c. Whenever a conditional certification is used, the WVDOH shall ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.
  - d. When the WVDOH requests authorization under a conditional certification to advertise for bids to proceed with physical construction where acquisition or right of occupancy and use of a few parcels has not been obtained, full explanation and reasons therefore, including identification of each such parcel, will be set forth in the WVDOH's request along with a realistic date when physical occupancy and use is anticipated as well as substantiation that such date is realistic. Appropriate notification must be provided in the

request for bids, identifying all locations where right of occupancy and use has not been obtained. Prior to the WVDOH issuing a notice to proceed with construction to the contractor, the WVDOH shall provide 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.

- e. Participation of Title 23 of the United States Code funds in construction delay claims resulting from unavailable parcels shall be determined in accordance with §635.124. The FHWA will determine the extent of Title 23 participation in costs related to construction delay claims resulting from unavailable parcels where FHWA determines the WVDOH did not follow approved processes and procedures.

Exceptions to the complete availability of all parcels are set forth in the Right of Way Certificate and detailed in the Status Report attached. For design-build projects, the Right of Way Certificate must conform to the requirements of 23 CFR 635.309(p).

All Right of Way Certificates shall adhere to the standardized forms. These certificates apply to both Central Office and District level projects. (See Appendix 5-19)

## **5.91 – ACQUISITION CONTROL SECTION RECORDS**

The records maintained in the Control Section are of two types:

1. Project Status Report
2. PS&E Phase Report

The Project Status Reports reflect the status of each parcel and are thus more detailed than the PS&E Phase Report. They contain information on the following:

1. Project identification.
2. The number of appraisals authorized, received, and approved, including the appraiser's name.
3. The number of abstracts authorized, received, and approved, including the attorney's name.
4. The parcels assigned to the Negotiator.
5. The total number of parcels on which there are occupied structures and the number of these parcels actually cleared.
6. The total number of parcels on the project and the number cleared.

7. The PS&E date.

Within the body of each status is data on each phase of acquisition, including:

1. Abstracting
2. Appraising
3. Negotiation and closing
4. Relocation
5. Property Management

When it is necessary to resort to condemnation, the negotiation portion of the status is replaced by an insert reflecting the status of the condemnation proceedings. Also, within the body of the status are the parcel numbers and the names of the owners. For each occupied parcel, the names of the tenants, if any, are also given.

The PS&E Phase Report reflects the status of the various right of way projects. Items included in this report are:

1. The date each project is programmed.
2. Project identification, including the right of way and construction project numbers and project name.
3. The County and District where the project is located.
4. The date preliminary plans are received in the Right of Way Division.
5. The name of the abstracting attorney and when the abstracts are expected.
6. The name of the appraiser and when the appraisal is expected.
7. The name of the reviewing appraiser.
8. The dates that final Right of Way plans are received in the Right of Way Division.
9. The date authorization to acquire is received from the Federal Highway Administration.
10. The number of appraisals authorized, received, and approved.
11. A listing of the total number of parcels, improved parcels, families, businesses,

and other improvements.

12. The total number of parcels cleared.
13. The PS&E and R/W Ready dates.

Both types of statuses are computer generated and kept.

## **5.92 - REPORTING AND RECORDING**

The data kept on the status comes from various sources. Data on activities originating in the Central Office is provided through copies of correspondence, which are routed through the Control Section, and by documents specifically sent to the Section for reporting purposes.

Reports on field activities are made daily from the Districts. Many of these reports are later verified by documents, which are submitted by the Districts.

## **5.93 – NEGOTIATOR’S PROGRESS REPORT**

An effective and efficient right of way program requires an accounting of all projects and parcels acquired by the districts as well as central office personnel. A Negotiator’s Progress Report is prepared quarterly by each district and forwarded to the Acquisition Manager. This Report has a listing for each acquisition agent along with specific parcel information relating to acquisition and condemnation. (See Appendix 5-24)

## **5.94 – PROJECT MONITORING AND PROBLEM RESOLUTION**

The Acquisition Manager periodically reviews the progress of acquisition activities and reports any problems to the Director of the Right of Way Division. The Director then follows up by referring the matter to the appropriate Section, District, or Division for necessary action. All projects must be tracked using the Negotiator’s Progress Report Project Tracking Spreadsheet. (See Appendix 5-24)

## **5.95 - CLOSING A PROJECT FROM THE STATUS**

When the project has been let to contract, it is removed from the PS&E Phase Report. When all improvements have been removed from the right of way on a project and the project has been let to contract, the status is removed from the computer and filed away for future reference.

**CHAPTER 6**

**APPRAISAL SECTION**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 6.00	General .....	1
Section 6.01	Appraisal Section Manager .....	1
Section 6.04	Staff Appraisers .....	1
Section 6.05	Staff Review Appraisers .....	2
Section 6.06	Qualifications of Staff & Review Appraisers .....	2
Section 6.07	Appraisal Review by District Personnel .....	2
Section 6.10	Contract (Fee) Appraisers & Review Appraisers .....	3
Section 6.20	Training .....	3
Section 6.21	Workload Shifts .....	3
Section 6.25	Waiver Valuation Criteria .....	4
Section 6.27	Minimum Payment Provision .....	4
Section 6.30-6.69	Information for Appraisers Manual .....	4
Section 6.70	Appraisal Review – General .....	5
Section 6.71	Duties of a Review Appraiser .....	5
Section 6.72	Scope of Work Estimates .....	6
Section 6.73	Fee Schedule for Contract Appraisal/Appraisal Review Estimates ....	6
Section 6.74	Contract Compliance .....	6
Section 6.75	Desk & Field Review .....	6
Section 6.76	Math & Logic Checks .....	7
Section 6.77	Corrections .....	7
Section 6.78	Plan Revisions .....	7
Section 6.79	Two Appraisals with Divergent Values .....	8
Section 6.80	Maintaining Consistency .....	9
Section 6.81	Appraisal Updates .....	9
Section 6.82	Review of Property Owner’s Appraisal .....	9

Section 6.83	Review of Specialty Reports .....	10
Section 6.84	Hazardous Materials & Leaking Underground Storage Tanks .....	10
Section 6.85	Fair Market Value and Just Compensation .....	11
Section 6.86	Larger Parcel .....	11
Section 6.87	Uneconomic Remnants .....	12
Section 6.88	Tenant Owned Improvements .....	13
Section 6.90	Mineral Valuation .....	13
Section 6.97	FHWA / WVDOH Stewardship Agreement .....	14
<b>Addenda Exhibits.....</b>		
Exhibit 6.01	Information for Appraisers .....	15

## CHAPTER 6

### APPRAISAL SECTION

#### 6.00 - GENERAL

The Constitution of West Virginia, Article III, Section 9 provides: "*Private property shall not be taken or damaged for public use, without just compensation...*" The Appraisal Section of the Right of Way Division is charged to a large extent with the responsibility of implementing this section of the Constitution and to achieve approved values that fully meet the requirements of the law as to just compensation.

#### 6.01 - APPRAISAL SECTION MANAGER

The Appraisal Section is headed by the Appraisal Section Manager who is directly responsible to the Director of the Right of Way Division for the efficient operation of the Section. The Appraisal Section Manager supervises the activities of the personnel in the Appraisal Section. The Appraisal Section Manager prepares preliminary documents to be used in the execution of contracts between the West Virginia Division of Highways and independent Contract (Fee) Appraisers, Contract (Fee) Review Appraisers and Valuation Specialists. See "Information for Appraisers" Addenda 6.01 of the Manual for current contracting procedures. The Appraisal Section Manager is responsible for planning and scheduling work to be performed by Appraisal Section staff, including review of all appraisal and review work done by Contract Appraisers and Reviewers, and is further charged with the duty of assuring that all work is carried out in a timely manner. The Appraisal Section Manager assists the Legal Division in obtaining services of qualified witnesses to support the State's position in condemnation proceedings and, further, insures that appraisals prepared for use in court are reviewed. The Appraisal Section Manager oversees the maintenance of continuing education, qualification and experience records of the Appraisers employed by the WVDOH and those appraisers and review appraisers listed on the Approved Appraiser List. The Appraisal Section Manager is called upon to make recommendations concerning applicants for appointment as Staff Appraisers and assists in the evaluation of appraisers and review appraisers wishing to have their name included on the Approved Appraiser List. The Appraisal Section Manager shall be a West Virginia Licensed Appraiser, in good standing with the WV State Appraisal Licensing Board, and his responsibilities include the proper performance of every phase of appraisal work.

#### 6.04 - STAFF APPRAISERS

Staff appraisers are selected from qualified individuals who have completed the Division of Highways' Training Program or who have had experience in real estate as a salesman, broker, appraiser or review appraiser, right of way negotiator, or as a staff employee of a state or utility company or any combination thereof, where the major portion of income was derived from such work. (See the Department of Personnel's job description(s) for specific information and requirements.)

Staff Appraisers are used in the same capacity as Contract (Fee) Appraisers. The complexity of an assignment given a Staff Appraiser depends upon the individual's qualifications, experience and demonstrated abilities. The Staff Appraiser may be utilized as an expert witness in condemnation proceedings. Experience has shown that the Staff Appraiser can be an effective witness when there has been proper pretrial preparation between the attorney and the appraiser.

All Staff and Review Appraisers are required to become State Licensed or Certified Appraisers in West Virginia.

## **6.05 – STAFF REVIEW APPRAISERS**

Review Appraisers are selected from the WVDOH's staff in addition to the required qualifications for Appraisers, consideration is given to the education and experience history and/or demonstrated analytical ability of the individual. Selection is made by the Appraisal Section Manager with the concurrence of the WVDOH Director. Review Appraisers shall be either West Virginia Certified or Licensed Real Estate Appraisers, in good standing with the West Virginia State Appraisal Licensing Board.

A Staff Appraiser may be a Review Appraiser on less complex parcels and may advance gradually to more complex properties as experience and ability increase. A Staff Appraiser receives procedural guidance and supervision from higher level Appraisers in all appraisal and appraisal review work.

## **6.06 - QUALIFICATIONS OF STAFF AND REVIEW APPRAISERS**

The qualifications of appraisers who are regular full-time employees of the Right of Way Division are set forth in currently applicable position descriptions. In all position descriptions which call for a college degree, experience in the right of way field may be substituted on a year for year basis. A Right of Way Trainee may be given some appraisal assignments beginning with less complex appraisals, progressing according to individual ability. Right of Way Trainees may do appraisal work under the direct supervision and guidance of a Staff Appraiser or Staff Review Appraiser.

All Staff Appraisers and Staff Review Appraisers, except trainees, must be capable of qualifying as expert witnesses in condemnation proceedings and be West Virginia Licensed Residential or General Real Estate Appraisers, in good standing with the West Virginia State Appraisal Licensing Board.

## **6.07 – APPRAISAL REVIEW BY DISTRICT PERSONNEL**

**CAUTION!** - Any appraisal made for any federally funded project **MUST** be reviewed by a qualified reviewing appraiser (49 CFR 24.104). Failure to comply with this requirement will result in a violation of 49 CFR 24 resulting in a “Federal-Aid Ineligibility Notice (FAIN)”, and a

withdrawal of Federal funds.

All appraisal and review work will be coordinated through the Central Office and will be performed within the currently approved policy and procedure guidelines.

The District Right of Way Manager or other District personnel who is a Licensed or Certified Appraiser may review and approve appraisals of the type and level their license allows.

If there is no one in the District Office who is qualified to review appraisals, the District shall request through the Central Office for appraisals to be reviewed. The Appraisal Section Manager will assign a Staff Review Appraiser or prepare a bid request for a Contract Review Appraiser pursuant to the current contracting procedures in place at the time.

See “Information for Appraisers” Addenda 6.01 of the Manual for current contracting procedures.

## **6.10 - CONTRACT (FEE) APPRAISERS AND REVIEW APPRAISERS**

All work to be performed by Contract (Fee) Appraisers and Review Appraisers will be contracted through the accepted and approved policy and procedure guidelines. (See “Information for Appraisers” Addenda 6.01 of the Manual for currently accepted contracting procurement procedures.) Any person wishing to perform services as a Contract (Fee) Appraiser, Contract (Fee) Reviewer, or Specialty Valuation must meet the guidelines currently in effect and be placed on the State’s Approved Appraiser List.

Any person wishing to be placed on the West Virginia DOT’s Approved Appraiser List must make application in writing to the Director of the Right of Way Division. This application must include a letter of interest indicating intent to provide appraisal and/or appraisal review services, along with a current Statement of Qualifications and at least two (2) appraisal(s) and/or appraisal review work product samples (redacted if necessary).

## **6.20 - TRAINING**

Employees of the WVDOH are trained in appraisal techniques through on-the-job training, in-house courses and appraisal organization courses. All WVDOH employees having a current appraisal license through the WV State Appraisal Licensing Board are required to obtain the necessary training courses for annual license/certification renewal.

## **6.21 - WORKLOAD SHIFTS**

Appraisers and Review Appraisers (Staff or Contract) are normally responsible directly to the Central Office. Exceptions to this are District Appraisers hired by and responsible to the District Right of Way Manager. The staff of the Appraisal Section may be used interchangeably as Appraisers or Review Appraisers to assure maximum utilization of available talent and expeditious

handling during peak workloads. Review Appraisers shall not review appraisals on projects where they have appraised the properties. Appraisers shall not appraise and negotiate on the same project.

## **6.25 - WAIVER VALUATION CRITERIA**

Federal Regulations allow for two waiver valuation situations in 49 CFR 24.102(c)(2).

1. Donation - An appraisal is not required if the owner is donating the property and releases the Agency from the obligation to appraise the property.

2. Nominal Value - An appraisal is not required if the WVDOH determines that an appraisal is unnecessary because the valuation problem is uncomplicated, and the fair market value of the take is estimated at \$25,000 or less, based on a review of available data. A waiver valuation may **NOT** exceed \$25,000, even when cost to cure or minor damages are included.

A value estimated under the waiver valuation criteria must not be referred to as an appraisal. Value of the take estimates under the waiver valuation criteria should require analyzed support of the value estimated. It is recommended that the available data considered be kept in the District Parcel File. Any cost-to-cure estimate must be supported by local data or a published cost manual. The main requirement under the waiver valuation criteria is that the value estimated must represent at least fair market value. The parcel file must contain the available data used to establish the amount to be offered under the waiver valuation criteria.

A nominal value estimated under the waiver valuation criteria should be documented using Appendix 5-22 and 5-23. (See Chapter 5)

## **6.27 - MINIMUM PAYMENT PROVISION**

All nominal valuations under \$25,000 shall be handled under the Appraisal Waiver Criteria. See Section 6.25 above. The minimum offer for acquisition is \$500.

## **6.30 - 6.69 - INFORMATION FOR APPRAISERS MANUAL**

The Appraisal Manual, "*Information for Appraisers*" is Addenda Exhibit 6.01.

**NOTE 1:** Please note that wherever in conflict, appraisal requirements under the Uniform Act will always take precedence over those required in USPAP.

**NOTE 2:** West Virginia values property acquired for public purposes under the "State" Rule, which requires a specific value estimate for the property taken and does not value property acquired for public purposes under the "Federal" Rule, wherein only "before" and "after" values are considered.

## **6.70 - APPRAISAL REVIEW - GENERAL**

Appraisal Reviews for the Division of Highways will be conducted in compliance with the most current versions of 49 CFR, 24.104 and "*Uniform Standards of Professional Appraisal Practice*" (USPAP).

West Virginia Division of Highways invokes Jurisdictional Exceptions to USPAP in the following instances:

A. WVDOH is a highly knowledgeable and informed client who invokes the Jurisdictional Exception by Establishing Scope of Work, which includes the type of appraisal requested and the report format. If an appraiser does not believe the assignment can be properly accomplished under the Scope of Work, they may decline the assignment pursuant to the current contracting procurement procedures in place at the time.

B. The definition of "Market Value" as indicated on the WVDOH appraisal forms differs from that in USPAP.

C. Since there are potentially other minor Jurisdictional Exceptions, WVDOH has included the following statement in the Appraisal and Appraisal Review Certification. "This appraisal was prepared according to the law and public policy of the West Virginia Department of Transportation, Division of Highways and the USPAP Jurisdictional Exception is invoked".

## **6.71 - DUTIES OF A REVIEW APPRAISER**

When deemed necessary by the Appraisal Section Manager, the Staff Review Appraiser is responsible for making Scope of Work estimates, assuring contract compliance, accurate and logical development of appraisals or specialty valuations in accordance with accepted standards. The Staff or Contract Review Appraiser is required to read all reports, inspect each subject property and all comparable sales, listings or rentals used in an analysis. If the Staff or Contract Review Appraiser has a valid reason for not having inspected the subject or comparable properties, a statement explaining the reason shall be included on the Statement of Review Appraiser (Form RW 6.10-C or RW 6.10-PM). The Review Appraiser determines Just Compensation from appraisals, specialty valuations and other pertinent valuation information.

A Review Appraiser shall recommend an offer be made to acquire an uneconomic remnant whenever applicable. A Review Appraiser may approve an amount as "Just Compensation" in **excess** of Fair Market Value when it is determined that FMV does not represent Just Compensation. In such cases, a detailed explanation is required in the Statement of Review Appraiser (Form RW 6.10-C or RW 6.10-PM). The Review Appraiser also prepares the "Statement of Just Compensation and Summary" (Form RW 6.11).

## **6.72 - SCOPE OF WORK ESTIMATES**

When deemed necessary by the Appraisal Section Manager, the Staff Review Appraiser will complete the Scope of Appraisal Work Estimate. This can provide the Project Review Appraiser an early opportunity to become familiar with the project and parcels involved. A copy of the Scope of Appraisal Work Estimate will be included in the appraisal procurement package. (See “Information for Appraisers” Addenda 6.01 of the Manual for current contracting procedures).

## **6.73 – FEE SCHEDULE FOR CONTRACT APPRAISAL/APPRAISAL REVIEW ESTIMATES**

On at least an annual basis, the Fee Schedule which contains fee ranges for most types of appraisal situations will be revised to adjust to current competitive rates and fees. When applying the Fee Schedule ranges to an estimate, Appraisal Section Manager will take into consideration the number of parcels in the assignment, the type of properties to be appraised, complexity of both the appraisal assignment(s) and the taking/residue situation, location of project, potential for adequacy of data and time available to complete the job.

(See “Information for Appraisers” Addenda 6.01 of the Manual for current contracting procedures).

## **6.74 - CONTRACT COMPLIANCE**

The Appraisal Staff Administrative Review Appraiser must review and verify that the Contract Appraiser/Review Appraiser has complied with the contract and Scope of Work estimate prior to approving payment of an invoice for services.

No invoices will be processed for payment until all contracted and acceptable appraisal and/or appraisal review reports have been approved by the Appraisal Staff Administrative Review Appraiser.

## **6.75 - DESK AND FIELD REVIEW**

A Staff or Contract Review Appraiser may perform the required desk and field review stages in any sequence. A technical review requires a field inspection of the subject and all comparable properties analyzed in the appraisal. Although the Review Appraiser is not required to perform interior inspections of subject or comparable properties, it is considered a good practice to make interior inspections, at least on a "spot check" basis, especially when reviewing the work of new Staff or Contract Appraisers or that of an Appraiser where past experience indicates a need to check more carefully. Interior inspections are recommended when there is a possibility of the Review Appraiser providing testimony in court.

## 6.76 - MATH AND LOGIC CHECKS

Correct arithmetic is important in any analysis dealing with value. Also important is the logical progression of thinking and computation that develops a logical conclusion. It is entirely possible to have an arithmetically perfect appraisal which results in an illogical and incorrect value. The Review Appraiser should review for logical value conclusions and be satisfied that the Appraiser's conclusion logically follows from the premise(s) upon which it is based before approving the value. All appraisal reports must comply with the appropriate sections of the *Uniform Standards of Professional Appraisal Practice* (USPAP) in effect on the effective date of valuation where no Jurisdictional Exception applies.

**NOTE:** Wherever in conflict, appraisal requirements under the Uniform Act will always take precedence over those required in USPAP.

## 6.77 - CORRECTIONS

Minor changes and corrections that do not significantly affect value can be made by the Review Appraiser without returning the report to the Appraiser. Examples of such minor changes are: insignificant mathematical errors, misspellings, and typographical errors.

Whenever a reviewer makes such a correction, the correction should be clearly initialed. It is a good policy to forward a copy of any minor corrections to the Appraiser. This serves three purposes:

- (1) it makes the Appraiser aware that the reports are being checked in detail;
- (2) it points out the Review Appraiser will not send reports back for minor things;  
and
- (3) it gives the Appraiser a head start in the event of an update for court.

When a Review Appraiser finds a need for significant changes or corrections, the concerns should be presented to the Appraiser and the WVDOH, preferably in writing. The Appraiser's response should also be in writing. All such correspondence should then become a part of the parcel file. If the Appraiser feels strongly about an element of the appraisal questioned by the Review Appraiser, and the Appraiser and the reviewer cannot agree on the need for a change, the Review Appraiser can make the change. The Review Appraiser then becomes the Appraiser and is responsible for the value conclusions and court testimony. Significant changes by the Review Appraiser must be supported with the same level of documentation that would be required if the reviewer were writing the appraisal [See 49 CFR 24.104(b), 24.103 and the *Uniform Standards of Professional Appraisal Practice* (USPAP) in effect on the effective date of valuation].

## 6.78 - PLAN REVISIONS

Plan revisions occur frequently on highway projects. Revisions may change the areas being acquired, the effect of the acquisitions on the residue, damages or benefits. Minor plan revisions

may not substantially affect the estimated value of the take and damages less benefits and can many times be accomplished in a revised appraisal review. However, in the event of substantial plan revisions, appraisers must be given the opportunity to decide the effect of plan revisions on their value estimate(s) since ultimately, they may be required to testify to their opinions of value.

In order for improvements to be valued they **MUST** appear on the plans. If the appraiser finds, during inspection of the property, that existing improvements are not shown on the plans the Appraisal Section **SHALL** be notified in order for plan revisions to be initiated. Notification should be **IN WRITING WITH EXHIBITS ATTACHED** showing the approximate location of improvements. This type of verification will facilitate the required revisions to the plans.

Work on that parcel's appraisal should be continued unless otherwise advised by WVDOH Appraisal Section personnel.

### **6.79 - TWO APPRAISALS WITH DIVERGENT VALUES**

A Review Appraiser may be called upon to review more than one appraisal of the same property. When there is more than one appraisal, they should be compared on all elements within the reports noting any significant differences. The Review Appraiser should keep in mind that appraisals can have similar final value conclusions but differ significantly on individual elements within the appraisal.

Technical differences include factors such as the size of the property, the age of improvements, the property's zoning, the selling price of a comparable, whether the property is leased or encumbered by an easement, or the physical characteristics of access to the remainder. Such differences are basically matters of fact and can usually be resolved by the Review Appraiser.

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

The Review Appraiser has a responsibility to explain or reconcile all significant differences between the appraisals. When a factual error is found, the reviewer should inform the Appraiser(s) in writing and have the Appraiser(s) verify the facts and revise the appraisal.

When Appraisers disagree on matters of judgment, the Review Appraiser may ask one or more of the Appraisers to reconsider their positions on the elements of value in question or to provide additional data or rationale to support their positions. The Review Appraiser must be careful not to direct or dictate a different opinion from the Appraiser(s). Rather, the Review Appraiser should question the Appraiser in a way that will prompt a reconsideration of the appraisal problem in question. All value related communication between the WVDOH personnel and Contract Appraisers/Review Appraisers should be in writing and become part of the parcel file.

After attempts to reconcile divergences, the Review Appraiser will usually have at least one appraisal which can be approved as the basis for the offer of just compensation. If at this point

significant divergences remain, the Review Appraiser's written report should point out the differences and explain why the reviewer agrees with one and not the other.

If the Review Appraiser agrees with one Appraiser on some points and the other Appraiser on others, elements of both appraisals may be combined into a final "Review Appraiser's Determination of Value". Under unusual circumstances the "Determination" may be so complex that it stands alone as a separate appraisal. The "Review Appraiser's Determination" requires the same level of documentation and support as an appraisal.

One solution to the problem of reconciling appraisal differences is to suggest that an additional appraisal be ordered. However, should the new Appraiser may come up with an entirely different conclusion and further complicate the problem, then the Review Appraiser must resolve the problem with a "Review Appraiser's Determination of Value".

### **6.80 - MAINTAINING CONSISTENCY**

One of the responsibilities of the Review Appraiser is to assure that closely similar properties on a project have like unit values placed on them or be prepared to explain why those values differ.

### **6.81 - APPRAISAL UPDATES**

The need for updating an appraisal most often occurs at the time the Division of Highways is preparing to condemn a property. The data used to estimate the value should be reviewed and an effort made to investigate pertinent sales up to the date of taking, which should be verified with Legal Counsel responsible for the condemnation action.

In the event of condemnation, the appraiser updating the appraisal to the Date of Take is responsible for valuing the property in its entirety, including all buildings, structures, site improvements, and any other elements of value.

In a fast moving and very active market, it may be necessary to update a relatively recent appraisal. It is the Division of Highways' policy to consider an update on appraisals over 6 months old; however, updates are not automatically required after 6 months, such as appraisals in economically depressed areas.

It sometimes occurs that during the negotiation phase new sales that are pertinent are brought to the attention of the negotiator and, subsequently, to the attention of the Appraiser and Review Appraiser. It may also occur that negotiations become protracted or acquisition is otherwise delayed on the project which may make updates necessary.

### **6.82 - REVIEW OF PROPERTY OWNER'S APPRAISAL**

An appraisal submitted by a property owner shall be considered. The Review Appraiser shall always consider any new information not previously considered or known. Significant new

information might be given to the appraiser for further consideration, or the Review Appraiser may choose to update the just compensation offer based on the additional data or the appraisal.

It is very important that the Review Appraiser document the review and consider all material submitted by the property owner. This will ensure compliance with 49 CFR Part 24 and USPAP. The Review Appraiser also has the responsibility to reject any property owner appraisals which do not comply with existing appraisal standards or regulations. Certainly, if the property owner's appraisal is more persuasive than those in the agency's file, the Review Appraiser can approve or recommend that amount.

### **6.83 - REVIEW OF SPECIALTY REPORTS**

The Appraisal Section Manager, Project Review Appraiser or Specialty Review Appraiser may retain a specialty valuation expert through the current contract procurement procedures.

The Project Review Appraiser (Staff or Contract) is responsible for the review and coordination of all appraisals and any associated specialty valuation reports such as coal, oil, gas, timber, machinery and equipment, hazardous material/waste clean-up estimates and any other required specialty reports.

The Project Review Appraiser must inform all parties involved when coordination is required such as timber or machinery and equipment. It is very important that the Appraiser coordinate with the Specialist as to which items will be valued by which party.

The component values from the Appraisal and the Specialty report must be itemized in the Statement of Review Appraiser (Form RW 6.10-C or Form RW 6.10-PM).

### **6.84 - HAZARDOUS MATERIALS AND LEAKING UNDERGROUND STORAGE TANKS**

WVDOH will employ specialty experts in dealing with hazardous materials to estimate the cost to remediate the contaminated property. The cost to remediate and the market value "as if clean" will be used as administrative tools in negotiating for the acquisition and necessary clean-up of the property to be acquired or affected by the project.

The State of West Virginia ex rel. West Virginia Division of Transportation, Division of Highways, vs. The Honorable Robert A. Burnside, Jr., Judge of the Circuit Court of Raleigh County, and MCNB Bank and Trust, Co. (Civil Action No. 14-C-506) case states the following:

Point 1: In condemnation proceedings the court or Judge cannot challenge the States Estimate of Value to be deposited into court before a Commissioners Hearing or Jury has been scheduled. See WV Code § 54-2-14, 54-2-14A, and 54-2-10.

Point 2: Although the WVDOH's policy is to appraise property "as clean", if known contamination is on a project the WVDOH must consider the remediation cost because it does affect the fair market value. The estimated clean-up cost should be deducted from the Estimate of Fair

Market Value as clean.

The estimated clean-up cost will be indicated on the Statement of Review Appraiser (Form RW 6.10-C or RW 6.10-PM) and the Statement of Just Compensation (Form RW 6.11).

## **6.85 – FAIR MARKET VALUE AND JUST COMPENSATION**

Existing Federal law and regulations require the West Virginia Division of Highways to establish "just compensation" which shall not be **less** than the approved appraisal of "fair market value". It follows then, that just compensation may; under certain circumstances, in eminent domain situations, be **greater** than fair market value. To be sure, any acquisition under the threat of condemnation violates the "willing seller" provision of the definition of market value. This creates a dichotomy which most Appraisers and Review Appraisers recognize and generally allow for by always finding in favor of the property owner when in doubt or questionable results occur. Beyond this appropriate safeguard, the Review Appraiser may recommend just compensation in excess of fair market value.

There are many situations where market value may not represent just compensation. For example, cases where owners may have constructed industrial buildings to suit their special and particular needs. The market value of such a special use building may not even come close to its value to the owner. Had it not been for the acquisition, these owners would likely have continued to use these facilities for many years to their satisfaction, caring less what their "market value" may be. This also applies to commercial and residential owners who may have built atypical improvements upon the property by building in functional obsolescence for which "the market" would never be willing to pay, but which the owners considered desirable and important features. In such cases, what the market would pay (market value) may not fairly represent just compensation. In these cases, the Review Appraiser may simply add back in the functional obsolescence that the Appraiser properly deducted in the estimate of market value. The result would tend to better represent just compensation.

## **6.86 - LARGER PARCEL**

The larger parcel concept is not new, but recent case law and appraisal literature have better developed the concept as it applies to eminent domain appraisals today. The larger parcel defined is simply that property which is to be appraised in the "**before value**" estimate. Today, the dominant principle in determining the larger parcel is "unity of highest and best use".

Several recent cases decided in State and Federal Courts have refined the larger parcel concept to relegate two of the factors: unity of title (ownership) and contiguity, to secondary positions in importance to unity of highest and best use. A few years ago, all three factors were imperative and equally important in determining the larger parcel. Enlightened reasoning has prevailed and the most important factor, unity of highest and best use, has emerged as the controlling factor.

Basing the larger parcel on unity of highest and best use allows Appraisers and Review Appraisers to reasonably decide the "larger parcel" in cases where more than one noncontiguous tract

of land has the same unity of highest and best use with similar ownership ties or dependent uses. This problem frequently occurs when owners have assembled several properties under separate deeds and/or slightly different ownerships which would not normally be shown as part of the same parcel on tax maps or the right of way plans. The Appraiser may be the first person to discover such facts and should report these findings to the Project Review Appraiser. It may be necessary to stop work and collect the pertinent data to affect a plan change to reflect the correct larger parcel. The larger parcel may, in some cases, be **less** than an entire ownership. This occurs most often in transitional areas where larger than typical tracts of land may have more than one highest and best use; such as, a semi-rural area with large tracts of land fronting on an existing highway. A widening project may acquire a strip along the frontage of the entire property which may have a different highest and best use than the rear portion. Caution and judicious reasoning are required of the Review Appraiser in counseling the Appraiser in deciding what constitutes the larger parcel.

It is also important to understand that unity of highest and best use would prevail over any existing use of all or part of the larger parcel if the existing use is not also the highest and best use.

No Appraiser or Review Appraiser should be expected to objectively decide such subjective matters as which of the many properties affected by a given highway project would develop first, second or last. The only reasonable way to deal with such totally subjective matters is to assume that, within reason, all similar affected parcels on a project are equally available, developable and readily marketable.

The Larger Parcel concept is subjective, however, after proper analysis, the Appraiser can determine if it is applicable. For instance, if a 200-acre farm has a partial taking, the Appraiser may determine that the Larger Parcel should be 5 acres with no damages to the residue. They may choose to appraise the partial taking accordingly.

## **6.87 - UNECONOMIC REMNANTS**

Existing law and regulation **require** the WVDOH to offer to purchase any uneconomic remnants. An uneconomic remnant may have a substantial market value but be of little or no value to the owner. (See 49 CFR 24.2(27))

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

Making decisions as to what constitutes an uneconomic remnant, as well as many of the other decisions required of Appraisers, Review Appraisers and Right of Way Administrators, requires the use of reasonable judgment.

The present regulations concerning uneconomic remnants encourage rather liberal interpretations as to what constitutes an uneconomic remnant. If the WVDOH acquires an uneconomic remnant and does not incorporate it within the right of way, the State of West Virginia may then resell the uneconomic remnant.

When a small tract of land is left with no access and no reasonable expectation of demand for any purpose except from only one or two adjoining property owners who could possibly use the property, the owners should not be left with the alternative of paying taxes on this piece of property, which they cannot use.

The decision as to what constitutes an uneconomic remnant becomes much more complex when larger, more valuable portions of a property remain, that have access and substantial market value.

The determination as to whether or not the remainder is of little or no value or utility to the owner is an **administrative decision, based on a recommendation by the Review Appraiser**, and not based upon the subjective, perhaps exaggerated views of the owner or the "market" value of the residue.

## **6.88 - TENANT-OWNED IMPROVEMENTS**

The Review Appraiser is responsible for assuring the Appraiser has placed a separate value on any tenant owned improvements, including mobile homes, according to the Manual "Information for Appraisers". The Review Appraiser must also set-out the values of the tenant owned improvements in the Statement of Review Appraiser (Form RW 6.10-C or RW 6.10-PM) or review memorandum, as well as in separate Statements of Just Compensation (Form RW 6.11) for the owner(s) and tenant(s) interests.

If the Appraiser has valued a tenant-owned building, structure, or improvement at its contributory value to the underlying land of the fee owner, that amount should be included in the total fair market value and broken out in an allocation of the total fair market value in the Review Statement.

## **6.90 - MINERAL VALUATION**

A mineral valuation is defined as the valuation of oil, gas, coal, limestone, or other mineral substance which can be extracted, produced and/or marketed as an economic commodity.

Authorization for appraisal of a scheduled project initiates commencement of a detailed examination of the right of way plans to determine the existence of oil and/or gas wells, active coal mining, or other mineral production or mineral reserves. This examination should also address the existence or probable occurrence of any coal to be encountered during construction, unmined in-place reserves of minable coal or other economic minerals located within the right of way down to a depth of 400' below the roadway or natural ground, whichever is lower, or regardless of depth, any coal seam that is potentially recoverable through longwall mining techniques where subsidence may be an issue, or in landlocked areas. This examination and/or occurrence of economic mineral production or reserves will be the basis for further evaluation.

All producing oil and/or gas wells and all mineral production areas will be examined in the field. Requests for valuation reports will be assigned to qualified specialists either in-house or

through current contracting procedures in place at the time. Upon receipt, these reports will be reviewed and fair market value and just compensation determined. Mineral valuation reports are then transmitted to the proper District Right of Way Manager for negotiation and acquisition in the same manner as surface appraisal reports. All oil and/or gas wells must be plugged in accordance with the laws, rules and regulations of the Office of Oil and Gas of the West Virginia Department of Environmental Protection. The amount estimated for plugging and abandonment must also be included in the valuation.

The valuation process applied to minerals involves estimating the fair market value of the loss of income resulting from the acquisition of the economically recoverable reserves as valued in place or the production facilities. In undeveloped coal areas where adequate data exists, the Comparable Sales Approach should be developed. In the absence of adequate comparable sales data, and when there is a reasonable probability of production in the reasonably foreseeable future, the Engineering Method and/or Income Approach may be developed to arrive at an estimate of fair market value.

#### **6.97 – FHWA / WVDOH STEWARDSHIP AGREEMENT**

All appraisal activities conducted by the WVDOH shall be in compliance with the current version of Federal Highway Administration, WVDOH Stewardship Agreement.

**ADDENDA EXHIBIT 6.01**  
**INFORMATION FOR APPRAISERS**

---

*ADDENDA EXHIBIT 6.01*  
*INFORMATION FOR APPRAISERS*

## **INFORMATION FOR APPRAISERS**

### **INTRODUCTION**

**This Appraisal Guide is furnished for use by staff and contract appraisers and review appraisers for the West Virginia Department of Transportation, Division of Highways, Right of Way Division.**

**The effective date of this edition is June 2021 and supersedes any prior dated instructional manuals and memoranda related to appraisal for the Division of Highways or its predecessors, the West Virginia Department of Highways, or the State Road Commission.**

**Manual Number** \_\_\_\_\_

**Issued to:** \_\_\_\_\_

**Date Issued:** \_\_\_\_\_

## **CHAPTER 6 – INFORMATION FOR APPRAISERS**

### **TABLE OF CONTENTS**

---

<b>SECTION I – General Qualifications.....</b>	<b>1</b>
Contract (Fee) Appraisers and Review Appraisers.....	1
Contract Appraiser Procedures and Requirements .....	1
Contract Review Appraiser Procedures and Requirements .....	3
Contract Compliance .....	5
Plan Revisions .....	6
Appraisal Updates .....	6
<b>SECTION II – Information for Contract Appraisers .....</b>	<b>7</b>
Purpose of Appraisals .....	7
Fair Market Value Defined .....	7
Conduct of the Appraiser .....	7
Contact with Property Owners .....	7
Tenant Owners .....	8
Appraisal of Tenant Owned Improvements and Mobile Homes .....	8
Absentee Property Owners .....	9
Valuation of M & E and/or FF & E .....	9
Salvage Value .....	9
Interpretation of Plans .....	10
Conflict of Interest .....	10
Confidentiality of Appraisal Reports .....	11
Pre-Contract Activities .....	11
Appraisal Fee Services .....	11
Scope of Work .....	11
Notice to Proceed .....	11
Contract Extensions .....	12
Notice of Change or Stop Order .....	12
<b>Appraisal Requirements .....</b>	<b>13</b>
Appraisal Defined .....	13
<i>Uniform Standards of Professional Appraisal Practice (USPAP) – Standard 2 Requirements</i> .....	14
<i>Uniform Standards of Professional Appraisal Practice (USPAP) Accepted</i> .....	15
<b>Appraisal Formats.....</b>	<b>16</b>
<b>USPAP Compliance (Jurisdictional Exceptions).....</b>	<b>17</b>
Jurisdictional Exceptions .....	17
Additional Requirements .....	18
<b>Appraisal Forms .....</b>	<b>19</b>
Report Submission .....	19
Signature .....	19
Updates, Corrections, Additions, Revisions .....	19
Use of Data Book .....	19
Use of Data Index Numbers .....	20
Data Sheets .....	20

Description of Data Collection and Verification Process .....	20
Use of Offerings and Listings .....	20
Verification of Data .....	21
Review Appraisers Check Data and Verification .....	21
<b>Larger Parcel .....</b>	<b>22</b>
Value of Improvements .....	23
Highest and Best Use – Same as Existing Use .....	23
Highest and Best Use – Different than Existing Use .....	23
Interim Use .....	24
Probability of Zoning Change .....	24
Non-Conforming Uses .....	25
<b>Approaches to Value - General .....</b>	<b>26</b>
<b>Market (Sales Comparison) Approach.....</b>	<b>27</b>
Adequacy of Market Search .....	27
Selection of Sales and Elements of Comparability .....	27
Sequence of Adjustments .....	28
Units of Comparison .....	28
Sales Influenced by Project .....	29
Use of Adjustment Grids .....	29
Explanation of Adjustments .....	29
<b>Support for Specific Adjustments.....</b>	<b>31</b>
<b>Cost Approach .....</b>	<b>36</b>
Replacement Cost Estimates .....	36
Use of Published Cost Data Services .....	36
Specialty Valuation (M & E, FF & E, Minerals, Timber, Contractors, etc.) .....	37
Accrued Depreciation Estimates .....	37
<b>Income Approach.....</b>	<b>38</b>
Gross Income Estimates .....	38
Vacancy and Collection Losses .....	38
Fixed and Operating Expenses .....	38
Discount and Capitalization Rates .....	38
Economic Life .....	39
Hazardous Materials and Hazardous Waste .....	39
Underground Storage Tanks (UST) .....	39
<b>Conclusion – Before Value of Entirety .....</b>	<b>40</b>
<b>Partial Taking Appraisals.....</b>	<b>41</b>
<b>Valuation of Residue .....</b>	<b>42</b>
Effect of Acquisition on Residue .....	42
Highest and Best Use of Residue .....	43

Approaches to After Value .....	43
Conclusion of Residue Value .....	44
Damages to the Residue .....	44
After Sales and Damage Studies .....	44
Non-Compensable Damages .....	44
Cost to Cure Damages .....	46
Site Improvements Replaced in Excess of Cost to Cure .....	47
Mineral Valuation .....	47
Valuation of Signs and Billboards .....	48
<b>Report Addenda Exhibits .....</b>	<b>49</b>
<b><u>SECTION III – Information for Contract Review Appraisers .....</u></b>	<b>50</b>
Responsibilities .....	50
USPAP Compliance (Jurisdictional Exceptions) .....	51
Desk and Field Review .....	51
Math and Logic Checks .....	51
Two Appraisals with Divergent Values .....	51
Maintaining Consistency .....	52
Review of Property Owner’s Appraisals .....	52
Review of Specialty Reports .....	53
<b>Special Responsibilities .....</b>	<b>54</b>
Just Compensation, Above Fair Market Value .....	54
Recommendation of Uneconomic Remnant Option(s) .....	55
<b>Uneconomic Remnant .....</b>	<b>56</b>
 <b>INFORMATION FOR APPRAISERS</b> <b>APPENDIX SECTION</b> <hr/>	
<b>Appendix A – Example – Sequence of Adjustments .....</b>	<b>57</b>
<b>Appendix B – Appraisal Formats .....</b>	<b>58</b>
Market Approach Only (M) (Sales Comparison) .....	58
Cost Approach Only (C) .....	59
Market and Cost Approaches (M/C) .....	59
Detailed Report (D) (Market, Cost and Income Approaches Considered) .....	60
<b>Appendix C – Forms (Forms Attached as Exhibits) .....</b>	<b>61</b>
<b>Appendix D – Contracting with Individuals for Appraisal/Appraisal Review Services .....</b>	<b>62</b>

## **ADDENDA EXHIBIT 6.01**

---

### **SECTION I GENERAL QUALIFICATIONS**

---

The Constitution of West Virginia, Article III, Section 9 provides: “*Private property shall not be taken or damaged for public use, without just compensation...*” The Appraisal Section of the Right of Way Division is charged to a large extent with the responsibility of implementing this section of the Constitution and to achieve approved values that fully meet the requirements of the law as to just compensation.

#### **CONTRACT (FEE) APPRAISERS AND REVIEW APPRAISERS**

All work to be performed by Contract (Fee) Appraisers and Review Appraisers will be contracted through the currently approved policy and procedure guidelines. (See Appendix D for details.) Any person wishing to perform services as a Contract (Fee) Appraiser, Contract (Fee) Reviewer, or Specialty Valuation must meet the guidelines currently in effect and be placed on the State’s **Approved Appraiser List**.

Any person wishing to be placed on the WVDOH’s Approved Appraiser List must make application in writing to the Director of the Right of Way Division. This application must include a letter of interest indicating intent to provide appraisal and/or appraisal review services, along with a current Statement of Qualifications and at least two (2) appraisal reports and/or appraisal review work product samples (redacted if necessary).

#### **CONTRACT APPRAISER PROCEDURES AND REQUIREMENTS**

Notice is hereby given by the West Virginia Department of Transportation, Division of Highways that Right of Way Appraisal Services related to transportation projects will be used for statewide projects. Future projects will be advertised and awarded on a low-bid basis when the Appraisal Section estimate exceeds the simplified acquisition threshold. If the estimate does not exceed the simplified acquisition threshold, the solicitation from only one source is the preferred method for acquiring Appraisal or Appraisal Review services by the WVDOH, Right of Way Division. An Appraiser/Review Appraiser Proposal will be required for each project in one fixed amount with a unit price schedule. If deemed necessary, other procurement methods may be utilized.

All individuals interested in participating in appraisal contracts for projects throughout the state must be pre-qualified and approved by the WVDOH, Right of Way Division in order to submit bids on upcoming projects.

Individuals desiring to be included on the pre-qualified list for real estate **APPRAISAL SERVICES** must meet the following criteria:

- All appraisal reports must be submitted on the currently approved WVDOH appraisal form and completed in compliance with the State Rule, and any and all applicable laws, rules, regulations, and requirements, including but not limited to the WVDOH “Information for Appraisers” and “Right of Way Manual”
- All appraisal reports and related correspondence will be transmitted electronically via an FTP site or email
- Have a minimum of three (3) years of full time or equivalent part-time experience in real estate appraisal and a license or certification in good standing with the West Virginia Real Estate Appraiser Licensing and Certification Board allowing for the appraisal of real estate being acquired under the threat of Eminent Domain
- Be competent, as defined by the competency rule, Standards and Provisions of the “*Uniform Standards of Professional Appraisal Practice*” (USPAP), and the “*Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*” (Uniform Act), and 49 CFR Part 24
- Be proficient in reading, interpreting, and explaining highway Right of Way plans and construction plans
- Be familiar with, and competent to provide, appraisal reports on properties subject to partial takings, including the ability to adequately address damages (diminution of value) to any residue properties
- Be proficient and competent in employing, when necessary, appraisal supplemental standards and jurisdictional exceptions as defined by USPAP. Additional proficiency and competency in completing appraisals with retrospective values and under hypothetical conditions and extraordinary assumptions are required
- Be able to qualify as an expert witness in condemnation proceedings and shall provide such testimony at all types of condemnation proceedings upon request and/or subpoena

Contract procurement may be by one of three ways. The first may be by competitive procurement (2 CFR 200.320(d)) with more than one source submitting a proposal. The second may be noncompetitive proposals (2 CFR 200.320(f)). This is solicitation from only one source. This procurement method considers the Appraiser/Review Appraiser's experience in the “type of property to be appraised” knowledge of the market and other traits that he or she may possess. The solicitation from only one source is the preferred method for acquiring Appraisal or Appraisal Review services by the WVDOH, Right of Way Division.

The third may be a procurement by sealed bids (2 CFR 200.320(c)) which will be one fixed amount, in total, for all appraisal activities as advertised. Once the appraisal, or appraisal review, service contract is awarded, the contract issued to the successful bidder will be provided one (1) hourly rate for plan revisions as requested by the WVDOH, and one (1) hourly rate for all litigation-related appraisal activities. These hourly rates must be all-inclusive of expenses incurred by the appraiser. No compensation will be made for time incurred by the appraiser in correcting errors/omissions within appraisal reports. Except for when written consent is given by the WVDOH Appraisal Section, completion of the contracted services must be submitted by the contracted due date. No partial payments will be made, and no invoices will be processed until all contracted and submitted acceptable appraisal reports have been reviewed and approved by the WVDOH.

If bids are solicited for a project, the successful bidder will be subject to a written assessment regarding performance which will be prepared by the project review appraiser. Consistent low ratings will influence the ability to participate in future bids.

Prior successful completion of training in appraisal for Federal-Aid Highway programs; appraisal of partial acquisitions; condemnation appraising (principles and applications); and providing expert witness testimony is strongly recommended.

Successful bidder shall coordinate project appraisal activities including Scope of Work with the WVDOH project review appraiser.

Prior employment by a State Department of Transportation is not required in order to apply for inclusion on the West Virginia Department of Transportation's Pre-Qualified Appraiser List or Pre-Qualified Review Appraiser List, or to submit proposals to perform appraisal or appraisal review services as may be requested by the WVDOH.

## **CONTRACT REVIEW APPRAISER PROCEDURES AND REQUIREMENTS**

Notice is hereby given by the West Virginia Department of Transportation, Division of Highways that Right of Way Appraisal Review services related to transportation projects will be used for statewide projects. Future projects will be awarded using one of the three methods.

All individuals interested in participating in appraisal contracts for projects throughout the state must be pre-qualified and approved by the WVDOH, Right of Way Division in order to submit bids on upcoming projects.

Individuals desiring to be included on the pre-qualified list for real estate **APPRAISAL REVIEW SERVICES**, in addition to meeting the qualifications for appraisal services, must meet additional criteria.

Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser. (49 CFR 24.104)

- All reports and documents must be submitted on the currently approved WVDOH Statement of Appraisal Review form and Statement of Just Compensation form, and completed in compliance with the State Rule, and any and all applicable laws, rules, regulations, and requirements, including but not limited to the WVDOH "Information for Appraisers" and "Right of Way Manual"
- All appraisal review reports and related correspondence will be transmitted electronically via an FTP site or email
- A minimum of five (5) years of full time or equivalent part-time experience providing technical reviews of appraisals for Federal-Aid projects is **REQUIRED**

- All bidders must have a minimum of five (5) years of full time or equivalent part-time experience in real estate appraisal review and a license or certification in good standing with the West Virginia Real Estate Appraiser Licensing and Certification Board allowing for the appraisal of real estate being acquired under the threat of Eminent Domain
- Be competent, as defined by the competency rule, Standards and Provisions of the “*Uniform Standards of Professional Appraisal Practice*” (USPAP), and the “*Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*” (Uniform Act), and 49 CFR Part 24
- Be proficient in reading, interpreting, and explaining highway Right of Way plans and construction plans
- Be familiar with, and competent to provide, appraisal reports on properties subject to partial takings including the ability to adequately address damages to any residue properties
- Be proficient and competent in employing, when necessary, appraisal supplemental standards and jurisdictional exceptions as defined in USPAP. Additional proficiency and competency in completing and reviewing appraisals with retrospective values and under hypothetical conditions and extraordinary assumptions is required
- Be able to qualify as an expert witness in condemnation proceedings and shall provide such testimony at all types of condemnation proceedings upon request and/or subpoena

Contract procurement may be by one of three ways. The first may be by competitive procurement (2 CFR 200.320(d)) with more than one source submitting a proposal. The second may be noncompetitive proposals (2 CFR 200.320(f)). This is solicitation from only one source. The solicitation from only one source is the preferred method for acquiring Appraisal or Appraisal Review services by the WVDOH, Right of Way Division.

The third may be a procurement by sealed bids (2 CFR 200.320(c)) which will be one fixed amount, in total, for all appraisal activities as advertised. Once the appraisal, or appraisal review, service contract is awarded, the contract issued to the successful bidder will be provided one (1) hourly rate for plan revisions as requested by the WVDOH, and one (1) hourly rate for all litigation-related appraisal activities. These hourly rates must be all-inclusive of expenses incurred by the appraiser. No compensation will be made for time incurred by the appraiser in correcting errors/omissions within appraisal reports. Except for written consent given by the WVDOH completion of the contracted services must be submitted by the contracted due date. No partial payments will be made, and no invoices will be processed until all contracted and submitted acceptable appraisal reports have been reviewed and approved by the WVDOH.

All bids will be one fixed amount, in total, for all appraisal activities as advertised. Once the appraisal, or appraisal review, service contract is awarded, the contract issued to the successful bidder will require one (1) hourly rate for report revisions as requested by the WVDOH, and one (1) hourly rate for all litigation-related appraisal activities. These hourly rates must be all-inclusive of expenses incurred by the reviewer. No compensation will be made for time incurred by the reviewer in correcting errors/omissions within reviewer reports. Excepting prior written consent of the WVDOH, completion of the contracted services must be submitted by the contracted due date. No partial payments will be made, and no invoices will be processed until all contracted and submitted acceptable appraisal reports have been reviewed and approved by the WVDOH.

If bids are solicited for a project, the successful bidder may be subject to a written assessment regarding performance which will be prepared by WVDOH Appraisal Section personnel. Consistent low ratings will influence the ability to participate in future bids.

Prior successful completion of training in appraisal review for Federal-Aid Highway programs; appraisal review of partial acquisitions; condemnation appraising (principles and applications); and prior experience in providing expert witness testimony is **REQUIRED**.

Applicants for inclusion on the pre-qualified list to provide appraisal review services will, in addition, be required to:

- Meet with WVDOH Appraisal Section review personnel prior to beginning review activities to determine scope of work per parcel and issues related to just compensation and appraisal methodology
- Knowledge and ability to determine and approve just compensation which may be different than fair market value
- Be able to generate carve out values and retention values as needed for relocation purposes
- Accurately address the potential of recommending an uneconomic remnant option(s) on applicable properties
- Be able to assess and apply excess cost to cure where applicable
- Be able to reconcile multiple appraisal reports with differing values
- Be responsible for making a “determination of value” in appropriate situations and/or when necessary
- Reviewer shall coordinate project appraisal review activities with WVDOH Appraisal Section personnel
- Be responsible for providing WVDOH with a written assessment of project fee appraiser(s) performance on each project
- Be responsible for considering any information supplied by the property owner, including appraisal reports, and providing an appropriate written response and revised review statement, if necessary
- Must supply photographs of all project properties as an attachment to the review statement

**Prior employment by the Department of Transportation is not required in order to apply for inclusion on the West Virginia Department of Transportation’s Pre-Qualified Appraiser List or Pre-Qualified Review Appraiser List, or to submit proposals to perform appraisal or appraisal review services as may be requested by the WVDOH.**

### **CONTRACT COMPLIANCE**

The Appraisal Manager or Administrative Reviewer must review and verify that the Contract Appraiser/Review Appraiser has complied with the contract and Scope of Work estimate prior to approving payment of an invoice for services.

No invoices will be processed for payment until all contracted and acceptable appraisal and/or appraisal review reports have been approved by the Appraisal Staff Administrative Reviewer.

## **PLAN REVISIONS**

Plan revisions occur frequently on highway projects. Revisions may change the areas being acquired, the effect of the acquisitions on the residue, damages, or benefits. Minor plan revisions may not substantially affect the estimated value of the take and damages less benefits and can many times be accomplished in a revised appraisal review. However, in the event of substantial plan revisions, appraisers must be given the opportunity to decide the effect of plan revisions on their value estimate(s) since ultimately, they may be required to testify to their opinions of value.

In order for improvements to be valued, they **MUST** appear on the plans. If the appraiser finds during inspection of the property that existing improvements are not shown on the plans, the Appraisal Section **SHALL** be notified in order for plan revisions to be initiated. Notification should be **IN WRITING WITH EXHIBITS ATTACHED** showing the approximate location of improvements. This type of verification will facilitate the required revisions to the plans.

Work on any parcel's appraisal should be continued unless otherwise advised by WVDOH Appraisal Section personnel.

## **APPRAISAL UPDATES**

The need for updating an appraisal most often occurs at the time the WVDOH is preparing to condemn a property. The data used to estimate the value should be reviewed and an effort made to investigate pertinent sales up to the date of taking, which should be verified with Legal Counsel responsible for the condemnation action. Some courts will permit testimony as to market data that occurred even later than the Date of Take provided it is relevant.

In the event of condemnation, the appraiser updating the appraisal to the Date of Take is responsible for valuing the property in its entirety, including all buildings, structures, site improvements, and any other elements of value.

In a fast-moving and very active market, it may be necessary to update a relatively recent appraisal. It is the WVDOH's policy to consider an update on appraisals more than 6 months old. However, updates are not automatically required after 6 months.

It sometimes occurs that during the negotiation phase new sales that are pertinent are brought to the attention of the negotiator and, subsequently, to the attention of the Appraiser and Review Appraiser. It may also occur that negotiations become protracted or acquisition is otherwise delayed on the project which may make updates necessary.

## **SECTION II**

# **INFORMATION FOR CONTRACT APPRAISERS**

---

**It is strictly the review appraiser's responsibility to recommend just compensation, which may occasionally, under special circumstances, be above fair market value. It is the appraiser's responsibility to report fair market value only.**

### **PURPOSE OF APPRAISAL REPORTS**

The WVDOH is required by law to reimburse each landowner from whom property is acquired for highway purposes unless they elect to donate their property. It is the duty of the staff or contract appraiser to estimate fair market value in accordance with applicable West Virginia law and Federal laws and regulations. These appraisals are used as a basis for negotiation with the property owner and to support the WVDOH's request for reimbursement of right of way costs from the Federal Highway Administration.

### **FAIR MARKET VALUE DEFINED**

Fair market value has been defined in West Virginia to be *"the price a willing buyer would pay a willing seller, neither acting under compulsion or duress, both freely exercising prudence and intelligent judgment as to its value and are familiar with the purposes for which the property is reasonably available"*. This is a Jurisdictional Exception to the definition in the *Uniform Standards of Professional Appraisal Practice (USPAP)*.

### **CONDUCT OF THE APPRAISER**

A right of way agent or design consultant is normally the first representative of the Department of Transportation to contact a property owner, with an appraiser making contact shortly thereafter. The impression made by these first representatives of the Department of Transportation may well decide the success or failure of subsequent negotiations with the property owner.

### **CONTACT WITH PROPERTY OWNERS**

It is a requirement of state and federal law that the appraiser must contact the property owner personally and offer the owner or the owner's designated representative an opportunity to accompany the appraiser during the property inspection. The appraiser must be courteous, considerate, and patient with the owner, making every effort to gain the owner's confidence and respect. The appraiser must convey the competency of a well-qualified person, fully capable of making a fair and impartial appraisal. During the appraiser's inspection of the property, the owner should be given the opportunity to point out any features of the property or its use that, in the owner's opinion, would have a bearing on its value.

The appraiser should make no attempt to answer any questions concerning negotiations or relocation procedures or questions of a technical nature. The appraiser will not answer questions pertaining to the value of any property. The appraisal process may be discussed; however, the appraiser must be extremely careful to make no reference to any dollar amounts. Even the use of

hypothetical or theoretical examples may be misinterpreted.

The appraiser must never discuss the value of any parcel assignments with anyone other than the Appraisal Section Managers, WVDOH Review Appraisers or Federal Highway Administration personnel. Under no circumstances will the appraiser ask an owner or a tenant for an opinion of value of all or any portion of the property, or for an opinion of the potential damages or benefits to the property resulting from the highway taking.

Valid documents of recent actual costs or prices paid may be pertinent to the current value of a property and may be considered to the extent they contribute to the current market value of the property being appraised.

Correspondence with property owners and/or tenants will be limited to letters to property owners and/or tenants to arrange for inspection or to provide an owner or tenant an opportunity to accompany the appraiser on the inspection. Any other written correspondence with property owners is not permitted without prior permission of the WVDOH's Project Review Appraiser.

### **TENANT OWNERS**

A tenant owner of any building, structure, or other improvements located on land of another, whose buildings, structures, or improvements will be acquired or will be required to be removed, shall be treated the same as a property owner, and will be given the same status and consideration as a property owner, including an opportunity to accompany the appraiser on the inspection.

### **APPRAISAL OF TENANT-OWNED IMPROVEMENTS AND MOBILE HOMES**

Current law requires that a tenant-owner of any building, structure, or other improvement (including mobile homes) located upon land to be acquired be made a **separate offer** for the contributory value of such improvements, disregarding the tenant's right or obligation to remove such items as, may be provided in a lease.

**Before a separate offer can be made to the tenant-owner, the landowner must disclaim any interest in the tenant-owned improvements, in writing.** The appraiser may be the first person to discover the existence of tenant-owned improvements and should report these findings to the review appraiser and/or Appraisal Section. Tenant owned improvements may consist of nearly anything added to and used on the property, such as building(s), additions to existing structures, mobile home(s), site improvements, sheds, silos, fencing, signs, special utilities, poles, towers, machinery, equipment, furnishings, and fixtures, etc.

Unless specifically notified to the contrary, all manufactured housing units (including modular and mobile homes) that are within any affected area will be valued, and the contributory value will be included in the total fair market value and will be stated separately in the report. This applies to any tenant-owned improvements located on land which belongs to another owner.

Current online or published where applicable editions of NADA "*Manufactured Housing Appraisal Guide*", Marshall & Swift's "*Residential Cost Handbook*" or "*MVS*", or sale data from local dealers or market sales may be used. **Do NOT use prices realized from auction sales without a thorough explanation.**

### **ABSENTEE PROPERTY OWNERS**

The appraiser is personally responsible for making a reasonable effort to contact any absentee owner(s) and for making arrangements for an inspection of their property and to offer the owner(s) or their representative an opportunity to be present during the inspection. Specific information concerning whereabouts of owners will be provided to the appraiser when such is available.

### **VALUATION OF M & E and/or FF & E**

An appraisal of an improved commercial, industrial or special purpose property will frequently require the valuation of Machinery and Equipment (M & E) and/or Furniture, Fixtures and Equipment (FF & E). Certain property types, such as motels, hotels, and restaurants, normally sell as “Assembled Economic Units”. When such properties sell, the transfer usually includes numerous items that would be considered personal property under other bodies of law such as “Landlord Tenant Law”. For WVDOH purposes, the appraiser is responsible for the valuation of all property components to be included in the estimate of fair market value. The following criteria should be considered for the valuation of all property components; Cost New in Place (CNIP), Fair Market Value in Place (FMVIP), and Fair Market Value Severed (FMVS). If the real estate appraiser is not fully competent to value all property components, a Specialty Valuation must be performed. Such assignments require a high degree of coordination between the appraiser, review appraiser, Appraisal Section Staff, and possibly the District Right of Way Manager or the Negotiator on the project. When the appraiser is competent to value all property components, no Specialty Valuation will be required. **If a Specialty Valuation is required, the appraiser must contact the WVDOH.** The WVDOH will then contract for the Specialty Valuation report(s). The WVDOH will provide the Prime Review Appraiser with a copy of any Specialty Report required. The Prime Review Appraiser must review any Specialty Reports and incorporate its contributory values, if any, in the review and just compensation form.

### **SALVAGE VALUE**

The term “salvage value” means the probable sale price of an item offered for sale, on the condition that it will be removed from the property at the buyer’s expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable, and capable of being used, including separate use of serviceable components and scrap, when there is little or no reasonable prospect of sale except on that basis.

Since the greater of contributory value or salvage value is to be offered to a tenant-owner, the appraiser may have to value these improvements both ways to test for the greater amount. This may constitute a scope of work change and contract amendment. **Contributory value** of tenant-owned improvements should be **included** in the total fair market value as a separate line item in the Appraisal Report and the Review Report **Salvage value** for removal should be set out separately and **not included** in the fair market value.

## **INTERPRETATION OF PLANS**

**The appraiser is cautioned against interpretation of plans for the property owner. This is primarily a function of the Right of Way Manager. Persistent questioning should be brought to the attention of the agent through the Project Review Appraiser or Appraisal Section.**

Appraisers should not give the impression that they do not know or are unable to answer; the appraiser must simply indicate, diplomatically, that it is the policy of the WVDOH for a Right of Way Manager to answer such questions. This is not a reflection on the appraiser's ability to interpret plans. The fact that no two people ever explain something in exactly the same way must be kept in mind. This often causes property owners to think they are getting two different stories, which could lead to feelings of mistrust and a breakdown in negotiations.

Appraisers are responsible for interpreting the plans for themselves to the extent that the proposed construction may affect the value of the remainder. In the event the appraiser has difficulty interpreting plans or other items supplied by the WVDOH, the Appraisal Section should be contacted.

Cross-sections and profiles must be examined and understood by appraisers when a partial taking is being appraised. The plan view alone will not provide sufficient information concerning the effects of the taking on a residue. Cross-sections are normally available in the Capitol Complex office or the District office.

Some WVDOH project plans may use the Metric (SI) System, and will show both Metric and English measurements, areas, and volumes. (If plans use the Metric System, the appropriate conversion factors and standards for converting and reporting will be made available upon request.)

## **CONFLICT OF INTEREST**

Under no circumstance is an appraiser to appraise a parcel in which they may hold or subsequently acquire any interest. In addition, an appraiser shall not be assigned any parcel wherein the valuation might be influenced by any personal interest in any other property in the area. The Appraisal Section will usually have no way of knowing whether or not a possible conflict of interest exists. If so, notify the Appraisal Section immediately.

**It shall be the ethical responsibility of the individual appraiser to refuse any assignment where such a conflict exists or may occur. In questionable or borderline cases, it shall be the responsibility of the appraiser to advise the Appraisal Section Manager of all the facts in order that a decision may be made as to whether or not it would be proper for the appraiser to accept the assignment.**

## **CONFIDENTIALITY OF APPRAISAL REPORTS**

**Appraisal reports are considered a confidential communication between the appraiser and the WVDOH, review appraiser(s), trial attorney(s), or Federal Highway Administration Officer(s). In no instance will the amount of the appraisal or breakdown of the appraisal be divulged to any person other than authorized employees of the WVDOH or the Federal Highway Administration without prior written permission from same, except under an official order of the court or for court testimony. The appraiser is not required to defend their reports to anyone except WVDOH review appraisers or as required in a court of law.**

## **PRE-CONTRACT ACTIVITIES**

Contracting for acquisition appraisal and appraisal review services will be by the methods discussed in 2 CFR 200.320 Methods of procurement to be followed.

When it is deemed necessary by the WVDOH to contract for appraisal and appraisal review services, those services will be contracted using the current WVDOH Approved Appraiser List and the currently accepted contract procurement procedures, as described in Chapter 7 of the WVDOH's Right of Way Manual. (See Appendix D for currently accepted contracting procedures.)

## **APPRAISAL FEE SCHEDULE**

On at least an annual basis, the Fee Schedule which contains fee ranges for most types of appraisal situations will be revised to adjust to current competitive rates and fees. When applying the Fee Schedule ranges to an estimate. The Appraisal Section Manager will take into consideration the number of parcels in the assignment, the type of properties to be appraised, complexity of both the appraisal assignment(s) and the taking/residue situation, location of the project, potential for adequacy or lack of data and time available to complete the job.

For current contracting procedures see Appendix D.

## **SCOPE OF WORK**

The Scope of Work will be contained in the request sent to the Appraiser and Review Appraiser to submit fee estimates for projects.

## **NOTICE TO PROCEED**

Written notice to proceed will be issued pursuant to currently accepted contracting procedures as outlined in Appendix D.

### **CONTRACT EXTENSIONS**

Should an appraiser encounter difficulties or extenuating circumstances beyond their control which will extend the time necessary for completion of an appraisal assignment, the Director of the Right of Way Division and the Appraisal Section Manager must be notified **in writing** as soon as possible, and before the due date of the contract. The letter or memorandum must refer to the project and affected parcel(s) and outline the reasons for the extension request. Include reference to the State and Federal Project numbers, and the Individual Services Contract number. A proposed extended completion date should also be given, if possible. The Appraisal Section Manager will reply in writing to grant or deny the requested extension. It is a good policy to notify the Appraisal Section Manager and project review appraiser in writing when difficulties arise. An open line of communication between the WVDOH and contractors has proven to be a beneficial policy.

### **NOTICE OF CHANGE OR STOP ORDER**

Any notice of contract amendments or cease orders will be issued in writing, pursuant to current contracting guidelines in place as outlined in Chapter 7 of the WVDOH's Right of Way Manual.

## **APPRAISAL REQUIREMENTS**

---

The West Virginia Division of Highways recognizes the requirements of the *Uniform Standards of Professional Appraisal Practice* (USPAP) as promulgated by the Appraisal Foundation. The WVDOH has adopted the requirements of 49 CFR Part 24, which refers to nationally recognized standards, which includes USPAP. There are a few instances where the **Jurisdictional Exception Rule** to USPAP will be invoked, such as:

1. Scope of work decisions concerning the type of appraisal, report format and the approach(s) to be developed are established by the client (WVDOH) instead of the appraiser because the client, in this case, is “highly informed”.
2. USPAP allows the reporting of a spread (range) in values, while under the “Uniform Act” WVDOH is required to establish a specific amount which represents fair market value/just compensation. These differences are in accordance with Federal and State law, and public policy.
3. Appraisers are required to disregard any increases or decreases in value caused by the public improvement or its likelihood when appraising property subject to eminent domain. There are occasionally other instances where the Jurisdictional Exception Rule must be invoked.

**NOTE:** A **Jurisdictional Exception** must be disclosed by the appraiser in the appraisal report.

### **APPRAISAL DEFINED**

The *Uniform Act Amendments of 1987* and *49 CFR 24.2(a)(3)* establish the definition for an appraisal used in federal-aid acquisition programs. These two documents define **appraisal** as “...a written statement independently and impartially prepared by a qualified Appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information...”

The report must contain the appraiser’s analytical conclusions from available market information to support the value opinion. An appraisal report must meet all the above elements. Otherwise, it is not an acceptable appraisal report for WVDOH or FHWA purposes.

The *Code of Federal Regulations* (49 CFR 24) expands on the elements of the appraisal definition by requiring agencies to develop criteria for simple and detailed appraisal reports. Further, detailed appraisal reports shall reflect nationally recognized standards, which includes the *Uniform Standards of Professional Appraisal Practice* (USPAP).

## **USPAP - STANDARD 2 REQUIREMENTS**

The Uniform Standards of Professional Appraisal Practice – Standard 2 contains an outline of requirements for appraisal reports.

**NOTE:** See the version of USPAP which is applicable to the specific assignment.

### **Standards Rule 2-1**

Each written or oral real property assignment must:

- a.) Clearly and accurately set forth the appraisal in a manner that will not be misleading;
- b.) Contain sufficient information to enable the intended user of the appraisal to understand the report properly; and
- c.) Clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

### **Standards Rule 2-2**

Each written real property appraisal must be prepared under one of the following options and prominently state which option is used: **Appraisal Report** or **Restricted Appraisal Report**.

The content of an **Appraisal Report** must be consistent with the intended use of the appraisal.

The content of a **Restricted Appraisal Report** must be consistent with the intended use of the appraisal.

### **Standards Rule 2-3**

Each written real property appraisal report must contain a certification that is similar in content to the following:

I certify to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and they are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount

of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report. (If more than one person signs the report, this certification must clearly specify which individuals did, and which individuals did not make a personal inspection of the appraised property.)
- No one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance must be stated.)
- Any appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the report.

**NOTE:** An Appraiser who signs any part of the appraisal report, including a letter of transmittal, **must** also sign the certification.

**UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) ACCEPTED**

The provisions of Standards Rule 2 are acceptable to and are required by, the WVDOH to the extent they are in concurrence with 49 CFR 24 or under the Jurisdictional Exception Rule, where applicable.

## APPRAISAL FORMATS

---

The WVDOH has the following formats available for various appraisal situations which normally occur.

### **Restricted Appraisal Report Format (Form RW 6.06)**

- (M) Market Approach Only
- (C) Cost Approach Only
- (M/C) Market and Cost Approaches

### **Appraisal Report Format (Form RW 6.06)**

- (M) Market Approach Only
- (C) Cost Approach Only
- (M/C) Market and Cost Approaches
- (D) Detailed – All 3 Approaches Considered

Each of the above formats is outlined in detail in Appendix B, Appraisal Formats.

**NOTE:** Most appraisal reports for the WVDOH will be in the Appraisal Report Format.

**NOTE:** USPAP previously had three written report options for real property and personal property appraisal assignments: Self-Contained Appraisal Report, Summary Appraisal Report, and Restricted Use Appraisal report. USPAP now has two written report options, **Appraisal Report** and **Restricted Appraisal Report**, for real property and personal property appraisal assignments; this is similar to STANDARD 10 Business Appraisal Reporting. In STANDARDS 2, 8, and 10, the “restricted use” report option name was changed to Restricted Appraisal Report.

## **USPAP COMPLIANCE (Jurisdictional Exceptions)**

---

As of October 2017, 49 CFR 24 and USPAP are in reasonable concurrence. There are a few minor differences that are resolved by invocation of Jurisdictional Exceptions.

### **JURISDICTIONAL EXCEPTIONS**

1. WVDOH is considered a highly knowledgeable client and retains the prerogative to decide which report format will best suit the requirements of the agency and which approaches are ***applicable and necessary*** to produce a credible appraisal report. This is a Jurisdictional Exception to USPAP.
2. USPAP allows the reporting of a spread (range) in values, while under the “Uniform Act”, WVDOH is required to establish a specific amount which represents fair market value/just compensation. These differences are in accord with Federal and State law, and public policy. This is a Jurisdictional Exception to USPAP.
3. Appraisers are required to disregard any increases or decreases in value caused by the public improvement or its likelihood when appraising property subject to eminent domain. This is a Jurisdictional Exception to USPAP

The “Uniform Act” P.L. 91-646, Title III, Sec. 301(3) reads in part:

**“Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property ...”**

Perhaps the best explanation for the necessity for considering project influence is a quote from Appendix A of 49 CFR 24.103(b), which says:

**“When the public is aware of the proposed project, project area property values may be affected. Therefore, property owners should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.”**

Some market increases show abnormal activity that coincides with different stages of the project, and it is quite possible that the activity and a portion of the increases in value above the norm are attributed to the project. If that is the appraiser’s conclusion, then sales of the type under discussion should be analyzed carefully and possibly deleted from consideration in the **before**-value estimate. However, these same sales could and should be used in the **after**-value estimate.

**ADDITIONAL REQUIREMENTS**

1. As per 49 CFR 24.102(c) requires appraisers afford property owners, or their designated representative, an opportunity to accompany the appraiser on the property inspection. If there are tenant-owned improvements on a parcel, the tenant-owner must also be given an opportunity to accompany the appraiser on the property inspection.
2. USPAP requires a maximum 3-year sales history of the property being appraised. Appraisal reports prepared for the West Virginia Division of Highways are subject to the Code of Federal Regulations, 49 CFR 24.103(a)(2)(i) which requires a 5-year sales history for all property types.
3. Any services regarding the subject property performed by the appraiser or review appraiser within a three (3) year period immediately preceding acceptance of the assignment, as an appraiser, review appraiser, or in any other capacity must be disclosed in the report certification as required by USPAP.
4. Complete and submit the Individual Services Contract Time Report (Form RW-TIME) for each appraisal requiring updates for court or plan revisions.

## **APPRAISAL FORMS**

---

The WVDOH will provide an electronic version of the appropriate appraisal forms to the appraiser upon request. Examples of the forms to be used can be found in the Chapter 6 Appendix.

Electronic appraisal forms may not be modified by the removal of any language. The addition of language is permitted, and in some situations is required.

### **REPORT SUBMISSION**

It is the appraiser's responsibility to submit appraisal reports on time, so they may be time/date stamped as received on or before the contract and/or extension due date. All appraisals are to be submitted as complete, signed reports, electronically, secured either by scanning or by other software into .pdf format, and named so that the files can be easily identified by date of submission, project, parcel number, and type of submission (appraisal, review, specialty, etc.).

### **SIGNATURE**

USPAP requires that each written report include a signed certification. USPAP defines **Signature** as “*personalized evidence indicating authentication of the work performed by the appraiser and the acceptance of the responsibility for content, analyses, and the conclusions in the report*”.

Appraisals being prepared for electronic submission must be signed. Therefore, electronic signatures will be accepted, in accordance with USPAP, which states that:

- a) “*the signature be personalized evidence indicating authentication*”
- b) “*An appraiser may authorize the use of his or her signature only on an assignment-by-assignment basis.*”
- c) “*An appraiser must not affix the signature of another appraiser without his or her consent.*”

Any appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the report.

### **UPDATES, CORRECTIONS, ADDITIONS, REVISIONS**

Any modification(s) to a report, including updates, corrections, additions, revisions, etc. to any electronically submitted document(s), including appraisal reports, data books, review documents, requires the submission of a complete revised report/document. Submission of revised individual pages or portions of reports/documents is not acceptable.

### **USE OF DATA BOOK**

Data books are encouraged whenever the assignment includes several parcels or when more than one project in the same geographic area is anticipated. If utilized, one (1) electronic copy of any data book or brochure is required.

### **USE OF DATA INDEX NUMBERS**

If a data book is used, each sale, lease, rental, etc. should be assigned an index number and that number used throughout the project whenever reference to that transaction is made. For example, a sale identified as “Sale 43” in the data book should be called “Sale 43” in each appraisal where it is used.

### **DATA SHEETS**

Sale, listing and rental data forms are helpful to everyone concerned. The WVDOH does not require a specific form or format for reporting the data gathered by appraisers, as long as the sheets clearly set out all pertinent facts. A color photo of each sale, listing or rental is required in the data book.

**NOTE:** It is important that, unless a comparable property has a street address, detailed narrative instructions be given on how to locate each property. A sale or data location map is also required.

### **DESCRIPTION OF DATA COLLECTION & VERIFICATION PROCESS**

The process of collecting, confirming, and reporting data for a Restricted Appraisal Report requires the same amount of description as is found in an Appraisal Report.

The description of the data collection and verification process may be contained in a data book, which is made a part of each appraisal report by reference. If a data book is not used, the required information must be contained within the body of each appraisal report.

Depending on the complexity of the appraisal problem and the type of property involved, there may be sufficient numbers of nearby sales to establish an adequate database from which to develop sound value estimates. In some instances, it may be necessary to expand the search on a city, county, or even statewide basis to find the sales information needed. In rare instances where unique properties are involved, a multi-state search may be required.

### **USE OF OFFERINGS AND LISTINGS**

While not a substitute for actual sales, the use of listings, pending contracts, and offers to purchase can be useful in analyzing the market, especially when market sales information may be otherwise limited. This type of data should be identified and not indiscriminately included with closed sales.

The main objective is to gather sufficient data for analysis to estimate reasonable values for the property to be appraised.

### **VERIFICATION OF DATA**

The reliability of an appraisal depends greatly upon the reliability of the information gathered during the data search. Verification of the terms of sale or lease through public records and property data from an MLS cannot substitute for firsthand information from the parties to the transaction.

For whatever reason, some public records do not contain true records of selling prices. Few contain the terms of the transaction.

A real estate agent may be used as a secondary source for verification if the parties involved in the transaction cannot, or will not, verify the terms and conditions of the sale.

The best source for verification is the principals to the transaction, the buyer and seller. Since they had the primary interests in the transaction(s), they will usually remember important details. The best verification is through both buyer and seller; since by nature of their positions, they perceived the transaction(s) somewhat differently. This may lead to variations of the same story, but the appraiser has at least heard both sides and can make a fully informed decision as to whether or not the data is reliable.

### **REVIEW APPRAISERS CHECK DATA AND VERIFICATION**

Review appraisers will, within reasonable limits, verify and/or “spot check” the accuracy of data submitted in an appraisal report, particularly when questions may occur about the validity of the data.

As workloads dictate, contract review appraisers may be engaged who are experienced in eminent domain appraisal and appraisal review. These contract review appraisers have the same requirements and authority as staff review appraisers.

**NOTE:** Contract Review Appraiser information is located in Section III of this manual.

## LARGER PARCEL

---

The larger parcel concept is not new, but recent case law and recent appraisal literature have better developed the concept as it applies to eminent domain appraisals.

The larger parcel is simply the property which is to be appraised in the **before value** estimate. The dominant principle in determining the larger parcel is “**Unity of Highest and Best Use**”.

Several recent cases decided in the State, Federal, and US Supreme Courts have refined the larger parcel concept to relegate two of the factors, **unity of title (ownership) and contiguity**, to secondary positions of importance, with **highest and best use** holding the first position. In the past, all three factors were imperative and equally important in determining the larger parcel.

Enlightened reasoning has prevailed and the most important factor, unity of highest and best use, has emerged as the controlling factor.

Basing the larger parcel on unity of highest and best use allows appraisers and review appraisers to reasonably decide the “larger parcel” in cases where more than one non-contiguous tract of land has the same unity of highest and best use with similar ownership ties or dependent uses. This problem frequently occurs when owners have assembled several properties under separate deeds and/or slightly different ownership, which would not normally be shown as part of the same parcel on the Right of Way plans. The appraiser may be the first person to discover such facts and should report these findings to the review appraiser and/or Appraisal Section. It may be necessary to stop work and collect the pertinent data to affect a plan change to reflect the correct larger parcel.

The larger parcel may, in some cases, be less than an entire ownership. This occurs most often in transitional areas where larger than typical tracts of land may have more than one highest and best use, such as a semi-rural area with large tracts of land fronting on an existing highway. A widening project may acquire a strip along the frontage of the entire property, which may have a different highest and best use than the rear portion. Caution and judicious reasoning are required of the review appraiser in counseling the appraiser in deciding what constitutes the larger parcel.

It is also important to understand that unity of highest and best use would prevail over any existing use of all or part of the larger parcel if the existing use is not also the highest and best use.

No appraiser or review appraiser should be expected to objectively decide such subjective matters as which of the many properties affected by a given highway project will develop first, second or last. The only reasonable way to deal with such totally subjective matters is to assume that, within reason, all affected parcels are equally available, developable, and readily marketable.

### **VALUE ALL IMPROVEMENTS**

Unless otherwise instructed by the WVDOH or Appraisal Section, the appraisal report must include values for all buildings, structures, and other improvements (including movable building equipment and trade fixtures) which are considered part of the real property and which are located on the larger parcel. This is normally required in order to develop a before value, even in cases where it may be obvious that said improvements will not be taken or damaged.

**NOTE:** In the event of litigation the **entire property**, not just the larger parcel, must be valued, including all improvements.

### **HIGHEST AND BEST USE – SAME AS EXISTING USE**

Often, the existing use will be the highest and best use, and that conclusion may be clearly obvious to the appraiser, reviewer, and even the courts.

The existing use is frequently the highest and best use. Acceptances of general statements to that effect have usually gone unquestioned in most appraisal reports. However, there is always a logical reason for the obvious conclusion, and a brief narrative identifying that reason would be more persuasive.

Substantiation of an appraiser's opinion with supportive data becomes more critical in the not so obvious situations. The appraiser may need to respond to inquiries by a reviewer or an attorney in the course of a trial, such as when a different highest and best use has been estimated by the appraiser on the opposing side.

Because of its effect on value conclusions, an unsupported or improper estimate of highest and best use may lead to unnecessary and costly litigation for both the WVDOH and the property owner.

In any but the most straightforward situations, especially those involving properties with older improvements, a thorough explanation and analysis of highest and best use is needed. The degree of analysis and support is dependent on the individual problem and could involve measuring the return on a property investment based on the continued use as improved, as opposed to the value increase to the property if it were renovated, expanded, or converted to another use.

### **HIGHEST AND BEST USE – DIFFERENT THAN EXISTING USE**

When highest and best use is estimated to be different than existing use, the appraiser is essentially concluding that the present improvements no longer provide sufficient contributory value for that purpose. This generally occurs when the value of land in an area, due to changing conditions, increases to such a level that it approaches or exceeds the value as improved.

The appraiser must support that conclusion by gathering and analyzing specific factual data to logically lead to the different highest and best use estimate. The appraiser may substantiate the inadequate return to the existing improved property by performing a building residual valuation estimate using properly established land values for the projected highest and best use.

Additionally, a comparison could be made using other similarly improved properties to

establish a value, which then could be compared to the value estimated for the projected highest and best use. It is also essential that the appraiser substantiate that:

- a) There is a demand for the use proposed.
- b) The physical features of the property would accommodate that use.
- c) The use is compatible with zoning requirements or a reasonable probability exists for rezoning, if necessary.
- d) There are no zoning or other restrictions that would preclude that use.

### **INTERIM USES**

The simplest way to avoid the trap of inconsistent use is to estimate value from sales of comparable properties where similar conditions exist, such as improved properties in transition to a higher use.

It is incorrect to base the present value of a property on a highest and best use to be attained in the future unless the appraiser discounts for the fact that a prudent buyer would not pay as much for a property not yet ready for that use as would be paid for one immediately ready for that use.

It is reasonable to conclude that if existing buildings have an interim contributory value, then the land will also have an interim value. That is, not being immediately ready for conversion to an ultimate higher and better use. To conclude otherwise violates the consistent use doctrine.

### **PROBABILITY OF ZONING CHANGE**

A probability of rezoning which has occurred because of the proposed project is not one that can be considered in arriving at the **before**-value of the property.

When estimating the **after**-value of a remainder, it is correct to consider a probability of rezoning that has occurred or may occur because of the taking or because of the impending project for which the property is taken.

Probability of rezoning should be a change that is anticipated in the near future and must have a current effect on market value.

The property should not be valued under such probability as if the rezoning has already occurred, but must be valued under current zoning, giving consideration to the probability of rezoning, including the cost, risk, delays, and time involved in obtaining such a rezoning.

Where a zoning authority has arbitrarily refused to change zoning for the purpose of minimizing subject project cost, and such rezoning would have probably occurred if the project had not been proposed, then such probability of rezoning should be properly considered.

The most convincing support for the effect of a probable rezoning on market value is an analysis of similar properties which have sold where the sales price reflects the probability of similar rezoning.

### **NONCONFORMING USES**

A nonconforming use is one that is not permitted under current zoning requirements but is allowed to continue because the use or occupancy was in existence prior to the current zoning requirements.

A nonconforming use can be economically very advantageous, such as in cases where the nonconforming property enjoys a higher use density or building to land ratio than is allowed by zoning. In these cases, the appraiser must assure that the comparables used are similar nonconforming uses or provide an analysis of the difference in prices paid for conforming and nonconforming use properties.

Conversely, a nonconforming use can be a major disadvantage when the existing use has ceased to be the highest and best use of the property. In this case, the nonconforming use no longer contributes to value on the market, and the appraiser should consider a highest and best use consistent with the current zoning requirements.

## **APPROACHES TO VALUE**

---

### **GENERAL**

It is believed that the individual appraisal form page instructions are reasonably self-explanatory.

It is not necessary for appraisers to define for the WVDOH the approaches to value, highest and best use, or any of the other terms frequently defined in appraisals. If the appraiser is required by an appraisal organization to provide such definitions, they should be placed in the data book or added addenda to the report, but not in the body of the report.

It is also not necessary to include a regional analysis in appraisals for the WVDOH, and only a brief neighborhood analysis as it relates to the subject property is required.

If the appraiser is not certain about what is required in any particular case, reference to this manual should answer most questions. If not, the appraiser should contact the review appraiser or the Appraisal Section.

In most appraisal situations, the market (sales comparison) approach is the most reliable and persuasive approach to value. When there is expected to be sufficient market data available this will be the format normally required.

The WVDOH may, as provided by USPAP, require something less than a detailed appraisal by requesting a single approach appraisal, as long as the result will not confuse or mislead and will produce a credible appraisal report.

The Federal Highway Administration and most other federal agencies, as well as most appraisal organizations, have recognized the validity of single approach appraisals.

When the resultant value estimate is fair to all parties and is not misleading ... it stands to reason that only the “necessary” applicable approach need be developed.

The WVDOH’s currently accepted contracting procedures will indicate the report format being requested to produce a credible appraisal report.

## **MARKET (SALES COMPARISON) APPROACH**

---

What is more indicative of value than the recent sales of comparable properties? The answer is a recent unforced sale of the subject property. Sales reflect the actions of buyers and sellers. The **principle of substitution** in the market approach uses the premise that *an informed purchaser will not pay more for a parcel of real estate than it would cost to purchase an equally desirable substitute property.*

A knowledgeable purchaser will, like the appraiser, make comparisons between properties when viewing the market. While such actions may not be very sophisticated, most sale prices are actually the result of this unsophisticated process.

It is the appraiser's responsibility to assemble, analyze, and correlate the market information that is available into an opinion of value.

### **ADEQUACY OF MARKET SEARCH**

The search for and verification of sales data was covered earlier, but bears repeating. In order for the appraiser to gain an understanding of values and market activity in an area, a compilation of all applicable sales data is a necessity.

### **SELECTION OF SALES AND ELEMENTS OF COMPARABILITY**

A comparable sale which is absolutely identical to a subject simply does not exist. Therefore, selection must be made from those available comparables that most closely resemble the subject.

An analysis of each sale should consider and discuss, where appropriate, the following:

- a) Estate/rights transferred
- b) Financing
- c) Conditions of sale
- d) Market conditions (time)
- e) Location
- f) Physical characteristics
- g) Highest and best use
- h) Land and building size
- i) Utilities

## **SEQUENCE OF ADJUSTMENTS**

Perhaps more important than the method of adjustment selected is the sequence in which the individual adjustments are applied. For years appraisers haphazardly applied adjustments in any order without considering the possibility that their results may be in error by an improper sequence. Certain adjustments which reflect factors other than actual differences between the subject property and the comparable property should be applied first and in the following order:

- a) Property rights conveyed or being appraised.
- b) Non-typical financing terms (cash equivalency).
- c) Conditions of sale (Special motivation of buyer and seller).
- d) Market conditions (time).

After these four factors have been considered and adjusted for or shown to be not applicable, other adjustments related to the differences between the subject and the comparable may be made, such as location, size, age/condition, etc. It is also good practice to group together in a logical sequence those adjustments which apply to the improvements separate from those which apply to the site and the site improvements. Current appraisal thinking suggests that all direct comparisons use a sequence of adjustments such as suggested above.

For WVDOH appraisals the grids and adjustment calculations are only part of the job. The **explanation of each adjustment is even more important** and should be an integral part of the appraisal report.

This could be expanded into a grid containing all of the comparables to be analyzed or as an individual sequence resulting in one of several indications of subject property value.

**NOTE:** The use of Adjustment Grids and the explanation and support of adjustments are discussed later in this manual.

(See Appendix A, Example 1: Sequence of Adjustments)

## **UNITS OF COMPARISON**

To properly compare the property being appraised with the comparable sales selected, it is **very important** that the appraiser establish a unit of comparison. This is done by selecting the unit of comparison that is most relevant to the properties involved **and** which is the most likely to be used in the market as a common comparison element in properties available for sale.

Properties should be reduced to a common denominator to facilitate comparison of market data. It is a good policy to check more than one unit of comparison, which can serve to narrow the range in price per unit and/or eliminate one or more adjustments.

## **SALES INFLUENCED BY PROJECT** (A Jurisdictional Exception to USPAP)

Jurisdictional Exceptions to USPAP were discussed earlier in the USPAP Compliance section of this manual. (See Exception number 3 on page 17)

Most appraisers who appraise for governmental agencies know about this requirement. It is often difficult to isolate the specific effects of a given project's influence on market prices, especially increases in a growth area where other influences may be at work in addition to the highway project.

The two methods of dealing with project influenced sales most used are:

1. Adjustments made in the direct comparison for conditions of sale (Motivation), and
2. Control areas established outside the project area with similar property sales and rentals which have not been affected by the project.

The important issue is that the law requires recognition of both decreases and increases brought about by the project or its likelihood. While one may be more readily identifiable and supportable than the other, it is the responsibility of the appraiser(s) and review appraiser(s) to properly recognize both in the valuation process.

## **USE OF ADJUSTMENT GRIDS**

Grids are the preferred method of displaying adjustments made and may be either vertical or horizontal. The grid lays out key characteristics on lines or in columns and graphically shows the adjustments being made.

## **EXPLANATION OF ADJUSTMENTS**

It is vital that the appraiser be fully aware that all adjustments **must** be justified. Lack of justification from the market is difficult to defend. However, there are many instances when meaningful market data for a given adjustment may not be available. It is, therefore, necessary that there be a reasonably detailed explanation of the reasoning process followed by the appraiser in reaching the concluded adjustment.

Adjustments for Market Conditions (Time) cannot be accepted with only a statement made that the adjustment is being applied based on the judgment and experience of the appraiser or discussion with others. The amount of adjustment used should be extracted from the market using matched or paired sales or an analysis of a range of sales that would isolate and substantiate time adjustment factors.

There are many instances and locations where there is a real shortage of data from which an appraiser can isolate variables for adjustment. In such situations, the appraiser must be permitted to explain logically the need for adjustments, and these adjustments must be expressed quantitatively (either as a percent or as a dollar amount).

The appraiser should also consider adjustments made in terms of alternatives available to the owner or purchaser relative to the possibility of affecting a cure. This same type of reasoning should be applied to other potentially curable items such as physical condition and utility to assure

the adjusted amount is not excessive considering all factors involved.

A 10% adjustment for topography, for instance, applied to a \$500,000 comparable sale would reflect a \$50,000 difference. This dollar amount should logically be compared to the cost to equalize or cure the topography factor (e.g. \$30,000 in fill cost).

1) Sale Price		<u>\$500,000</u>
2) + Adjustment for Topography @ 10% - OR-	<u>\$50,000</u>	
3) + Cost-to-Cure (Fill Cost)	<u>\$30,000</u>	
Indicated Value (1 plus lesser of 2 or 3)		<u>\$530,000</u>

## SUPPORT FOR SPECIFIC ADJUSTMENTS

---

This section focuses on the type of support that would be acceptable for specific adjustments. It recognizes the need for subjective explanation for, and adjustment by, the appraiser when the percentage or dollar amount is not substantial, or in those instances where a thorough market search has provided inadequate data for analysis.

These are generally the most common elements adjusted; however, others may have application based on the type of property being appraised and the adjustments that the market data may dictate are important.

### 1. Conditions of Sale Adjustments (Motivation)

A Motivation adjustment other than special financing is usually a difficult adjustment to support with analysis of factual data. Normally, the best support the appraiser can give is a statement of the facts that may have affected the conditions of the sale of the comparable property followed by an explanation of the reasoning which led to the conclusion. If possible, avoid the use of sales which appear to have severe or questionable conditions of sale or motivational factors.

In some cases, it is possible and practical for the appraiser to make an analysis that can rather accurately show the effects of seller financing or other financing arrangement at a lower-than-typical interest rate. This factor affecting motivation can be re-adjusted to the current market interest rate by the appraiser through a mathematical process. Any mathematical procedure for adjustment of the terms of financing must be supported by market information.

### 2. Market Conditions Adjustments (Time)

A better term to use in place of “Time Adjustment” is “Market Conditions” since the mere passage of time is not the real issue. A trend showing changes in market conditions is the goal.

If an adjustment is warranted for the time period between the sale date of a comparable and the subject appraisal date, then the basic data search should produce the data from which an analysis can be made to support such an adjustment. If the time adjustment does not show in the market, then perhaps no adjustment is warranted.

The **ideal method** of showing a market conditions adjustment would be with the sale and resale of the same comparable property, where the only difference between the two sale dates was the time factor. Such paired sales do occur in many active markets, particularly for vacant land sales and single-family residential sales. The appraiser must isolate the time factor from other influences (forced sales, family sales, property improvements, economic obsolescence, etc.).

The second most desirable type of data used to support a market conditions adjustment is sales of highly similar properties at different points of time in the recent past. In this type of data, a high degree of similarity in all features is necessary to effectively isolate the effects of time on market price and value.

Appraisers should always be careful that the data used supports a time adjustment for the specific area involved and the type property, zoning, and highest and best use of the parcel being

appraised. Local average data, local studies, and the opinions of local real estate brokers and bankers concerning market conditions are interesting secondary subjective opinions but are **not primary data sources** upon which the appraiser can base a conclusion.

### **3. Location Adjustments**

Location adjustments should normally be relatively minor in the typical appraisal. For the comparable property to be truly comparable it should be in a location reasonably close or similar to the subject property.

When minor location adjustments are made it is often extremely difficult and unnecessarily time-consuming and expensive to attempt to provide more than the appraiser's reasoning and explanation for the adjustment. Minor location adjustments are often highly subjective, based on observations and judgment, but the appraiser should provide some significant observations or facts that led to the conclusion.

### **4. Land Size Adjustments**

There is an appraisal concept generally accepted by appraisers that larger tracts usually sell for less per unit than smaller tracts. This is usually true, but there are exceptions.

If this adjustment is to be made, it should be consistent with sales data from the market data search.

### **5. Zoning Adjustments**

Typically, every effort should be made to obtain comparable sales with the same zoning as the property being appraised, or sales where there is a reasonable probability of being rezoned to that zoning classification.

In some cases, it is not always possible to obtain highly similar sales in the same location with identical zoning. A slight variation in zoning from one classification of residential to another classification of residential may have very little effect upon market value. However, slight variations in other situations may have a drastic effect upon market value.

When a comparable sale with zoning different from the subject property is used, there should be a logical explanation as to why zoning does not affect the market value. Or, if an adjustment is made for zoning, it should be based upon a data study of sales in both of the zoning classifications **and** a comparative study of the differences in sales price.

Occasionally an appraiser may elect to make an adjustment when the probability of rezoning is a factor in the subject or in one or more of the comparable sales used. In such cases, the adjustment should be made based on market data which supports the conclusion that a reasonable probability of rezoning exists. The amount of the adjustment should be based on this data.

### **6. Topography Adjustments**

This adjustment is usually employed to allow for differences in degree of slope, relative

ruggedness of terrain, and drainage features. Topography, as it deals with degree of slope and relative ruggedness, is itself relative to the area in which the appraisal(s) are being made. The appraiser must rate such features, as do the people who live in the area being considered.

Topography may be a particularly difficult factor to isolate from the market data available. Hopefully, the data found will be comparable enough that no large adjustments are necessary.

Topography can definitely be a determining factor in the general utility and highest and best use of land. Differences or similarities in topography are often factors in establishing the larger parcel.

Degree of slope (which is also often related to soil type) is a determining factor in land use in some agricultural regions, simply due to the inability of equipment (tractors, watering systems, etc.) to operate safely or effectively on slopes above a certain degree.

Drainage, or the lack of drainage, may be a deciding factor in use potential and determination of highest and best use, as well as requiring an adjustment when found to be significantly different.

Current environmental regulations may affect an area of marshy or swampy land which might have been drained or filled to permit some dry land use may have a very limited use potential today. It is, of course, entirely proper to make separate adjustments.

In areas where useable and less useable topography are encountered the appraiser should explore making comparisons on the basis of “net useable land area” instead of total gross area.

## **7. Shape of Land Adjustments**

When shape is a factor in the comparison of two parcels, and the amount involved is substantial, it should be supported by data from the market with an analysis of such data. This analysis of data should also be coupled with any zoning or other building restrictions that would influence value or would influence what could be constructed on the property as a result of the shape.

## **8. Age and Condition of Improvements Adjustments**

These two adjustments are often combined in a single adjustment since the factors are normally so closely related. They can also be treated separately as the appraiser deems appropriate.

This adjustment permits treatment of the differences in physical deterioration and functional obsolescence observed upon inspection of the subject and comparable improvements. Quality of construction difference is often included in or confused with, condition of improvements. Depending on the method of establishing the adjustment, this may or may not be proper.

This type of adjustment is often explained through rating age-life differences or simple subjective reasoning based on the appraiser’s observation during inspection.

The often subtle effects on prices caused by these types of differences are usually difficult,

if not conjectural, to extrapolate from market data. Therefore, the appraiser is usually called upon to exercise some judgmental reasoning to produce a logical explanation for such adjustments.

## 9. Building Size Adjustments

Building size adjustments can be supported in several ways but should be based on the unit or differential factor, which is recognized by the buyers and sellers of the particular type of property being appraised.

Some of the methods used include: simple ratio or percent of size difference assuming larger is better or more valuable (which is not always true); or, abstracted contributory value rated on a square foot (square meter) or per room or other unit basis.

The appraiser may subjectively make an adjustment (in the absence of conclusive data) when the size difference and the adjustment is not substantial. In such cases, the appraiser should offer a reasonable and logical explanation for the conclusions reached.

Appraisers should keep in mind that improvements cannot usually be directly related, in the market approach, to their depreciated cost new. In the market approach, the buildings and other improvements must be related to their contribution to that value, as combined with the land.

Size adjustments may finally result in a subjective opinion of contribution, perhaps considering cost new depreciated; but, in any event, such opinion should be supported by a logical and thorough explanation by the appraiser.

## 10. Utility Adjustments

Adjustments for utilities include such adjustments as sewer, public water, gas, and electric. The lack of any one of these utilities, or the limited availability or restrictions upon any one of these utilities, can drastically affect market value.

Modern environmental requirements are becoming so strict that in some areas new construction has been greatly restricted or completely prohibited pending completion of proposed sewer facilities, which require several years before construction even begins. The difference in value between a large commercial tract of land **with** sewer and a large commercial tract of land **without** sewer cannot necessarily be measured by the cost of an adequate septic or sewage treatment system.

Proposed construction of a new sewer line, although not definite, could affect value. An on-site sewer or septic system could be excessively costly and discourage any development.

In like manner, the availability of public water supply and its quality can affect the value of residential and industrial tracts. One example would be where adjustments would have to be made for a potential industrial tract that was served by only a two-inch water line where any typical development would require a much larger water service line, especially if the cost of such service would be borne by the property owner.

In making adjustments for availability of utilities or their quality, consideration must be given to the cost of correcting such lack of utility service, but this is not normally the measure of

the difference, only a factor to be considered in arriving at the difference.

As in all such adjustments, the basic support comes from the comprehensive data search, which should provide the data for the sites having different combinations of utilities and, from which data an analysis can be made to arrive at relative sales prices between tracts with different utilities available. This analysis should also include the relative distance of each of the properties to the utilities, and other factors, such as: limits of service of the utility; and, cost requirements that would affect ultimate availability to each of the properties involved.

## **COST APPROACH**

---

The Cost Approach is generally less reliable than sales comparison and has limited applicability in estimating market value of properties for eminent domain purposes. It would generally have application in those unusual and infrequent occurrences where market sales data is really not available, or the property is a special purpose type. With these exceptions, therefore, it is a rare occurrence when the cost approach would be the most reliable value indicator. Most often, when this approach is included in the appraisal, it is as a check on other approaches.

There are other times, however, such as new construction, special purpose property, functional replacements, or estimating cost-to-cure alternatives, where the Cost Approach may be a strong value indicator, and its use would be appropriate.

The Cost Approach is normally reserved for special purpose (unique) properties such as churches, schools, public buildings, functional replacements, and properties improved to serve the special needs of a particular user. These are properties which often do not produce rental income, and for which there is a limited market.

A Cost Approach can be developed on any improved property but is not usually the most persuasive approach and will normally only be requested by the WVDOH in the previously mentioned cases.

Whether it is just being used as backup or actually relied on as the primary indicator of value, the appraiser is required to fully develop all elements of the cost approach, including:

- Vacant land value
- Replacement cost of the improvements
- Accrued depreciation

### **REPLACEMENT COST ESTIMATES**

Replacement cost is the estimated amount it would take to construct a functional replacement of the building being appraised using similar materials, design, and quality of workmanship. This of course does not include any super-adequacy or obsolescence present.

Replacement cost is required for the WVDOH's appraisals since replacement cost ignores super-adequacies and some other forms of obsolescence which affect market value.

### **USE OF PUBLISHED COST DATA SERVICES**

Appraisers commonly use one of the published national cost data services to develop replacement cost. In the case of new development or construction, actual cost figures may be available from local contractors and developers.

Selection of the source of cost data is left to the individual appraiser. The appraisal report must identify the specific source of cost data and show all calculations. If a cost data service is used, the title of the service, section, page, and effective dates of each section of reference are required in order to permit the review appraiser to find each factor used and assure accuracy.

Most cost services will provide a reasonably accurate estimate of replacement cost, if applied accurately, with attention to detail and step-by-step procedure, according to the instructions for use. Improper application or failure to follow the detailed procedures as called for will surely produce an inaccurate result and an unacceptable appraisal.

The appraiser should show each step taken in using the service, along with notations as to service title, section, page, date of section or page, and the calculations leading to the cost estimate, including the source of any factors used to modify the costs to the local area or current time. If the appraiser uses a computerized cost service, the printed output may be included in the appraisal report along with the above information. Without this information, a review appraiser cannot assure that the cost estimate has been properly derived.

### **SPECIALTY VALUATION** (M & E, FF & E, Minerals, Timber, Contractors, etc.)

The review appraiser is responsible for coordinating the real estate appraisal and the specialty valuation to assure that they do not both value any items or features causing double compensation. It is also important to assure all proper items will be valued.

Specialty Valuation reports shall be submitted under the guidelines outlined under the “Report Submission” section of this manual.

### **ACCRUED DEPRECIATION ESTIMATES**

Some cost services provide a section for estimating typical accrued depreciation. This method of estimating depreciation is usually well-founded, being based on actual case studies of similar properties in different classifications. These tables or charts can be reasonably accurate, but only as long as it is well established that the subject improvements suffer only normal physical deterioration and functional obsolescence.

No such table will provide an accurate estimate of accrued depreciation if there is any evidence of abnormal or excessive functional obsolescence or any degree of external obsolescence. If other than normal physical deterioration and normal functional obsolescence are factors, a different method of estimating accrued depreciation is necessary. The most commonly used are the “age-life” and the “breakdown” methods.

## **INCOME APPROACH**

---

There are true investment-type properties that change hands in the open real estate market based entirely on their potential return to the investor. These are investment properties where the Income Approach will provide a persuasive indication of value.

However, the Income Approach is frequently used by appraisers to value properties that may produce an income to the operator (owner) that are not true investment properties, such as one-to-three family residential properties, Mom-and-Pop type stores, or any similar enterprise where the purchaser/owner devotes personal time in operating and managing the business, and which are typically owner-occupied and operated.

As with the use of the Cost Approach, if the Income Approach is used, either as a primary value indicator or as a backup estimate, there are essential elements that must be considered and properly related to market conditions for the type of property being appraised.

### **GROSS INCOME ESTIMATES**

Actual rental income for the subject property should be used only to the extent it is supported by comparable gross rental data found in the market for similar income-producing property.

### **VACANCY AND COLLECTION LOSSES**

With rare exception, there would be an amount of loss due to tenant turnover and collection problems. This factor should have as a basis the experience of similar type rental properties.

### **FIXED AND OPERATING EXPENSES**

Actual expenses of the subject should be considered by the appraiser but used only if supportable by conditions observed in the analysis of similar properties.

Reasoning and support for fixed and operating expenses, such as utilities, repairs and maintenance, reserves for replacements, management charges, and other appropriate items used in the income approach, should be included.

### **DISCOUNT AND CAPITALIZATION RATES**

Discount or capitalization rates are best supported in the market by an analysis of similar sales to determine the rate expected in the open market. The use of a “band of investment” method of developing a discount rate or capitalization rate is less desirable than actual market data but is certainly more acceptable than other less supportable methods. In periods of rapidly fluctuating interest rates, it is imperative that the appraiser’s rate be well supported and current.

### **ECONOMIC LIFE**

Estimated remaining economic life should be derived from a reasoned explanation of the appraiser's thought process leading to the concluded estimate. Total economic life expectancies and remaining economic life expectancies cannot normally be extracted from empirical data since, by their nature, these are always subjective estimates. However, the appraiser should explain what facts and information were considered and what published material, if any, were used as references.

### **HAZARDOUS MATERIALS AND HAZARDOUS WASTE**

The appraiser's only responsibility concerning hazardous materials used or stored, or apparent hazardous waste on a property, is to report the apparent or suspected presence of such to the review appraiser and/or Appraisal Section.

The appraiser is to appraise the property "as if clean". The WVDOH will employ specialists in hazardous material and waste matters to provide sampling, testing, and clean-up cost estimates, which will be used by the WVDOH in negotiation and administrative decision making.

Appraisers would be wise to indicate in the appraisal that the property is being appraised as if clean and any hazardous materials or waste are not considered, per instructions from the WVDOH.

### **UNDERGROUND STORAGE TANKS (UST)**

The appraiser has the obligation to report any known or suspected underground storage tanks if they are not already shown on the plans.

All underground storage tanks known to exist should be listed in the report, with information regarding size, type, age, and ownership of the tanks. All underground storage tanks are to be handled the same way, regardless of ownership or use status.

Existing underground storage tanks should normally be valued at their contributory value to the property.

## **CONCLUSION – BEFORE VALUE OF ENTIRETY**

---

By now, it should be clear that WVDOH and FHWA strongly favor the use of the Sales Comparison Approach, when adequate market data exists, in establishing the fair market value of a property. There will be times, however, when more than one approach to value will, with good reason, be included in an appraisal report. In those instances, it is necessary for the appraiser to properly reconcile the value estimate of each approach used into a final value conclusion of the fair market value of the property being appraised.

The appraiser is responsible for weighing the significance and applicability of the values indicated by thoroughly reviewing and analyzing the range of values. The appraiser should consider the appropriateness of each approach to the appraisal problem, the reliability of the data used, and the consistency of available data throughout the entire appraisal process.

The appraiser should re-analyze the problem and decide whether there is a reasonable assurance that all significant data has been considered and properly applied, and that proper weight has been assigned to all pertinent factors. For instance, the appraiser would want to assure that all approaches are based on a consistent highest and best use, and the approaches and methods used are related to the property interests being acquired.

No matter how many approaches are used, the appraiser will usually find that there will be a range of values. A judgment or selection must be made since a specific conclusion of value is required for eminent domain appraisals.

A value spread or range is not acceptable. Indications of value should never be averaged.

Through a process of judgmental reasoning, a final value is estimated, considering whether all significant data has been accounted for, on what basis (approach) the market buys and sells the type of property involved, and what amount is the most convincingly substantiated based on the data presented.

## PARTIAL TAKING APPRAISALS

---

To arrive at an estimate of fair market value for the WVDOH, it is first necessary to establish the market value of the entire property. The next step is to estimate the market value of the part taken, before the take. The difference in these two value estimates indicates the value of the residue **before** the take, as it contributes to the whole. This value estimate is then compared to the residue value **after** the take.

The **residue value**, after the take, presumes a sale in accordance with the definition of market value, that reflects the price a purchaser would be willing to pay for the remaining property, assuming:

1. The project is completed and opened to traffic, and/or access.
2. The property is in its uncured condition.

That difference will indicate any increase or decrease in value attributable to benefits or damages.

The estimate of fair market value will then reflect value of the part taken, plus damages (if any) and consideration of all benefits (special and general) only insofar as they offset damages.

If the appraisal problem involves a partial acquisition of land and/or improvements, the appraiser must essentially begin again and consider the residue as a new property, which may require different approaches or a re-analysis of the same data or an entirely different group of data. There are many cases that do not require the re-appraisal of the residue, such as minor takings of land and site improvements where the residue is not damaged or benefitted by the taking.

Under West Virginia law, partial takings must be computed in the following manner:

1) Value of Entirety (Larger Parcel) Before the Take		\$ _____	
2) Value of Take			\$ _____
3) Value of Residue, Before Take	(1) minus (2)	\$ _____	
4) Value of Residue, After Take (include all damages (less) all benefits)		\$ _____	
5) Damages to Residue	(3) minus (4)		\$ _____
6) Temporary Easement(s) (if any)			\$ _____
7) Estimated Fair Market Value of Land and Improvements Taken (plus) Damages to Residue (if any) (less) All Benefits (2) plus (5) plus (6)			\$ _____

Steps (1) and (4) above often require completely separate valuations. Note that the value of the take is **always** paid to the owner and that **all** benefits (special and general) may be offset against damages, but not the value of the take.

## VALUATION OF RESIDUE

---

The residue (remainder) must be considered as a separate property from the **before** situation, and must be described and analyzed as an entity, separate and apart from the **before** situation.

The purpose of the appraisal is to estimate the market value of the residue. The function is to compare the **after**-value estimate with the value of the residue as a part of the entirety **before** in order to determine whether there is any reduction (damage) or enhancement (benefit) as a result of the acquisition.

The appraisal of the residue must be made presuming the proposed project has been completed according to construction plans and open for public use. This is considered to be a **hypothetical condition** under USPAP.

The **after-value** appraisal must be supported to the same extent as the entire, **before-value** appraisal.

Although some of the information contained in the appraisal of the whole property before may be applicable to the appraisal of the residue, the intent is to appraise the remainder as a separate entity without regard to the whole property or the acquisition.

It is unacceptable to describe or approach the valuation of the residue by reference of its relationship to, or as a part of, the before tract. It must be described and considered as a separate tract, as though the before situation never existed.

**NOTE:** The value of a temporary construction easement (TCE) should be based on the **after-value** of the property being appraised. It should be based on the percentage to which the property is being encumbered during the construction of the project.

### **EFFECT OF ACQUISITION ON RESIDUE** (Describe/Discuss)

- a) Change in size
- b) Change in shape
- c) Change in grade (slope)
- d) Access – after
- e) Partially remaining buildings and site improvements
- f) Compliance with present zoning (Reasons for noncompliance must be discussed.)

**NOTE:** If the improvements are essentially the same as those described in the appraisal of the whole property, reference to the description in that section will suffice.

### **HIGHEST AND BEST USE OF RESIDUE**

When the appraiser's opinion of highest and best use of the remainder is the same as for the property before the acquisition, a statement to that effect is acceptable. A change in use, or a use based on the probability of rezoning or some other occurrence requires a fully developed highest and best use explanation.

In cases where the utility and highest and best use of the residue is the same as the entirety before, the same data used in the before value may be re-analyzed.

When the take substantially changes the utility or highest and best use of the residue, a different, more comparable group of data should be analyzed.

### **APPROACHES TO AFTER VALUE**

Some latitude is allowed appraisers in selection of approaches and techniques employed in estimating the value of a residue after the take. Appraisers are expected to apply the most pertinent and persuasive approaches and techniques. It is understood that there are not always sales adequately comparable to certain residues from which a convincing direct comparison can be developed.

It is a good rule to first consider using the same approach(es) that were used in the before value of the entirety. When it is not practical, a different approach may have to be developed.

It is generally unacceptable for an appraiser to conclude that a residue is some percent or amount more or less valuable after the take without some data analysis or a thorough explanation of the reasoning process that led to the conclusion.

A major consideration is identification of the market in which the remainder property would be competitive. Comparable sales and rental data must be selected from those properties which a knowledgeable buyer would consider as alternatives to the remainder property. To the greatest extent practicable, the comparables should have the same characteristics as the remainder property. Adjustments necessary to compare each comparable individually to the remainder must be applied and explained.

If the appraiser's analysis of market data for the remainder, after a minor or insignificant taking, indicates that the comparable data and adjustments used in the appraisal of the whole property **before** are also the most comparable to the remainder, it is not necessary to repeat the sales analysis and comparison in this section of the appraisal. Reference to the appropriate page location of the analysis must be stated, and the reasoning for such conclusion must be fully explained. If additional adjustment is necessary to compare comparables used in appraisal of the whole property to the remainder, a sales grid should be included in this section of the appraisal.

The appraisal of **significant takings** requires that the remainder be appraised separately using all market data pertinent to the remainder, assuming the transportation facility (project) is completed and in operation as indicated in the plans.

## **CONCLUSION OF RESIDUE VALUE**

The discussion in the report shall include the appraiser's reasoning which led to the final value estimate. The appraiser should indicate which approach was given the most weight, explain why, and discuss any other conditions which influence the market value estimate. If an approach, other than the one given the most weight in the **before value** appraisal, is utilized, the appraiser must support and discuss the reasons for the change of emphasis.

The omission of an approach to value (Departure) must be discussed, if not previously disclosed as a Jurisdictional Exception to USPAP.

The residue value estimate must be allocated to the value contributions of land and improvements. Tenant-owned buildings, structures, and other improvements, and their contributory values must be separately identified.

## **DAMAGES TO THE RESIDUE**

The appraiser should describe and explain the marketability of the remainder. If no damages are indicated as a result of the acquisition, the appraiser should so state.

If damages are indicated, the amount must be computed, and each cause supported by the use of appropriate market data. Where such data are unavailable, studies or other supporting information must be included in the databook, or, if specific to one parcel, in the Addenda as an attachment to the report.

If damages cannot be mitigated (cost-to-cure) and there are no benefits, the difference between the value of the residue as a part of the whole property and the value of the residue after the acquisition is the fair market value.

## **AFTER SALES AND DAMAGE STUDIES**

All appraisers are requested to send any data they find concerning after sales of any kind to the Appraisal Section for distribution to all other appraisers.

## **NON-COMPENSABLE DAMAGES**

Not all damages are compensable and may not be included in the amount due to the owner(s) as fair market value. Inclusion of non-compensable damages will render an appraisal unacceptable.

The Legal Division of the West Virginia Department of Transportation, Division of Highways has prepared a list of items considered to be non-compensable under State Law, and it is required that any appraisal made reflects these rulings. These items are as follows:

a) **Loss of Business**

Loss by reason of interruption of business is non-compensable under eminent domain. *Gauley & Easter R/R Co. vs. C. A. Conley, et al*, 84 W. Va. 489A business conducted upon land is generally considered entirely distinct from the market value of the

land and has no determinative influence upon it except insofar as it illustrates one of the uses to which the land taken may be put. Nichols, supra, Sec. 13.3(1)

b) Loss of Profits

Loss of profits due to the necessity for moving a business, or loss of profits due to interruption of business by reason of and during the course of construction of public improvements, or for any reason at all, are ordinarily non-compensable.

Gauley & Easter R/R Co. vs. C. A. Conley, et al, 84 W. Va. 489, 100 S.E. 290; Buckhannon R/R Co. & Great Scott Coal Co., 75 W. Va. 423

c) Good Will

“Good Will” does not constitute “property” in the constitutional sense when land is taken under eminent domain. Nichols, supra, Sec. 13.31

d) Diversion of Traffic – Circuity of Access

When a governmental body makes a change in the location of a highway, the owner of property abutting thereon who is affected by such change cannot, ... recover damages by reason thereof when “reasonable access to and from his property is provided”. Heavner vs. State Road Commission, 118 W. Va. 630, 191 S. E. 574; Gardner vs. Bailey, 128 W. Va. 331, 36 S. E. 2nd 215; Richmond vs. Hinton, 117 W. Va. 223, 185 S. E. 411

e) Noise and Fumes or Damages in Annoyance and Inconvenience Suffered by the Public

Gardner vs. Bailey, 128 W. Va. 331, 36 S. E. 2nd 215

f) Future Damages

Damages recoverable in an eminent domain proceeding must relate to the time of the taking. They must be eminent and reasonable to be apprehended and not remote or merely possible. C. & P. Telephone Co. vs. Red Jacket Consolidated etc. Co., 95 W. Va. 406, 121 S. E. 278; Tennessee Gas Transmission Co. vs. Fox, 134 W. Va. 106, 58 S. E. 2nd 564

g) Moving Cost and Relocation Assistance Benefits

The West Virginia Department of Transportation, Division of Highways is authorized by the West Virginia Code 17-2A-20 to pay “relocation cost to persons dislocated by highway construction. Such cost, however, is not part of the eminent domain proceeding and shall be excluded from the appraisal.”

## **COST TO CURE DAMAGES**

Use of the “cost to cure damage” technique is appropriate when such cost is **less than** the difference between the remainder value “cured” and the remainder value “uncured”.

The property owner will be compensated for the cost to cure so they can cure the problem.

Appraisals of the remainder cured and uncured generally are not necessary when the cost to cure represents a minor expenditure to assure continued operation or use of the remainder.

When significant or major damages are involved the appraiser must report:

- a) The estimated value of the remainder as severed, before application of the “cost to cure”, and
- b) The estimated value of the remainder as severed, after application of the “cost to cure”.

The steps required are:

### 1) Valuation of Remainder - Uncured

The independent appraisal of the remainder before application of the “cost to cure” is one of the most critical parts of the “cost to cure” analysis (A mathematical subtraction is not acceptable.)

Undesirable marketability features, if any, of the remainder resulting from the taking, must be described and explicitly detailed in the report so that each item of potential damage reflected by the reduced value of the remainder is identified.

When the valuation of the remainder (uncured) is complex, the expertise of a specialist may be required to determine if all or a significant portion of the damages may economically be cured, and to estimate the “cost to cure”.

The appraiser must assure that the cure does not create an enhancement of value which did not exist in the property before the take.

If a “cure” involves re-establishment of an improvement, or portion thereof, which was paid for in the part taken, the amount paid must be deducted from the re-establishment cost in order to calculate the amount of the net “cost to cure”.

### 2) Valuation of Remainder – Cured

A “cure” may eliminate only a part of the monetary damages. Therefore, a valuation of the cured remainder is required for comparison with the uncured remainder value to assure that compensable damages from all causes have been estimated.

A “cure” must not normally require owners to go partially or wholly outside their property to affect the cure, such as the cost to purchase land to replace the land in the take. A cure based on such premise requires written approval from the project review appraiser or Appraisal Section Manager.

### **SITE IMPROVEMENTS REPLACED IN EXCESS OF COST TO CURE**

When site improvements such as trees, shrubs, fence, paving, etc. are taken, the contributory value of such features is paid as value of take. Any cost to replace such features above their contributory value may be treated as a cost to cure.

### **MINERAL VALUATION**

A mineral valuation is defined as the valuation of oil, gas, coal, limestone, or other mineral substance which can be extracted, produced, and/or marketed as an economic commodity.

Authorization for appraisal of a scheduled project initiates commencement of a detailed examination of the right of way plans to determine the existence of oil and/or gas wells, active coal mining, or other mineral production or mineral reserves. This examination should also address the existence or probable occurrence of any coal to be encountered during construction, “unmined, in-place” reserves of minable coal, or other economic minerals located within the right of way down to a depth of 400' below the roadway or natural ground, whichever is lower, or regardless of depth, any coal seam that is potentially recoverable through long-wall mining techniques where subsidence may be an issue, or in landlocked areas. This examination and/or occurrence of economic mineral production or reserves will be the basis for further evaluation.

All producing oil and/or gas wells and all mineral production areas will be examined in the field. Requests for valuation reports will be assigned to qualified specialists either in-house or through current contracting procedures in place at the time. Upon receipt, these reports will be reviewed and fair market value and just compensation determined. Mineral valuation reports are then transmitted to the proper District Right of Way Manager for negotiation and acquisition in the same manner as surface appraisal reports. All oil and/or gas wells must be plugged in accordance with the laws, rules, and regulations of the Office of Oil and Gas of the West Virginia Department of Environmental Protection. The amount estimated for plugging and abandonment must also be included in the valuation.

The valuation process applied to minerals involves estimating the fair market value of the loss of income resulting from the acquisition of the economically recoverable reserves as valued in place or the production facilities. In undeveloped coal areas where adequate data exists, the Comparable Sales Approach should be developed. In the absence of adequate comparable sales data, and when there is a reasonable probability of production in the reasonably foreseeable future, the Engineering Method and/or Income Approach may be developed to arrive at an estimate of fair market value.

West Virginia Department of Highways vs. Berwind Land Co., 280 S.E.2d 609 (1981) No. 14284 Supreme Court of Appeals of West Virginia; July 17, 1981 states that “the presence of mineral deposits, clay sand, gravel, or other minerals of value in or on land is an element of value to be considered in the arriving at market value of property taken by eminent domain.

1.) If the existence and quantity of mineral or other elements of value in a fee estate can be accurately determined, an expert witness may testify to his or her opinion of the value in place of one unit of that element and multiply it by the quantity of that resource present in or on the land to determine the value of the element in place.

2.) The owner of the fee property taken by eminent domain may prove the market value of the land by introducing evidence of the separate value of the elements present in or on the land when it can be shown that (1) the existence and quantity of the element of value can be accurately determined, (2) the other factors, such as the expense of production and marketing, were taken into consideration in arriving at the value sought to be introduced, (3) the element is clearly significant in value, and (4) the use of the property for purposes of exploiting that element of value is not inconsistent or incompatible with the highest and best use to which the property may be put or that the subservient use has been devalued to the degree it interferes with the highest and best use of the property taken. The jury should be instructed that the evidence of separate values is only a factor to be considered in determining the total market value of the land; to the extent, such separate values are inconsistent with the highest and best use of the land they should be disregarded in arriving at the figure of just compensation.”

“To establish the value of the land, the presence of crops, trees, shrubs, and timber upon it and of coal, oil, gas, stone, and other minerals and valuable deposits upon or under the surface may be shown. The presence, the nature, and the state of the development of all these components, contents, or elements, whatever they may appropriately be called, are pertinent as bearing upon and tending to establish the market value of the land. Consideration, however, should be confined to the land and its contents and elements together and as an entirety when there is no separate ownership with respect to any of them. The various components, contents, and elements are part of and, together with the surface, constitute the land in its entirety as a complete and composite unit. Generally, land of the character of that owned by the property owner is sold and has a market value by the acre and the price is affected by the various elements which give it value. The landowner is entitled to consideration of all the advantages which the land possesses, but the only proper inquiry is that which concerns the value of the land as land at the time of the taking. He or she may not realize on possibilities of increased value of the land except to the extent that they affect its then existing value.” The estimate of fair market value should not involve the unit rule of valuation.

The WVDOH may contract for Specialty Mineral Valuation and/or review as deemed necessary. See Appendix D for currently accepted contract procurement procedures.

### **VALUATION OF SIGNS AND BILLBOARDS**

There are two classifications of signs:

- 1) Outdoor Advertising Signs (Billboards) of all sizes, and
- 2) On-premise signs of all types and sizes. An on-premise sign advertises or gives information about a business or activity located on the property where the sign is located.

Because of their unique nature, signs are normally valued through the Cost Approach, with the depreciated replacement cost representing the “market value in-place” considering it personal property, as taxed.

If a sign is in the area of a taking or will be required to be removed, a separate valuation of each sign is required. The WVDOH expects the appraiser to be responsible for all sign valuation. If the appraiser isn’t competent on valuing signs, then it will be the appraiser’s responsibility to hire someone to perform a Specialty Sign Valuation when necessary.

## **REPORT ADDENDA EXHIBITS**

---

Any exhibits not contained in a data book or which refer principally to a given parcel should be contained within the appraisal report.

Items that are not required may be included if the appraiser believes they will add needed information or strengthen the validity of the appraisal report(s).

These items should be included in the report's Addendum.

## **SECTION III**

### **INFORMATION FOR CONTRACT REVIEW APPRAISERS**

---

The Contract Review Appraiser has the primary responsibility to assure that the appraisal report under review is in reasonable compliance with the existing requirements of the West Virginia Department of Transportation, Division of Highways, the Federal Highway Administration, and *Uniform Standards of Professional Appraisal Practice* (USPAP).

See Appendix D for currently accepted contract procurement procedures.

#### **RESPONSIBILITIES**

The following is an outline of some of the responsibilities of a Contract Review Appraiser:

- A. Assure that appraisal reports comply with the WVDOH's manual "*Information for Appraisers*" and with 49 CFR Part 24.
- B. Assure that appraisal reports comply with USPAP Standards 1 and 2.
- C. Assure that review reports comply with the WVDOH's manual "*Information for Appraisers*" and with USPAP Standard 3.
- D. Assure that each appraisal report and that the review documentation reflects Jurisdictional Exceptions, where applicable.
- E. Assure that each appraisal report and the review documentation reflect Additional Requirements, where applicable.
- F. Complete and submit a "Statement and Certification of Contract Review Appraiser" (Form RW 6.10-C) for each appraisal reviewed.
- G. Complete and submit a review statement and a "Statement of Just Compensation and Summary" (Form RW 6.11) for each appraisal reviewed. When applicable, a separate "Statement of Just Compensation and Summary" form will be completed and submitted which states the value of any tenant interests.
- H. Complete and submit a color photograph of the subject property for each appraisal reviewed.
- I. Complete and submit the Appraiser Evaluation (Form RW 6.25-E) for each appraisal reviewed.
- J. Complete and submit the Individual Services Contract Time Report (Form RW -TIME) for each appraisal requiring updates for court or plan revisions.

### **USPAP COMPLIANCE (Jurisdictional Exceptions)**

As of October 2017, 49 CFR 24 and USPAP are in reasonable concurrence. There are a few minor differences that are resolved by invocation of Jurisdictional Exceptions.

USPAP compliance and Jurisdictional Exceptions are discussed on page 17 of this manual.

### **DESK AND FIELD REVIEW**

A Staff or Contract Review Appraiser may perform the required desk and field review stages in any sequence. A technical review requires a field inspection of the subject and all comparable properties analyzed in the appraisal. Although the Review Appraiser is not required to perform interior inspections of subject or comparable properties, it is considered a good practice to make interior inspections, at least on a "spot check" basis, especially when reviewing the work of new Staff or Contract Appraisers or that of an Appraiser where past experience indicates a need to check more carefully. Interior inspections are recommended when there is a possibility of the Review Appraiser providing testimony in court.

### **MATH AND LOGIC CHECKS**

Correct arithmetic is important in any analysis dealing with value. Also important is the logical progression of thinking and computation that develops a logical conclusion. It is entirely possible to have an arithmetically perfect appraisal which results in an illogical and incorrect value. The Review Appraiser should review for logical value conclusions and be satisfied that the Appraiser's conclusion logically follows from the premise(s) upon which it is based before approving the value. All appraisal reports must comply, with the greatest degree possible, with the appropriate sections of the *Uniform Standards of Professional Appraisal Practice* (USPAP) in effect on the effective date of valuation where no Jurisdictional Exception applies.

**NOTE:** Wherever in conflict, appraisal requirements under the Uniform Act will always take precedence over those required in USPAP.

### **TWO APPRAISALS WITH DIVERGENT VALUES**

A Review Appraiser may be called upon to review more than one appraisal of the same property. When there is more than one appraisal, they should be compared on all elements within the reports noting any significant differences. The Review Appraiser should keep in mind that appraisals can have similar final value conclusions but differ significantly on individual elements within the appraisal.

Technical differences include factors such as the size of the property, the age of improvements, the property's zoning, the selling price of a comparable, whether the property is leased or encumbered by an easement, or the physical characteristics of access to the remainder. Such differences are basically matters of fact and can usually be resolved by the Review Appraiser.

Some differences between appraisals are matters of judgment. Appraisers may disagree on highest and best use, damages to the residue, selection of valuation techniques, contributory value of improvements, types, and amounts of depreciation, or the appropriateness of using certain

comparable sales or rentals.

The Review Appraiser has a responsibility to explain or reconcile all significant differences between the appraisals. When a factual error is found, the reviewer should inform the Appraiser(s) in writing and have the Appraiser(s) verify the facts and revise the appraisal. Usually, errors of fact can be readily resolved.

When Appraisers disagree on matters of judgment, the Review Appraiser may ask one or more of the Appraisers to reconsider their positions on the elements of value in question or to provide additional data or rationale to support their positions. The Review Appraiser must be careful not to direct or dictate a different opinion from the Appraiser(s). Rather, the Review Appraiser should question the Appraiser in a way that will prompt a reconsideration of the appraisal problem in question. All value related communication between the WVDOH personnel and Contract Appraisers/Review Appraisers should be in writing and become part of the parcel file.

After attempts to reconcile divergences, the Review Appraiser will usually have at least one appraisal which can be approved as the basis for the offer of just compensation. If at this point significant divergences remain, the Review Appraiser's written report should point out the differences and explain why the reviewer agrees with one and not the other.

If the Review Appraiser agrees with one Appraiser on some points and the other Appraiser on others, elements of both appraisals may be combined into a final "Review Appraiser's Determination of Value". Under unusual circumstances, the "Determination" may be so complex that it stands alone as a separate appraisal. The "Review Appraiser's Determination" requires the same level of documentation and support as an appraisal.

One solution to the problem of reconciling appraisal differences is to suggest that an additional appraisal be ordered. When making such a recommendation, the Review Appraiser hopes the new appraisal will confirm the value of one of the original Appraisers. However, there is the risk that the new Appraiser may come up with an entirely different conclusion and further complicate the problem. When this happens, the Review Appraiser must resolve the problem with a "Review Appraiser's Determination of Value".

### **MAINTAINING CONSISTENCY**

One of the responsibilities of the Review Appraiser is to assure that closely similar properties on a project have like unit values placed on them or be prepared to explain why those values differ.

### **REVIEW OF PROPERTY OWNER'S APPRAISAL**

An appraisal submitted by a property owner should be considered. The Review Appraiser should always be willing to consider any new information not previously considered or known. Significant new information might be given to the appraiser for further consideration, or the Review Appraiser may choose to update the just compensation offer based on the additional data or the appraisal.

It is very important that the Review Appraiser document the review and consider all

material submitted by the property owner. This will ensure compliance with 49 CFR Part 24 and USPAP. The Review Appraiser also has the responsibility to reject any property owner appraisals which do not comply with existing appraisal standards or regulations. Certainly, if the property owner's appraisal is more persuasive than those in the agency's file, the Review Appraiser can approve or recommend that amount.

### **REVIEW OF SPECIALTY REPORTS**

The Appraisal Section Manager, Project Review Appraiser, or Specialty Review Appraiser may retain a specialty valuation expert through the current contract procurement procedures in place at the time.

The Project Review Appraiser (Staff or Contract) is responsible for the review and coordination of all appraisals and any associated specialty valuation reports such as coal, oil, gas, timber, machinery, and equipment, hazardous material/waste clean-up estimates, and any other required specialty reports.

The Project Review Appraiser must inform all parties involved when coordination is required such as timber or machinery and equipment. It is very important that the Appraiser coordinate with the Specialist as to which items will be valued by which party.

The results of secondary valuation reports (minerals, fixtures, or timber valuations) cannot simply be added to the value of the land to arrive at a value of the property as a whole without proper analysis by the review appraiser. The review appraiser must consider these components of the property in light of how they contribute to the market value of the property as a whole and not be in conflict with highest and best use.

The component values from the Appraisal and the Specialty report must be itemized in the Statement of Review Appraiser (Form RW 6.10-C or Form RW 6.10-PM).

## **SPECIAL RESPONSIBILITIES**

---

### **JUST COMPENSATION, ABOVE FAIR MARKET VALUE**

Existing federal law and regulations require the WVDOH to establish “just compensation”, which shall not be less than the approved appraisal of “fair market value”. It follows then, that just compensation may, under certain circumstances in eminent domain situations, **be greater than** fair market value.

Any acquisition under the threat of condemnation violates the “willing seller” provision of the definition of market value. This creates a dichotomy which most appraisers and review appraisers recognize and generally allow for by usually finding in favor of the property owner when doubt or questionable results occur. Beyond this appropriate safeguard, the review appraiser may recommend just compensation in excess of fair market value.

There are many situations where market value may not represent just compensation. For example, cases where owners may have constructed buildings, structures or other improvements to suit their special and particular needs. The market value of such a special use improvement may not even come close to its **value-in-use** to the owner. Had it not been for the acquisition, the owner(s) would likely have continued to use these facilities for many years to their satisfaction, caring less what their **market value** may be.

This also applies to commercial and residential owners who may have created a monster on the market by building in functional obsolescence for which the market would never be willing to pay, but which features the owner(s) considered desirable and important. What the market would pay (market value) may not fairly represent just compensation.

In these cases, the review appraiser may simply add back in the functional obsolescence that the appraiser properly deducted in the estimate of market value. The result would tend to better represent just compensation. The review appraiser must explain the reasoning for increasing the amount to be offered above the appraised market value.

There are certain property types, such as hotels, motels, and restaurants that normally sell as a package. The package typically includes land and buildings **plus** furniture, fixtures, and equipment (FF & E), much of which would be classed as personal property under landlord-tenant law but may be considered as an assembled economic unit under eminent domain law.

The problem in West Virginia is that personal property cannot be condemned. However, amicable, negotiated through agreements to purchase assembled economic units is, in the interest of just compensation, not only appropriate, it is more representative of just compensation than market value would be in such cases.

It is strictly the review appraiser’s responsibility to recommend just compensation, which may be above fair market value. It is the appraiser’s responsibility to report fair market value only.

## **RECOMMENDATION OF UNECONOMIC REMNANT OPTION(S)**

**Uneconomic Remnant** defined: *A remaining part of a property, after a partial acquisition that the Division of Highways has determined to be of little or no value or utility to the owner.*

Existing law and regulations require the WVDOH to offer to purchase any uneconomic remnants.

When applying the law to specific properties, the review appraiser and the WVDOH's Administrators must understand the intent of the law. The legislative history of the law indicates the **intent** is "**to not leave the owner a remnant of property that is no longer economic for them to retain**" or constitutes a loss to the owner not compensated for under the laws of eminent domain.

Making a decision as to what constitutes an uneconomic remnant, as well as many of the other decisions required of appraisers, review appraisers, and WVDOH Administrators requires the use of reasonable judgment.

The existing regulations concerning uneconomic remnants encourage a rather liberal interpretation as to what constitutes an uneconomic remnant. If the WVDOH acquires an uneconomic remnant and does not incorporate it within the right of way, the State of West Virginia may then sell (or lease) the uneconomic remnant.

If a small tract of land is left with impaired access or no reasonable expectation of demand for any purpose except as additional land for one or two adjoining properties, the owners should not be left with the alternative of paying taxes on this piece of property which they cannot use. This paraphrases the legislative intent of uneconomic remnant as included in the "Uniform Act".

Uneconomic remnant options are not to be made by the Appraiser or in the Engineering Function. The determination to recommend a remainder to be of little or no utility or value to the owner is **an administrative determination based on a recommendation by the review appraiser**. It is not based on the subjective, exaggerated, or self-serving views of the owner or the market value of the residue. An owner's statements and opinions about the value and utility of a residue may be taken into consideration but are not the sole basis for recommending an uneconomic remnant.

The decision as to what constitutes an uneconomic remnant becomes much more complex when larger, more valuable portions of a property remain that have access and substantial market value.

In some cases, a residue may have considerable market value, but have little or no value or utility to the owner.

## UNECONOMIC REMNANT

---

When it is determined that an uneconomic remnant exists, the Contract Review Appraiser shall add a statement on the “Statement and Certification of Contract Review Appraiser (Form RW 6.10-C) using language similar to the following:

**UNECONOMIC REMNANT RECOMMENDATION:**

**Due to the (state the reason), the review appraiser has determined that the residue of this parcel will have little or no value or utility to the owners and recommends an optional offer of (\$ add the amount) be made in accordance with 49 CFR 24.2(a)(27) and 24.102(k).**

**NOTE:** The approved fair market value and the required breakdown is entered in the usual place on the “Statement and Certification of Contract Review Appraiser (Form RW 6.10-C) and the uneconomic remnant must be noted in the Review Statement.

The recommended Uneconomic Remnant Option is also entered on the “Statement of Just Compensation and Summary” (Form RW 6.11) as an “**Optional Allocation**” following the allocation of the approved fair market value.

## APPENDIX A EXAMPLE

### SEQUENCE OF ADJUSTMENTS

The following example uses the suggested sequence of adjustments and shows one comparable sale adjustment by converting percentage adjustments to dollars.

<u>Elements of Comparison</u>	<u>Percentage Adjustment from Market</u>	<u>Adjustments to Comparable Sale Price</u>
Sale Price		\$250,000
+/- Adjustment for Property Rights Sold	+ 3%	<u>7,500</u>
Adjusted Price		\$257,500
+/- Cash Equivalency (Special Financing)	- 4%	<u>(10,300)</u>
Adjusted Price		\$247,200
+/- Conditions of Sale (Motivation)	(Normal)	<u>-0-</u>
Adjusted Price		\$247,200
+/- Market Conditions (Time)	+ 6%	<u>14,832</u>
Adjusted Price		\$262,032
Location (- Subject Inferior) or (+ Subject Superior)	- 10%	(26,203)
Condition (- Subject Inferior) or (+ Subject Superior)	+ 15%	39,305
Size (+ Subject Smaller) or (- Subject Larger)	+ 5%	<u>13,102</u>
Net Adjusted Percent (%)	+ 10%	
Net Adjusted Price (\$)		<u>\$26,203</u>
Indicated Value of Subject		\$288,236
	Rounded to	\$288,500®

Note that each of the first four adjustments are applied separately, using subtotals (change of the base with each adjustment) until the adjustments for the specific differences between the subject and the comparable are made to reduce the distortion of using the sale price as the base in each step.

After the market conditions adjustment is made, the resulting adjusted price remains as the base for all subsequent adjustments.

## **APPENDIX B**

### **APPRAISAL FORMATS**

---

The WVDOH has the following formats available for various appraisal situations which normally occur.

#### **Restricted Appraisal Report Format (Form RW 6.06)**

- (M) Market Approach Only
- (C) Cost Approach Only
- (M/C) Market and Cost Approaches

#### **Appraisal Report Format (Form RW 6.06)**

- (M) Market Approach Only
- (C) Cost Approach Only
- (M/C) Market and Cost Approaches
- (D) Detailed – All 3 Approaches Considered

**NOTE:** Most assignments for the West Virginia Division of Highways will request an Appraisal Report Format.

See Exhibits in Appendix C for samples of Appraisal Forms.

#### **MARKET APPROACH ONLY (M) (SALES COMPARISON)**

The Market Approach Only (M) (Sales Comparison) report format (Form RW 6.06) requires the following Appraisal Form pages of a narrative format, which addresses all required items on these pages.

Front Cover Page	
Page 1	Certificate of Appraiser
Page 2	Parcel Information
Page 3	Description of Property
Page 4	Photos and Sketch
Page 5	Market Approach
Page 8	Summary – Value of Entirety

If the appraisal involves a partial taking, these additional pages may be required:

Page 5	Market Approach to Establish Unit Land Value for Take
Page 9	Value of Take and Residue – Before
Page 10	Description of Residue/Effects of Take
Pages 5, 6, 7	Value of Residue – After Take (any or all pages)
Page 11	Reconciliation and Conclusion of FMV

### **COST APPROACH ONLY (C)**

The Cost Approach (C) report format (Form RW 6.06) will require the following Appraisal Form pages to estimate the value of the entirety (Larger Parcel).

Note: A copy of the source data for cost information used must be provided.

Front Cover Page	
Page 1	Certificate of Appraiser
Page 2	Parcel Information
Page 3	Description of Property
Page 4	Photos and Sketch
Page 5	Market Page for Land Value
Page 6	Cost Approach
Page 8	Summary – Value of Entirety

If the appraisal involves a partial taking, these additional pages may be required:

Page 9	Value of Take and Residue – Before
Page 10	Description of Residue/Effects of Take
Pages 5, 6, 7	Value of Residue – After Take (any or all sheets)
Page 11	Reconciliation and Conclusion of FMV

### **MARKET AND COST APPROACHES (M/C)**

This format may be requested when a lack of market data is anticipated, and the property is improved, or when there is a question as to highest and best use, interim improvement value, or when the improvement is fairly new and is a proper improvement.

The Market and Cost (M/C) Approach report (Form RW 6.06) will require the following Appraisal Form pages to estimate the value of the entirety (Larger Parcel).

Front Cover Page	
Page 1	Certificate of Appraiser
Page 2	Parcel Information
Page 3	Description of Property
Page 4	Photos and Sketch
Page 5	Market Page for Land Value
Page 6	Cost Approach
Page 8	Summary – Value of Entirety

If the appraisal involves a partial taking, these additional pages may be required:

Page 9	Value of Take and Residue – Before
Page 10	Description of Residue/Effects of Take
Pages 5, 6, 7	Value of Residue – After Take (any or all sheets)
Page 11	Reconciliation and Conclusion of FMV

**DETAILED REPORT (D) (MARKET, COST, AND INCOME APPROACHES CONSIDERED)**

This format will rarely be requested unless the parcel contains an investment type property where the principal motivation of buyers is the potential rental income production. This type of property is not frequently encountered on highway projects in West Virginia.

For the State of West Virginia, this report format requires a Certified General Real Estate Appraiser having a certification issued by the West Virginia State Appraisal Licensing Board.

The Detailed Report (D) format (Form RW 6.06) will require the following Appraisal Form pages if all three approaches are developed to determine the value of the entirety (Larger Parcel).

Front Cover Page	
Page 1	Certificate of Appraiser
Page 2	Parcel Information
Page 3	Description of Property
Page 4	Photos and Sketch
Page 5	Market Page for Land Value
Page 5	Market Approach as Improved
Page 6	Cost Approach
Page 7	Income Approach
Page 8	Summary – Value of Entirety

If the appraisal involves a partial taking, these additional pages may be required:

Page 9	Value of Take and Residue – Before
Page 10	Description of Residue/Effects of Take
Pages 5, 6, 7	Value of Residue – After Take (any or all sheets)
Page 11	Reconciliation and Conclusion of FMV

## **APPENDIX C**

### **FORMS**

---

Form RW 6.04	Individual Services Contract – Appraisal / Appraisal Review
Form RW 6.06	Appraisal Report
Form RW 6.07-PM	Property Management Appraisal Report
Form RW 6.10-C	Certificate & Statement of Contract Review Appraiser
Form RW 6.10-PM	Certificate & Statement of Contract Review Appraiser – Property Management
Form RW 6.11	Statement of Just Compensation and Summary
Form RW 6.17-F	Invoice - Appraisal / Appraisal Review Services – Fee on Contract
Form RW 6.17-H	Invoice - Appraisal / Appraisal Review Services – Hourly Basis
Form RW-TIME	Individual Services Contract – Time Report
Form RW 6.25-E	Appraiser Evaluation Form
Form RW 6.25-E(1)	Appraisal Evaluation Form – Rating Criteria

## **APPENDIX D CONTRACTING WITH INDIVIDUALS FOR APPRAISAL SERVICES / APPRAISAL REVIEW SERVICES**

---

Information concerning **contracting** procedures, **bid** procedures, qualifications to be included on the WVDOH Approved Appraiser List, **forms** that are required in this section, etc., **MUST** be directed to the Right of Way Division Director and/or the Right of Way Division Contracting Manager.

**CHAPTER 7**  
**RIGHT OF WAY CONSULTANT SERVICES**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 7.00	Introduction .....	1
<b>Section 7.10 - COMBINED RIGHT OF WAY SERVICES SELECTION.....</b>	<b>1</b>	<b>1</b>
Section 7.10.1	Procurement Method to be Used .....	1
Section 7.10.2	Advertise Annually for Pre-Qualification .....	1
Section 7.10.3	Submission of Non-Priced Proposals Including Qualification Questionnaire ...	2
Section 7.10.4	Non-Priced Proposals Evaluation by Committee .....	2
Section 7.10.5	Letters of Interest .....	3
Section 7.10.6	Long List Submission for Approval which Included Letter of Interest Information ....	4
Section 7.10.7	Committee to Determine Qualified Consultants for Individual Projects ....	4
Section 7.10.8	Independent Cost Estimate .....	4
Section 7.10.9	Submission of Short List Approval .....	5
Section 7.10.10	Consultant Notified & Scope of Work Meeting Held .....	5
Section 7.10.11	Consultant Submits Priced Proposal .....	5
Section 7.10.12	Priced Proposal Reviewed & Audited .....	6
Section 7.10.13	Priced Proposal Approved & Contract Executed .....	7
Section 7.10.14	Project Management .....	7
Section 7.10.15	Invoicing .....	7
Section 7.10.16	Request for Extension .....	9
Section 7.10.17	Notification of Completion .....	9
Section 7.10.18	Disposition of Errors & Deficiencies .....	9
Section 7.10.19	Retention of Records .....	9
<b>Section 7.20 - CONTRACT APPRAISAL/APPRAISAL REVIEW SECTION 10</b>	<b>CONTRACTING PROCEDURES FOR APPRAISAL/APPRAISAL REVIEW</b>	<b>10</b>
Section 7.21.1	Procurement Method to be Used .....	10
Section 7.21.2	Public Notice – Requests for Letters of Interest .....	10
Section 7.21.3	Pre-Qualification of Individual Appraisers/Reviewers .....	11
Section 7.21.4	Requests for Rate Quotations .....	11
Section 7.21.5	Selection Rating Criteria for Appraisers/Review Appraisers .....	12

Section 7.21.6	Contract Process .....	12
Section 7.21.7	Appraisal/Review Fee Schedule .....	14
Section 7.21.8	Invoicing & Time Reporting .....	14
<b>Section 7.30 – RESERVED FOR FUTURE USE .....</b>		<b>14</b>
<b>Section 7.40 - ACQUISITION SERVICES SECTION.....</b>		<b>15</b>
<b>CONTRACTING WITH INDIVIDUALS FOR NEGOTIATION SERVICES</b>		
Section 7.41.1	Procurement Method to be Used .....	15
Section 7.41.2	Public Notice – Requests for Letters of Interest .....	15
Section 7.41.3	Pre-Qualification of Individual Negotiators .....	15
Section 7.41.4	Request for Rate Quotation .....	15
Section 7.41.5	Selection Rating Process for Negotiators .....	15
Section 7.41.6	Selection Rating Criteria for Negotiators .....	16
Section 7.41.7	Contracting Process .....	16
Section 7.41.8	Invoicing & Time Reporting .....	16
<b>Section 7.50 - RELOCATION SERVICES SECTION.....</b>		<b>17</b>
<b>CONTRACTING WITH INDIVIDUALS FOR REPLACEMENT HOUSING, PROPERTY MANAGEMENT &amp;/OR MOVING COSTS SERVICES</b>		
Section 7.51.1	Procurement Method to be Used .....	17
Section 7.51.2	Public Notice – Requests for Letters of Interest .....	17
Section 7.51.3	Pre-Qualification of Individual Relocation & Property Management Specialists .	17
Section 7.51.4	Request for Rate Quotation .....	17
Section 7.51.5	Selection Rating Process for Relocation & Property Management Specialists.....	18
Section 7.51.6	Selection Rating Criteria for Relocation & Property Management Specialists ....	18
Section 7.41.7	Contracting Process .....	18
Section 7.51.8	Invoicing & Time Reporting .....	19
Section 7.60	Definitions .....	19

## **CHAPTER 7**

### **RIGHT OF WAY CONSULTANT SERVICES**

#### **7.00 - INTRODUCTION**

These guidelines have been prepared to inform Consultant firms and WVDOH personnel of the guidelines and methods of requesting a Letter of Qualification (commonly called a letter of interest), preparing fee proposals, negotiation procedures, agreement considerations, invoicing procedures and instructions, and other related subjects.

The information contained within these guidelines is applicable to all types of consultant agreements including combined right of way services, individuals for acquisition appraisals, individuals for property management appraisals, individuals for appraisal review services, individuals for negotiation services, and replacement housing and/or moving cost services.

The WVDOH policy requires that Disadvantaged Businesses shall have the maximum opportunity to participate in the performance and award of contracts, whether financed in whole or in part with Federal funds in accordance with the Division of Highways; Disadvantaged Business Enterprise Program.

#### **7.10 - COMBINED RIGHT OF WAY SERVICES SECTION**

##### **7.10.1 - PROCUREMENT METHOD TO BE USED**

The procurement method to be used for contracting with firms for combined Right of Way Services contracts will follow the provisions of West Virginia Code §5A-3-3(9), West Virginia Code §17-2A-8, Federal Highway Administration Project Development Guide 4., "Contracting for Right-of-Way Services", 2 CFR 200.317 and 2 CFR 200.320.

##### **7.10.2 – ADVERTISE ANNUALLY FOR PRE-QUALIFICATION**

A list of prequalified firms available to perform WVDOH Consultant work shall be completed annually by the Administrative Section. The pre-qualified list shall be open for a maximum of one year. Classified advertisements will be placed in at least one statewide newspaper in general circulation for request for non-priced proposals. Upon approval of the Commissioner of Highways, this advertisement will be placed prior to the start of each fiscal year with a deadline for submittals as determined annually. The advertisement will also be on the West Virginia Department of Transportation's webpage.

The request must identify all evaluation factors and their relative importance, such as, the types of services being requested, number and availability of qualified personnel, geographical area to be considered, etc. The advertisement must clearly indicate that a current copy of the "Consultant Confidential Qualification Questionnaire", RW Form CQ, must either accompany the response or be on file with the Division of Highways. (See Appendix 7-1, example of advertisement.)

Any consultant who wants to request inclusion on the list may file the proper pre-qualification documents pursuant to an advertisement at any time the list is open. If the consultant meets the qualifications to be included on the list, the consultant shall be placed on the list for the remainder of the term of the list.

### **7.10.3 - SUBMISSION OF NON-PRICED PROPOSALS INCLUDING QUALIFICATION QUESTIONNAIRE**

A summary of the qualifications must be incorporated into the consultant's non-priced proposal and submitted to the WVDOH on the "Right of Way Consultant Qualification Questionnaire". (See Appendix 7-2.) The CCQQ will be reviewed to determine the Consultant's overall capabilities to handle the proposed work, including available workforce, personnel qualifications, and present overall workload.

If the consultant is anticipating the use of sub-consultants to supplement their workforce, the consultant may subcontract certain portions of the services to be provided so long as the consultant performs with its own organization and personnel, work amounting to not less than 50% of the original contract price. Sub-consultant and subcontractor performance is subject to all the same laws and regulations applicable to that of the consultant.

The submission should indicate whether a cost accounting system has been maintained and is in effect such that it is capable of segregating and identifying accumulating costs for each job that is performed under cost-type contracts. A completed "Cost Accounting Information Statement" is required with each submission. (See Appendix 7-3.)

### **7.10.4 - NON-PRICED PROPOSALS EVALUATION BY COMMITTEE**

An Evaluation Committee consisting of the Director of the Right of Way Division, Project Managers, and/or Section Heads or their designees will carry out an evaluation of all non-priced proposals. Each member of the evaluation committee shall read and evaluate each non-priced proposal considering and weighing several pertinent factors, such as other project experience, staffing, etc. This information will be summarized on an evaluation form. This review will result in a listing of all pre-qualified firms. (See Appendix 7-4.)

A review will be made by the Administration Section of the default Workers Compensation and Unemployment Compensation files to determine if the consultant is in good standing or is default. If the consultant is in default, they will be notified by letter by the Administration Section of the default status and their need to contact the WorkForce WV.

The consultants will be notified in writing by the Administration Section if they have been added to the pre-qualified listing.

### **7.10.5 - LETTERS OF INTEREST**

Once a project has been identified that will require the use of pre-qualified consultants, all pre-qualified consultants will be notified by letter or e-mail of the project(s) and requested to submit information pertaining thereto. This notification letter will state each project(s), location(s), and number of parcels including number of families and businesses, if applicable. (See Appendix 7-5, example of letter of interest request.)

If interested in obtaining the contract for services, the consultant will be required to submit in writing a letter of interest, which shall include:

- a. A completed Cost Accounting Information Statement if not previously submitted. (See Appendix 7-3)
- b. Hourly rates for specific employee classifications:
  - Project Manager
  - Right of Way Agent
  - Relocation Agent
  - Right of Way Trainee
  - Administrative Assistant Clerical
- c. Copy of the most current audited overhead rate if not previously submitted.
- d. Specify the project(s) for which they are submitting the letter of interest.
- e. Current staffing availability and workloads should be provided if changes have occurred since the submittal of the non-priced proposal and the Right of Way Consultant Confidential Qualification Questionnaire. (See Appendix 7-2)

The consultant is to submit the responses within the period specified in the letter (normally ten (10) working days).

The Evaluation Committee will review the replies that have been received and determined to be complete. The Evaluation Committee will evaluate the proposals, based on the following criteria, which are listed in descending order of importance:

- a. Experience and qualification of consultant's staff and subcontractors to be assigned to the project.
- b. An evaluation of the submitted hourly rates and overhead information will be performed.
- c. Cost will be weighted at not less than 30% but shall not be the primary determinative factor in the evaluation.
- d. Preference will be given for experience in governmental right-of-way activities.
- e. References will be considered.

- f. From this review, a “Long List” of qualified consultants will be prepared.

#### **7.10.6 - LONG LIST SUBMISSION FOR APPROVAL WHICH INCLUDED LETTER OF INTEREST INFORMATION**

The Long List will be submitted to the Selection Committee for their review and approval. The Selection Committee consists of the Secretary of Transportation, the Commissioner of Highways, the State Highway Engineer, and the next lower level of management beneath the State Highway Engineer under whose direction the work will be performed. The Secretary of Transportation may appoint additional members at their discretion.

#### **7.10.7 - COMMITTEE TO DETERMINE QUALIFIED CONSULTANTS FOR INDIVIDUAL PROJECTS**

Subsequent to approval of the Long List, the Right of Way Division Director shall designate the appropriate staff to review the letter of interest and initial proposal information to assure that pertinent information and data have been submitted. The Right of Way Division Director will provide information and comments from this review to the Selection Committee.

The review should include but not be limited to:

- a. Comparison with factors of interest
- b. Qualifications
- c. Technical evaluation
- d. Previous performance evaluations
- e. Completeness of submitted information

Cost will be weighted at not less than 30% but shall not be the primary determinative factor in the evaluation. The evaluation committee shall then meet to discuss the relative merits of the proposals and a listing of firms to be submitted to the Selection Committee. The evaluation will rate the consultants using the Consultant Rating Form (See Appendix 7-6). The review performed by the Evaluation Committee will result in a Short List.

#### **7.10.8 - INDEPENDENT COST ESTIMATE**

The Director of the Right of Way Division or designee will prepare an independent cost estimate prior to the submission of priced proposals. The estimate will include, but not be limited to, the type and number of expected services, estimated costs to perform the services and types of personnel needed for the services.

### **7.10.9 - SUBMISSION OF SHORT LIST APPROVAL**

The Short List will be forwarded to the Selection Committee for final selections. These reviews will include, but not be limited to, the following:

- a. Qualification
- b. Technical evaluation
- c. Previous performance with WVDOH
- d. Completeness of submitted prospectus (non-priced proposal)
- e. Cost information submitted

A selection will be made of the approved consultant.

### **7.10.10 - CONSULTANT NOTIFIED AND SCOPE OF WORK MEETING HELD**

Once a selection has been made the Right of Way Director or designee will notify the consultant of the selection and a scope of work meeting will be scheduled. Refer to Appendix 7-7A-E for Scope of Work Examples.

### **7.10.11 - CONSULTANT SUBMITS PRICED PROPOSAL**

Following the Scope of Work Meeting, the selected consultant shall submit a priced proposal. This priced proposal shall include:

- a. Brief statement of consultants' understanding of the project.
- b. A work plan detailing the approach the consultant intends to follow in accomplishing the project.
- c. Estimated hours to be spent by each staff member on each task identified in the work plan.
- d. Appraisal fees, if a part of the scope of work. (Individual parcel prices are required; average or flat fee parcel is not acceptable)
- e. All wages are to be shown as hours x rates by individuals and/or classification. No daily rates are to be submitted.
- f. Certified labor rates.
- g. Itemized breakdown of all costs - no lump sum amounts.

- h. Proposed salaries and overhead are not to exceed the WVDOH's limits.
  - 1. Salary for any individual or classification is not to exceed the WVDOH's current limit
  - 2. Overhead is not to exceed the WVDOH's current limit per fiscal year
- i. Airline and other common carrier travel costs will be allowed, if customary and reasonable and approved in advance by the Right of Way Division.
- j. Meals, mileage, lodging, and other transportation will be allowed if customary and reasonable, and allowed under the current state travel regulations.
- k. The Consultant's maximum allowable profit cannot exceed the rate determined by the West Virginia Transportation Auditing Division.
- l. The Sub-consultant's maximum allowable profit of their portion of the contract cannot exceed the rate determined by the West Virginia Transportation Auditing Division.
- m. The Sub-consultant's fee proposal shall be included in the prime Consultant's fee proposal. The Sub-consultant's fee proposal shall be in the same format as the prime Consultant's fee proposal.

The priced proposal is to be submitted within the time period designated at the scope of work meeting.

#### **7.10.12 - PRICED PROPOSAL REVIEWED AND AUDITED**

The submitted priced proposal will be reviewed by Right of Way personnel for correctness, completeness, and concurrence with the scope of work. Regulations require that in most cases an audit will be conducted of the overhead and expenses which are claimed in the fee proposal. The priced preliminary proposal will be submitted to the Transportation Auditing Division for a preliminary proposal review, when required. The results of this review must be included in a revised fee proposal before final agreement can be reached on the fees. After receipt of Auditing's review, corrections, negotiations, and the submission of a new proposal may be required. A technical review of the costs may need to be prepared by the Right of Way Division.

The WVDOH can authorize the consultant to begin work prior to the execution of an agreement with the issuance of a Notice to Proceed. This letter from the Commissioner or his/her designee to a Consultant authorizing work to begin prior to the execution of an agreement is with the understanding that the Consultant will be reimbursed by the WVDOH for any and all reasonable monies expended for work authorized if an agreement is not executed by any and all of the parties concerned.

The final priced proposal with a copy of the draft agreement and the technical review shall be submitted to Transportation Auditing Division for final proposal review (if appropriate).

### **7.10.13 - PRICED PROPOSAL APPROVED AND CONTRACT EXECUTED**

Once the price proposal has been approved, the Right of Way Director or his/her designee will prepare a contract. (See Appendix 7-8).

### **7.10.14 - PROJECT MANAGEMENT**

The Director of Right of Way shall assign a project manager to each project and Consultant. This project manager is responsible to oversee the individual project proceedings and the work performance by the consultant. The project manager will assist with any problems or questions that may occur with the Consultant. The project manager shall regularly inform the Director of Right of Way of the Consultant's progress or problems by the Consultant. The project manager is generally the District Right of Way Manager.

A performance evaluation form shall be completed at the end of the project. This form is to be submitted with the final invoice to Transportation Auditing Division.

### **7.10.15 - INVOICING**

All invoices are to follow the guidelines as set forth below:

- a. No invoices can be submitted or paid prior to the executed agreement.
- b. The work must be completed and approved prior to invoicing the WVDOH.
- c. Invoices are to be addressed to the Project Manager, who will review them for completeness, and forward them to the Central Office Administration Section for processing.
- d. Each project is to be invoiced separately.
- e. Identify project by number and location.
- f. Identify invoice by WVDOH project number and date (not by amount).
- g. Identify invoice by Federal Employer's Identification Number (FEIN).
- h. Content of invoice submissions:
  1. Original of each document is to be submitted with one (1) copy of each document.
  2. Original must have original certification signature and title of officer of the company. The signature must be with blue ink.
- i. All Invoices shall have the following attachments:

1. A tabulation of direct payroll costs, which includes employees' names (or acceptable identifier), title, and salary.
  2. Direct payroll costs should have backup which shows the pay period involved, the employee name, the hourly rate and the amount (example payroll registers).
  3. A tabulation of direct non-salary costs which should be detailed by vendor date and amount. Copies of paid vouchers, invoices, and expense accounts shall be attached.
- 
- j. Invoice must have a column for "current expenses" plus a total to date column.
  - k. A completed BF-2 or Form RW 10.01, depending on authorization org shall accompany the original and all invoice copies.
  - l. All computations are to be mathematically correct.
  - m. An invoice submission may be made up of several of the invoice forms as shown in Appendix 7-9.
  - n. The WVDOH will not honor any invoice for work performed prior to the notice to proceed. Approval must be in writing.
  - o. The breakdown for sub-contractors and sub-consultants must be provided with the prime invoice. This invoice must agree with the amounts being invoiced by the prime consultant. Copies of paid vouchers, invoices, and expense accounts shall be attached.
  - p. Invoices must be paid in sequential order.
  - q. The project manager is to review, approve, and stamp with signature all invoices prior to payment.
  - r. Upon submission of the final invoice, all records of direct costs (receipts, timesheets, expense accounts, payroll, etc.) must be in the Consultant's possession, filed, and reference the invoice number and the project number they were billed under.
  - s. Prior to the payment of the final invoice, the final invoice will be submitted to Transportation Auditing Division for audit of the project.
  - t. Submission of the final invoice to Transportation Auditing Division must include an invoice recap and direct labor recap. The invoice recap summarizes the costs per invoice and classification of costs: example direct labor, overhead, direct costs, etc. The direct labor recap summarizes the labor per invoice and Fiscal Year Ending dates to enable the overhead to be adjusted per Fiscal Year.

#### **7.10.16 - REQUEST FOR EXTENSION**

The Consultant shall submit in writing any requests for time extensions. Any request for extension of time shall be considered and an agreement reached at the time such addition or deletion is ordered. These requests for extension of time will be reviewed and may be approved by the Right of Way Director or designee. A supplemental agreement will be prepared for any approved time extensions.

Upon written notice and execution of a Supplemental Agreement by all parties and without invalidating the Agreement, the WVDOH may require changes in fees due to the revision or abandonment of work contemplated or already satisfactorily performed by the Consultant. The amount of adjustment in fees for such changes shall be determined by mutual agreement. The WVDOH will not be otherwise obligated to honor claims for additional fee payments unless the work has been previously authorized by a Supplemental Agreement.

#### **7.10.17 - NOTIFICATION OF COMPLETION**

The Right of Way Director or his/her designee will be notified in writing of the completion of the project. Once the Right of Way Division has received notification of completion of the project, a final invoice and all project files must be submitted within 90 days.

#### **7.10.18 - DISPOSITION OF ERRORS AND DEFICIENCIES**

When it is determined that an error or deficiency exists, the Division responsible for oversight of the Consultant's contracted work shall report its findings to the next highest level of management under whose direction the work was performed.

A review and analysis of the findings shall be made to confirm whether or not an error or deficiency exists, with agreement being reached on such with the reporting Division.

After an agreement has been reached, the findings shall be reported to the State Highway Engineer who, at his/her discretion, shall form a committee made up of the lower level of management beneath the State Highway Engineer under whose direction the work was performed, the reporting Division and the State Highway Engineer, to further review the findings.

The State Highway Engineer shall report his/her findings to the Commissioner for final disposition.

#### **7.10.19 - RETENTION OF RECORDS**

The Consultant and its sub-consultants shall maintain records of material costs, direct salary, payroll additives, other direct and indirect costs, and net fee used to support cost of the

work and shall maintain all accounts, papers, maps, photographs, other documentary material, and any evidence pertaining to costs incurred, and shall make such materials available at its offices at all reasonable times during the contract period and for three (3) years after Federal Highway Administration final payment for the project, for inspection by the WVDOH, Federal Highways Administration, or any authorized representatives for the State or Federal Government, and copies thereof shall be furnished if requested. "Final Payment" refers to the date of final payment (reimbursement) of Federal Funds to the State with respect to the particular project. If a claim, investigation, or litigation is pending after what was assumed to be the final payment, the retention period will not begin until final settlement of the claim, investigation or litigation.

## **7.20 - CONTRACT APPRAISAL / APPRAISAL REVIEW SECTION**

### **7.21 - CONTRACTING PROCEDURES FOR APPRAISAL / APPRAISAL REVIEW**

#### **7.21.1 - PROCUREMENT METHOD TO BE USED**

Contract procurement may be by one of three ways. **The first** may be by competitive procurement (2 CFR 200.320(d)) with more than one source submitting a proposal. **The second** may be noncompetitive proposals (2 CFR 200.320(f)). This is solicitation from only one source. This procurement method considers the Appraiser/Review Appraiser's experience in the "type of property to be appraised" knowledge of the market and other traits that he or she may possess. The solicitation from only one source is the preferred method for acquiring Appraisal or Appraisal Review services by the WVDOH, Right of Way Division.

**The third** may be a procurement by sealed bids (2 CFR 200.320(c)) which will be one fixed amount, in total, for all appraisal activities as advertised. Once the appraisal, or appraisal review, service contract is awarded, the contract issued to the successful bidder will be provided one (1) hourly rate for plan revisions as requested by the WVDOH, and one (1) hourly rate for all litigation-related appraisal activities. These hourly rates must be all inclusive of expenses incurred by the appraiser. No compensation will be made for time incurred by the appraiser in correcting errors/omissions within appraisal reports. Except for when written consent is given by the WVDOH Appraisal Section, completion of the contracted services must be submitted by the contracted due date. No partial payments will be made, and no invoices will be processed until all contracted and submitted acceptable appraisal reports have been reviewed and approved by the WVDOH.

#### **7.21.2 – PUBLIC NOTICE – REQUESTS FOR LETTERS OF INTEREST**

Public notice will be given periodically by advertising in a statewide newspaper and by other appropriate means. (See Appendix 7-10 and 7-11.)

### **7.21.3 - PRE-QUALIFICATION OF INDIVIDUAL APPRAISERS/REVIEWERS**

See Chapter 6 – Information for Appraisers Addenda 6.01 for the procedures to be followed for individuals interested in being considered for the List of Approved Appraisers and Review Appraisers.

### **7.21.4 - REQUESTS FOR RATE QUOTATIONS**

When a request for appraisals/appraisal reviews is received on an adequately developed set of Right of Way Plans, the procedures found in Chapter 6 – Information for Appraisers Addenda should be followed.

The proposal forms will show the location and description of the proposed work, the approximate quantities of work to be performed, date on which the work is to be completed, and the date, time, and place of opening of proposals. All papers bound with or attached to the proposal forms are considered a part thereof and must not be detached or altered. Upon request, the WVDOH will furnish preapproved list of bidders with proposal forms. Proposal forms, on which the name of the bidder is to be typed or written in ink before issuance, will be issued to prequalified appraisers only. (See Appendix 7-12 & 7-16.)

The proposal must be signed in ink by the bidder, notarized and contain the address of the individual bidder.

Proposals will be considered irregular and will be rejected for any of the following reasons:

- a. When the proposal is on a form other than that furnished by the WVDOH or if the form is altered.
- b. When the proposal does not contain a unit price for each pay item listed.
- c. Failure to sign, properly execute, or notarize the proposal.

Proposals shall be submitted in a special envelope provided by the WVDOH and sealed. Proposals shall be received at the proper designated office of the WVDOH prior to the hour set in the proposal. Proposals received after the time stated in the proposal and prior to the opening of bids will be returned to the bidder unopened. At any time prior to the bid opening time stated in the advertisement, submitted bids may be withdrawn by the bidder, provided the request is made in writing. In the event that adequate controls are in place, a digital bid opening process may be utilized.

The proposals will be read publicly and, in the order, as advertised at the stated time and location, with the total bid amount and bidders name being read. All results are subject to final review to ensure no irregularities were found in the bids. Bidder, their authorized agents, and other interested parties are invited to be present.

Projects will be awarded on a low bid basis subject to a review for completeness of bid, verification of no outstanding taxes owed to the State and any related state requirements. All bidders will be notified by e-mail of the winning bidder, which will also be posted to the WVDOH's website. The winning low bidder will be notified in writing and given notice to proceed including permission to contact the Appraisal Section for additional information and instructions.

Should the awarded low bid recipient withdraw their bid prior to starting of work the next low bidder would be awarded the project. Should the project have been started by the recipient prior to withdrawing, the recipient would be paid for the portion of the contract completed and approved and the remaining work will be re-bid. The work in process to date will become property of the WVDOH.

Should no bids be received for an advertised project, the project will be re-advertised. Should the low bid significantly exceed the WVDOH's estimate, prior to the contract being awarded, the WVDOH may negotiate with the low bidder in an attempt to bring the project within the WVDOH's cost estimate. If an agreement can't be met, the project will be re-bid. After the second bidding of the project and bids still significantly exceeds the WVDOH's estimate the bid will be submitted to management for evaluation. Should no bids be received after the second bidding, it will be management's decision as how to proceed.

#### **7.21.5 - SELECTION RATING CRITERIA FOR APPRAISERS/ REVIEW APPRAISERS**

All individuals on the Pre-Qualified List will be eligible to bid for the individual projects. Should awarding the contract on a low bid basis method not be possible, the following method will be used:

All individuals on the Pre-Qualified List will be rated to establish a "Short List" also known as "Alternate Procedures" for each assignment based on the following factors:

- a. Past performance on similar assignments
- b. On-time delivery of past assignments
- c. Known ability as expert witness, when pertinent

#### **7.21.6 - CONTRACTING PROCESS**

Once awarded the contract, Form RW 6.04 will be executed. The contract will be forwarded to the low bidder for signature and execution by the Administrative Section Manager and Commissioner of Highways or his/her designee. Should the signed contract not be returned within fifteen (15) calendar days the contract will be considered withdrawn by the bidder.

(See Appendix 7-13.)

Time is an essential element of the contract, and it is important that the work be completed within the time specified. Therefore, the WVDOH will assess a penalty of one

percent (1%) per each calendar day to be forfeited and deducted from the fees listed in the contract for each parcel not received by the date due for a maximum of thirty (30) calendar days at which time the contract may be canceled. However, upon written application signed by the contractor, and in the event of extenuating circumstances, the WVDOH may, at its discretion, expressly grant in writing an extension of time to the contractor.

The WVDOH shall have the right to terminate the contract with regard to any or all services provided for herein for any of the following reasons:

1. In the event of the changes in WVDOH plans which obviate the necessity of any work which may be involved.
2. If work is not completed and delivered by the dates listed in the contract or extension dates.
3. If the contract is not returned signed within fifteen (15) calendar days of receipt.
4. If the WVDOH exercises its right to terminate the contract, such termination notice shall be given by the WVDOH to the Contractor, in writing by Certified mail, to the last known address of the Contractor. In the event of termination, the Contractor shall be paid for the particular parcels terminated in proportion to the work and services actually completed on such parcel or parcels involved, as of the date of notification of termination. Upon termination of this contract, or any part thereof, for any reason provided for herein, any and all work actually performed by the Contractor shall become the property of the WVDOH.

In the event that a Contractor fails to honor any term or condition, the Director of Right of Way may cancel the contract and re-award the contract to the next lowest bidder. The contractor failing to honor contractual obligations is responsible for all differences in cost.

If plan changes or other circumstances require an additional parcel to be added to the contract, the Contractor will be provided information and parcel numbers and asked to submit a price. This price will be reviewed and compared to the bid amounts and if accepted a supplemental contract will be issued.

Should this method not be possible, the following method will be used:

The selected Appraiser will be sent a letter requesting a contract covering the assignment. (See Form RW 6.04.) The request letter will provide the Project Number(s), Parcel Number(s), time allowed for completion and other pertinent information. All sections of the contract must be completed, and a signed original sent to the Appraisal Section Manager.

Upon receipt, the contract will be checked for completeness and the fees compared with the Appraisal Fee Schedule. (See Section 7.21.7.) If the contract is complete and the estimated fees are within the ranges on the Appraisal Fee Schedule, the contract will be signed by the Appraisal Section Manager and sent to the Deputy Secretary Commissioner or their designee for

signature. A copy of the executed contract is sent to the appraiser with a letter of notice to proceed with work on the contract.

If there is a substantial difference (high or low) between the estimated fees from the appraiser and those in the Appraisal Fee Schedule, the Project Review Appraiser will attempt to negotiate toward closing the disparity. If an agreement cannot be reached, the Project Review Appraiser may request a fee estimate and contract from another appraiser with concurrence of the Appraisal Section Manager.

#### **7.21.7 – APPRAISAL/APPRAISAL REVIEW FEE SCHEDULE**

On an annual basis, the Appraisal Section Manager and the Staff Review Appraisers shall meet to review the existing Appraisal Fee Schedule to determine if appraisal fee ranges should be changed for the coming fiscal year. If it is determined that fee changes are warranted, a Revised Appraisal Fee Schedule will be projected and sent to the Federal Highway Administration by the Director of Right of Way through the Appraisal Section Manager.

#### **7.21.8 - INVOICING AND TIME REPORTING**

The contract awarded on a low bid basis may be paid in one lump sum amount once all work is complete and accepted by the WVDOH.

Should awarding the contract on a low bid basis method not be possible, the following method will be used:

When all or a portion of the appraisal reports in a contract are submitted for review, an invoice for the work submitted may be tendered on Invoice Form RW 6.17-F (Fee on Contract) or Form RW 6.17-H (Hourly Basis) (See Appendix 7-14 & Appendix 7-15). The invoice must be fully completed, signed and dated by the contractor. Each invoice must be approved by the Appraisal Section Manager or their designee.

Under an hourly rate contract, the Contract Appraiser must submit accurate and detailed Time Reports during the contract period to substantiate invoice amounts. (See Appendix 7-17.)

A Time Report (Form RW-TIME) is not required when a fee per parcel contract is used.

#### **7.30 – RESERVED FOR FUTURE USE**

## **7.40 - ACQUISITION SERVICES SECTION**

### **7.41 - CONTRACTING WITH INDIVIDUALS FOR NEGOTIATION SERVICES**

#### **7.41.1 - PROCUREMENT METHOD TO BE USED**

The procurement method to be used for Individual Services Contracts for Negotiation Services will follow the provisions in 2 CFR 200.320(b), which is "Procurement by small purchase procedures." This section allows services to be secured that do not cost more than the simplified acquisition threshold referenced in 2 CFR 200.88 currently set at \$150,000.00 per project.

#### **7.41.2 - PUBLIC NOTICE - REQUESTS FOR LETTER OF INTEREST**

Public notice will be given periodically by advertising in a statewide newspaper and by other appropriate means. (See Appendix 7-18.)

#### **7.41.3 - PRE-QUALIFICATION OF INDIVIDUAL NEGOTIATORS**

The advertisement for letters of interest will also request a current set of qualifications which includes education, experience, and client list. The Acquisition Section Manager and Right of Way Director or designee will review the qualifications of each individual to decide what types of assignments they appear competent to perform. An individual whose work product is unknown will be given a trial assignment consisting of a few parcels of the type the individual appears competent to negotiate.

Due to the continuing need for qualified negotiators and the difficulties encountered in maintaining an adequate number of negotiators, especially those with highly specialized expertise, it will be necessary for the Acquisition Services Section to continue the practice of accepting individuals for placement on the approved list of negotiators, as needed.

#### **7.41.4 - REQUEST FOR RATE QUOTATIONS**

All individuals who properly responded to the advertisement and possess the required experience and qualifications will be sent a "Request for Rate Quotations" form for Negotiators. (See Appendix 7-19 and Appendix 7-20)

#### **7.41.5 - SELECTION RATING PROCESS FOR NEGOTIATORS**

Prior to the date that negotiators are to be initiated on a project where a Contract Negotiator will be engaged, the Acquisition Section Manager or designee shall select individuals from the List of Pre-qualified Negotiators who are believed to be competent to complete the assignment, based on the Selection Rating Criteria. (See 7.41.6 below.) The result is a "Short

List” of individuals, in descending order of standing, whose work product is believed will be the most advantageous to the Right of Way Division in completing the project on time.

With the concurrence of the Director of Right of Way, the Acquisition Section Manager will contact the individuals on the Short List, in order of standing, to ascertain each individual’s availability and willingness to accept the assignment. The first individual who indicates willingness and availability will be sent all plans, reports, forms, and information necessary to complete the assignment and asked to sign a contract covering the assignment.

The Acquisition Section Manager should prepare an independent estimate of the anticipated work. Should the estimate exceed \$150,000.00 the contract will be let by low bid procedures.

#### **7.41.6 - SELECTION RATING CRITERIA FOR NEGOTIATORS**

All individuals on the Pre-qualified List of Negotiators will be rated to establish a “Short List” for each assignment based on the following factors:

- a. Past performance on similar assignments
- b. On-time delivery of past assignments
- c. Known ability to negotiate this type of project
- d. Current rate information

#### **7.41.7 - CONTRACTING PROCESS**

The selected Negotiator will be sent a letter containing a contract covering the assignment for signature using Form RW 5.31. (See Appendix 7-21.) Once the contract has been executed an original executed copy will be returned to the Negotiator.

#### **7.41.8 - INVOICING AND TIME REPORTING**

When work on a file or group of files is completed by signed option, an executed deed, or approved recommendation for condemnation, the files are transmitted to the District Office. At that time, an Invoice for the work submitted may be tendered on Form RW 5.32. (See Appendix 7-22.) The invoice must be fully completed, signed, and dated by the contractor. The invoice must be approved by the Acquisition Section Manager or designee.

The Contract Negotiator must submit accurate and detailed Time Reports with the invoice to substantiate invoice amounts. (See Appendix 7-17.)

## **7.50 - RELOCATION SERVICES SECTION**

### **7.51 - CONTRACTING WITH INDIVIDUALS FOR REPLACEMENT HOUSING, PROPERTY MANAGEMENT, AND/OR MOVING COSTS SERVICES**

#### **7.51.1 - PROCUREMENT METHOD TO BE USED**

The procurement method to be used for Individual Services Contracts for Relocation and Property Management Services will follow the provisions in 2 CFR 200.320(b), which is "Procurement by small purchase procedures". This section allows services to be secured that do not cost more than the simplified acquisition threshold referenced by 2 CFR 200.88 currently set at \$150,000.00 per project.

#### **7.51.2 - PUBLIC NOTICE - REQUESTS FOR LETTERS OF INTEREST**

Public Notice will be given periodically by advertising in a statewide newspaper and by other appropriate means. (See Appendix 7-18.)

#### **7.51.3 - PRE-QUALIFICATION OF INDIVIDUAL RELOCATION AND PROPERTY MANAGEMENT SPECIALISTS**

The advertisement for letters of interest will also request a current set of qualifications which includes education, experience, and client list. The Relocation Section Manager or designee will review each individual's qualifications to decide what level of assignment they appear competent to perform. Persons whose work product and/or reputation are unknown to the Relocation and Property Management Staff will be given a trial assignment consisting of an assignment of the type the individual appears competent to handle.

Due to the continuing need for qualified Relocation and Property Management Specialists and the difficulties encountered in maintaining an adequate number of Relocation/Property Management Specialists, especially those with highly specialized expertise, it will be necessary for the Relocation Services Section to continue the practice of accepting individuals for placement on the approved list of specialists, as needed.

#### **7.51.4 - REQUEST FOR RATE QUOTATIONS**

All individuals who properly responded to the advertisement and possess the required experience and qualifications will be sent a "Request for Rate Quotations" Form for Relocation and Property Management Services. (See Appendix 7-23.)

### **7.51.5 - SELECTION RATING PROCESS FOR RELOCATION AND PROPERTY MANAGEMENT SPECIALISTS**

Prior to the date appraisal reports are due on a project where a Contract Property Management, Replacement Housing Calculations or Moving Costs are involved, the Relocation Section Manager or designee shall select individuals from the Pre-qualified List of Relocation and Property Management Specialists believed to be competent to complete the assignment based on the Selection Rating Criteria. (See 7.51.6 below.) The result is a "Short List" of individuals, in descending order of standing, whose work product is believed will be the most advantageous to the Right of Way Division.

The Relocation Section Manager or designee will contact the individuals on the Short List, in order of standing, to ascertain each individual's availability and willingness to accept the assignment. The first individual who indicates willingness and availability will be sent all information necessary to complete the assignment and asked to sign a contract covering the assignment. (See Appendix 7-24.)

The Relocation Section Manager should prepare an independent estimate of the anticipated work. Should the estimate exceed \$150,000.00 the contract will be let by low bid procedures.

### **7.51.6 - SELECTION RATING CRITERIA FOR RELOCATION AND PROPERTY MANAGEMENT SPECIALISTS**

All individuals on the Pre-qualified Relocation and Property Management Specialists List will be rated to establish a "Short List" for each assignment based on the following factors:

- a. Known past performance on similar assignments
- b. On-time delivery of past assignments
- c. Known ability and experience
- d. Current Rate Quotations

### **7.51.7- CONTRACTING PROCESS**

A contract will be based entirely on hourly rates covering all costs, including overhead and expenses. The selected Relocation Specialist will be sent a letter containing a contract covering the assignment for signature using Form RW 12.21. (See Appendix 7-24.) Once the contract has been executed an original copy will be returned to the Relocation Specialist.

## **7.51.8 - INVOICING AND TIME REPORTING**

When all or a portion of the work units in a contract are submitted, an Invoice for the work submitted may be tendered on Form RW 12.22. (See Appendix 7-25.) The invoice must be fully completed, signed, and dated by the contractor. Each invoice must be approved by the Relocation Section Manager or designee.

The Contractor must submit accurate and detailed Time Reports during the contract period to substantiate invoice amounts. (See Appendix 7-17)

## **7.60 - DEFINITIONS**

Consultant - A business, educational institution, individual, or public agency qualified to perform a service required by the WVDOH. A consultant may be a consulting engineer, architect, public agency, or other professional firm, agency, or individual.

Cost Accounting Information Statement - A statement that provides adequate details to demonstrate that the prospective consultant has a job cost accounting system that is capable of segregating, identifying, and accumulating costs for cost-type contracts.

Cost Analysis - A review and evaluation of the separate cost elements and proposed fixed fee of (a) a consultant's cost or pricing data, and (b) the judgmental factors applied in projecting from the data to the Independent Cost Estimate in order to form an opinion of the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. Any major variations from norms shall be documented and supported.

Disadvantaged Business Enterprise (DBE) - A small business concern which is owned and controlled by one or more socially or economically disadvantaged individuals which have been certified under the Small Business Administration's 8(a) program or by the WVDOH.

Independent Cost Estimate - A written detailed estimate prepared after the detailed scope of work meeting and prior to the receipt of the consultant's priced proposal. This will have an appropriate breakdown of specific types of labor required, work hours, indirect cost, and an estimate of the consultant's fixed fee (considering the risk and complexity of the work) for use during negotiations.

Exempt Projects - Federally funded projects where Federal Highway Administration and the Division of Highways have agreed that the Commissioner of Highways will act on behalf of the Federal Highway Administration.

Fixed Fee - A dollar amount established to cover the consultant's profit and business expenses not allocable to overhead.

Letter of Intent - A letter from the Commissioner or his/her designee to a consultant authorizing work to begin prior to the execution of an agreement with the understanding that the consultant will be reimbursed by the WVDOH for any and all reasonable monies expended for work authorized if agreement is not executed by any and all the parties concerned.

Noncompetitive Selection - The procurement through solicitation of a proposal from only one source or, after solicitation of a number of sources, competition is determined to be adequate.

Evaluation Committee - A committee consisting of the Director of the Right of Way Division, Project Managers, and/or Section Heads or their designees concerned with the process by which individuals are selected by the Director of the Right of Way Division.

Pre-negotiation Audit - An examination of a consultant's records made in accordance with the generally accepted auditing standards.

Priced Proposal - A statement by a consultant which is submitted after the consultant is selected to accomplish the work and after the detailed scope of work meeting indicating the proposed costs to perform the required service.

Qualification Questionnaires - A WVDOH form on which a consultant's experience data, personnel, fields of work performed, and present and past activities are listed.

Qualification and Technical Analysis - A review of the consultant's qualifications, including review of experience, reputation, expertise for a particular project under consideration, demonstrated ability, capability to meet requirements, location of offices, distribution of work to individuals and firms (specifically DBE's), time frame proposed by the consultant or required by the WVDOH, and past performance; both administratively and technically. Other criteria may be required in special cases.

Scope of Work -

- a. Preliminary: A general description of the work to be accomplished, including the location.
- b. Detailed: A clear, accurate, and detailed description of the technical requirements for the services to be rendered.

Selection Committee - This Committee shall consist of the Secretary of Transportation, the Commissioner of Highways, the State Highway Engineer, and the next lower level of management beneath the State Highway Engineer under whose direction the work will be performed. The Secretary of Transportation may appoint additional members at his/her discretion. At least three members are necessary to transact the selection.

Short List - A list of consultants, the number being two more than needed, considered to be most qualified to accomplish a proposed project.

Contract Modifications -

- a. Contract modifications are required for any modifications in the terms of the original contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

- b. A contract modification shall clearly outline the changes made and determine a method of compensation.
- c. Overruns in the costs of the work shall not warrant an increase in the fixed fee portion of a cost plus fixed fee contract. Significant changes to the scope of work may require adjustment of the fixed fee portion in a cost plus fixed fee contract or in lump sum contract.
- d. When necessary to maintain schedules and/or as determined by the Commissioner of Highways, the consultant may be authorized to proceed with work prior to agreement on the amount of compensation and execution of the contract modifications. (See Letter of Intent.) (This Letter of Intent process is used primarily when first initiating work.)

**CHAPTER 8**  
**PROPERTY MANAGEMENT SECTION**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 8.00	General .....	1
Section 8.10	Right of Way Clearance .....	1
Section 8.10.1	Right of Way Clearance Records .....	1
Section 8.10.2	Improvement Inventory by District (Form RW 8.05) .....	2
Section 8.10.3	Use of Form RW 8.05 in Central Office .....	2
Section 8.10.4	Fixtures .....	2
Section 8.11	Retention Value Estimates .....	2
Section 8.11.1	Retention & Removal by Owners .....	3
Section 8.12	Vacancy of Structures Acquired by WVDOH .....	3
Section 8.12.1	Vandalism Control by a District .....	4
Section 8.13	Restoration of Fixtures by Owners .....	4
Section 8.14	Asbestos Inspections .....	4
Section 8.15	Rodent Control .....	5
Section 8.20	Public Auction of Improvements .....	6
Section 8.20.1	Notice of Auction .....	6
Section 8.21	Terms of Sale .....	6
Section 8.22	Conduct of Auction by Central Office .....	6
Section 8.23	Execution & Delivery of Bill of Sale to Purchaser .....	7
Section 8.24	Rejection of Bid .....	8
Section 8.30	Removal at No Cost to the WVDOH .....	8
Section 8.31	Removal by WVDOH Maintenance Forces .....	8
Section 8.32	Removal by Demolition Contractor .....	8
Section 8.33	Clearance by Highway Contractor .....	9
Section 8.34	Inspection by Removal by District .....	9
Section 8.35	Release of Bond upon Compliance .....	9

Section 8.35.1	Extension of Contract .....	9
Section 8.35.2	Forfeiture of Contract .....	10
Section 8.36	Completion of Project Improvement Removal .....	10
Section 8.37	Mobile Home Titles .....	10
Section 8.40	Inventory of WVDOH Owned Property .....	11
Section 8.40.1	Real Property Inventory Forms & Files .....	11
Section 8.40.2	Sources of Data for Inventory .....	11
Section 8.40.3	Inspection of Non-Right of Way Properties .....	12
Section 8.41	Disposition of Excess Real Property .....	12
Section 8.41.1	Appraisal of Excess Property .....	12
Section 8.42	Determination of Excess Property Under \$25,000 .....	14
Section 8.42.1	Board of Public Works .....	16
Section 8.42.2	Determination of Excess Property over \$25,000 .....	16
Section 8.43	Disposition of Land by Public Auction .....	17
Section 8.43.1	Minimum Bid .....	17
Section 8.44	Advertisement of the Auction .....	17
Section 8.44.1	Conduct of Public Auction .....	17
Section 8.44.2	Closing of Excess Property Sale .....	18
Section 8.45	Disposition of Property by Exchange .....	18
Section 8.45.1	Determination of Feasibility .....	18
Section 8.45.2	Preparation for Exchange .....	19
Section 8.45.3	Negotiations for Exchange .....	19
Section 8.45.4	Closing of Exchange .....	19
Section 8.46	Sales to other Government Agencies .....	19
Section 8.47	Lease of Real Estate Owned by the WVDOH .....	19
Section 8.47.1	Leasing – General Principles .....	20
Section 8.47.2	Interim Leases .....	20
Section 8.47.3	Lease Records .....	21
Section 8.47.4	Requests to Lease Property .....	21
Section 8.47.5	Appraisal & Negotiations for Lease Purposes .....	21
Section 8.47.6	Preparation & Execution of Lease .....	22
Section 8.47.7	Procedure when there is more than One Prospective Lessee .....	22

Section 8.48	Joint Use Agreements .....	22
Section 8.50	Rent Collection .....	23
Section 8.50.1	Collection of Delinquent Rents .....	23
Section 8.51	Inspection of Leased Property .....	23
Section 8.52	Renewal or Termination Notice .....	23
Section 8.52.1	Rent Review, Adjustment & Phase-In .....	24
Section 8.53	Vacation Procedure .....	25
Section 8.60	Leasing by WVDOH of Property from Others .....	25
Section 8.60.1	Real Property Lease Provisions .....	25
Section 8.60.2	Lease Payable Records .....	26
Section 8.70	Request & Authorization to Lease Additional Space .....	26
Section 8.70.1	Fair Rent Determination .....	26
Section 8.70.2	Preparation & Execution of a Lease in a District .....	27
Section 8.70.3	Renewal or Termination Notices .....	27
Section 8.71	Request & Authorization to Lease Office Space .....	28
Section 8.71.1	Preparation & Execution of Lease .....	28
Section 8.71.2	Renewals & Terminations .....	28
Section 8.72	Rent Payment .....	28
Section 8.73	Annual Inspection .....	29
Section 8.74	Purchase of Real Estate for other than Right of Way .....	29
Section 8.75	Eligibility of Employees of the DOH to Purchase or Rent Property from the DOH .....	29
Section 8.80	Performance of Non-Property Management Functions .....	29
Section 8.81	Last Resort Housing .....	30
Section 8.82	Participation in “Logo Program” .....	30
Section 8.90	Right of Way (ROW) Use Agreements .....	30
Section 8.100	Utility Accommodation Lease of Real Property Owned by DOH ...	30
Section 8.101	Utility Accommodation Leasing – General Principles .....	31
Section 8.101.1	In-Kind Compensation .....	33
Section 8.102	Conditions of Utility Accommodation .....	33
Section 8.103	Approval of Other Agencies .....	34
Section 8.104	Utility Accommodation Lease Records .....	35
Section 8.105	Requests for Utility Accommodation Leases .....	35

Section 8.106	Preparation & Execution of Utility Accommodation Lease .....	35
Section 8.107	Rent Collection .....	35
Section 8.108	Collection of Delinquent Rents .....	35
Section 8.109	Renewal or Termination Notice .....	36
Section 8.110	Rental Review & Adjustment .....	36
Section 8.111	Vacation Procedure .....	36
Section 8.112	Preparation & Execution of a Lease in a District .....	36
Section 8.113	Board of Risk & Insurance Management .....	37
Section 8.114-8.119	Reserved for Future Use .....	37
Section 8.120	Municipal Annexation Requests .....	37

## **CHAPTER 8**

### **PROPERTY MANAGEMENT**

#### **8.00 - GENERAL**

The basic objectives of the Property Management Section are to maximize the use of real property acquired by the WVDOH for highway purposes and non-right of way real property not otherwise used for WVDOH purposes; to negotiate property leases by Districts or the WVDOH; to provide for the disposition of excess real estate; and to arrange for public sale or demolition of structures to make certain that the acquired property is available for highway construction purposes.

Procedures for meeting these responsibilities and carrying out the required functions are prescribed in this Chapter.

Any property management request to be completed at the District level is accomplished by the District Property Manager who is responsible to the District Realty Manager.

The Central Office Property Manager is responsible for requests completed at the WVDOH level and reports to the Director of the Right of Way Division through the Relocation and Property Management Manager.

#### **8.10 - RIGHT OF WAY CLEARANCE**

Improvements located on right of way acquired by the WVDOH may be retained and removed by the owners. (See Section 8.11.1)

Improvements not retained by owner may be removed from the project by:

1. Public Auction (Section 8.20);
2. Public or quasi-public agencies. (Section 8.30);
3. WVDOH maintenance forces (Section 8.31);
4. Demolition contracts (Section 8.32); or
5. Highway construction contractors (Section 8.33).

##### **8.10.1 - RIGHT OF WAY CLEARANCE RECORDS**

The basic clearance record is the "Building Record," Form RW 8.05 (Appendix 8-1). This record reflects pertinent data concerning acquisition, possession, and clearance of improvements on each project and is maintained at the District level from the time approved plans first arrive in the District to the date of final clearance.

### **8.10.2 - IMPROVEMENT INVENTORY BY DISTRICT (FORM RW 8.05)**

Upon receipt in the District, approved acquisition plans are reviewed in the field for accuracy as to placement, description, and number of improvements within the right of way. Any discrepancies are reported in writing to the District Right of Way Manager or the Director of the Right of Way Division when necessary. If improvements are only partially within the right of way, the District Right of Way Manager must see that a structural removal easement is obtained for a sufficient area around these improvements to allow removal or remodeling to be completed efficiently.

Upon completion of the field inspection and corrections of the plans, if any, Form RW 8.05 is initiated by completing the project information. This record is then updated as the project progresses.

### **8.10.3 - USE OF FORM RW 8.05 IN CENTRAL OFFICE**

A copy of the initiated RW 8.05 is submitted to Central Office. The information is placed in the proper Property Management file for the purpose of adding information as it is submitted by the District.

### **8.10.4 - FIXTURES**

Fixtures are normally acquired by the WVDOH as part of the real property. Any fixture retained by the owner of the realty is usually treated in the manner outlined in Section 8.11 and then is listed as an exception to the option and/or deed.

In cases involving special situations, e.g., commercial or industrial properties, representatives of the property management and relocation sections meet with the owner of the real property and the tenant operator, when applicable, to identify those fixtures which are part of the realty along with any property which will be removed during relocation. This meeting, when possible, is held before the appraisal process is begun so the appraiser(s) may be properly appraised. If, during negotiations, the owner or tenant indicates a desire to retain items formerly considered to be fixtures, such retention is handled in the manner outlined herein.

### **8.11 - RETENTION VALUE ESTIMATES**

Unless relocation of improvements is inconsistent with urban development plans, Retention Value Estimates are made by the District Appraiser or the Central Office Appraisal Section prior to negotiations when possible. The estimates must be approved by the District Right of Way Agent and the Chief Reviewing Appraiser or his/her designee.

Included in the retention value estimate process on each parcel is the establishment of the performance guaranty which is to be required in the event the improvement is retained by the owner or sold at public auction. The amount of the guaranty is also approved by the District Right

of Way Agent and is additionally approved by the Central Office Property Manager or his/her designee.

When the owner indicates a desire to retain only some of the improvements or fixtures therein, the District Property Manager will, upon request and through proper channels, prepare retention estimates for the item(s) to be retained. (See Chapter 5, Section 5.45 and 5.46)

### **8.11.1 - RETENTION AND REMOVAL BY OWNERS**

When improvements located on right of way acquired by the WVDOH are retained by the owners, the negotiator:

1. Has the seller sign original plus four copies of SPECIFICATIONS, Form RW 8.10 (Appendix 8-2).

One copy is left with the property owner (seller); one copy is given to the District Property Manager, and the others attached to the signed option or deed.

2. Explains that a performance guaranty is necessary and that it shall be posted in one of the following ways:
  - A. Owner deposits with the District Realty Manager Agent the required sum in the form of a certified check, cashier's check, or money order made payable to the West Virginia Division of Highways; or
  - B. Owner obtains a bond obtained from a licensed bonding agency. Owner is given a receipt of Form RW 8.11B (Appendix 8-10).
3. Notifies the District Property Manager of the owner's decision to retain.

See Chapter 5, Section 5.45 and 5.46

### **8.12 - VACANCY OF STRUCTURES ACQUIRED BY WVDOH**

The District Property Manager maintains close liaison with the District Relocation Agent concerning the dates occupants are expected to vacate properties acquired by the WVDOH. Further liaison is maintained with respect to conditions involved in the vacancies such as special permission for the removal of particular fixtures or special agreement with respect to fixtures placed in commercial or industrial buildings by the occupants. (See Section 8.10.4.) On the actual moving date, the District Property Manager inspects the premises to determine that all buildings are being delivered in the agreed condition. Items missing from the buildings are recovered or compensated for as prescribed in Section 8.13 herein.

### **8.12.1 - VANDALISM CONTROL BY A DISTRICT**

Vandalism control begins with notice to appropriate police that the WVDOH is acquiring improved properties in a designated area and that their cooperation is sought in the control of vandalism.

Additional steps are taken as deemed necessary:

1. Steps giving notice of WVDOH ownership and warning against trespassing shall be posted; doors, windows, and other openings shall be barricaded. Notify District Managers so that their Maintenance Division can take appropriate measures to secure the property.
2. Improvements may be offered for sale by public auction provided the owners have been tendered payment and the occupants are committed to moving to a new location.
3. With the approval of the District Engineer/Manager and the Right of Way Division Director, a security patrol may be established.

### **8.13 - RESTORATION OF FIXTURES BY OWNERS**

When the inspection made by the District Property Manager at the time physical possession and/or key is transferred reveals that one or more fixtures have been removed from an improvement, the District takes prompt action to recover the item(s).

An estimate is made of the value of the missing item(s). The owner is advised of the missing item(s) and requested to account for them. If restoration or restitution is made, the file is completed accordingly, and the matter closed. If such restoration or restitution is not made, one or more of the following alternatives, as applicable, may be employed:

1. The property owner may make restitution during the closing if it occurs after the improvements are vacated.
2. The property owner may make restitution by check or money order made payable to the West Virginia Division of Highways and sent to the District Right of Way Manager.
3. If neither of the above is arranged, the facts are presented to the Legal Division in writing for further action.

### **8.14 – ASBESTOS INSPECTIONS**

Upon the completion on all acquisition activities, the District Right of Way Manager will identify all structures that will require an asbestos inspection. This information should be provided to the Central Office Relocation/Property Management Manager in order for Central Office to

coordinate with the Engineering Division on the preparation of a contract with a contractor specializing in asbestos inspections. Upon the selection of a contractor, the District Right of Way Manager will be notified and a formal request for an asbestos inspection should be made by the District. Asbestos inspection requests should contain the following information and documentation:

1. Rodent Control Report and Inventory (Form RW 8.26)
2. Building Record (Form RW 8.05)
3. Request for Asbestos Inspection, including parcel number, type of structure, demolition number, address of structure, pictures, and location map.

Once a report is complete Central Office Right of Way will provide copies to the following:

1. Department of Environmental Protection, Division of Air Quality
2. Project Manager
3. WVDOH Engineering Division (Right of Way contact)
4. District Construction Engineer (two copies)
5. District Right of Way Manager

An electronic copy of the report is maintained in the Central Office Property Management Section.

The District Property Manager will turn over all keys (that are available) to the District Construction Department when the report is transmitted to the construction department for use by the contractor.

Contractors should use the asbestos inspection provided by the Right of Way Division. Those contractors that wish to have additional reports prepared must do so at their own cost.

### **8.15 - RODENT CONTROL**

Inspection for rodent infestation is carried out on projects in urban areas and in rural areas. When rodent activity is discovered, poisoned bait, usually of the anticoagulant type, is set in the runs. If there is not an accessible water supply nearby, a small container of water is placed near the bait. Baits are replenished periodically until signs of rodent activity cease. Periodic inspections are made thereafter to determine whether new rodent activity is taking place.

When bait is used, signs are posted on the structure exterior to warn the public that rodent control measures have been taken and the poison has been placed in the structure.

Results of the inspections and treatment methods are recorded as completed on Form RW 8.26 (Appendix 8-4).

In the event of a serious rodent infestation problem, assistance of the local State Health Department is sought by the District Right of Way Manager.

## **8.20 - PUBLIC AUCTION OF IMPROVEMENTS**

All improvements of value not retained and removed by the owners may be offered for sale at public auction. Improvements are generally offered on the parcel basis, i.e., all improvements on one parcel are offered as a unit. Normally, improvements on not more than 15 parcels are offered in any one day.

### **8.20.1 - NOTICE OF AUCTION**

Public auction of improvements is advertised by placing a notice, "For Sale At Public Auction" (Appendix 8-5), in the classified section of a newspaper having general circulation in the county in which such improvements are located. This notice normally appears on three different days with the first appearance being at least 20 days prior to the date of the auction. The District, when sending the notice to the newspaper publisher, also provides a copy of the notice to the Central Office Property Manager. (See Section 8.12.1, Item No. 2.)

Additional written notice may be given to former owner(s) and other persons known to be interested in purchasing improvements from the WVDOH.

## **8.21 - TERMS OF SALE**

The terms of sale by public auction are contained in the notice of "For Sale At Public Auction," (Appendix 8-5) as an example, and the "Bill of Sale," Form RW 8.12, (Appendix 8-6).

There are additional Federal requirements applicable to removal of improvements accomplished within the 90-day period immediately prior to the date the highway contractor commences operations on any Federal-aid project. Appropriate references to these additional requirements are made in the attachment to Form RW 8.12 (Appendix 8-6).

## **8.22 - CONDUCT OF AUCTION BY CENTRAL OFFICE**

Each public auction is conducted by an auctioneer who is accompanied by a clerk. The auctioneer or the clerk should be a notary public for the county in which the auction is conducted. The District Agent or their designee may act as either auctioneer or clerk.

Immediately prior to every auction, if vacant, the available improvements being offered are opened for inspection to prospective bidders. After allowing time for inspection, the auctioneer opens the auction by reading the public notice, specifications and the amount of the performance bond to be posted by the purchaser. (This amount is usually that which the District Property Manager estimates to be the cost of demolition in the event the purchaser defaults.)

After reading the above and answering pertinent questions, the auctioneer asks for bids. The bidding is not closed until the auctioneer is positive no further bids are going to be made.

In the event improvements are vandalized prior to the public auction, the minimum bid may be reduced proportionately. When the District transmits the sale documents (Section 8.23), appropriate written justification and color photos are provided to support the reduction.

As the auction progresses, the clerk records the activities on Form RW 8.07 (Appendix 8-7).

The successful bidder shall deposit the purchase price with the clerk no later than the next banking day. This deposit shall be in the form of a certified check, cashier's check, or money order made payable to the West Virginia Division of Highways. The clerk obtains the signature of the successful bidder and gives them a receipt on Form RW 8.04 (Appendix 8-8). All checks are to be deposited with the District Comptroller on the date they are received with appropriate credit to the project authorization. All documents pertaining to the sale must be executed by the high bidder as reflected by the minutes of sale of the public auction Form RW 8.07 (Appendix 8-7).

Under normal circumstances, keys to the buildings being sold are given to the high bidder who is advised that protective measures against vandalism may be taken, but actual removal may not be started until the executed Bill of Sale has been delivered and the required performance guaranty has been posted.

### **8.23 - EXECUTION AND DELIVERY OF BILL OF SALE TO PURCHASER**

When the District Right of Way Manager determines that a sale to the highest bidder is in the public interest, the Bill of Sale (Form RW 8.12), accompanied by one copy of each of Forms RW 8.04 and RW 8.07, (Appendix 8-8 and 8-7) are sent by the District to the Central Office Property Manager for approval and execution on behalf of the WVDOH. In addition, copies of the check and transmittal of the check to the District Comptroller are submitted to the Central Office Property Manager. When applicable, copies of Attachment 1, the wage rate determination, and Federal requirements must be attached to the Bill of Sale.

If the sale is found to be in the public interest and the documentation thereof is found to be proper, the Central Office Property Manager approves the Bill of Sale and submits it to the Director of the Right of Way Division for completion on behalf of the WVDOH.

When all documents have been properly executed, distribution is made as follows:

1. Original with attachments to the District for delivery to the purchaser.
2. Copy with attachments to District for filing.
3. Copy with attachments to Central Office for parcel file.

After the purchaser has posted the required guaranty, the executed Bill of Sale is delivered to the purchaser. The purchaser is also authorized to begin actual removal. The guaranty bond may be posted in one of two ways.

1. Purchaser deposits required sum with District Right of Way Manager in the form of a certified check, cashier's check, or money order.
2. Bond from a licensed bonding agency.

All forms of payment shall be made payable to the West Virginia Division of Highways. The purchaser will be given a receipt on Form RW 8.11A (Appendix 8-9).

The time allotted to the purchaser for completion of removal begins on the date they receive the Bill of Sale.

### **8.24 - REJECTION OF BID**

If the District Right of Way Manager believes it to be in the public interest to reject a particular bid, the agent so recommends in writing to the Director of the Right of Way Division stating his or her reasons for such recommendation. The Agent also recommends further action concerning the method of disposition. If the Director concurs in the recommendation for rejection, he or she notifies the District Right of Way Manager who in turn advises the bidder and returns the money deposited by the bidder. The Director also authorizes the disposition procedure which he or she believes will best serve the public interest.

### **8.30 - REMOVAL AT NO COST TO THE WVDOH**

When efforts to sell improvements fail, the District Right of Way Manager, subject to the written approval of the Director of the Right of Way Division, may arrange for removal by the fire departments or other public agencies.

Specifications governing such removals are the same as those for purchasers except that a performance bond is not normally required of fire departments or other public agencies.

### **8.31 - REMOVAL BY WVDOH MAINTENANCE FORCES**

In some instances, it is necessary or desirable to secure removal of unsold improvements by the maintenance forces of the WVDOH. Approval of this method must be given in writing by the District Engineer/Manager and the Right of Way Director prior to the removal.

Removal and cleanup conform to the specifications applicable to removal by purchaser with the exception that no performance bond is required.

### **8.32 - REMOVAL BY DEMOLITION CONTRACTOR**

Structures which are neither sold nor removed by methods prescribed in Section 8.30 or 8.31 may be demolished by a demolition contractor. Use of this method is initiated when the District Right of Way Office prepares a demolition list Form RW 8.19 (Appendix 8-15) and

submits it to the Director of the Right of Way Division who transmits the request to the Engineering Division for preparation of a demolition contract to be awarded in accordance with normal contract procedures. The WVDOH reserves the right to delete certain improvements from the contract in the event of a prior sale thereof.

When the demolition contract is let and all the buildings are not vacant, the District Property Manager notifies the Construction Engineer in the District or their designee on the job site when each building becomes vacant. A copy of this notice is provided to the Central Office Property Manager.

### **8.33 - CLEARANCE BY HIGHWAY CONTRACTOR**

Improvements which have not been removed by any other means may be left for disposal by the highway contractor.

### **8.34 - INSPECTION OF REMOVAL BY DISTRICT**

The District Property Manager inspects all removals except those done by demolition or highway contractors.

District Construction personnel inspect all removals done by demolition or highway contractors.

### **8.35 - RELEASE OF BOND UPON COMPLIANCE**

When the District Property Manager determines disposition is satisfactorily completed as required, the bond may be released as follows:

1. If the guaranty is held in the District Office, the purchaser signs Form RW 8.16A or 8.16B, (Appendix 8-11 and 8-12, respectively) as applicable, acknowledging that their guaranty has been returned to him or her.
2. If the guaranty is held in the form of a bond in the District Office, the purchaser signs Form RW 8.16A or 8.16B (Appendix 8-11 and 8-12, respectively), as applicable, acknowledging that their guaranty has been returned to him or her.

#### **8.35.1 - EXTENSION OF CONTRACT**

When conditions beyond the control of the purchaser or former owner have prevented completion of removal on schedule, the District Right of Way Manager may grant an appropriate extension of time provided such extension would not delay progress on the project. Such permission is granted in writing and is based upon receipt of a written request from the purchaser who acquired the improvements or the owner who retained improvements.

Relief from other terms of the contract may be granted only by the Director of the Right of Way Division or the Commissioner of WVDOH.

### **8.35.2 - FORFEITURE OF CONTRACT**

If the District Right of Way Manager determines that the purchaser doesn't meet the time of the contract, then the performance guaranty in the form of a certified check, cashier's check or money order, or funds obtained from liquidated bonds are then deposited in the WVDOH fund and credited to the project.

### **8.36 - COMPLETION OF PROJECT IMPROVEMENT REMOVAL**

Improvement disposition on each project is completed when:

1. The District has obtained physical possession.
2. Arrangements have been made to dispose of all improvements.
3. Those improvements removed by means other than highway contract are cleared of the right of way.
4. A highway construction contract which includes demolition of improvements, which have not been removed by any other means, has been awarded.

When the above conditions are met, the District Property Manager makes and forwards to the Central Office Property Manager one copy of the completed Building Record, Form RW 8.05 (Appendix 8-1), for use in the Central Office files and the Property Management Section.

The original Building Record is retained in the District Office and filed in the proper project file.

### **8.37 - MOBILE HOME TITLES**

When manufactured housing or mobile home(s) are acquired by the WVDOH, the District Office responsible for the acquisition must forward the title(s) to the Property Management Section of the Right of Way Division. The Property Management Section will then have the title(s) transferred into the name of the WVDOH and will return the title(s) to the district.

Upon sale of the manufactured housing or mobile home(s), the appropriate title(s) will be delivered to the purchaser. If titled improvements are not sold, but removed by the contractor, the WVDOH will retitle the improvements in the name of the contractor and deliver the title(s) to the contractor for proper disposal.

## **8.40 - INVENTORY OF WVDOH OWNED PROPERTY**

An inventory of all real property, except right of way, owned in fee by the WVDOH is maintained by the District and Central Office Property Managers. Such real property includes:

1. Excess properties not needed by the WVDOH (including uneconomic remnants).
2. Properties used in normal WVDOH operations.
3. Properties acquired for foreseeable uses.

The District Right of Way Manager notifies the District Property Manager of any property in these categories that is purchased in order that the Property Manager may initiate a property inventory.

### **8.40.1 - REAL PROPERTY INVENTORY FORMS AND FILES**

For each parcel of real property Form RW 8.02 is prepared in duplicate (See Appendix 8-13) by the District Property Manager and submitted to the District Right of Way Manager for approval. Upon approval, the District Right of Way Manager returns the original Form RW 8.02 to the District Property Manager for file purposes and forwards a copy to the Property Management Section in the Central Office. This form is then maintained in the appropriate file as long as the property listed in the real property inventory.

Upon receipt of the inventory form, the Central Office Property Manager reviews it and then causes the appropriate data to be entered in the computer file in order that the computer generated real property inventory listing can be updated.

The Acquisition Manager will provide an electronic copy of all deeds to the Property Management Section so that the appropriate data can be entered into a database.

### **8.40.2 - SOURCES OF DATA FOR INVENTORY**

The following sources are used in compiling data for property inventory:

1. Project Plans and Maps
2. County Deed Records
3. Circuit Clerk Records
4. WVDOH Records (District, Central Office, or Commissioner's Minutes)

### **8.40.3 - INSPECTION OF NON-RIGHT OF WAY PROPERTY**

A minimum of one annual inspection is made at the District level of each property listed in the inventory to assure that no unauthorized use is being made of property owned by the WVDOH. This inspection includes a review of a printout from the computer files to ensure the data in the printout is accurate and up to date.

Should an encroachment be discovered on WVDOH property, appropriate remedial steps are immediately taken to remedy the encroachment. Such steps may necessitate legal action in which event all pertinent facts are given in writing to the Central Office Property Manager for review and forwarding to Legal Division for appropriate action. Should it appear that a lease may provide an equitable solution, said lease is consummated in accordance with Section 8.47 of this Chapter.

Any changes in the file are noted on the printout which is then returned to the Central Office in order that the computer file may be corrected.

### **8.41 - DISPOSITION OF EXCESS REAL PROPERTY**

Disposition of excess real property rights may be arranged on a permanent basis by:

1. Direct sale to abutting owner(s)
2. Sale at Public Auction
3. Exchange
4. Abandonment
5. Sales to other Government Agencies

Temporary disposition may be accomplished through lease. Refer to Section 8.47 for details. (See Appendix 8-24)

#### **8.41.1 - APPRAISAL OF EXCESS PROPERTY**

The WVDOH is required by State law to receive fair market value for all property that it sells or leases and that does not fall into the category of land sales contained in West Virginia Code, §17-2A-19(c)(2). This section of State law deals with the principal abutting landowners and the various conditions that must be met to implement a direct sale to same, utilizing the current Consumer Price Index calculation.

Excess property that is to be sold shall be reviewed by the District Right of Way Office to determine if the estimated fair market value is \$25,000.00 or less. Properties that fall into this group shall be valued using the following procedures:

The West Virginia State Code requires that the State Tax Department, through periodic reappraisal, determine the fair market value of property subject to taxation. Assessed values for these properties are based, at present, on 60% of fair market value. Given the requirements of law, it is the intent of the WVDOH, for properties having an estimated fee value of \$25,000.00 or less, to rely upon the appraised fair market value of the abutting/adjoining land as established by the Assessor in the county where the property is located to estimate the fair market value of excess WVDOH property.

The Assessor’s appraisal/assessment data is readily available in the public domain and is required to be updated every three years. It is important to note that the appraised value of the abutting/adjoining land is to be utilized rather than the assessed value. If the assessed value is known, then dividing the assessed value by 0.60 will yield the appraised value. The appraised value of the abutting/adjoining land is listed as one of three possible components of valuation, these being land value, building value, and mineral value. Only the land value is to be used, as typically, unimproved land is what the WVDOH is proposing to sell.

Once the appraised value of the abutting/adjoining property has been determined, it is then necessary to determine the appropriate unit value (per acre, per square foot) to apply to the area being sold or leased. This is obtained by dividing the appraised value of the abutting/adjoining property by the total area of that property to determine the appropriate unit value. This unit value is then multiplied by the area of the excess property to be sold to establish an estimate of fair market value. (See Appendix 8-20)

The following is an example of the calculations used to determine fair market value for WVDOH property to be considered excess and sold:

Assessed land value		60% Assessor’s value		FMV
\$60,000.00	÷	0.60	=	\$100,000.00
Fair Market Value		Abutting property size		Unit value
\$100,000.00	÷	25,000 sq. ft.	=	\$4.00 sq. ft.
Unit Value		Excess property		FMV Division
\$4.00 sq. ft.	x	5,000 sq. ft.	=	Property \$20,000.00

If the excess property is being sold, then the value has now been established at \$20,000.00 based upon the appraised value of the abutting parcel, as determined by the County Assessor.

This same procedure applies to land that is requested to be leased. The District Right of Way Office will establish fair market rent based on the procedures and calculations above with the additional step of extracting a market rent value by applying an annual rate of return to the fair market value figure, with a minimum lease value of \$300.00 per year. The annual rate of return to be used is established by the Central Office Appraisal Section on a yearly basis, beginning July 1 of each year.

The following is an example of the calculation to be used to establish fair market rent:

Fair Market Value		Annual rate		Annual rent
Division property		of return		
\$20,000.00	x	0.08	=	\$1,600.00

When using these procedures, the District Right of Way Office shall provide an original and two copies of the following items to the Central Office Property Management Section:

- Cover memo transmitting the package to Central Office Property Manager.
- Property Management Request Checklist
  - Form RW-Checklist-PM (See Appendix 8-21)
- Plat of area
- Color photographs of the subject and adjoining areas
- Right of way plan sheet and county tax map
- PF 12 obtained by the Applicant. If the Applicant cannot obtain the PF 12 from the County Assessor, the Agent is to obtain it.
- Deed of acquisition by the WVDOH.
- The preceding procedures are to be used for properties with estimated values of \$25,000.00 and under. For properties that exceed the \$25,000.00 limit, an appraisal must be requested through the Property Management Section.
- Any letters of first right of refusal from abutting landowners. (See Appendix 8-22)
  - (See Section 8.42) (See WV Code §17-1A-19(c)(2))

#### **8.42 - DETERMINATION OF EXCESS PROPERTY UNDER \$25,000.00**

Upon receipt of a request to sell property in the District Office, the District Right of Way Manager initiates the process leading to a decision on granting the request. This is normally done by following the procedure outlined in the pamphlet entitled *Disposition of Division of Highways Property*. A letter is sent to the applicant confirming receipt of the request and requesting any additional information necessary. A copy of the *Disposition of Division of Highways Property* pamphlet will be forwarded to the applicant at this time.

If the District Engineer/Manager denies the request for sale, the District Right of Way Manager advises the applicant in writing with a copy of the denial being sent to the Central Office Property Management Section accompanied by a copy of the circulation request (Appendix 8-19). The information in the circulation request must be in the format as shown on the appendix. Both the circulation request and the denial letter are then maintained in the Central Office Property Management Section.

The District Property Manager, upon receiving a written request, begins an investigation which includes confirming WVDOH's ownership through Right of Way plans and deeds of record, and identifying and determining ownership of all abutting owners. At this point, the District Property Manager will contact the Central Office Property Management Section to request that a Property Management file number and authorization number be assigned.

The District Property Manager must circulate the request and relevant information to the District personnel responsible for the disposition of excess property.

If there are multiple abutting owners, each must be contacted with the option to exercise their rights of first refusal as abutting owner. Should they exercise that right, those parties will become a part of a joint deed. (All deeds must be in the name or names of abutting property owners.) All abutting property owners, upon receipt of a certified letter from the District Property Manager, have a maximum of 60 days to reply in writing of their interest to exercise their rights of first refusal.

If the District Engineer/Manager recommends approval of the request, and the Fair Market Value of the property to be disposed of has been determined to be less than \$25,000.00, the District Property Manager forwards the request (original and 3 copies) to the Property Management Section of the Right of Way Division for circulation in Central Office. Upon approval by Central Office, the Property Management Section will return the final approval to the District Right of Way Manager for further processing. The District Property Manager requests the applicant should submit a plat and centerline description prepared by a licensed surveyor. In the event the applicant cannot supply a plat and centerline description, they may be secured by the District Right of Way Manager. Plats and centerline descriptions may also be requested through the Property Management Section of Central Office. The purchase price will be the value of the property as established and approved by the Central Office Appraisal Section, plus a nominal administrative cost(s) of processing requests by the WVDOH.

Upon receiving a completed and approved plat, description and appraisal, the District Property Manager requests the District or designee to prepare a deed.

When the deed is received from the District by the District Right of Way Manager, it is reviewed by the Director of the Right of Way Division who, upon review and approval by the Right of Way Division Attorney, forwards the deed to the West Virginia Real Estate Division for review in accordance with the Executive Branch Real Estate Policy (Appendix 8-26). Upon approval by the West Virginia Real Estate Division, the deed will be submitted to the Commissioner of the WVDOH for execution through the State Highway Engineer.

When the District Right of Way Manager receives an executed deed, the closing date will be established with the applicant. A copy of the unrecorded deed may be given to the applicant for review prior to the closing date. On the date of closing, the applicant will tender a cashier's check, certified check or money order made payable to the West Virginia Division of Highways for the amount of the appraised value plus \$400.00 allied charges. This payment is to be deposited with the District Comptroller within 24 hours of its receipt. In addition, copies of the check and transmittal of the check to the District Comptroller are submitted to the Central Office Property Management Section.

The District Property Manager records the deed in the appropriate county. Upon receipt of the recorded deed in the District Right of Way Office, the original is forwarded to the purchaser with a copy being retained in the District Office and a copy forwarded to Central Office with the request that the Property Management authorization be closed after all billable activities have ceased.

Upon receipt of the recorded deed in the Central Office Property Management Section, the Property Management file and authorization are closed. A copy of the recorded deed is forwarded to the Engineering Division for their use in adjusting the Right of Way project plans.

#### **8.42.1 - BOARD OF PUBLIC WORKS**

Upon receipt of a request from any government agency to purchase property owned by the WVDOH, all regulations outlined in Section 8.42 apply except government agencies do not need to be abutting owners.

Any proposed transfers of property owned by the WVDOH to another government agency must first be approved by the Board of Public Works. Included in the package to be submitted to the Board of Public Works must be the minutes of the meeting whereby the receiving agency (Grantee) approved the acquisition of the property. A signed resolution created by the receiving agency (Grantee) showing the approval of the land acquisition shall be submitted in addition of minutes. The deed to be submitted to the Board of Public Works must be prepared by an Attorney and must have that Attorney's name on the document. All deeds that require approval by the Board of Public Works must contain a reversion clause as well.

#### **8.42.2 - DETERMINATION OF EXCESS PROPERTY OVER \$25,000.00**

Upon receipt of a request to sell property in the District Office, the District Right of Way Manager initiates the process leading to a decision on granting the request. This is normally done by following the procedure outlined in the pamphlet entitled *Disposition of Division of Highways Property*.

A letter is sent to the applicant confirming receipt of their request and requesting any additional information necessary. A copy of the *Disposition of Division of Highways Property* pamphlet will be forwarded to the applicant at this time.

If the District Engineer/Manager recommends approval of the request and the fair market value of the property to be disposed of is estimated to be in excess of \$25,000.00, the District Right of Way Manager will forward the original and two (2) copies of the request to the Central Office Right of Way Division, Property Management Section.

The Central Office Right of Way Division, Property Management Section verifies the accuracy of exhibits depicting the area involved in the request for sale. Upon review and approval by Central Office Property Management Section, the request is forwarded for further review in Central Office.

Any request for sale may require Federal Highway Administration approval, in accordance with the most recent State/Federal Stewardship Agreement.

Upon receipt of approvals, the Director of the Right of Way Division advises the District Right of Way Manager the property has been declared excess and disposition arrangements may be made.

Disposition arrangements will be made by the District in accordance with Section 8.42.

### **8.43 - DISPOSITION OF LAND BY PUBLIC AUCTION**

Disposition of excess property may be accomplished by public auction in the event the only abutting owner is the WVDOH or all abutting owners decline their right of first refusal.

#### **8.43.1 - MINIMUM BID**

Before the excess property is offered for sale at public auction the Fair Market Value is determined. Fair Market Value is established through the normal appraisal process. Those allied costs to be reclaimed as a part of the sale price are added to the Fair Market Value. The sum of these two items equals the minimum acceptable bid.

### **8.44 - ADVERTISEMENT OF THE AUCTION**

Public notice of the impending auction is given in the same manner as that prescribed for improvements (refer to Section 8.20.1).

Normally the minimum acceptable bid mentioned under Terms of Sale in the notice is the appraisal value of the property plus an extra amount to cover a portion of the cost of administering the sale.

The party requesting the property be sold is notified in writing concerning the auction.

#### **8.44.1 - CONDUCT OF PUBLIC AUCTION**

The public auction is conducted at the time and place specified in the notice. In addition to the auctioneer, there is a clerk present who records bids and other pertinent matters on Form RW 8.07 (Appendix 8-7).

The auctioneer opens the auction by reading the public notice and answering pertinent questions after which the auctioneer asks for bids.

At the conclusion of the bidding, the clerk obtains the name, address, and telephone number of the high bidder. No later than the next banking day the high bidder must deposit the amount of the bid in the form of a cashier's check, certified check, or money order made payable to the West Virginia Division of Highways with the clerk who will give the high bidder a receipt on Form RW 8.04A (Appendix 8-14). This check or money order is to be deposited with the District Comptroller within 24 hours of its receipt.

#### **8.44.2 - CLOSING OF EXCESS PROPERTY SALE**

If the District Right of Way Manager believes acceptance of the high bid to be in the best interest of the WVDOH, the District Right of Way Manager so recommends by letter to the Right of Way Director that the sale be made. With the letter is forwarded:

1. Quitclaim Deed prepared under the supervision of the attorney in the District. If there is no attorney in the District, information is sent to Central Office in order that the Legal Section of the Right of Way Division can prepare the deed.
2. A receipt for the deposit made with the District Comptroller.
3. Copy of Form RW 8.04A (Appendix 8-14).
4. Copy of Form RW 8.07 (Appendix 8-7).

If the District Property Manager finds the papers in order and concurs in the recommendation of the District Right of Way Manager, the deed with the recommendation of approval by the Director of the Right of Way Division is submitted through proper channels to the Commissioner for his consideration.

If the Commissioner indicates approval of the sale by signing the deed, proper distribution is then made of the deed.

A representative of the District tenders the deed in person or by letter to the bidder.

After the closing is held and the deed is recorded by the District Property Manager, the District furnishes to the Central Office a copy of the recorded deed.

#### **8.45 - DISPOSITION OF PROPERTY BY EXCHANGE**

Excess real property may be exchanged for property which can be used in the construction, maintenance, or operation for the State Highway System.

##### **8.45.1 - DETERMINATION OF FEASIBILITY**

Two determinations may be required, the first being whether the WVDOH property to be surrendered by the WVDOH is excess. This decision, if not already made, would result from following the normal process described in Section 8.42 herein. The second determination, to be made simultaneously with the first, involving usefulness of the property offered to the WVDOH would be handled through the office of the Director of the Right of Way Division. If the offered property is in fact needed in connection with a previously authorized acquisition project, then this second determination is not necessary.

The final decision to proceed with the exchange rests with the Commissioner of WVDOH.

### **8.45.2 - PREPARATION FOR EXCHANGE**

If the exchange has been found to be feasible in principle, a title report and appraisal are obtained of the property to be acquired through usual procedures. An appraisal of the property owned by the WVDOH is also obtained.

### **8.45.3 - NEGOTIATIONS FOR EXCHANGE**

Upon obtaining the approved values for use in negotiating the exchange, the Director of the Right of Way Division authorizes initiation of negotiations; however, before doing so when the property to be acquired by the WVDOH has the higher value of the two, the Director makes certain the sufficient funds to cover the cost of acquisition are encumbered.

Negotiations for the exchange are conducted in accordance with the policies established for right of way acquisition. Variations in consideration to be paid either to or by the WVDOH are not made unless authorized by the Director of the Right of Way Division. Any liens or encumbrances against the title of the property to be acquired by the WVDOH are resolved before closing.

### **8.45.4 - CLOSING OF EXCHANGE**

Closing of an exchange transaction requires a deed for the property being acquired by the WVDOH and a deed for the property disposed of by the WVDOH. However, both transactions may be included in one deed.

## **8.46 - SALES TO OTHER GOVERNMENT AGENCIES**

Excess property may be sold on a negotiated basis to other agencies of the State, municipalities, or counties after finding that the property is excess (refer to Section 8.42.1). Appraisal is prepared, reviewed, approved, and forwarded to the District. If the agency agrees to the appraisal price, the proposed sale information and an executed deed are submitted to the Secretary of State's Office for approval by the Board of Public Works. Upon receipt of approval, payment is received and the executed deed is delivered in accordance with provisions of Section 8.44.2. Excess property may be sold to other State agencies, municipalities, or counties for a \$1.00 consideration at the discretion of the Commissioner of WVDOH. The deed of conveyance must contain language stating that if said property is not used for public purposes, all property conveyed shall immediately revert back to the WVDOH.

## **8.47 - LEASE OF REAL ESTATE OWNED BY THE WVDOH**

Real property owned by the WVDOH may be leased to others when it has been determined:

1. It is excess but cannot be sold or exchanged.

2. It is not excess but the need for it for the WVDOH's purposes is not imminent.
3. Its use under the lease does not interfere with an existing use by the WVDOH.

#### **8.47.1 - LEASING -- GENERAL PRINCIPLES**

Leasing of WVDOH property normally conforms to the following principles:

1. The lease agreement is in writing and all terms of the lease are set forth therein.
2. Rents are based on a written determination of fair rental value.
3. All rents are payable in advance and are collected upon delivery of the lease to the lessee.
4. Each lease is on a monthly, quarterly, semi-annual, or annual basis with the right of cancellation on a 30-day basis reserved to the WVDOH.
5. If improved property is involved, the WVDOH assumes no responsibility for utility or trash collection bills. No repairs or alterations are made at the expense of the WVDOH unless such expense is first authorized in writing by the Director of Right of Way Division.
6. All leases for fair market rent must contain the following language: "This agreement shall be for an initial term of \_\_\_\_\_ year(s) commencing on the first day of the month after the full execution of this agreement and the receipt of the Lessee's first (monthly, yearly) rent. Said receipt date shall be memorialized on the last page of this lease." This language shall not be included in dollar documents for public agencies.

The following language is provided in the last numbered item: "First Payment received and Lease Delivered on \_\_\_\_\_"

Employees of the WVDOH are prohibited from leasing property to or from the WVDOH unless written permission is first given by the Commissioner of WVDOH.

#### **8.47.2 - INTERIM LEASES**

The Director of the Right of Way Division, at the initiation of each project, establishes the policy for free occupancy to be granted owner-occupants of improved properties on that project. Depending upon conditions in which acquisition is taking place, the period of free occupancy may be from 30 to 90 days after the property owner receives payment or the WVDOH receives right of possession from a Circuit Court. Owner-occupants who remain after the expiration of the period of free occupancy must then lease the properties from the WVDOH. Tenants in improved properties are not normally granted any period of free occupancy but are required to lease from

the WVDOH as soon as the WVDOH acquires title or receives right of possession through a Circuit Court. The terms governing these leases are generally the same as those listed in Section 8.47.1; however, the rental period is always month to month and total occupancy may not exceed one year. The requirement that rent be paid before occupancy may begin is also not applicable in these cases.

When the District Right of Way Manager receives approval to lease property on an interim basis, the Agent has an agreement prepared on the interim lease agreement. The prospective lessee signs the interim lease and the District Agent forwards the interim lease to the Director of the Right of Way Division for signature. Distribution of each executed interim lease is spelled out in Section 8.47.6 herein except the Director of the Right of Way Division rather than the Commissioner retains the last copy.

### **8.47.3 - LEASE RECORDS**

All leases are assigned numbers for easy reference. Receivable leases are assigned numbers in the following manner: Chronological Order Number, District Number, County Number, i.e. 1-1041 is the first receivable lease negotiated in District 10, Raleigh County.

Pertinent data concerning each lease is maintained in the "Lease Receivable Master Listing" on the WVDOH's mainframe computer. This data is entered from a terminal installed in the Right of Way Division. To assure that the files are current and accurate, the data is printed out, and the printouts are provided to the District Right of Way Managers for review and correction, if necessary.

The master file on rental payments is maintained in the Accounts Receivable Section of the Finance and Administration Division. Monthly, an "Age Analysis Report" is produced from this file which is a listing of those leases for which rent payments are delinquent. Use of this report is discussed in Section 8.50.

### **8.47.4 - REQUESTS TO LEASE PROPERTY**

Requests for leases totaling less than \$25,000.00 per year are handled through the same process as that described in Section 8.42.

Requests for leases totaling more than \$25,000.00 per year are handled through the same process as that described in Section 8.42.2.

### **8.47.5 - APPRAISAL AND NEGOTIATIONS FOR LEASE PURPOSES**

Upon receipt of the authorization to lease, the Central Office Appraisal Section obtains a determination of the fair rental value of the property to be leased. When the value is determined in Central Office, it is forwarded in writing to the District with the authorization to begin negotiations for the lease and its terms. The terms, unless otherwise authorized by the Director of the Right of Way Division, conform to the principles in Section 8.47.1.

#### **8.47.6 – PREPARATION AND EXECUTION OF LEASE**

The lease document is prepared in the District Right of Way Office and reviewed by the Legal Section of the Right of Way Division. Leases using the form approved by the Legal Division will be reviewed only by the Legal Section of the Right of Way Division. The lessee signs an original and two copies of the lease, that forwarded from the District to the Central Office. If the Director finds the lease acceptable, it is forwarded to the Commissioner or his authorized deputy for execution. Upon execution, the lease is returned to the Central Office Right of Way Division and distribution is made as follows:

1. Original to District for delivery to Lessee.
2. Copy to District for files.
3. Copy to Central Office Property Management file.

Upon delivery of the executed document, the District Agent collects the first term fair market rent and transmits it to the District Comptroller for deposit into Account RRR3791.

As the lease transmittal is being completed, the Right of Way Division and District records are established in accordance with the requirements of Section 8.47.3.

#### **8.47.7 – PROCEDURE WHEN THERE IS MORE THAN ONE PROSPECTIVE LESSEE**

If more than one person expresses an interest in leasing a particular property from the WVDOH, the District, upon receipt of the approved fair rental value, conducts a public auction in order that all interested parties are given an opportunity to bid for the leasing of the property.

The notice used is in the same form as that used for public sale of excess lands. The fair rental value is set forth as the minimum acceptable bid.

On the next banking day after the auction, the highest bidder tenders the first required rental payment and is given a receipt therefore (Form RW 8.04A modified for this purpose). The rental payment is deposited with the Comptroller. The District Right of Way Manager then forwards his/her recommendation that a lease be prepared and executed to the Director of the Right of Way Division. The Director then causes an appropriate lease to be drafted.

#### **8.48 - JOINT USE AGREEMENTS**

Property within right of way limits may be used by others provided such use does not interfere with construction and/or operation of the highway facility. This use is subject to a joint use agreement. The procedure normally followed in the preparation and execution of such agreements is that specified herein. Federal approval may be required, as set out in the State/Federal Stewardship Agreement.

## **8.50 - RENT COLLECTION**

All rents are invoiced through the WVDOH's Finance and Administration Section. Form RW 8.24 (Appendix 8-16) is used to initiate billing.

Approximately 60 days prior to the beginning of any rental period (first day of month) the Central Office Property Manager requests a "prebilling report" through normal computer request channels. This prebilling report lists the names of all lessees from whom rent is to be collected during the designated rental period.

The District Property Manager reviews the billing report and transmits same to the Accounts Receivable Section of the Finance and Administration Division where invoices are generated and sent to the lessees in time for them to make the prescribed payments.

Rent payments on interim leases are handled in accordance with Volume III, Chapter 19, West Virginia Division of Highways' Administrative Operating Procedures. Since these payments represent credits to right of way projects, appropriate entries are made in Central Office financial cards from data provided by Accounts Receivable to the District Property Manager.

### **8.50.1 - COLLECTION OF DELINQUENT RENTS**

Periodically, the Accounts Receivable Section of the Finance and Administration Division provides to the District Property Manager an "Age Analysis Report" which reflects all overdue payments.

When a lessee is in arrears, the District Property Management Agent is to make contact with the lessee in order to bring the accounts up to date. If these accounts continue to remain in arrears, they are referred to the Legal Division for further action.

## **8.51 - INSPECTION OF LEASED PROPERTY**

The District Property Manager makes, at a minimum, an annual inspection of each leased property to ascertain that all terms of the lease are being kept by the lessee. This inspection should include contact with the lessee either in person. Any violation is brought to the attention of the lessee by letter. After allowing adequate time (60 days) for correction, the District reinspects and if the conditions have not been corrected, the lessee is notified to vacate.

## **8.52 - RENEWAL OR TERMINATION NOTICE**

Normally, each lessee gives notice of intent to renew or terminate in accordance with the terms of the lease. In those leases involving annual renewal, should no notice be received from lessee by the fifth day before final date for giving notice, the District contacts the lessee to ascertain his position. This is to remind the lessee of his obligation under the terms of the lease.

To assist the District in performing this function, the District Property Manager obtains computer printouts and sends to the District Right of Way Manager a monthly report entitled, "Lease Receivable - District Notice Report." As appropriate action is taken at the District level, such action is documented in the report and the report is then returned to the Central Office. The District Property Manager then causes the computer file to be properly updated.

When the WVDOH finds it necessary to terminate a lease, written notice is given the lessee by the District Right of Way Manager, copy to the Central Office, in accordance with the terms of the lease. If there is no specific notice requirements set forth in the lease and the term is one or more years, notice is given 90 days before the actual date of termination. If the lease is monthly, the notice is given 30 days in advance of the actual cancellation date.

### **8.52.1 - RENT REVIEW, ADJUSTMENT, AND PHASE-IN**

Each long-term lease involving the collection of more than nominal rent under which the WVDOH is the lessor, is subject to review prior to the renewal term in order to determine whether the rental reflects current economic conditions. The District Property Manager utilizes the Disposition of Excess Property form (See Appendix 8-20) to initiate the review of the market conditions in the area where the leased property is located. In review of the market condition, if it is determined that conditions have changed sufficiently to require a rent rate change, the assigned appraiser will then, through normal appraisal process, determine a new rate. Upon receipt of this new rental rate as approved, the District Property Manager notifies the affected lessee and a new lease is negotiated. In order to provide sufficient time to obtain both a determination as to whether the lease rent should be changed, and/or a new lease is to be obtained, this process is normally initiated at least seven (7) months prior to the scheduled renewal date of the existing lease.

Due to the fact that a lease term can vary from one year to twenty years, or more, a substantial increase may be established by the reappraisal to determine current fair market rent. In some instances, this may cause financial hardship to the lessee. In those instances, where the lessee has expressed hardship, the WVDOH will phase in the increase over a three (3) year period. The phase-in would be one-third (1/3) of the increased rent amount plus the original rent amount the first year of the new term. The second year of the new term the rent would be two-thirds (2/3) of the rent increase plus the original rent. The third year of the new term would be the full amount of the updated rent.

This process will only apply to existing lease agreements where there is a substantial rent increase. An amendment to the existing lease will be prepared and signed by the WVDOH and the lessee and placed in the lease file showing the lessee agrees to the terms of the phase-in.

Upon the amendment to an existing lease and implementation of the phase-in process, the District Property Manager will notify the Central Office Property Manager each year of the phase-in so that Finance and Administration Division can update their records and the lessee billed accordingly.

### **8.53 - VACATION PROCEDURE**

The District, when the lessee vacates an improved property, follows basically the procedure outlined in Section 8.12.

Should the inspection made at the time of vacation reveal that any of the fixtures have been moved, recovery or reimbursement is handled in the same manner as outlined in Section 8.13.

After the property is vacant, normal vandalism control is exercised (refer to Section 8.12.1).

The District Property Manager inspects the property after vacation by the tenant to ensure the property was left in good condition.

### **8.60 - LEASING BY WVDOH OF PROPERTY FROM OTHERS**

When it becomes necessary for a District or the WVDOH to lease additional space for other than office use, such space is leased in accordance with the specifications listed below unless prior approval for other terms is obtained from the Commissioner or his duly authorized deputy. Leases of office space are obtained in accordance with regulations established by the Commissioner of the Real Estate Division.

#### **8.60.1 – REAL PROPERTY LEASE PROVISIONS**

Each lease under the terms of which the WVDOH is the lessee and which requires payment of more than nominal rent adheres to the following principles:

1. The lessee is the West Virginia Department of Transportation, Division of Highways.
2. The premises to be leased are described so that no misunderstanding arises as to location or amount of area leased.
3. The right to cancel upon 30 days written notice is given to the lessee. In unusual situations, this right is given based upon 60 or 90 days' notice.
4. Rent payment is normally made at the end of each specified rental payment period and upon receipt of a proper invoice from the lessor.
5. The WVDOH is given the privilege of making additions necessary to the accomplishment of its functions and the right to remove such additions at the expiration of the lease.
6. When access to the leased premises is over or through other property of the lessor, the right of ingress and egress via the most practical route is granted to the WVDOH.

7. When the lessor owns adjoining property, the following clause is inserted in the lease agreement:

“The lessor hereby releases the Division of Highways from any and all damages that may be occasioned to the residue of the property of the lessor by reason of the occupation and use of the property by said Division of Highways.”

### **8.60.2 – LEASE PAYABLE RECORDS**

The records kept on leases under which the WVDOH is the lessee are similar to those kept on leases under which the WVDOH is lessor (Section 8.47.3).

Lease numbering is reversed by placing the chronological number of the lease after the District-County combinations, i.e. 1041-1; 1041-2; 1041-3, etc.

The master file is maintained on the computer mainframe described in Section 8.47.3. Monthly, a printout entitled, “Lease Payable-Master Listing,” is generated and distributed to the District Right of Way Managers for their use and for updating purposes.

A master rent payment file is maintained in the Accounts Payable Section of the Finance and Administration Division for those leases under the terms of which the WVDOH is the lessee. Records are also maintained in the Districts. These records contain the following information:

1. Date Invoice Received
2. Rental period
3. Due Date
4. Amount
5. Date Paid

### **8.70 - REQUEST AND AUTHORIZATION TO LEASE ADDITIONAL SPACE**

A District Engineer/Manager or WVDOH Director, upon finding that his organization requires additional space, requests in writing authorization from the Commissioner or his authorized deputy permission to lease such required area. In the request, the reason for the lease, the area required, and owners are set forth.

#### **8.70.1 - FAIR RENT DETERMINATION**

Upon receipt of authorization to lease a particular property, the WVDOH Director or District Engineer/Manager requests the Director of the Right of Way Division to obtain the lease

agreement. The Right of Way Director authorizes the Appraisal Manager to cause a fair rental determination to be made in accordance with the specification of Section 8.47.5.

The Director further causes a search to be made of the county records to determine ownership. Normally, if the expected rent exceeds \$100.00 annually, an abstract may be requested. For leases requiring the payment of less than \$100.00 annually, the District Property Manager checks the county records to determine the present ownership of the tract to be leased. The rent determination is sent in writing to the District Right of Way Manager if the proposed lease is for District purposes or if the lease is for Central Office.

If rent payment is to be nominal (e.g., \$1.00), no appraisal is necessary.

### **8.70.2 - PREPARATION AND EXECUTION OF A LEASE IN A DISTRICT**

If the rental rate and terms of the lease proposal are acceptable to the prospective lessor, the District Right of Way Manager requests an agreement from the Central Office. This lease is prepared in the Legal Section of the Right of Way Division and then submitted to the Legal Division for approval. After being approved in the Legal Division, the lease agreement is transmitted through the Right of Way Division Property Manager to the District Right of Way Manager who causes the agreement to be delivered to the lessor for signature.

After the lease is signed by the lessor and acknowledged before a notary public, it is transmitted by the District Right of Way Manager to the District Property Manager who submits it through normal channels for signature by the Commissioner. Upon execution by the Commissioner, the original and the copies are returned to the Right of Way Division. The original is retained in Central Office Property Management and the two copies are sent back to the District who delivers one copy to the lessor and retains a copy for their files.

At this time, the WVDOH and District records are established.

### **8.70.3 - RENEWAL OR TERMINATION NOTICES**

Renewal and termination notices are given in accordance with the terms of each lease. No later than 15 days prior to the time notice is required, the District Property Manager inspects the premises which are under lease to the WVDOH to determine they are still in use.

Following this inspection, an appropriate official, under whose jurisdiction the premises are leased, is contacted to ascertain whether the WVDOH desires to continue occupancy under appropriate renewal.

The District Engineer/Manager or the District Right of Way Manager sends an appropriate notice to the lessor. Copies of such notice are sent to the District Property Manager and the Director of the WVDOH which occupies the premises involved.

To assist the Districts in this activity, a report entitled, "Lease Payable-District Notice Report," is generated from the master lease files and transmitted to the District Right of Way

Manager. As action is taken, same is documented on the request which is then returned to the District Property Manager for use in updating the files.

## **8.71 - REQUEST AND AUTHORIZATION TO LEASE OFFICE SPACE**

When the District Engineer/Manager or the WVDOH Director finds it necessary to lease office space, authorization is requested for such lease as provided in Section 8.60.

### **8.71.1 - PREPARATION AND EXECUTION OF LEASE**

The District Property Manager forwards a request to Central Office Property Management Section for lease of office space along with requisition Form No. WV-15 (Appendix 8-17) who then forwards the request to the Real Estate Division. who has the property appraised and has the lease negotiated and executed.

After the lease has been executed, the Real Estate Division sends one copy to the Right of Way Division where additional copies are made for use by the using District or WVDOH and the Finance Division. Distribution to the lessor is made through the Division of Finance and Administration.

### **8.71.2 - RENEWALS AND TERMINATIONS**

Renewals and terminations are handled by the Real Estate Division. Upon request by the Central Office Property Manager, the Director of Leasing in Finance and Administration notifies the lessor in writing of intent to renew or terminate and provides a copy of such notice to the Central Office Property Manager.

## **8.72 - RENT PAYMENT**

Rent must be paid on the basis of a written invoice presented by the lessor.

For lessors who do not have their own invoice forms, the District prepares an invoice, Form 8.23, (Appendix 8-18) and sends the original and four copies to the lessor for signature 30 days before the rent is due.

The lessor returns the signed invoice package to the District. After the invoice is approved and payment is authorized in the District, it is forwarded to the Finance Division for further processing with a copy to the Central Office Property Manager for purposes of updating the lease files. Payment is made in accordance with procedures established by the Business Manager of the WVDOH.

Some leases for space occupied by Central Office are serviced directly by the Division Property Manager. In these instances, the District Property Manager causes the invoices to be prepared and transmitted to the appropriate location.

### **8.73 - ANNUAL INSPECTION**

The District Property Manager inspects each leased property at least annually to be sure that:

1. There is continuing need for use of the property by WVDOH forces.
2. The WVDOH is not in violation of any of the terms of the lease agreement; and
3. The lessor is honoring the terms of the agreement.

If there appear to be violations by either the WVDOH or the lessor, the District Property Manager provides notice to the appropriate person(s) concerning such violation.

The District Property Manager also provides a written report concerning the results of the inspection to the Central Office Property Manager.

### **8.74 - PURCHASE OF REAL ESTATE FOR OTHER THAN RIGHT OF WAY**

When it is necessary to acquire real estate for use by the WVDOH for other than right of way purposes, such acquisitions are conducted in the same manner as normal right of way purchases. These other uses include, but are not limited to, roadside parks, county headquarters, district offices, and weigh station sites.

As soon as such acquisitions are completed, the District Property Manager inventories the property acquired in accordance with Sections 8.40 and 8.40.1.

### **8.75 - ELIGIBILITY OF EMPLOYEES OF THE WVDOH TO PURCHASE OR RENT PROPERTY FROM THE WVDOH**

No employee of the WVDOH or a member of his or her immediate family is eligible to purchase land or improvements from the WVDOH. With prior written approval of the Commissioner of the WVDOH, an employee or a member of his or her immediate family may lease property from or to the WVDOH.

### **8.80 - PERFORMANCE OF NON-PROPERTY MANAGEMENT FUNCTIONS**

District Property Managers may perform other duties within the District provided they are technically qualified to perform such other duties and also provided that to perform such duties would not interfere with property management functions.

## **8.81 - LAST RESORT HOUSING**

In Chapter 12, Section 12.28 of this Manual, there is a provision for “last resort housing” when the statutory relocation housing payment limits are exceeded. As stated in that Section, many valid and innovative techniques may be used to provide last resort housing. If the WVDOH provides State-owned rental housing to a displaced person, the Property Management Section then becomes responsible for processing the lease agreement and for management of the property during the lease term.

The Relocation Section requests that the Legal Section draw up a lease for a 42-month maximum rental period. The lease is then given to the Property Management Section for execution. Upon execution, the lease is handled in the same manner as set forth in the applicable parts of Section 8.47 of this Chapter.

## **8.82 - PARTICIPATION IN “LOGO PROGRAM”**

This Program is now handled by the Traffic Engineering Division.

## **8.90 – RIGHT OF WAY (ROW) USE AGREEMENTS**

A ROW use agreement conveys the right to use highway real property interests above or below the highway’s established grade line, beneath an elevated highway structure, or adjacent to the roadway, and located within the approved right of way boundaries. This includes the land and any related real property rights held by the WVDOH.

All requests for ROW use agreements on Interstate systems must be approved by the Federal Highway Administration in accordance with the State/Federal Stewardship Agreement. Interstate systems extend beyond the mainline and include connectors and other types of road acquired with Interstate funding.

Current procedures relating to leasing apply accordingly.

## **8.100 - UTILITY ACCOMMODATION LEASE OF REAL PROPERTY OWNED BY THE WVDOH**

Any interest in real property owned by the WVDOH may be leased to others for utility accommodation when it has been determined:

1. It is excess.
2. It is not excess but the need for it for the WVDOH’s purposes is not imminent.
3. Its use under the utility accommodation lease does not interfere with an existing use by the WVDOH.

4. It does not compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.

### **8.101 - UTILITY ACCOMMODATION LEASING -- GENERAL PRINCIPLES**

Utility Accommodation Leases of WVDOH property must conform to the following principles:

1. The utility accommodation lease agreement is in writing and all terms of the utility accommodation lease are set forth therein.
2. Fair Market Value Rental Rates are established by the Commissioner by June 30, for the following fiscal year. Upon a showing by a utility that the rates set by the Commissioner do not represent the fair market value in the area of the proposed installation, the District Engineer/Manager may recommend an adjustment in the rental rates, if, in his or her discretion, it is in the best interest of the State to do so. Any adjustment of rates must be approved by the Utilities Section of the Engineering Division.
3. All rents are payable in advance and are collected upon delivery of the utility accommodation lease to the lessee.
4. Each utility accommodation lease is to be paid on a monthly, quarterly, semi-annual, annual, or term basis with the **right of cancellation on a 30-day basis reserved to the WVDOH.**
5. All utility accommodation leases must contain the following language: “This Utility Accommodation Lease is for a term of \_\_\_\_\_ (\_\_\_\_) years commencing on the first day of the month after the full execution of this agreement and the receipt of the Lessee’s first (monthly or yearly) rent. Said receipt date shall be memorialized on the last page of this Utility Accommodation Lease.”

The following language shall follow the last notary acknowledgment and will be signed and dated by the Utility Supervisor delivering the document. “First Payment received and Utility Accommodation Lease Delivered on \_\_\_\_\_” (this date is the effective date of the utility accommodation lease)

“\_\_\_\_\_ Utility Supervisor,  
District \_\_\_\_\_”

6. Employees of the WVDOH are prohibited from leasing property to or from the WVDOH unless written permission is first given by the Commissioner of WVDOH.
7. The person, firm or corporation applying for a utility accommodation lease is responsible for the design of the facility to be installed or attached to a highway structure. The WVDOH will be responsible for review and approval of the proposal

with respect to the location, construction materials used, procedures for and manner of installation or attachment.

8. Approval of any utility accommodation lease does not constitute liability or indemnification of the WVDOH for improperly engineered or installed facilities. The WVDOH will not be responsible for changes in right-of-way, property lines, or designations which render the approved design useless.
9. All utility installations under a utility accommodation lease should be of durable materials relatively free from routine servicing and maintenance requirements and, at a minimum, meet the following current requirements:
  - (a) Electric power and communication facilities should conform with the National Electrical Safety Code.
  - (b) Waterlines should conform with the specifications of the American Water Works Association and the State Department of Health.
  - (c) Sewer lines should conform to regulations of the State Department of Health. No sewage or other obnoxious effluents shall be discharged into any highway ditch line or storm drainage structure.
  - (d) Pressure pipelines should conform with the applicable sections of the American National Standards Institute; Title 49 CFR, Parts 192, 193, and 195 and applicable industry codes.
  - (e) Liquid petroleum pipelines should conform with applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways. Any pipeline carrying hazardous materials shall conform to the rules and regulations of the U. S. Department of Transportation governing the transportation of such materials.
  - (f) Fiber Optic Installations shall conform with the WVDOH's Policy on Fiber Optic Installations Within Right-of-Way.
  - (g) All Utility facilities should be of a design, subject to reasonable consideration of engineering and economic feasibility, that does not adversely affect highway or traffic safety or otherwise impair the highway or its aesthetic quality.
  - (h) New installations or adjustments of existing utility lines, particularly those located underground or attached to structures, should be planned so as to minimize hazards and interference with highway traffic.

### **8.101.1 - IN-KIND COMPENSATION**

The WVDOH is required to receive fair market value for all utility accommodation leases. The exception to this rule is for utilities that are telecommunications carriers.

W. Va. Code § 17-2E-6 delineates the types of in-kind compensation which may be negotiated with a telecommunications carrier. These include, without limitation:

1. Conduit or excess conduit;
2. Innerduct;
3. Dark fiber;
4. Access points;
5. Telecommunications equipment and services;
6. Bandwidth; and,
7. Other telecommunications facilities as a component of the present value of the trenching.

The WVDOH shall value any in-kind compensation based on fair market value at the time of installation or review and may also consider any valuation or cost information provided by the telecommunications carrier.

### **8.102 - CONDITIONS OF UTILITY ACCOMMODATION**

If any facility is placed on, over, through, along, with, across or under the WVDOH's property without an approved permit, utility agreement, or utility accommodation lease, and the facility, after ten days' notice, is not removed, then the WVDOH may cause removal at the owner's expense, pursuant to the Obstructions statute. W. Va. Code § 17-16-1, *et seq.* Nothing herein prevents the WVDOH from immediately removing any installation which creates a hazard to public safety, use, construction or maintenance of any highway.

The following general conditions and stipulations are given concerning the use and occupancy of highway property under a utility accommodation lease:

1. Full information, including a plan view developed on WVDOH plans, pursuant to the WVDOH's Design Directives, shall be provided to the WVDOH showing all work to be done on WVDOH's property. A cross-sectional view of the highway will be required for all installations.
2. All underground facilities will be installed so that they can be located in the future. Locator tape will be used in accordance with the following:

**Red** - Electric Lines

**Yellow** - Gas, Oil, Steam, Petroleum, etc.

**Orange** - Communication Lines

**Blue** - Water

**Green** - Sanitary Sewers

The recommended location of the locator tape is 18 inches (450 mm) below the surface directly above the installation.

3. The lessee agrees to hold the WVDOH harmless for any damages to persons or property, which may arise during the progress of or by reason of the work performed
4. Facilities should be kept in a good state of repair both in structure and aesthetic quality.
5. The installation shall be relocated, adjusted, or removed by the lessee, at no cost to the WVDOH, when required for improvement of the highway, unless the provisions of W. Va. Code § 17-4-17b or § 17-4-17d apply. Or, unless the installation is within a Utility Accommodation Corridor, as established by the Commissioner, in which case the cost of the relocation will be borne by the WVDOH.
6. The lessee agrees to protect at all times, its employees, equipment and the traveling public in accordance with the current edition of the manual, "Traffic Control for Street and Highway Construction and Maintenance Operations", published by the WVDOH.
7. The installation must be maintained to ensure the safe and convenient use of the traveling public. Erection and maintenance of all required warning devices, barricades and danger signals, including keeping them operational and clean is the responsibility of the lessee.
8. Any work performed during the presence or absence of the WVDOH's inspector does not relieve the lessee of its responsibility for proper installation and indemnification of the WVDOH.

### **8.103 – APPROVAL OF OTHER AGENCIES**

Depending upon the impact of the installation, a utility accommodation lease may require approval of other agencies. For example, installations which cross property owned by the United States Forest Services, United States Fish and Wildlife Service, and the United States Army Corps of Engineers, all require approval of those entities before any utility accommodation lease can be consummated.

Additionally, it is possible that environmental assessments would be required, depending upon the installation.

Any installation that is proposed within controlled access right of way must be approved by the Federal Highways Administration.

#### **8.104 - UTILITY ACCOMMODATION LEASE RECORDS**

All utility accommodation leases are assigned numbers for easy reference by each District in the following manner: Current Calendar Year, County Abbreviation, the Letter “U”, and Chronological Order Number. For example, 18-MONO-U-1, is the first receivable utility accommodation lease negotiated in Monongalia County during the calendar year 2018.

The District Utility Supervisor maintains the original utility accommodation lease file, and provides two copies to the Central Office Property Management Section, as discussed in Section 106.

#### **8.105 - REQUESTS FOR UTILITY ACCOMMODATION LEASES**

All requests for utility accommodation leases originate with the District Utility Supervisor in the District in which the lease is to be issued.

Leases for less than or equal to one half (1/2) mile of the WVDOH’s property shall be signed by the District Engineer/Manager.

Leases for more than one half (1/2) mile of the WVDOH’s property shall be forwarded for concurrence to the Utility Section of the Engineering Division. Upon the Utility Section’s concurrence, the lease is returned to the District for signature by the District Engineer/Manager.

#### **8.106 – PREPARATION AND EXECUTION OF UTILITY ACCOMMODATION LEASE**

Using the rates established by the Commissioner, and on the prescribed form approved by Legal Division, the utility accommodation lease is prepared in the District Utility Supervisor. The lessee signs an original and two copies of the utility accommodation lease. The original lease and the two copies are then forwarded through proper channels to the District Engineer/Manager for signature, as noted in Section 105. Once executed, the original lease is maintained at the District and two copies are forwarded to the Central Office Property Management Section.

Upon delivery of the executed document, the District Utility Supervisor collects the first term fair market rent and transmits it to the District Comptroller for deposit.

#### **8.107 - RENT COLLECTION**

All rents are billed through the WVDOH’s Finance and Administration Division.

#### **8.108 - COLLECTION OF DELINQUENT RENTS**

Any utility accommodation lease that is more than thirty (30) calendar days in arrears on rental payments, shall constitute an obstruction under the provisions of W.Va. Code § 17-16-1, *et*

*seq.* The District Utility Supervisor should notify the District Right of Way Manager to take appropriate action under the Obstruction procedures.

Leases more than thirty (30) calendar days in arrears on rental payments should also be forwarded to Legal Division for collection action.

### **8.109 - RENEWAL OR TERMINATION NOTICE**

Normally, each lessee gives notice of intent to renew or terminate in accordance with the terms of the utility accommodation lease.

When the WVDOH finds it necessary to terminate a utility accommodation lease, written notice is given the lessee by the District Utility Supervisor, with a copy to the Central Office, in accordance with the terms of the utility accommodation lease. If there are no specific notice requirements contained in the utility accommodation lease and the term is one or more years, notice is given 90 days before the actual date of termination. If the utility accommodation lease is monthly, the notice is given 30 days in advance of the actual cancellation date.

### **8.110 - RENTAL REVIEW AND ADJUSTMENT**

Each long-term utility accommodation lease is subject to review every five years prior to the renewal term in order to determine whether the rental reflects current economic conditions. Every year, the Commissioner establishes fair market value, and the District Utility Supervisor should review the yearly values to determine if the market conditions in the area where the utility accommodation lease is located have substantially changed.

If it is determined that conditions have changed sufficiently to require a rent rate change, the District Utility Supervisor notifies the affected lessee and a new utility accommodation lease is negotiated.

### **8.111 - VACATION PROCEDURE**

Should the lessee of a utility accommodation lease vacate the leased property, they shall remove any improvements. Failure to do so will constitute an Obstruction.

### **8.112 - PREPARATION AND EXECUTION OF A LEASE IN A DISTRICT**

If the rental rate and terms of the utility accommodation lease proposal, contained on the approved form, are acceptable to the prospective lessor, the District Utility Supervisor prepares the lease, and forwards it through channels to the District Engineer/Manager for approval. Should the lessee request modifications to the lease form, or desire to provide in-kind compensation, the utility accommodation lease is transmitted through the Central Office Property Management Section to the Legal Division for their review. If Legal Division approves the utility

accommodation lease modifications, the utility accommodation lease is returned to the District Utility Supervisor to obtain the signature of the District Engineer/Manager.

Should Legal Division not approve the modifications to the utility accommodation lease form, the utility accommodation lease is denied, and the District Utility Supervisor will inform the lessee.

Any lessee that proposes lease modifications or desires to provide in-kind compensation should be advised by the District that the process to approve such could take up to three (3) to six (6) months.

### **8.113 – BOARD OF RISK AND INSURANCE MANAGEMENT**

The primary responsibility for the West Virginia Board of Risk and Insurance Management (BRIM) is to provide casualty insurance coverage for all State Agencies. The current policy in determining whether to request structure numbers and whether a structure will be included on the Board of Risk and Insurance Management (BRIM) insurance coverage for WVDOH is:

- Structures must have a replacement value of \$3,001 or greater, and/or a contents value of \$5,000 or greater for a minimum of six months during the year.
- Non-combustible structures having no insurance contents value must have a structure replacement value of \$10,000 or greater. Examples: spreader and tailgate racks
- Sodium chloride brine tanks will not be included in the agency structures insured by BRIM.

When adding a new structure or building, the District Property Management Agent will send a completed RMI-20 form to the BRIM Coordinator and the Central Office Property Management Section. Once a building number has been assigned by the BRIM Coordinator the Central Office Property Management Section will enter this information into the BRIM system. Properties not insured will be included into the BRIM system using a NI (non-insured) number assigned by the Property Management Section.

### **8.114 – 8.119 – RESERVED**

### **8.120 – MUNICIPAL ANNEXATION REQUESTS**

The WVDOH periodically receives notices and/or requests for approval of proposed municipal annexations that include DOH right of way. To better ensure consistency in our response to such notices, the following procedures are to be followed by DOH personnel:

Municipal annexations that involve DOH right of way are to be submitted by a municipality to the appropriate District Headquarters; requests submitted by a municipality to other DOH offices are to be forwarded promptly to the appropriate District Headquarters. District personnel are to expeditiously review (within 30 days) the request and determine, to the extent possible:

- The right, title, and interest DOH has regarding the roadways in question;

**CHAPTER 9**  
**ADMINISTRATIVE SECTION PROCEDURES**

**TABLE OF CONTENTS**

---

<u><b>SECTION</b></u>	<u><b>SUBJECT</b></u>	<u><b>PAGE</b></u>
Section 9.00	General .....	1
Section 9.01	Organization .....	1
Section 9.02	Correspondence .....	1
Section 9.03	State Right of Way Authorization .....	1
Section 9.04	Working Hours, Leave, Holidays, Insurance, Retirement & Salaries.	2
Section 9.05	Time & Expenses .....	2
Section 9.06	Travel on State Business .....	2
Section 9.07	Invoice Forms .....	2
Section 9.07.1	Invoice Form RW 10.01 .....	2
Section 9.07.2	Distribution of Form RW 10.01 .....	4
Section 9.08	Invoice Processing Acquisition .....	4
Section 9.08.1	Invoice Processing Variations .....	5
Section 9.08.2	Advance Payment into Court .....	6
Section 9.08.3	Invoicing for Final Orders .....	6
Section 9.09	Guardian Ad Litem .....	6
Section 9.10	Residential Relocation Payments .....	7
Section 9.11	Residential Moving Cost Only – Invoice Processing .....	7
Section 9.13	Invoice for Moving Cost for Business, Farms, or Nonprofit Orgs ....	8
Section 9.13.1	Invoice for Payment “In-Lieu of” Moving Costs for Businesses, .....	9
Section 9.14	Invoice for Estimating .....	10
Section 9.15	Invoice for Actual, Reasonable Expenses in Searching for a Replacement.....	11
Section 9.16	Invoice for Actual, Direct Losses of Tangible Personal Property ....	11
Section 9.17	Incidental costs of Transfer of Property to WVDOH .....	11
Section 9.18	Court Costs .....	12
Section 9.18.1	Condemnation Witness Service Fee .....	12

Section 9.19	Court Reporter .....	13
Section 9.20	Contract Services .....	13
Section 9.21	Final Payment of Utility Invoices .....	14
Section 9.22	Flow of Railroad Utility Invoices .....	14
Section 9.23	Final Voucher .....	14
Section 9.24	Definition of Terms .....	14

## **CHAPTER 9**

### **ADMINISTRATIVE SECTION PROCEDURES**

#### **9.00 – GENERAL**

Acquisition of real estate for use by the WVDOH is a multi-million-dollar program. These expenditures involve thousands of transactions yearly. As such, prompt payment is expected. The taxpayers expect proper handling of their funds. Accordingly, these procedures should be followed.

#### **9.01 - ORGANIZATION**

The Administrative Section of the Right of Way Division Central Office is as follows:

The function of this Section includes the handling of invoices for acquisition, relocation, expense accounts, salary, and time reports for Central Office personnel.

This Section is also charged with the responsibility of processing all invoices including, but not limited to, those received from attorneys, appraisers, clerks of circuit courts, sheriffs, utilities, and others who provide services.

#### **9.02 – CORRESPONDENCE**

Correspondence between the Central and District Offices is to be by transmittal memorandum. When correspondence involves transmittal of an invoice, follow the format of Appendix 9-1A and 9-1B. If a transmittal is for other than invoices, the subject of the correspondence, i.e. project, county, parcel, name of payee, etc., must be shown on the subject line of the transmittal memorandum.

Communication to a District, whether written or verbal, must be directed to the District Right of Way Manager. Correspondence pertaining to invoices should be directed to the Administrative Services Manager or other designated person(s).

#### **9.03 - STATE RIGHT OF WAY AUTHORIZATION**

Before any money can be spent, the Director of the Right of Way Division, or their duly authorized representative, prepares the State Authorization, Form BF-98 (see Appendix 1-1) for those projects that are the responsibility of the Central Office Right of Way Division. Authorization for District projects are the Districts responsibility.

In Central Office, this authorization is forwarded to the Programming Division, for approval. The approved authorization is returned to the Right of Way Division; one copy remains in the Right of Way Division Administrative files and one copy is forwarded to the proper district. The receipt of this authorization by the district authorizes it to begin expending funds allocated for the subject right

of way project.

Upon authorization of Federal funds, the District may proceed with the expenditures relating to right of way activities.

It is the responsibility of the District Right of Way Manager to monitor all right of way expenditures in their District. If a project requires additional funds, such should be requested to Central Office in writing.

Supplemental authorizations are numbered in chronological order and follow the same workflow, whether they are the Central Office or the Districts' responsibility.

#### **9.04 - WORKING HOURS, LEAVE, HOLIDAYS, INSURANCE, RETIREMENT AND SALARIES**

The State of West Virginia Department of Transportation Employee Handbook covers working hours, annual leave, sick leave, military leave, jury duty, legal holidays, retirement, West Virginia group insurance and salaries.

#### **9.05 - TIME AND EXPENSES**

The reporting of time, and related expenses, with the information required by others, is the responsibility of the Administrative Services Manager in Central Office or the Comptroller in the District.

#### **9.06 - TRAVEL ON STATE BUSINESS**

Travel regulations are found in the West Virginia Department of Transportation Administration Procedures, Volume 1, Chapter 4.

#### **9.07 - INVOICE FORMS**

Invoicing shall use a standard form. Form RW 10.01.

Note: Payees must be established in the wvOASIS system before payment can be issued.

##### **9.07.1 - INVOICE FORM RW 10.01**

The following information will enable employees to understand Form RW 10.01 and to be certain that the invoice is accurately completed and submitted with the proper documentation.

1. District No.     : Numerical indication of the District in which the charge is incurred.

2. \_\_\_\_\_, West Virginia: Indicate the city where the District Office is located.

3. Payee (and addresses): Name all parties who are to share in the payment.

Names can be found on the payee's invoice, the claim form, or other instrument (known as source documents).

Name of payee must match the information in the source document.

If the State Warrant (Form RW 9.04) is to be mailed, the proper address is to be shown on the Form RW 10.01.

The Vendor Customer Number, Address Identification Number and Vendor Address must match the States wvOASIS System.

Note: The Payee's information (provided on the W-9 form) must be established in the wvOASIS system before payments can be issued. (See Appendix 9-3)

4. Date \_\_\_\_\_ : This blank is to be completed on the date the invoice is prepared.

5. Statement of Account: This is to be a concise statement of the purpose of the payment. It is to refer to an attached invoice, claim, or other instrument.

6. Parcel No. \_\_\_\_\_: To determine the cost of acquiring each parcel, all charges attributable to that parcel must be shown. Therefore, if the source document involves one or more parcels, each parcel number is to be shown.

7. Amount Due: The amount to be paid is entered in this space.

8. The following blocks are identified as "coding" and are completed in accordance with the Project Number or Authorization Guide (copies of which are in the Central Office and District Offices). (See Appendix 9-4, Activity and Object Codes.)

Org. No.	Auth. No.	Act.	Obj.

### **9.07.2 – DISTRIBUTION OF FORM RW 10.01**

Following is the distribution of Form RW 10.01:

Original scanned to Finance Division  
Copy for Right of Way Division File in Application Extender

### **9.08 – INVOICE PROCESSING ACQUISITION**

To support invoices resulting from options, deeds, easements, or other acquisition documents, the following must be attached to the invoice: (See Appendix 9-5A and 9-5B.)

1. Transmittal memorandum, original plus one copy for Control Room.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Certificate of Acquisition, Form RW 5.21, with option only.
5. Acceptance of Option, Form RW 5.05, original plus one copy with deed, easement, or final order.
6. Option, Form RW 5.03, original plus one copy.
7. Negotiator's Certification, Form RW 5.24.
8. Deed, easement, or final order submit one copy with the invoice; the original may be held by the grantor or attorney until payment is made.
9. Documentation showing approved fair market value as established by a review appraiser, one copy:
  - (a) Statement of Review Appraiser, Form RW 6.10-C and Statement of Just Compensation, Form RW 6.11 or;
  - (b) Appraisal Waiver (aka "Waiver Valuation") memorandum
10. Last negotiation sheet (Form RW 5.02, A, B, C or D) describing the contacts made to obtain the option must be included in the invoice package. All previous negotiation sheets would have been submitted to the Central Office prior to invoicing.
11. In addition, when the owner elects to retain one or more structures, the following must accompany the invoice:
  - (a) Specifications attached to each copy of the option.

- (b) Appraisal Retention Value Estimate, one copy included in the invoice package.
  - (c) Release signed by property owner waiving hazardous waste.  
See Chapter 5, Section 5.45 and 5.46
12. Administrative settlements are encouraged by FHWA Guidelines. In these cases, in addition to documents required above, a memorandum from the District Right of Way Manager detailing justification for settlement must be included in the invoice package.

The Right of Way Director approves all Administrative Settlements.

13. In condemnation cases, one copy of the Litigation Report II shall be submitted to the Central Office prior to processing a final order for payment.
14. In support of all final orders, the Right of Way Division must receive a written memorandum from the Legal Division setting forth its recommendation for payment. A copy of the Right of Way Division Director's concurrence to pay the amount of the award or verdict recommended by the Legal Division shall accompany the final order.

### **9.08.1 - INVOICE PROCESSING VARIATIONS**

The following variations require that additional supporting documents be included in the invoice package as indicated:

1. Corporate Owner: If signature is that of someone other than the president or vice president of the company or corporation, a copy of the instrument authorizing that person to sign the acquisition instrument is required.
2. Church Trustee Ownership: Affidavit signed by all trustees showing that statutory procedure was followed in conveying the property to the WVDOH.
3. Ownership partially or wholly vested in minors, incompetents, or convicts: Certified copy of the court order or Power of Attorney authorizing another to act for the minor, incompetent, or convict.
4. Supporting evidence and documents if there is any change in ownership, if a death of an owner has occurred, if there is or has been a divorce proceeding, etc.
5. Out of State Property Owners: Under West Virginia Code §11-21-71b, a withholding of 2.5% of the appraised value for nonresidents of West Virginia for sale of property. A separate Form RW 10.01 along with a cover memo is to be included in the original invoice package to the West Virginia State Tax Department reflecting the 2.5%

withholding. (See Appendix 9-1C, 9-1D, 9-12, and 9-12A.)

### **9.08.2 - ADVANCE PAYMENT INTO COURT**

An invoice for advance payment into court is prepared by the Administrative Section. The following documents are necessary: (See Appendix 9-6.)

1. Transmittal memorandum, including the date of the Court hearing, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Certificate of Deposit, Form RW 10.08A, original plus one copy.
5. Documentation showing approved fair market value as established by a review appraiser, one copy:
  - (a) Statement of Review Appraiser, Form RW 6.10-C and Statement of Just Compensation, Form RW 6.11 or
  - (b) Appraisal Waiver Statement of Just Comp (See Form RW 5.13)

### **9.08.3 – INVOICING FOR FINAL ORDERS**

All Final Order invoice packets are prepared by the District Offices and are transmitted to the Central Office Administrative Section. The invoice package must include:

1. Transmittal Memorandum
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Certified copy of the Order Vesting Absolute Title and Final Order
5. Condemnation II Report

### **9.09 - GUARDIAN AD LITEM**

Invoices to pay a guardian ad litem are prepared by the District Offices and are transmitted to the Administrative Section. The invoice package must include: (See Appendix 9-7.)

1. Transmittal memorandum, original plus one copy.

2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Original of order appointment by the court as guardian ad litem or the court order approving the guardian's fee.

### **9.10 – RESIDENTIAL RELOCATION PAYMENTS**

All residential relocation invoice packages are prepared by the District offices and transmitted to Central Office Right of Way Division for payment. (See Appendix 9-8 through 9-8B.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.

In addition, refer to the current “West Virginia Department of Transportation, Division of Highways, Moving Cost and Replacement Housing Invoicing Procedures and Forms”, furnished by the Relocation Section of the Right of Way Division.

### **9.11 - RESIDENTIAL MOVING COST ONLY---INVOICE PROCESSING**

All residential moving cost invoice packages are prepared by the District offices and transmitted to Central Office Right of Way Division for payment. (See Appendix 9-8A.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Relocation Claim Residential, Form RW 12.04, original only.
5. The approved Licensed mover's invoice, original only.
6. If a qualified person performing services is employed, i.e. plumber, electrician, TV serviceman, an original of the invoice, receipt or statement must accompany Form RW 10.01.
7. Final Contact Sheet, Form RW 12.02B, original only.

### SELF-MOVER

1. Same as commercial mover except: (See Appendix 9-8A.)
  - (a) Original estimate of moving cost. Invoice must not exceed the estimate.
  - (b) Invoices supporting any other expense, i.e. truck rental, original only.

### FIXED SCHEDULE

1. Same as commercial mover except vendors' invoices listed as Items (4) and (5) above are not required. (See Appendix 9-8A.)

In addition, refer to the current "West Virginia Department of Transportation, Division of Highways, Moving Cost and Replacement Housing Invoicing Procedures and Forms", furnished by the Relocation Section of the Right of Way Division.

## **9.13 - INVOICE FOR MOVING COST FOR BUSINESSES, FARMS, OR NONPROFIT ORGANIZATIONS**

All invoice packages for moving costs for businesses, farms, or nonprofit organizations are prepared by the District offices and transmitted to Central Office Right of Way Division for payment.

Invoicing data required to substantiate moving cost claims for businesses, farms, or nonprofit organizations: (See Appendix 9-8A.)

### COMMERCIAL MOVER

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Form RW 12.06, Relocation Claim (business, farm, and nonprofit organization), original only.
5. Licensed mover's invoice, original only.
6. Form RW 12.07, Estimate Sheet, original only.
7. Final Contact Sheet, Form RW 12.02B, original only.

SELF- MOVER  
(Two Estimate Method)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Form RW 12.06, Relocation Claim, original only.
5. Form RW 12.07, Estimate Sheets for two firm bids from qualified movers, original only. If additional sheets are needed, original only.
6. Invoice from claimant, original only.
7. Final Contact Sheet, Form RW 12.02B, original only.

SELF-MOVER  
(Self-estimate Method)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Form RW 12.06, Relocation Claim, original only.
5. Form RW 12.07, Estimate Sheet from Claimant, original only. If additional sheets are needed, original only.
6. Invoice from claimant supported by receipts or other appropriate documentation (must not exceed estimate).
7. Final Contact Sheet, Form RW 12.02B, original only.

In addition, refer to the current “West Virginia Department of Transportation, Division of Highways, Moving Cost and Replacement Housing Invoicing Procedures and Forms”, furnished by the Relocation Section of the Right of Way Division.

**9.13.1 - INVOICE FOR PAYMENT “IN LIEU OF” MOVING COSTS FOR BUSINESSES, FARMS, AND NONPROFIT ORGANIZATIONS**

All invoice packages for “in lieu of” moving costs for businesses, farms, and nonprofit organizations are prepared by the District offices and transmitted to Central Office Right of Way

Division for payment.

This method is available to businesses, farms, and nonprofit organizations: (See Appendix 9-8A.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Form RW 12.06A, Relocation “In Lieu of Payment”, original only.
5. One signed copy of Federal Income Tax return and supplemental sheets to support the return filed for each of the two years (or 12 consecutive months within this period) immediately preceding the year in which claimant relocated or discontinued the business, farm, or nonprofit organization.
6. Memorandum from District Manager commenting on claimant’s eligibility for the “In Lieu of Payment”, original plus one copy.
7. Form RW 12.02B, Final Contact Sheet, original only.

In addition, refer to the current “West Virginia Department of Transportation, Division of Highways, Moving Cost and Replacement Housing Invoicing Procedures and Forms”, furnished by the Relocation Section of the Right of Way Division.

#### **9.14 - INVOICE FOR ESTIMATING**

On projects originated in the Central Office, All the invoice packages for relocation benefits and estimates are prepared by the District offices and transmitted to Central Office Right of Way Division for payment.

To support a claim for services rendered in making estimates or bids by qualified estimators or bidders, submit the following documents: (See Appendix 9-8A.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Estimator’s invoice, original only.
5. Form RW 12.07, one copy of estimate.

In addition, refer to the current “West Virginia Department of Transportation, Division of Highways, Moving Cost and Replacement Housing Invoicing Procedures and Forms”, furnished by the Relocation Section of the Right of Way Division.

### **9.15 - INVOICE FOR ACTUAL, REASONABLE EXPENSES IN SEARCHING FOR A REPLACEMENT BUSINESS, FARM, OR NONPROFIT ORGANIZATION**

This is normally invoiced as part of moving cost and not as a separate item. Invoicing data required to substantiate actual expenses in searching for a replacement business, farm, or nonprofit organization must include: (See Appendix 9-8A.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Original and certified statement of actual time spent in searching at a reasonable hourly rate.
5. Receipted bills for transportation, meals, and lodging, original only.
6. Form RW 12.02B, Final Contact Sheet, original only.

In addition, refer to the current “West Virginia Department of Transportation, Division of Highways, Moving Cost and Replacement Housing Invoicing Procedures and Forms”, furnished by the Relocation Section of the Right of Way Division.

### **9.16 - INVOICE FOR ACTUAL, DIRECT LOSSES OF TANGIBLE PERSONAL PROPERTY (BUSINESS, FARM, OR NONPROFIT ORGANIZATION)**

To support a claim for actual, direct losses of tangible personal property by businesses, farms, or nonprofit organizations, contact the Central Office for instructions regarding documentation. If approved by Central Office, use Form RW 12.06, original only, and Form RW 12.02B, Final Contact Sheet, original only.

### **9.17 - INCIDENTAL COSTS OF TRANSFER OF PROPERTY TO WVDOH**

Invoices for payment of allowable Incidental Costs of transfer of property to the WVDOH must include: (See Appendix 9-9.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.

3. Form RW 10.01, original only.
4. Form RW 13.11, original only.

### **9.18 - COURT COSTS**

On projects originated in the Central Office, the invoice packages are prepared by the District offices and transmitted to Central Office Right of Way Division for payment. For District originated projects, the invoices are transmitted through the District Engineer or his representative and to the Comptroller for payment.

Categories include but are not limited to (See Appendix 9-10 through 9-10D):

1. Circuit clerk's fees (Typically obtained by Legal Division)
  - (a) Institute condemnation proceedings
  - (b) Condemnation proceedings fees
2. Service of Process fees (Typically obtained by Legal Division)
3. Land Commissioners' fees

To process for payment, invoice package must include:

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Statement of cost, invoice from the court officer, original only.
5. Commissioners' service fees, original plus one copy of order or the prepared invoice certified to by the attorney in the case.

#### **9.18.1 – CONDEMNATION WITNESS SERVICE FEES**

When submitting invoice to pay condemnation witness service fee, the package must include:  
(See Appendix 9-10C.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.

3. Form RW 10.01, original only.
4. Invoice from witness, original only.

### **9.19 - COURT REPORTER**

When submitting invoice to pay a court reporter, the invoice package must include: (See Appendix 9-10D.)

1. Transmittal memorandum, original plus one copy.
2. DOH-90, original only.
3. Form RW 10.01, original only.
4. Statement from court reporter of amount due, original only.

### **9.20 - CONTRACT SERVICES**

For those projects originated in Central Office, only the voucher (bill) should be submitted to Central Office for processing. On District originated projects, a Form RW 10.01 is to be prepared for payment by the Comptroller. Examples of those services are: (See Appendix 9-11, 9-11A and 9-11B.)

1. Appraisal
  - (a) Fee appraisers
  - (b) Fee evaluation witnesses
2. Legal
  - (a) Abstract attorneys
  - (b) Closing attorneys

The invoice package for these services must include as a minimum:

1. DOH-90, original only.
2. Form RW 10.01, original only.
3. Contractor's invoice, original only.
4. One copy of the contract.

## **9.21 - FINAL PAYMENT OF UTILITY INVOICES**

Upon receipt of an invoice for final payment in the Right of Way Division, a copy of the final invoice, along with the Supplemental Utility Agreement, is transmitted to the Auditing Division. There a full audit is performed.

The audited invoice is returned to the Right of Way Division accompanied by:

1. Auditing Division Certificate (Form BX-3)

NOTE: Partial or full payment of utility invoices are handled on the District level.

## **9.22 - FLOW OF RAILROAD UTILITY INVOICES**

Railroad invoices are sent by the Company to the District Utility Supervisor who in turn submits the invoice for processing.

## **9.23 -FINAL VOUCHER**

The last phase on federally funded projects by Right of Way is the submission of a Final Voucher to the Federal Highway Administration by the Federal Aid Section of the Finance Division.

The Right of Way Division maintains records of outstanding parcels on each project.

Periodic review is made of these records and when no matters are pending on a project, the Finance Division is notified that the project is closed and that a Final Voucher may now be submitted to the Federal Highway Administration.

## **9.24 - DEFINITION OF TERMS**

Account Number - That number which has been predetermined to cover any given expenditure

Acquisition Payment - Money paid by the WVDOH to owners of real estate acquired for necessary rights of way. The acquisition may be by option, deed, administrative settlement, commissioners' award or jury verdict.

Activity Number - That number which has been predetermined to cover a given activity. See "Use of Corresponding Activity and Object Codes", Appendix 9-4.

Authorization Number - That number which has been predetermined to correspond with a given "activity number". Individual projects carry their own number (see Project Number list in either the Central Office or the District Offices).

Code (Coding) - The predetermined numerical classification of expenditures. Each invoice must be properly coded prior to forwarding to the Finance Division for payment.

Function - Same as Activity.

#### Functional Highway Systems

Expressway - Serves major intrastate and interstate travel, including Federal interstate routes.

Trunkline - Serves major city to city travel.

Feeder - Serves community to community travel and/or collects and feeds traffic to the higher systems.

State - Local Service (SLS) - Localized arterial and spur roads, which provide land access and socioeconomic benefits to abutting properties.

Funds - Can be either State or Federal-aid and is determined by the Authorization Number.

Litigation Reports - Reports submitted by attorneys in condemnation cases and used in support of payment of commissioners' award or a jury verdict.

Object Number - That number which has been predetermined to correspond with a given "activity" number. See "Use of Corresponding Activity and Object Codes", Appendix 9-4.

Organization Number - The Right of Way Central Office organization number is 0062. Each District has their own organization number.

Parcel Number - Every parcel of land, which must be acquired for highway purposes is given an identification number.

Project Number - The number assigned to a section of highway. In coding, the authorization number is always used in lieu of the project number.

Source Documents - Invoices submitted by vendors; options; deeds; court orders; administrative settlements; commissioners' reports; etc.

State Warrant - The check issued by the State of West Virginia in payment of a debt. (Form RW 9.04)

**CHAPTER 10**

**“RESERVED FOR FUTURE USE”**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
-----------------------	-----------------------	--------------------

## **Chapter 10**

### **Reserved for Future Use**

---

**CHAPTER 11**

**CEMETERIES**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 11.00	General .....	1
Section 11.10	Responsibility for Documentation & Relocation .....	1
Section 11.20	Investigation for Relocation of Existing Graves .....	2
Section 11.21	Unplatted Cemeteries .....	3
Section 11.22	Developed or Platted Cemeteries .....	3
Section 11.23	Ascertain Identities .....	4
Section 11.30	Reinterment Information .....	4
Section 11.31	Relocation of Graves Deed.....	5
Section 11.40	Authorization for Entry & Removal .....	7
Section 11.50	Authorization for Condemnation .....	7
Section 11.60	Public Notice .....	7
Section 11.61	Bid Procedure .....	8
Section 11.62	Contract Award .....	10
Section 11.63	Contract Compliance .....	12
Section 11.64	Emergency Reinterment Procedure .....	13
Section 11.70	Correction of Cemetery Plot Plan .....	14
Section 11.80	Payment Procedure .....	14
Section 11.90	Completion of Relocation .....	15
Section 11.100	Cemetery Relocation Flowchart .....	15

## **CHAPTER 11**

### **CEMETERIES**

#### **11.00 - GENERAL**

During the location study of a highway, every effort is made to eliminate interference with cemeteries. However, because of the topography of the State, the rough terrain may govern location consideration. Consequently, cemeteries cannot always be avoided, and the WVDOH is often confronted with the disinterment (removal) and reinterment (reburial) of graves in the cemeteries affected.

This chapter prescribes the basic procedure for grave relocations and the acquisition of such rights of ownership necessary in both occupied and unoccupied portions of cemeteries.

#### **11.10 - RESPONSIBILITY FOR DOCUMENTATION AND RELOCATION**

The Central Office will appoint an individual to act as the Central Office Cemetery Coordinator who will verify the accuracy of the cemetery mapping, prepare the photographic documentation (this includes at least one photograph each of the head, foot and overall view of each grave), assist with probing if necessary, complete the cemetery survey form and additional documents as needed, prepare the cemetery relocation contract, oversee and supervise the entire processes of the disinterment and reinterment.

The Coordinator will be responsible for preparing a report which is submitted to the Environmental Section of the Engineering Division for their review. This report, when approved, is then sent to the State Historic Preservation Officer (SHPO) for approval or comments as required by Section 106 of the National Historic Preservation Act of 1966 as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic and Cultural Properties." This report on some occasions, may be part of the study performed by an environmental consultant on the project alignment.

This report will contain the following information:

1. The reason for taking the cemetery
2. The location of the cemetery
3. The conditions of the foliage and terrain in reference to the access and maintenance of the cemetery
4. A brief history of the cemetery, pertaining to boundaries and ownership
5. An overview of what was discovered after the initial clearing
6. What methods were used to ascertain if any additional graves exist
7. Site mapping
8. Preparation for moving
9. The procedures for identification and locating next of kin of the decedents such as: advertisements in newspapers, courthouse records, and additional area and/or places researched

Mapping and documents should be made part of this report as Exhibits which include the following:

1. Mapping of disinterment and reinterment cemeteries
2. Newspaper article(s)
3. Legal advertisements
4. Location maps
5. West Virginia Division of Highways Cemetery Index
6. Legal description
7. Deeds of cemetery property or reservation
8. Photographs, with log to describe photographs (See Appendix 11-26)

The Central Office Cemetery Coordinator is administratively responsible to the Director of the Right of Way Division. All subsequent references to Agent include the District Right of Way Manager, Right of Way Agent and/or the cemetery relocation coordinator by reference if they are responsible for the relocation of a cemetery and reports to the Central Office Cemetery Coordinator. References to Coordinator will include the Central Office cemetery personnel. The Central Office Cemetery Coordinator has the option to perform the cemetery relocations as a Central Office project as time will allow and in this situation any references to Agent would apply to the Coordinator.

Incidental to relocating graves are such tasks as identifying next of kin, obtaining signed deeds of permission (Deed Relocation of Graves), locating unmarked graves, monuments, head and foot stones, attempting to identify the deceased in unknown graves, locating and obtaining reinterment sites, administering the cemetery relocation contract and serving as inspector during disinterment.

The Right of Way Division, at its discretion, may contract with private firms/consultants for the activities necessary for the relocation of cemeteries. In this situation, the subsequent reference to Agent would apply to the contracted firm/consultant by reference. The Coordinator will oversee the activities of the contracted firm/consultant.

## **11.20 - INVESTIGATION FOR RELOCATION OF EXISTING GRAVES**

The Agent and/or Coordinator is first informed of the existence of a cemetery by the Consultants, Surveyors, Engineering Division, District Design, or Family Members of the Decedent, prior to receiving of the Right of Way plans, or in some cases not until they receive the Right of Way plans. During the preliminary stages of plan preparation, the consultant, Engineering Division or District Design attempts to locate all cemeteries within the proposed right of way and prepares a cemetery plot plan indicating the boundaries of the cemetery and the location of each identifiable grave, staked as described in Section 11.21. Assistance may also be requested from the Coordinator.

Upon receipt of the plans, the Agent and/or Coordinator proceeds as follows:

1. Reviews the cemetery plot plan in the field for accuracy and notes any appropriate corrections.
2. If their evaluation of the cemetery indicates that unknown or unmarked grave sites are present, an intensive investigation is conducted to locate and identify as many of the graves as possible.

An ad should be placed in the major and local newspapers requesting the heirs or anyone having knowledge of graves to contact the Agent and/or Coordinator.

1. Assistance may be requested from District Building and Grounds and/or Maintenance to provide personnel and equipment to clear the area of brush and vegetation to facilitate the location of any unmarked graves which may exist. Observation of depressions in the ground could indicate the presence of unmarked graves. Probing with a metal rod on a systematic basis may reveal other unknown graves. The rod will meet with less resistance where the ground has been disturbed, indicating the presence of a probable grave. This will occur even on very old graves.
2. If the probing reveals additional grave sites or possible exploration areas, the Agent makes recommendations for revisions to the plans by memorandum to the Coordinator.

### **11.21 - UNPLATTED CEMETERIES**

An unplatted cemetery is often a family cemetery located on private land or even an isolated single grave. Unplatted cemeteries are surveyed after staking and all graves and burial plots, along with the location that are to be explored, are identified and numbered. A wooden stake approximately 3 feet in length, labeled with the appropriate grave number, should be placed at the head of the grave and a stake, approximately 18 inches in length, should be placed at the foot. A tabulation sheet is prepared, listing the number, the names of the decedents, unknowns, markers or monuments, rocks, foot stones and inscriptions thereon. This information is then submitted to the Coordinator for inclusion in the Right of Way plans.

### **11.22 - DEVELOPED OR PLATTED CEMETERIES**

A developed or platted cemetery is typically a commercial entity selling grave sites to the public, or a church affiliated facility. Cemetery plot plans are prepared by the Consultant, Engineering Division, Coordinator, or by District Engineering and included in the right of way plans as the cemetery reinterment indexes and existing cemetery layout sheet(s). These sheets and indexes show the individual grave numbers assigned by the WVDOH for relocation purposes, the existing cemetery lot/plot numbers, block(s) section names and identity of all known graves. If not already done, the Agent obtains copies of all available maps or plats of the existing cemetery for supplemental information. All graves that are to be disinterred but not noted on the cemetery plot plan are surveyed by the consultant and added to the plans or surveyed by the District/Statewide survey crew. The field notes obtained by the survey crew are to be sent to the

Central Office Right of Way Division's Coordinator for inclusion on the plans.

### **11.23 – ASCERTAIN IDENTITIES**

The Agent and/or Coordinator makes a reasonable and diligent effort to identify each deceased, and each decedent's surviving next of kin, heirs at law, administrator, executor or personal representative. This information can be obtained from sextons of cemeteries, funeral homes, and by personal inquiry throughout the neighborhood. When the Agent identifies as many of the graves as can be located, a copy of this information is placed in the District files for reference purposes and a copy provided to the Coordinator for filing in the Central Office. The information gathered includes, if necessary, the names of persons granting the authority for burial of the deceased, minister who conducted the religious service, doctor who signed the death certificate, a list of relatives, and any other information that may be pertinent.

The Agent also personally contacts the property owner(s) of the parcel(s) on which the cemetery is located to gain any information about the cemetery that might be helpful. The Agent documents this contact on RW Form 5.02A or 5.02C. Any follow-up visits with the property owner are recorded on Form RW 5.02B or 5.02D.

### **11.30 – REINTERMENT INFORMATION**

The Agent then contacts all identified next of kin or interested persons and completes the Information for the Relocation of Graves form, Form RW 11.01. This form provides the following data:

1. Project number
2. Cemetery parcel number
3. County
4. Grave number
5. Name of deceased
6. Date or inscription appearing on the monument or marker.
7. Names and addresses of nearest living relatives and relationship to the deceased.
8. If casket or vault was used and, if so, what type, wood, metal, or concrete.  
(Note: If original burial did not use a vault, one will be provided as required by the reinterment cemetery or as specified by the coordinator to minimize settlement at the reinterment site).
9. The preferred place of reinterment which is indicated on the questionnaire along with any pertinent remarks.
10. Size and type of marker, if any

If no monument/marker is present or in the case where the cemetery will not allow an upright monument, one will be provided in accordance with Section 17 of the "Specifications for Disinterring and Reinterment of the Remains of Decedents". (See Appendix 11-15)

The Agent and/or Coordinator should complete the Information for the Relocation of Graves Marker Identification form, Form RW 11.01A if the above conditions apply.

### **11.31 – RELOCATION OF GRAVES DEED**

After Form RW 11.01 has been completed for each known decedent, the Agent and/or Coordinator then obtains from the nearest of kin an executed "Deed Relocation of Graves," which grants the right and privilege to disinter and move in a proper manner the remains of the deceased. This will be performed under the supervision of a West Virginia licensed embalmer or West Virginia licensed funeral director.

The Deed for existing grave(s) and/or plots further releases to the WVDOH: (1) all rights of sepulchral or easements of burial; (2) rights to make any further burials in the cemetery involved; and/or (3) burial plots located within the proposed right of way of the project.

The Agent and/or Coordinator should document all contacts in relation to the grave(s) and/or burial plots on Form RW 11.02, Cemetery Relocation Contact Sheet. The original is placed in the District files and a copy of all documents, including the deed, are furnished to the Coordinator.

In situations where future burial plots have been acquired in perpetual care cemeteries or mapped cemeteries in which lots have been conveyed by deeds, the WVDOH will replace these plots in kind or make payment to the owner (including opening and closing, vaults, etc., with proof of purchase) for acquisition of plots and rights of burial. Value will be established using current cemetery price listings.

In an unmapped cemetery (fenced) or mapped cemetery where lots have not been sold, the Agent and/or Coordinator will review the site and determine if any future burial plots qualify for replacement by the WVDOH. The size of the burial area, number of plots within the fenced/mapped area, areas reserved with monuments, rocks, blocks, pipes, or stakes, and number and names of the living next-of-kin of the deceased buried at the cemetery will be used to make this determination. The living next-of-kin must provide a signed statement showing name, age, relationship and address for those intended to be buried at this cemetery. Future born will not be considered. In unmapped cemeteries (not fenced) the area and topography, in addition to the above, will determine the number of future burial plots that qualify for replacement. These types of lots/plots are replaced with an equal or better site as economically as possible and do not qualify for payment. In perpetual care cemeteries this replacement will also include monument setting fee, opening and closing of grave at a cost of regular day burial, and vaults. Vaults replacement will be determined on a project bases and based upon the situation that exists at disinterment cemetery.

The original and one copy of the Deed are executed. The copy is retained by the relative. Additional copies are made of the original for distribution; one to the District and one to the Central Office. The original Deed is returned to the Central Office after recording.

Several versions of the Deed form are used. The first, Form RW 11.03A, is used when a reinterment site is purchased by the WVDOH. The second, Form RW 11.03B, is used when a reinterment site is provided by others. The Agent tenders a \$1.00 consideration to the individual who signs the "Deed Relocation of Graves" and obtains a receipt (see Form 5.29, Section 5.44,

Chapter 5) from that person. The third, Form RW 11.03C is used for the acquisition of vacant cemetery lots/plots that was/were acquired by owners with a deed. The fourth, RW Form 11.03D is used when remains are to be cremated and the fifth, RW Form 11.03E is used for the removal of Pet Graves.

When using Deed Forms 11.03A, 11.03B, 11.03D, and 11.03E a Permission Form (Form RW 11.04) may be used for family members to assign their rights to another for the decedents arrangements. When using Deed Form 11.02C a Declaration of Heirs Form (Form RW 11.05) will be required to document heirs if lot owner(s) are deceased.

After the deeds have been completed, they are then recorded in the courthouse located in the county in which the graves are located by either the Agent or a designated representative.

In some rare cases after the deed is signed and at the determination of the Coordinator, the grave(s) can be removed by using a completed Disinterment – Reinterment Application and Permit. To use this permit there must be total agreement of the family members and the Declaration of Heirs Form completed (Form RW 11.05). This permit must be completed and signed by the representing family member and furnished, upon awarding of a Contract to the Funeral Director on the project, to the State Registrar for approval. After approval is granted and the disinterment/reinterment performed the permit is completed by the Funeral Director and copies provided to the State Registrar, the receiving Cemetery, and the Coordinator for filing.

If the nearest of kin desires to purchase a reinterment lot or lots, the Agent provides assistance, if needed, in coordinating the acquisition between the nearest of kin and the cemetery owner or property owner. If the compensation for the reburial site is to be paid directly to representatives of the cemetery, a provision is incorporated into the Deed authorizing such payment. Copies of the Deed are attached with Invoice Form 10.01, along with other related documents to support payment and submitted to the Coordinator. Upon issuance, the state warrant is delivered to the cemetery representative, by an agent or the coordinator. A Deed is then furnished to the nearest of kin for the new grave plot. The nearest of kin can also request the WVDOH to reinter on private land owned by themselves or others. In this case, no payment would be made for the reburial lot(s) unless there is conveyance by deed and the site surveyed, cemetery boundary established, and a map prepared and recorded in county commission showing the lots. This will be done by the property owner, who will assume all costs.

The owner of the private land will be required to sign an Agreement for Reintering the Remains of Decedents on Private Land, Form RW 11.06. The Agent tenders a one-dollar consideration to the owner(s) who signs the Agreement and obtains a receipt.

The WVDOH attempts to reinter the deceased in an equal to or better reinterment site as economically as possible, taking into consideration such things as location within the reinterment cemetery, whether perpetual care existed at both the disinterment and reinterment sites, and interment site of family members who might already be buried or entombed in the cemetery. In the latter case, a more expensive lot may be purchased if a member of the immediate family is already buried in a costlier area.

The WVDOH, as a last resort, upon approval of the coordinator after considering the number of burial sites/cemeteries in area, request of family, the cost of perpetual care lots and

other factor and cost involved in the disinterment and reinterment, may choose to purchase a tract of land in which to re-establish a burial site in the area for the decedents.

#### **11.40 - AUTHORIZATION FOR ENTRY AND REMOVAL**

After the Deeds for Relocation of Graves have been recorded and the real estate and easements acquired or right of entry granted for the area needed for the disinterment, the Agent requests authority from the Director of the Right of Way Division to petition the court for entry upon and removal of graves. When the authority is granted, the Agent furnishes to the appropriate District Office Attorney or Central Office Staff Attorney, an information package to use in filing the petition in the circuit court in the county in which the graves are located. This package contains the following:

1. Legal description
2. Grave Relocation Deeds
3. Information for the Relocation of Graves forms for each body to be moved
4. List of nearest relatives and addresses
5. Plan sheet(s) showing the cemetery location, reinterment sites location plats, and detailed sheet(s) showing disinterment and reinterment information
6. Copy of photographs showing each grave overall and another showing the monument/rock
7. Sample wording of new marker if unknown or unmarked

#### **11.50 - AUTHORIZATION FOR CONDEMNATION**

A memorandum is prepared and sent to the Agent and/or Coordinator. The Agent then forwards the memorandum to the appropriate District Office Attorney or Central Office Staff Attorney to accompany the condemnation package. The West Virginia Code requires a petition be filed in the circuit court to obtain access rights and legal permission to move the graves.

Upon filing the petition with the court, the District Office Attorney or Central Office Staff Attorney sends a memorandum containing the Condemnation Report I and petition to the Director of the Legal Division. One copy of the memorandum goes to the District Right of Way Manager, and one goes to the Director of the Right of Way Division with attachments and exhibits for filing.

#### **11.60 - PUBLIC NOTICE**

After the Order is issued by the court, the Coordinator prepares an advertisement, Form RW 11.07, Notice to Contractors, to announce the proposed cemetery disinterment/reinterment of

the remains and to solicit bids from interested contractors. The advertisement is also reviewed by the Coordinator for adequacy. The original(s), one for each newspaper is/are then forwarded to the Right of Way Division Director for signature. After the notice is returned to the Coordinator, it is forwarded with instructions to a newspaper of general circulation in the county in which the cemetery is located, a newspaper in the State Capitol having statewide circulation, and published on the West Virginia Department of Transportation's Internet Site. The notice is published weekly for a minimum of three (3) weeks, appearing three times during this period. The bid opening date must be a minimum of twenty-one calendar days from the first date the ad appears. In addition, the WVDOH maintains a list of bidders which includes out-of-state contractors who are notified by mail of a prospective contract.

### **11.61 - BID PROCEDURE**

A prospective contractor who wants to bid on the proposal requests a bid package from the Coordinator. This bid package contains:

1. A cover letter containing information such as: who to contact for additional information, special instructions, or other information concerning the disinterment/reinterment, including the number of working days from letting of contract in which to complete work.
2. A Mandatory On-Site Pre-Bid Notice, if holding a mandatory pre-bid conference, which also includes a map to the location.
3. Contractor's proposal. (See Appendix 11-14)
4. WVDOH's "Specifications for Disinterring and Reinterring the Remains of Decedents". (See Appendix 11-15) Note: The reinterment cemetery's specifications regarding markers, vaults, and perpetual care may vary and must be met.
5. WVDOH's Proposal Guaranty Bond. (See Appendix 11-16)
6. WVDOH's Confidential Qualification Questionnaire, Form RW 11.08.
7. A copy of the State's current Heavy Highway Prevailing Wage Rates and any Special Provisions, if applicable.
8. Plan sheets of the disinterment site, and indexes showing reinterment information and sample wording for Grave Markers, Monuments, and/or Memorials.
9. Plats of reinterment site(s) showing cemetery location.
10. A copy of Notice to Contractors Form RW 11.07.
11. Vendors Registration and Disclosure Statement, Form WV-1.

12. Bid Return Envelope.
13. Form W-9 Request for Taxpayers Identification Number and Certification.
14. State of West Virginia Purchasing Division's Purchasing Affidavit.
15. Notice to all Bidders to report Bid Rigging Activities.
16. Additional Contract Provisions Equal Employment Opportunity.
17. Special provision for Standard Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).
18. Notice of requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).
19. Application of the Standard of Comparison under the Davis-Bacon and Related Acts.

If the project is federally funded, these additional items are included in the package.

1. Copy of the Federal Heavy and Highway Construction Wage Rates.
2. Required Contract Provisions on all Federal-Aid Construction Contracts (FHWA 1273).
3. Attachment "A" Employment Preference for Appalachian Contracts (applicable to Appalachian Corridor contracts only) Supplemental FHWA 1273.

A self-addressed return envelope is enclosed with each bid package to assure that the bid is returned directly to the Central Office Right of Way Division and remains sealed until the scheduled bid opening. The envelope shows the project number, cemetery name, etc.

After the bid packages have been mailed to the interested contractors, the Agent and/or Coordinator arranges to meet them at the cemetery site to aid them in evaluating the proposed work. The Agent and/or Coordinator also accompanies the contractors to the reinterment locations. At this time, the Agent reviews the bid package with the contractors and answers any questions they might have concerning the various forms required or pertaining to the proposed contract.

If project requires a pre-bid conference the Agent and/or Coordinator will meet with all contractor(s) at a designated time and location, all questions and answers must be addressed to all attending contractors.

On the date of the bid opening, the Agent and/or Coordinator will be present. The Director of the Right of Way Division or designee will coordinate and supervise the bid opening procedure at the time, date and location specified in the Notice to Contractors, Form RW 11.07. Bids are accepted until 1:00 p.m. on the day noted in the advertisement. Any bid proposals received after

that time will be returned to the shown bidder unopened. The bid proposals at the specified time and date are publicly opened and the name of the bidder and total amount of proposal read aloud.

Each bid which is submitted must include a proposal guaranty of completion of work. This may take the form of a surety bond, certified or cashier's check. The amount must be 5% of each contractor's bid, or \$500.00, whichever is greater. If the proposal guaranty is not included with the bid package, the bid is automatically rejected. This amount may be forfeited if the successful low bidder fails to proceed with the contract. If the contract is awarded, it will be within 30 calendar days after the bid opening date or at a date set by and agreed to by both parties. The Coordinator reviews each bid for mathematical calculation accuracy and then prepares a memorandum for the Right of Way Division Director, which includes the appropriate details of all the bids along with their recommendation, and a request for approval of the lowest regular bid.

### **11.62 - CONTRACT AWARD**

Upon award, the Coordinator prepares a contract package to be provided to the successful bidder. The package contains (in the order shown below) the following:

1. Cover letter (Notice of Award) advising that contract and surety and/or collateral bond payable to the State of West Virginia-DOT-Highways in the amount of 100% of Contract Price are to be returned to the WVDOH within 20 calendar days from date of this notice of award, along with proof of insurance (Item 23 in Specifications for Disinterring and Reinterring the Remains of Decedents). (See Appendix 11-15)
2. Contract for the Relocation of Graves, that applies, see Forms RW 11.09, RW 11.09A or RW 11.09B.
3. Contract Bond. (See Appendix 11-23)
4. Sample of US Department of Labor Payroll Form WH-347. (See Appendix 11-24)
5. Specifications for Disinterring and Reinterring the Remains of Decedents.
6. Sample wording for Grave Markers, Monuments, and Memorials.
7. Plan Sheets of the disinterment site and indexes showing reinterment data.
8. Form FHWA 1273 (federal projects only). Include Attachment "A" Supplemental FHWA 1273 on Appalachian Corridor projects.
9. State Heavy and Highway Construction Wage Rates for State Projects (include the Federal Heavy and Highway Construction Wage Rate in addition to state rates on federal projects).
10. Notice to Contractors Form RW 11.07.

11. State of West Virginia Purchasing Division's Purchasing Affidavit.
12. Contractor's Proposal.
13. Confidential Qualification Questionnaire, Form RW 11.08.

Before the contract is mailed to the address shown on the proposal of the successful bidder for execution it is reviewed to assure that all the necessary WVDOH's papers have been completed and includes the following:

1. Project number
2. Name of bidder
3. County
4. Number of graves to disinter and/or reinter
5. Name of disinterment cemetery
6. Station number according to plans
7. Amount of bid
8. Number of Working Days to complete work.

After the signed contract is returned by the contractor, the following should be verified:

1. Review the contract to assure that,
  - a. A corporate seal is affixed to the contract, if required.
  - b. Bond is attached in an amount of 100% of the Contract price or a Bonding company seal affixed to the contract, if through a bonding company.
2. Verify that the contractor has submitted the required proof of Liability, Property Damage and Automobile Insurance. This certificate or proof must be co-signed by a West Virginia insurance agent if dealing with an out-of-state company.
3. Check the coverage limits of the insurance policy to determine whether it matches the specification. Check the expiration date of the policy to determine that it will be in effect during the full period of the contract.
4. Proof of Workers Compensation Insurance.

If all requirements have been met, the contract is then executed by the WVDOH, upon approval by the Legal Division, and a Notice to Proceed will be issued to the Contractor.

### **11.63 - CONTRACT COMPLIANCE**

Compliance with cemetery removal contract requirements is handled in accordance with usual highway contract procedures with respect to counting actual working days and surveillance of the work being performed. Therefore, the Agent and/or a designated representative are present at both the disinterment and reinterment sites while the contractor is working. If possible, the Coordinator will also be present at all disinterment and reinterment sites. A West Virginia funeral director or licensed embalmer must also be present while any work is being performed.

The contractor and department personnel should coordinate or hold a pre-construction meeting to be assured that an adequate number of department personnel (who will act as inspectors) are available at both sites as needed.

The Agent or his designated representative keeps a log or check sheet verifying that the required steps are taken for each grave site being moved. A copy of the Log Sheet is provided to Central Office. (See Appendix 11-25)

Although the contractor bids on a given number of units, the actual number of grave sites to be moved cannot always be accurately determined prior to awarding the contract. Factors that can contribute to this variance are unmarked graves, mass graves, or next of kin wishing to move the graves themselves. Therefore, the contract is an "open-end" contract, and final payment is based on a per unit contract price for the number of units actually moved as set forth in the specifications.

At the determination of the Agent and/or Coordinator some existing cemeteries can require trenching with a backhoe after all known graves are removed. This is to verify that no other graves exist at the site. This is performed by digging parallel trenches approximately 457 mm to 610 mm (18 to 24 inches) in depth (at the direction of the inspectors) and approximately 914 mm (3 feet) between trenches or by open pit where the ground in the whole burial site is opened to view and prove at a depth of at least 914mm (3 feet) or deeper as determined by the Coordinator. Also, the Contractor may be required on some contracts to cut access to the existing cemetery and/or the reinterment site. If these are required, an additional item for each will be added to the Contractor's Proposal prior to bidding as required.

After the work has been completed in accordance with the contract, the contractor must supply to the WVDOH a wage and hour report for the work completed.

The wages and hours are to be reported and must include the following:

1. Project Number
2. County
3. Cemetery Name
4. Employee Name

5. Social Security Number
6. Address
7. Classification
8. Hourly rate (regular and overtime)
9. Hours worked per day
10. Total hours per week (Monday through Sunday)
11. Total earned per week

The contractor is responsible to keep a record, on a daily basis, showing the relocation of all graves. The Central Office Cemetery Coordinator may assist with this task. This report shall contain:

1. Project number
2. Name of cemetery
3. Grave number
4. Date disinterred
5. Date reinterred
6. Location of reinterment
7. Inventory of all items found during relocation
8. Date and sign the form

The Contractor may use a form similar to Form RW 11.01 or may derive their own. A separate report is written for each reinterment cemetery or reinterment parcel. Copies of these grave records once signed by the Contractor are to be submitted to the Coordinator.

#### **11.64 - EMERGENCY REINTERMENT PROCEDURE**

Occasionally a grave site is overlooked during right of way clearance and is discovered after construction has begun. If this occurs, construction activity in the immediate area is stopped, and the Coordinator is notified so that steps can be taken to remove the grave.

### **11.70 - CORRECTION OF CEMETERY PLOT PLAN**

At this time, the Agent and/or Coordinator compares the copies of the disinterment plot plan and the reinterment index, and if they do not agree:

1. Adds the names, if known and location of any grave sites not included in the original cemetery index sheet. (Any graves of unknowns not shown on plan and index are given an identifying number.)
2. Adds the additional grave site(s) and/or explored locations to the cemetery plan sheet(s).
3. Furnishes the reinterment site information for the cemetery index and plan sheets:
  - a. If the reinterment is in a perpetual care cemetery, a lot or plot number, block number and section number are all that is needed.
  - b. If interment is in an unrecorded cemetery plot, the site must be identified on an insert of the county general highway map and the relocated graves surveyed to show the location of the reinterred site, referenced to fence corners, along with other permanent grave markers in the area. If the site is in the area of the project, use centerline stationing. The access road to this site also needs surveyed to the state/county highway and then from that intersection the mileage given to the next state/county highway.

This information is sent to the Coordinator so that it can be added to the original cemetery plot plan(s) and index sheet(s), along with preparing the reinterment site plan.

The contractor then submits an invoice package for the work completed. This invoice package includes a signed invoice from the contractor stating that the project has been completed, lists any changes or additions to the original contractor's proposal, shows original bid price, additional costs, and total amount to be paid. This invoice must be signed by the Agent and/or Coordinator, stating that the above is true and correct and the work was done to specification and in accordance with the executed contract. The Agent also verifies agreement with the original contract, wage report and location of reinterment graves.

### **11.80 – PAYMENT PROCEDURE**

Any additions or deviations must be explained by a memorandum to the Director of the Right of Way Division. After everything is in agreement, the invoice package which contains the contractor's invoice, copy of the bid proposal (showing change if any), copy of Contract for Relocation of Graves, and memorandum for any additions and/or deviations, if required, is submitted for processing for payment. However, the invoice is not approved for payment by the Central Office until the Coordinator verifies that the number of graves moved agrees with the number shown on the plans, and that the reinterment data agrees.

The state warrant is mailed directly from the Finance Division of the WVDOH to the contractor.

### **11.90 - COMPLETION OF RELOCATION**

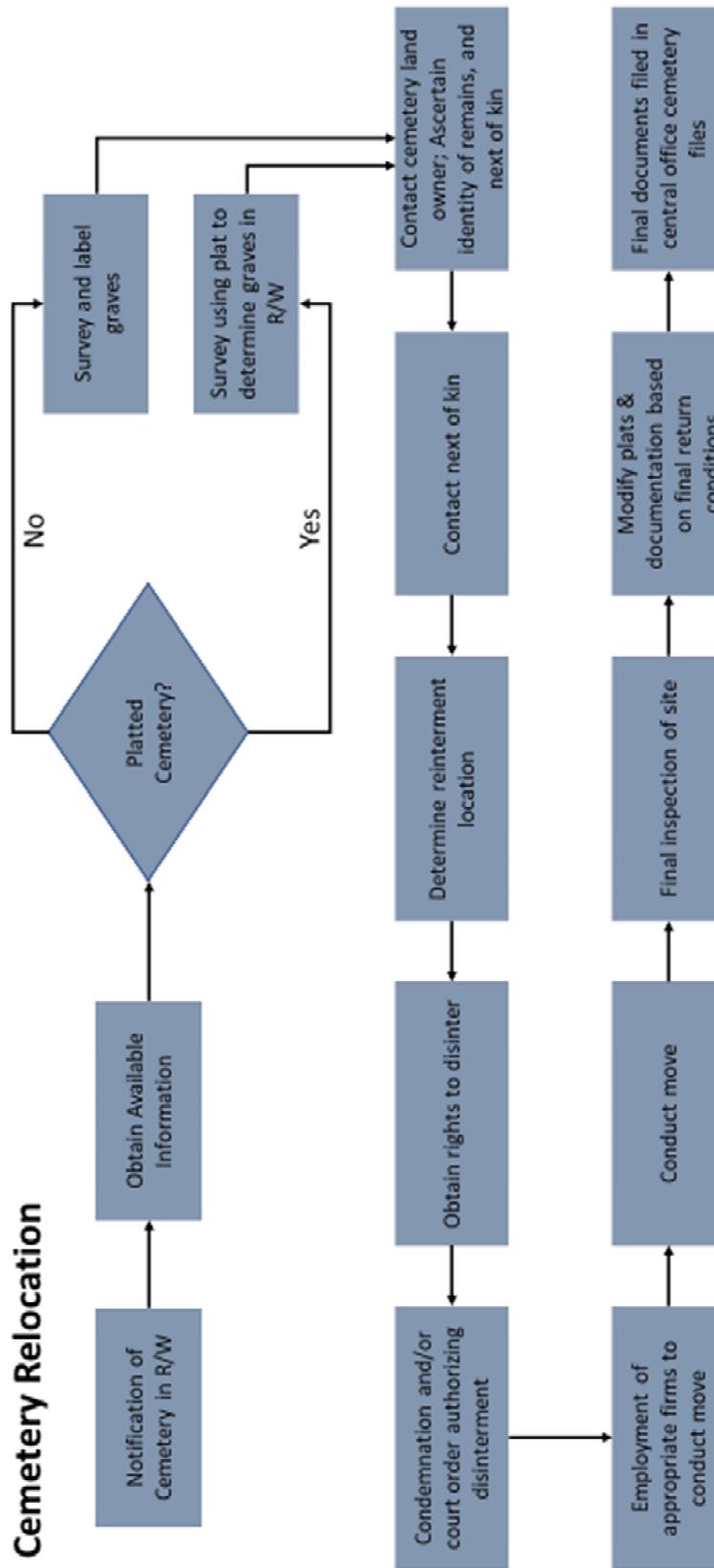
When all work has been completed to the satisfaction of the Coordinator, the contractor's performance bond will be released.

Soil placed into new gravesites can move, compress and settle over a period of time. In the event such settlement of the graves should occur within 90 days or a greater period of time as specified in the cover letter on the Bid Packages, after the completion of the contract, the contractor shall be required to refill the area or reset monuments at no additional cost to the WVDOH.

The Agent shall, after completion of the contract and release of bond, provide a complete copy of all documents, memorandums, etc. to the Coordinator for permanent filing in the Central Office Cemetery Files.

### **11.100 – CEMETERY RELOCATION FLOWCHART**

This subsection contains a flowchart that depicts the process for a cemetery relocation from the notification that a cemetery is in the area of the right of way acquisition through the final step of filing documents in the Central Office cemetery files. This visual concept summarizes the steps necessary for successful cemetery relocation.



**CHAPTER 12**

**RELOCATION ASSISTANCE AND PAYMENT PROCEDURES**

**TABLE OF CONTENTS**

---

<b><u>SECTION</u></b>	<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>
Section 12.00	General .....	1
Section 12.01	Purpose .....	1
Section 12.02	Policy & Procedures .....	1
Section 12.03	Authority .....	1
Section 12.04	Central Office Organization .....	1
Section 12.04.1	Central Office Responsibility .....	2
Section 12.05	District Office Organization .....	2
Section 12.05.1	District Office Responsibility .....	2
Section 12.06	Environmental Document .....	3
<b>WRITTEN NOTICES</b> .....		<b>3</b>
Section 12.07	General .....	3
Section 12.07.1	90 Day Owner Occupant .....	3
Section 12.07.2	90 Day Occupant .....	4
Section 12.07.3	Less Than 90 Day Occupant .....	4
Section 12.07.4	Notice of Replacement Housing Payment Amounts .....	4
Section 12.07.5	Project Lead Time .....	4
Section 12.07.6	90 Day Written Notice .....	5
Section 12.07.7	30 Day Written Notice .....	5
Section 12.07.8.1	Appeals of Relocation Determinations .....	5
Section 12.07.8.2	Notice of Right to Appeal .....	5
Section 12.07.9	Withholding of Payment .....	6
Section 12.07.10	Coordination of Relocation Activities .....	6
Section 12.07.11	Eviction .....	7

<b>RELOCATION ASSISTANCE ADVISORY SERVICES .....</b>	<b>7</b>
Section 12.08 General .....	7
Section 12.08.1 Eligibility .....	7
Section 12.08.2 Minimum Advisory Services Requirements .....	7
Section 12.08.3 Local Relocation Office .....	9
Section 12.08.4 Information to be Maintained at the Local Relocation Office .....	9
Section 12.08.5 Aliens Not Lawfully Present in the United States .....	10
<b>MOVING COST PAYMENTS.....</b>	<b>10</b>
Section 12.09 General .....	10
Section 12.09.1 Moving Cost Payment for Relocation from Real Property not Acquired...11	11
Section 12.09.2 Limitations & Exceptions .....	11
Section 12.09.3 Distance of Move .....	11
Section 12.09.4 Moving Bids or Estimates for Businesses .....	11
Section 12.09.5 To Whom Payments are Made .....	11
Section 12.09.6 Hardship .....	11
Section 12.09.7 Storage .....	11
Section 12.09.8 Insurance & Loss of Personal Property .....	12
Section 12.09.9 Removal & Reinstallation .....	12
Section 12.09.10 Exclusion of Moving Expenses & Losses .....	12
Section 12.09.11 Delivery of Payment & Pre-Draw Hardship Claim .....	13
Section 12.09.12 Filing of Claim .....	13
<b>RESIDENTIAL MOVING EXPENSE PAYMENTS .....</b>	<b>13</b>
Section 12.10 Moving Expense Individuals & Families .....	13
Section 12.10.1 Actual Cost Commercial Move Method .....	13
Section 12.10.2 Additional Eligible Moving Expenses .....	14
Section 12.10.3 Fixed Moving Expense Schedule .....	14
Section 12.10.4 Dormitory Style Room .....	14
Section 12.10.5 Owner Retention .....	14
Section 12.10.6 Multiple Occupancy .....	14
<b>MOBILE HOME MOVING COST PAYMENTS .....</b>	<b>15</b>
Section 12.11 General .....	15
Section 12.11.1 Moving Expenses Owners of the Mobile Home “Non-Occupant” ..15	15
Section 12.11.2 Moving Expenses Occupant Who Moves from the Mobile Home ..15	15

Section 12.11.3	Moving Expenses Mobile Home Unit Moved with Contents .....	15
<b>BUSINESS, FARM, &amp; NONPROFIT ORGANIZATION MOVING COST. 16</b>		
Section 12.12	General .....	16
Section 12.12.0	Small Business Reestablishment Expenses .....	18
Section 12.12.1	Inventory of Personal Property .....	20
Section 12.12.2	Notice of Move .....	20
Section 12.12.3	Commercial Move Method “Actual Reasonable Cost” .....	20
Section 12.12.4	Self-Move Method “Low Bid” .....	20
Section 12.12.5	Bidders .....	21
Section 12.12.6	Business Moving Cost Findings (\$2,500 Maximum) .....	21
Section 12.12.7	Filing of Business Claim .....	21
Section 12.12.8	Business Fixed Payment “In Lieu Of” .....	22
Section 12.12.9	Eligibility Determination .....	22
Section 12.12.10	Farm Fixed Payment “In Lieu Of” .....	23
Section 12.12.11	Nonprofit Fixed Payment “In Lieu Of” .....	23
Section 12.12.12	Average Annual Net Earnings Business or Farm .....	23
Section 12.12.13	Filing of “In Lieu Of” Claim.....	24
Section 12.12.14	Determining the Number of Businesses.....	24
Section 12.12.15	Moving Payments Advertising Signs .....	24
<b>REPLACEMENT HOUSING ..... 25</b>		
Section 12.13	General .....	25
Section 12.13.1	Occupancy Status .....	25
Section 12.13.2	One Year Period to Occupy Decent, Safe & Sanitary Housing .....	25
Section 12.13.3	Inspection for Decent, Safe & Sanitary Standards .....	26
Section 12.13.4	Exceptions to Standards for Decent, Safe & Sanitary Housing .....	26
Section 12.13.5	Statement of Eligibility to Lending Agency .....	26
Section 12.13.6	Time Period for Filing Claim .....	26
Section 12.13.7	To Whom Payment May Be Made.....	27
Section 12.13.8	Payment After Death .....	27
Section 12.13.9	One Replacement Housing Payment for a Single-Family Dwelling & Exceptions.....	27
Section 12.13.10	Replacement Housing Payment Eligibility Classifications.....	28
Section 12.13.11	When Payments Exceed \$7,200 or \$31,000.....	28

<b>90 DAY OWNER OCCUPANTS .....</b>	<b>28</b>
Section 12.14	Replacement Housing Payments for 90 Day Owner-Occupant .....28
Section 12.14.1	Eligibility Qualifications for Replacement Housing Payments .....29
Section 12.14.2	Purchase of Replacement Dwelling .....30
Section 12.14.3	Price Differential Payment .....30
Section 12.14.3.1	Occupant with Partial Ownership .....31
Section 12.14.4	Replacement Housing Appraisal .....31
Section 12.14.5	Comparable Replacement Housing .....32
Section 12.14.6	Owner Retention .....32
Section 12.14.7	“Breakout” Major Exterior Attribute .....33
Section 12.14.8	“Breakout” Partial Takes.....33
Section 12.14.9	“Breakout” Higher & Better Use of Subject .....33
Section 12.14.10	“Breakout” Acquired Residence in a Structure other than Normal Size ....33
Section 12.14.11	Ownership of Replacement Dwelling Prior to Displacement .....34
Section 12.14.12	Advance Replacement Housing Payment in Condemnation Cases ..34
Section 12.14.13	Delivery of Payment & Pre-Draw Hardship Claim .....35
<b>INCREASED MORTGAGE INTEREST PAYMENT.....</b>	<b>35</b>
Section 12.15	General .....35
Section 12.15.1	Eligibility Situation .....35
Section 12.15.2	Payment .....36
Section 12.15.3	Computation .....36
Section 12.15.4	“Breakout” Partial Acquisition Normal Tract .....37
Section 12.15.5	“Breakout” Partial Acquisition Tract Not Normal .....37
Section 12.15.6	“Breakout” Multi-Use Properties .....37
Section 12.15.7	“Breakout” Acquisition of Higher & Better Use Properties .....37
Section 12.15.8	Documentation for Payment.....37
Section 12.15.9	Delivery of Payment.....38
<b>INCIDENTAL EXPENSES FOR REPLACEMENT PROPERTY .....</b>	<b>38</b>
Section 12.16	General .....38
Section 12.17	Combined Payments not to Exceed \$31,000.....39
<b>FIRST NEGOTIATION CONTACT .....</b>	<b>39</b>
Section 12.18	First Contact by Negotiator .....39
Section 12.18.1	“Owner” Follow-Up Relocation Contact .....40

<b>90 DAY OWNER OCCUPANT RENTAL PAYMENT .....</b>	<b>40</b>
Section 12.19        General .....	40
Section 12.19.1    Qualifications to Apply for Payment .....	40
Section 12.19.2    Eligibility to Receive Payment.....	40
Section 12.19.3    Rental Replacement Housing Payment Determination .....	41
Section 12.19.4    Rental Replacement Housing Payment Computation .....	41
Section 12.19.5    Comparable Replacement Housing .....	42
Section 12.19.6    Disbursement of Rental Payment .....	42
Section 12.19.7    Combined Payments not to Exceed \$31,000.....	42
<b>90 DAY TENANT.....</b>	<b>42</b>
Section 12.20        General .....	42
Section 12.20.1    Qualifications for Payment.....	42
Section 12.20.2    Eligibility to Receive Payment.....	43
Section 12.20.3    Delivery of Payment & Pre-Draw Hardship Claim .....	43
<b>RENTAL ASSISTANCE PAYMENT .....</b>	<b>43</b>
Section 12.21        90 Day Tenant Rental Replacement Housing Payment Calculation.	43
Section 12.21.1    Base Monthly Rental for Displacement Dwelling .....	44
Section 12.21.2    Comparable Replacement Housing .....	45
Section 12.21.3    Disbursement of Rental Payment .....	45
Section 12.21.4    Combined Payments not to Exceed \$7,200.....	45
<b>DOWN PAYMENT ASSISTANCE PAYMENT.....</b>	<b>45</b>
Section 12.22        90 Day Tenant Down Payment Computation .....	45
<b>FIRST RELOCATION CONTACT .....</b>	<b>46</b>
Section 12.23        “Tenant” First Relocation Contact .....	46
<b>MOBILE HOMES – REPLACEMENT HOUSING.....</b>	<b>46</b>
Section 12.24        General .....	46
Section 12.24.1    Mobile Home Parks.....	47
Section 12.24.2    Mobile Homes as Replacement Dwellings .....	47
Section 12.24.3    Mobile Home Comparables .....	47
Section 12.24.4    Moving Expenses .....	48
Section 12.24.5    Mobile Home Park Entrance Fees.....	48
Section 12.24.6    Person Moves Mobile Home.....	48
Section 12.24.7    Persons with Both an Ownership & Tenant Interest .....	48
Section 12.24.8    Delivery of Payment.....	48

<b>MOBILE HOMES REPLACEMENT HOUSING PAYMENT –</b>	
<b>90 DAY OWNER OCCUPANT .....</b>	<b>49</b>
Section 12.25	Replacement Housing Eligibility Qualifications 90 Day Owner .....
Section 12.25.0	Eligibility to Receive Payment.....
Section 12.25.1	Replacement Housing Determination Home & Site Acquired .....
Section 12.25.2	Replacement Housing Determination Site Only Acquired .....
Section 12.25.3	Replacement Housing Determination – Mobile Home Acquired .....
<b>MOBILE HOMES REPLACEMENT HOUSING PAYMENT –</b>	
<b>90 DAY OWNER TENANTS .....</b>	<b>51</b>
Section 12.26	General .....
Section 12.26.1	Qualifications to Apply for Payment .....
Section 12.26.2	Eligibility to Receive Payment .....
Section 12.26.3	Delivery Payment & Pre-Draw Hardship Claim.....
<b>MOBILE HOME RENTAL ASSISTANCE PAYMENT .....</b>	<b>53</b>
Section 12.26.4	90 Day Occupant Rental Replacement Housing Payment Calc.....
Section 12.26.5	Comparable Replacement Housing.....
Section 12.26.6	Disbursement of Rental Property .....
Section 12.26.7	Combined Payment not to Exceed \$7,200 .....
<b>MOBILE HOME DOWN PAYMENT ASSISTANCE PAYMENT .....</b>	<b>54</b>
Section 12.26.8	90 Day Tenant Down Payment Computation .....
<b>MAJOR DISASTER PROJECTS.....</b>	<b>54</b>
Section 12.27	General .....
Section 12.27.1	Modifications of Policy & Procedure Tenure of Occupancy .....
Section 12.27.2	Computation of Replacement Housing Payment .....
<b>LAST RESORT HOUSING .....</b>	<b>55</b>
Section 12.28	General .....
Section 12.28.1	Utilization of Last Resort Housing.....
Section 12.28.2	Methods of Providing Last Resort Housing.....
Section 12.28.2.1	Eligible Costs .....
<b>RELOCATION RECORDS .....</b>	<b>57</b>
Section 12.29	General .....
Section 12.29.1	Individual Families.....
Section 12.29.2	Businesses .....
Section 12.29.3	Farms .....

Section 12.29.4	Moving Expenses .....	58
Section 12.29.5	Replacement Housing Payment .....	59
Section 12.30	Reports .....	60
Section 12.31	Definitions .....	60

## **CHAPTER 12**

### **RELOCATION ASSISTANCE AND PAYMENTS PROCEDURES**

#### **12.00 - GENERAL**

The WVDOH provides a relocation assistance program which complies with and implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

#### **12.01 - PURPOSE**

The purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, is to assure that persons displaced by a Federal, Federal assisted or State project are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

#### **12.02 - POLICY AND PROCEDURES**

The policies and procedures contained in this Chapter are intended to establish the means of providing relocation assistance advisory services and required payments for displaced persons. It also provides for payment of supporting services such as preparation of bids and estimates.

This Chapter further provides for policy and procedure to assure that every individual displaced will have, or will have been offered, a comparable, decent, safe, and sanitary replacement dwelling within their financial means. The Chapter also provides for hearings and appeal procedures to encourage amicable resolutions of controversies that may arise. The WVDOH will not proceed with Federal-aid projects involving the displacement of persons without first adhering to the statewide assurances referenced in the Operating Policy and Procedures of the West Virginia Department of Transportation, Division of Highways, for Compliance with Title III of Public Law 91-646. (See Appendix 5-1)

#### **12.03 - AUTHORITY**

The WVDOH is authorized to fully comply with provisions of the above-identified Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, by Chapter 17, Article 2A, Section 20 of the West Virginia Code.

#### **12.04 - CENTRAL OFFICE ORGANIZATION**

The Director of the Right of Way Division is responsible for the administration of all sections of the Division, including the Relocation Section. The Manager of the Relocation Section reports directly to the Director of the Right of Way Division.

### **12.04.1 - CENTRAL OFFICE RESPONSIBILITY**

The Relocation Manager and/or his/her staff are responsible for:

1. The formulation and administration of relocation policies and procedures and dissemination to the District Manager.
2. Correlating the relocation activities with the activities of other sections of the Right of Way Division.
3. Teaching and instructing the principles and practices of the relocation program to inexperienced personnel and conducting periodic relocation seminars for all personnel.
4. Assisting and guiding the relocatee when referred by the District Manager, to assure they will be given a full hearing, to assure that a decision will be promptly reached and transmitted to the appellant within a reasonable period of time.
5. Assisting the District Manager and his or her staff, in any way, including the assignment of additional personnel, if needed, to facilitate and assure that equitable relocation services and benefits will be provided to relocatees in the acquisition and clearance of right of way needed for highway construction.

### **12.05 - DISTRICT OFFICE ORGANIZATION**

WVDOH District Offices are geographically located to best serve the needs of the people. All District Offices are staffed with a District Manager and an adequate number of Right of Way Agents, Relocation Agents, Property Managers, and administrative staff to effectively and efficiently conduct all right of way activity. District Offices are open to the public on regular working days and relocation services are available at any reasonable time, by appointment.

#### **12.05.1 - DISTRICT OFFICE RESPONSIBILITY**

A Relocation Agent, under the direction and supervision of the District Manager, is responsible for implementing the policies and procedures of the relocation program and for the supervision of relocation personnel assigned to the District. Specific responsibilities of the Relocation Agent include, but are not necessarily limited to:

1. Offering relocation assistance and advisory service to all relocatees.
2. Offering and processing relocation payments for all eligible relocatees.
3. Establishing and staffing project relocation field offices when needed and authorized.

4. Inspecting selected replacement housing units to assure that comparable replacement dwellings meet decent, safe, and sanitary standards.
5. Securing and assembling information and survey data necessary for studies to properly relocate and aid relocatees including securing and assembling lists of comparable, decent, safe, and sanitary housing.
6. Transmitting information and data such as contact sheets, inspection sheets, and copies of all letters and correspondence to Central Office.

## **12.06 - ENVIRONMENTAL DOCUMENT**

An Environmental Assessment is a written statement containing an assessment of the anticipated significant beneficial and detrimental effects which the agency decision may have upon the quality of the human environment for the purposes of:

1. Assuring that careful attention is given to environmental matters;
2. Providing a vehicle for implementing all applicable environmental requirements; and;
3. Ensuring that the environmental impact is taken into account in the agency decision.

An element of early environmental planning is to assess the social impacts of a project including potential displacements. Upon request from the Environmental Section, personnel of the Right of Way Division will make an "Assessment of Environmental Impacts of the Action Associated with Significant Relocation of People and Businesses." These reports are forwarded to the Engineering Division.

## **WRITTEN NOTICES**

### **12.07 - GENERAL**

The Division of Highways has prepared an informational brochure entitled "West Virginia Department of Transportation, Division of Highways, Right of Way Section, BROCHURE, Relocation Assistance, Moving Costs, Replacement Housing Appeals" This Relocation Brochure is provided to each relocatee by the District Manager to ensure they are fully informed of the benefits and services available. (See Appendix 12-9)

#### **12.07.1 - 90 DAY OWNER-OCCUPANT**

At the initiation of negotiations to acquire an identified parcel involving the displacement of a homeowner or the owner's personal property, the Right of Way Agent furnishes the owner a Relocation Brochure and fully explains relocation services available and how the services may be

obtained. In addition to the Relocation Brochure, the agent explains eligibility requirements to receive payment for the applicable moving costs, replacement housing, increased interest costs, incidental expenses, including the right to appeal and the option to rent replacement housing. The agent also completes the personal information page in the Brochure for the relocatee.

### **12.07.2 - 90 DAY OCCUPANT**

As soon as possible after the initiation of negotiations, the Relocation Agent furnishes the 90-day occupant who may be displaced, a Relocation Brochure that fully explains the relocation services available and how the services may be obtained. In addition to the Relocation Brochure, the agent explains eligibility requirements to receive payments for the applicable moving cost, rental replacement housing, including the right to appeal. The agent also completes the personal information page in the Brochure for the relocatee.

### **12.07.3 – LESS THAN 90 DAY OCCUPANTS**

As soon as possible after the initiation of negotiations, the Relocation Agent furnishes the less than 90-day occupant who may be displaced, a Relocation Brochure that fully explains the relocation services available and how the services may be obtained. In addition to the Relocation Brochure, the agent explains eligibility requirements to receive payments for the applicable moving cost, rental replacement housing, including the right to appeal. The agent also completes the personal information page in the Brochure for the relocatee.

### **12.07.4 - NOTICE OF REPLACEMENT HOUSING PAYMENT AMOUNTS**

In order to provide a positive understanding by the relocatee, the amount of replacement housing payment to which he or she is entitled, the location of the comparable dwelling on which the payment is based, and the pertinent eligibility requirements are furnished the relocatee by the Right of Way or the Relocation Agent. The completed Form RW 12.13 (Owner) Form is normally given to the owner-occupant by the negotiator or Relocation Agent on the first negotiation contact. The Form RW 12.13 (Tenant) Form is given to the tenants by the Relocation Agent on the first relocation contact. If this information cannot be given on the first contact, it will be offered in a prompt manner.

### **12.07.5 - PROJECT LEAD TIME**

The project lead time is so scheduled that no person lawfully occupying real property is required to move from a dwelling, or to move the business, farm operation without at least 90 days written notice of the intended vacation date. As permitted by applicable law, the Director may make exceptions to this provision.

### **12.07.6 - 90 DAY WRITTEN NOTICE**

The 90-day written notice shall be given to each person lawfully occupying real property or whose business, farm operation, nonprofit organization or personal property is required to move. The notice is given on or after initiation of negotiations to acquire the parcel and does include a statement that the relocatee will not be required to move from a dwelling, or to move his or her business or farm operation before 90 days from the date of the notice (See Appendix 5-27). The 90-day notice further states that the displaced person will be given a 30-day written notice (See Appendix 5-26) specifying the date on which the property must be vacated.

**NOTE: The 90-day letter cannot be given to a residential relocatee until he or she has been informed of his or her replacement housing eligibility.**

### **12.07.7 - 30 DAY WRITTEN NOTICE**

The 30-day written notice shall be given to the relocatee any time after the State has tendered payment either to the real property owner or their agent or to the court in condemnation providing the time is at least 60 days after the date of the 90-day notice.  
(See Appendix 5-26 and 5-27)

### **12.07.8.1 – APPEALS OF RELOCATION DETERMINATIONS**

Any party aggrieved by the eligibility determination made by the WVDOH concerning their replacement housing offer, moving cost, incidental costs, or mortgage interest differential payment may appeal. The aggrieved party is contacted by District personnel and arrangements are made for a preliminary appeal hearing to be conducted by the District Right of Way Manager. The District Right of Way Agent's recommendations and information presented at the hearing are sent to Central Office by memorandum. A decision will be promptly reached on the basis of evidence and the relocatee promptly notified of such decision by the District. If the appellant is still dissatisfied, he or she is advised that he or she may carry his or her appeal forward to the Director of the Right of Way Division. The Director promptly arranges for a hearing where the appellant may discuss his or her appeal in full. After a complete investigation is made of the salient facts in his or her appeal, a written decision including an explanation concerning any amounts disallowed is promptly forwarded to the party making the appeal. If the appeal is denied, the applicant should be informed of his or her right to seek judicial review.

### **12.07.8.2 - NOTICE OF RIGHT TO APPEAL**

The WVDOH shall promptly review appeals in accordance with the requirements of applicable law and this part.

***Actions which may be appealed.*** Any aggrieved person may file a written appeal with the WVDOH in any case in which the person believes the WVDOH has failed to properly consider the person's application for assistance under this part. (See Request for Relocation Appeal Hearing

Form RW 12.16) Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment under 49 CFR 24.106 or 24.107, or a relocation payment required under this part. The WVDOH shall consider a written appeal regardless of form.

***Time limit for initiating appeal.*** The WVDOH may set a reasonable time limit for a person to file an appeal. Should no written claims be submitted to the WVDOH, the right to appeal is limited to no later than 60 days after the relocatee has been advised of his relocation eligibility. The right to appeal is terminated when a displacee files a written claim for payment.

***Right to representation.*** A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's expense.

***Review of files by person making the appeal.*** The WVDOH shall permit a person to inspect and copy all materials pertinent to their appeal, except materials which are classified as confidential by the WVDOH. The WVDOH may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

***Scope of review of appeal.*** In deciding an appeal, the WVDOH shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

***Determination and notification after appeal.*** Promptly after receipt of all information submitted by a person in support of an appeal, the WVDOH shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the WVDOH shall advise the person of their right to seek judicial review of the decision.

***WVDOH official to review appeal.*** The WVDOH official conducting the review of the appeal shall be either the head of the WVDOH or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

#### **12.07.9 - WITHHOLDING OF PAYMENT**

The WVDOH shall not withhold all or any part of any relocation payment to the displacee to satisfy an obligation to any creditor except the IRS. The WVDOH may deduct from the relocation payments any rent that the displacee owes the WVDOH; except that no deduction shall be made if it would prevent the displacee from obtaining comparable replacement housing.

#### **12.07.10 - COORDINATION OF RELOCATION ACTIVITIES**

Every effort is made to coordinate WVDOH's relocation activities with other Federal, State, and local government agencies. This includes contact with other governmental agencies acquiring property and relocating families, businesses, and nonprofit organizations; public housing agencies as to the availability of property for rent; and agencies which offer assistance and Small Business Administration.

### **12.07.11 - EVICTION**

Eviction for cause must conform to applicable State and local law. Any person, who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth unless the WVDOH determines that (See 49 CFR 24.206):

1. The person received an eviction notice prior to the initiation of negotiations and was later evicted; or
2. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
3. In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in the West Virginia code.

## **RELOCATION ASSISTANCE ADVISORY SERVICES**

### **12.08 – GENERAL**

The WVDOH shall establish and carry out a relocation assistance advisory services program so that displaced persons will receive uniform and consistent services and payments regardless of race, color religion, sex, disability, or national origin. The services are intended to assist persons in relocating to decent, safe, and sanitary housing that meets their needs. The services shall be provided by personal contact, except, if such personal contact cannot be made, the WVDOH shall document the file to show reasonable efforts were made to achieve the personal contact.

#### **12.08.1 - ELIGIBILITY**

Relocation assistance advisory services shall be offered to any "displaced person." Displaced Person is defined in 49 CFR 24.2(a)(9).

#### **12.08.2 - MINIMUM ADVISORY SERVICES REQUIREMENTS**

The WVDOH's relocation assistance program is initiated as soon as feasible on each project where displacement will occur. Each relocatee is, at a minimum, provided a West Virginia Department of Transportation, Division of Highways Relocation Brochure which gives an explanation of the relocation program and benefits. In addition, the assistance program includes some or all of the following as may be appropriate:

1. Personally, interview each person to be displaced, determine the person's relocation needs and preferences and explain the relocation payments and other assistance for

which the person may be eligible, the relocated eligibility requirements, and the procedures for obtaining such assistance.

2. Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available.
3. The WVDOH shall inform the displaced person in writing of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment and the basis for the determination in order that the displaced person is made aware of the amount of the replacement housing payment to which he or she may be entitled. The number one comparable must meet decent, safe, and sanitary standards and be available at the time of the offer.
4. Replacement housing shall be inspected prior to being made available to assure that it meets applicable decent, safe, and sanitary standards. If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.
5. Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the WVDOH to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D))
6. All displaced persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.
7. Provide current and continuing information on the availability, purchase prices and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.
8. Minimize hardships to persons in adjusting to relocation by providing advisory assistance as to other sources of assistance that may be available, and such other help as may be appropriate.
9. Supply persons to be displaced with appropriate information concerning Federal and State housing programs administered by the Small Business Administration and other Federal and State programs offering assistance to persons to be displaced.

10. Any person who occupies property acquired by the WVDOH who moved into the property after the WVDOH acquired the property and their occupancy is permitted by a short-term lease, is eligible for relocation advisory assistance.

### **12.08.3 - LOCAL RELOCATION OFFICE**

A local relocation office shall be established when the WVDOH determines that the volume of work or needs of the displaced persons are such as to justify the establishment of such an office.

The relocation office shall be reasonably convenient to public transportation or within walking distance of each project. The determination whether to establish a local relocation office shall be made on an individual project basis.

### **12.08.4 - INFORMATION TO BE MAINTAINED AT THE LOCAL RELOCATION OFFICE**

The following information shall be maintained and/or provided to the extent it is available for the displacee of each project at the local relocation office:

1. Current lists, on a continuous basis, of replacement dwellings available to displaced persons without regard to race, color, religion, sex or national origin, drawn from various sources, suitable in price, size, and condition.
2. Current lists, on a continuous basis, of commercial properties and locations for displaced businesses.
3. Current data for such costs as security deposits, closing costs, typical down payments, interest rates and terms.
4. Maps showing the location of schools, parks, playgrounds, shopping and public transportation routes in the area, where applicable.
5. Schedules and costs of public transportation, where applicable.
6. Copy of the State brochure explaining its relocation program, local ordinances pertaining to housing, building codes, open housing, and consumer education literature on housing, shelter costs and family budgeting.
7. Subscriptions for apartment directory services, neighborhood and metropolitan newspapers, etc.; in addition, multiple listing services shall be maintained, where available.
8. Other important information of value to displaced persons in the particular area.

### **12.08.5 - ALIENS NOT LAWFULLY PRESENT IN THE UNITED STATES**

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

1. In the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States.
2. In the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members.
3. In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest.
4. In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States.

In computing relocation payments under the Uniform Relocation Act, if any member(s) of a household or owner(s) of an unincorporated business, farm, or nonprofit organization is (are) determined to be ineligible because of a failure to be legally present in the United States, no relocation payments may be made to him or her. Any payment(s) for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the United States, unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the United States, or is an alien lawfully admitted for permanent residence in the United States. (See 49 CFR 24.208)

## **MOVING COST PAYMENTS**

### **12.09 - GENERAL**

Any individual, family, business, farm operator, or nonprofit organization is eligible to receive payment for the reasonable expenses of moving his or her personal property when he or she qualifies as a "Displaced Person."

### **12.09.1 - MOVING COST PAYMENT FOR RELOCATION FROM REAL PROPERTY NOT ACQUIRED**

When the acquisition of real property used for a business or farm operation causes a person to vacate a dwelling or move his or her personal property from other real property not acquired, the cost of moving such personal property is reimbursable in accordance with procedures applicable to other similar moving cost reimbursements.

### **12.09.2 - LIMITATIONS AND EXCEPTIONS**

Generally, a displaced person is eligible for only one moving cost. However, the Director of the Right of Way Division may authorize exceptions.

### **12.09.3 - DISTANCE OF MOVE**

Moving expense payments are limited to the cost of a move not to exceed 50 miles. Exceptions may be made when the Director of the Right of Way Division determines the move cannot be accomplished within the 50-mile radius.

### **12.09.4 - MOVING BIDS OR ESTIMATES FOR BUSINESSES**

The cost of advertising for bids or the cost of obtaining bids or estimates of moving expenses for businesses are reimbursable, not to exceed two bids or estimates per move (not including specialists or sub-bids). If the two bids are incompatible, the District may, with the Relocation Manager's approval, obtain additional bids.

### **12.09.5 - TO WHOM PAYMENTS ARE MADE**

By written prearrangement of the relocatee, moving cost payments may be made payable to the relocatee or jointly to the relocatee and the mover.

### **12.09.6 - HARDSHIP**

In hardship cases, arrangements may be made for payment of moving expenses in advance. Requests for hardship cases originate with the District Manager and are reviewed and approved by Central Office.

### **12.09.7 - STORAGE**

When an actual expense basis is used, and it is necessary for a relocatee to store his or her personal property for a reasonable period not to exceed 12 months, the cost of such storage is

eligible as a moving expense. Storage on the residue or on other property owned by the relocatee or his or her immediate family is not eligible as a moving expense. The Relocation Manager may extend the 12-month limitation if it is deemed by him or her to be necessary. Any requests submitted for storage must be reasonable and necessary. All requests must be pre-approved and requested in writing to the Relocation Manager.

### **12.09.8 - INSURANCE AND LOSS OF PERSONAL PROPERTY**

The actual cost of insurance for the replacement value of the personal property moved and necessary storage (Commercial Move only) is eligible for reimbursement. If insurance is not reasonably available the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent or employee) may be reimbursed. The actual cost of the replacement value insurance shall be obtained and verified by the Relocation Agent prior to owner signing the contract with the moving company and require replacement value insurance.

### **12.09.9 - REMOVAL AND REINSTALLATION**

The expenses for packing, crating, unpacking, and uncrating of personal property, disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property are eligible for reimbursement.

### **12.09.10 - EXCLUSION OF MOVING EXPENSES AND LOSSES**

The following listed moving expenses are not reimbursable:

1. Cost of moving any structure or other real property improvement in which the displaced person reserved ownership.
2. Interest on a loan to cover moving expenses.
3. Loss of good will.
4. Loss of profits.
5. Loss of trained employees.
6. Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 49 CFR 24.304(a)(6);
7. Personal injury.
8. Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the WVDOH.
9. Expenses for searching for a replacement dwelling.
10. Physical changes to the real property at the replacement location of a business or farm operation except for those allowable in paragraph 12.12.0(2)(c) and 12.12.0(1).
11. Costs for storage of personal property on real property already owned or leased by the displaced person.
12. Refundable security and utility deposits.

### **12.09.11 - DELIVERY OF PAYMENT AND PRE-DRAW HARDSHIP CLAIM**

Moving cost payments are normally hand delivered directly to the relocatee or assignee only after the move has been accomplished. In cases where it would create an undue hardship on the claimant to wait for his or her claim to be processed in a routine manner, a "Pre-Draw Hardship Claim" can be processed prior to the move and delivered to the relocatee directly upon his or her vacation of the subject parcel. (See Appendix 12-10)

### **12.09.12 - FILING OF CLAIM**

A relocatee must file his or her written claim (Form RW 12.04, Form RW 12.06, or Form RW 12.06B, as applicable) on a form provided by the WVDOH for that purpose. The claim should be filed as soon as possible after the personal property has been moved. However, the relocatee has up to 18 months to file his or her claim after the later of the following dates:

1. Tenants - the date of the move.
2. Owners - the date of the move or the date the owner receives final payment for the real property, whichever is later.
3. The time limit can be waived by the Director of the Right of Way Division for a good cause.

## **RESIDENTIAL MOVING EXPENSE PAYMENTS**

### **12.10 - MOVING EXPENSE INDIVIDUALS AND FAMILIES**

A relocated individual or family eligible to receive a payment for moving personal property has the option of payment on the basis of actual reasonable moving expenses or the moving expense schedule.

#### **12.10.1 - ACTUAL COST COMMERCIAL MOVE METHOD**

The relocatee may choose a commercial mover acceptable to the WVDOH and direct them to move his or her personal property to a specified location. After the move is completed, he or she will be reimbursed for the actual reasonable expense of moving his or her personal property a distance not to exceed 50 miles, as evidenced by the moving invoice from the commercial mover. In addition, other necessary costs, such as non-refundable fees for disconnection and reconnection of utility service and storage up to 12 months can be reimbursed. All costs must be supported by invoices or receipts from the performer of services.

### **12.10.2 - ADDITIONAL ELIGIBLE MOVING EXPENSES**

The actual moving costs may also include special services such as the cost of an ambulance to transport invalid relocatees. The actual reasonable costs of meals and lodging are eligible for reimbursement when the Director of the Right of Way Division determines such costs are necessary. (Temporary lodging is only to be used for short periods of time.)

### **12.10.3 - FIXED MOVING EXPENSE SCHEDULE**

As an optional method, a relocated individual or family is eligible to receive a moving expense amount determined according to a schedule established by the WVDOH. The schedule is graduated in relation to the number of rooms in the subject dwelling. (See Page 6 in the Moving Schedule shown in the Relocation Brochure.)

The moving expense payment will be computed on the number of furnished rooms in the dwelling unit plus basements, attics, garages and "outbuildings" if such spaces do, in fact, contain sufficient personal property as to constitute a room. Once the room count has been established the move payment is invoiced by using Form RW 12.04 – Relocation Claim and Form RW 12.02B – Final Contact Sheet.

### **12.10.4 – DORMITORY STYLE ROOM**

The moving expense and dislocation allowance to a person with minimal personal property who is in occupancy of a dormitory style room shared by two or more other unrelated persons is limited to \$100.00.

### **12.10.5 - OWNER RETENTION**

The cost of moving a retained dwelling or structure to another location is **not** eligible as a moving expense. If the relocatee chooses to use his or her dwelling as a means of moving his or her personal property to another location, he or she may be reimbursed only on a fixed schedule basis. However, if the personal property is moved from the dwelling he or she may be paid on an actual cost basis or on a fixed schedule basis.

### **12.10.6 - MULTIPLE OCCUPANCY**

Due to the definition of "HOUSEHOLD", multiple occupancy of a single dwelling unit will rarely occur. In those cases, with Central Office approval, the following procedures will apply:

1. If two or more occupants of the subject dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share as determined

by the WVDOH of any relocation payments that would have been made if the occupants moved together.

2. If the WVDOH determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to all relocation payments.
3. Two or more families occupying the same dwelling unit who relocate into separate dwelling units may elect to be reimbursed either on an actual cost basis for each family or on a schedule move for each family. A schedule move payment will be based on the number of rooms actually occupied by each family plus community rooms utilized by each family.

## **MOBILE HOME MOVING COST PAYMENTS**

### **12.11 - GENERAL**

A tenant or owner/occupant displaced from a mobile home or mobile home site is entitled to a payment for the cost of moving his or her personal property on an actual cost basis or as an alternative on the basis of a fixed payment.

#### **12.11.1 - MOVING EXPENSES OWNERS OF THE MOBILE HOME "NON-OCCUPANT"**

The owner of a mobile home classified as personal property may be reimbursed for the actual reasonable costs of a move accomplished by a commercial mover based on the lower of two estimates. (See paragraph 12.12.)

#### **12.11.2 - MOVING EXPENSES OCCUPANT WHO MOVES FROM THE MOBILE HOME**

A displaced occupant of a mobile home may be reimbursed for the actual reasonable costs of moving his or her personal property or may choose to be reimbursed by the fixed schedule shown in the relocation brochure.

#### **12.11.3 - MOVING EXPENSES MOBILE HOME UNIT MOVED WITH CONTENTS**

If the owner occupies the mobile home and the mobile home unit is moved with the furnishings intact, the displacee may be reimbursed for his or her moving expense only by the scheduled moved method.

## **BUSINESS, FARM AND NONPROFIT ORGANIZATION MOVING COST**

### **12.12 - GENERAL**

A nonprofit organization, an owner of a business, or a farm operation is entitled to receive payment for moving expenses if it is necessary for the personal property to be moved because of highway construction. Expenses may include:

1. Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the WVDOH determines that relocation beyond 50 miles is justified.
2. Packing, crating, unpacking, and uncrating of the personal property.
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment and other personal property and substitute personal property described in Paragraph 12 below. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
4. Storage of the personal property not to exceed 12 months, unless WVDOH determines that a longer period is necessary. (Also see Paragraphs 12.09.7 and 12.09.10.)
5. Insurance for the replacement value of the personal property in connection with the move and necessary storage.
6. Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.
7. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault of negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
8. Professional services necessary for (1) planning the move of the personal property, (2) moving the personal property, and (3) installing the relocated personal property at the replacement location.
9. Relettering signs and replacing stationery on hand at the time of displacement that is made obsolete as a result of the move.

10. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
  - (a) The fair market value of the item for as is for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the WVDOH determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or
  - (b) The estimated cost of moving the item as is, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)
11. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
12. Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:
  - (a) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
  - (b) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the WVDOH for eligible moving and related expenses, but with no allowance for storage. A single bid or estimate is allowable only when move is low cost or uncomplicated.
13. Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$2,500.00 as the WVDOH determines to be reasonable, which are incurred in searching for a replacement location including:
  - (a) Transportation.
  - (b) Meals and lodging away from home.
  - (c) Time spent searching, based on reasonable salary or earnings.
  - (d) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
  - (e) Time spent in obtaining permits and attending zoning hearings.

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

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.06 – Relocation Claim
  - Form RW 12.06B – Searching Time for Replacement Site
  - Receipts for transportation, meals, lodging, and fees of real estate agents or real estate brokers
  - Form RW 12.02B – Final Contact Sheet
14. Provision of utilities from right of way to improvements on the replacement site.
15. Feasibility surveys, soil testing and marketing studies.
16. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the business operation.
17. Impact fees or one-time assessments for anticipated heavy utility usage.
18. Other moving-related expenses that are not listed as ineligible as the WVDOH determines to be reasonable and necessary. (Refer all questionable items to Central Office.)

### **12.12.0 - SMALL BUSINESS REESTABLISHMENT EXPENSES**

In addition to the payments available under Paragraph 12.12, a small business, farm, or non-profit organization may be eligible to receive a payment, not to exceed \$25,000, for expenses actually incurred in relocating and reestablishing at a replacement site.

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.06 – Residential Claim
- Receipts for work performed to reestablish the business.
- Memorandum from the Relocation Agent explaining the receipts and the work that was completed. This memorandum should include a tally that will ensure that the \$25,000 is not being exceeded.
- Form RW 12.02B – Final Contact Sheet (It should be noted on this form that the payment is for reestablishment expenses).

1. Eligible expenses. Reestablishment expenses must be reasonable and necessary. They may include, but are not limited to the following:
- (a) Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.

- (b) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
  - (c) Construction and installation costs for exterior signing to advertise the business.
  - (d) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
  - (e) Licenses, fees, and permits when not paid as part of moving expenses.
  - (f) Advertisement of replacement location.
  - (g) Estimated increased costs of operation during the first 2 years at the replacement site for such items as:
    - (i) lease or rental charges;
    - (ii) personal or real property taxes;
    - (iii) insurance premiums, and
    - (iv) utility charges, excluding impact fees
  - (h) Other items that the WVDOH considers essential to the reestablishment of the business.
- (2) Ineligible expenses. The following is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:
- (a) Purchase of capital assets, such as office furniture, filing cabinets, shelving, machinery, or trade fixtures.
  - (b) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
  - (c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in 49 CFR 24.304 (a) (5).
  - (d) Interest on money borrowed to make the move or purchase the replacement property.

- (e) Payment to a part-time business in the home which does not contribute materially to the household income.

### **12.12.1 - INVENTORY OF PERSONAL PROPERTY**

Prior to but near the time of the actual move, a nonprofit organization, business, or farm operation must have prepared a list (inventory) of items to be moved. Items classed as real estate and retained by the owner must be excluded from the list. (NOTE: A list is not needed if the "In Lieu of" payment option is chosen.) (See Form RW 12.07A)

### **12.12.2 - NOTICE OF MOVE**

The displaced person must provide the WVDOH reasonable advance notice within 7 days of the date of the start of the move or disposition of the personal property. The displaced person must permit the WVDOH to make reasonable and timely inspections of the personal property at both the subject site and replacement site and also to monitor the move when necessary.

### **12.12.3 - COMMERCIAL MOVE METHOD "ACTUAL REASONABLE COST"**

A nonprofit organization, owner of a business, or farm operation may choose a commercial mover, acceptable to the WVDOH, and direct him or her to move the personal property to a specified location and may be paid an amount equal to the lower of two bids prepared by qualified bidders. After the move is completed, the relocated nonprofit organization, business or farm operation will be reimbursed for the actual reasonable expense (see Section 12.12) of moving the personal property a distance not to exceed 50 miles as evidenced by the moving invoice from the commercial mover(s).

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.06 – Relocation Claim
- Two Licensed Mover's Invoices
- Form RW 12.07A – Personalty List and Photos for personalty to be moved
- Form RW 12.02B – Final Contact Sheet
- Other necessary costs, such as disconnecting and reconnecting utility services, may be reimbursed provided the costs are supported by invoices or receipts from the provider of the service. Storage costs are reimbursed with a copy of paid receipts only.

### **12.12.4 - SELF - MOVE METHOD "LOW BID"**

As an alternative to the commercial method, a nonprofit organization, owner of a business, or farm operation may be paid an amount equal to the lower of two bids prepared by qualified bidders, estimators or specialists. The prepares of the bids are selected by the District Manager and can be reimbursed for their fees by the WVDOH. The bids should be itemized and include all eligible categories.

NOTE: If two bids cannot be obtained, one bid can be acceptable with prior Central Office approval and an explanation to be included with the Moving Cost invoice.

### **12.12.5 – BIDDERS**

It is the WVDOH's responsibility to obtain qualified bidders, estimators, or moving specialists. They should be provided the new address, the approximate date of the move, the list of personal property to be moved and other specifications and information deemed necessary.

NOTE: A business, farm or nonprofit organization can choose to move part of the personal property by commercial mover and part by the "Self Move Estimate" Method. In these cases, the bids should be prepared for just those items that are to be moved as a "Self-Move."

### **12.12.6 - BUSINESS MOVING COST FINDING (\$2,500.00 MAXIMUM)**

As an alternative to either the self-move or commercial moving methods involving non-complicated moves, a nonprofit organization, owner of a business or farm may be reimbursed for his or her moving costs based on a moving cost finding (estimate) prepared by a qualified WVDOH employee.

This method should be used only for non-complicated moves and cannot exceed \$2,500.00 unless prior approved by the Relocation Manager.

A list of the items to be moved, along with the finding (estimate) must be included with the invoice package.

Upon completion of the move, the relocatee can be paid without further documentation.

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.06 – Relocation Claim
- Form RW 12.07 – Estimate – Bid Forms
- Form RW 12.07A – Personalty List and Photos for personalty to be moved
- Form RW 12.02B – Final Contact Sheet

### **12.12.7 - FILING OF BUSINESS CLAIM**

Upon completion of a move, including services performed, and prior to payment by the WVDOH, the District Manager will verify that moving and services were performed in accordance with the charges.

The invoice packet will be submitted by the Right of Way Agent and once the move, including services performed, has been completed and verified by the Right of Way Agent, the check will be delivered. (See Appendix 12-12)

The invoice packet will be submitted by the Right of Way Agent and once the move, including services performed, has been completed and verified by the Right of Way Agent, the check will be delivered. (See Appendix 12-12)

### **12.12.8 - BUSINESS FIXED PAYMENT "IN LIEU OF"**

In lieu of all other moving cost payments, an owner of a discontinued or relocated business is eligible to receive a payment equal to the "average annual net earnings" of the business except that such payment is not less than \$1,000 or more than \$40,000. (See Appendix 12-12)

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.06A – Fixed Payment Claim
- One (1) signed copy of the relocatee's filed Federal Income Tax Return and supplemental sheets to support this return for each of the two (2) years immediately preceding the taxable year in which the claimant relocated or discontinued the business.  
Note: Form 1040 and Form 1040-Schedule C (Profit/Loss Statement) are the most commonly used forms
- Form RW 12.02B – Final Contact Sheet

### **12.12.9 - ELIGIBILITY DETERMINATION**

A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses. Such fixed payment, except for payment to a non-profit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph 12.12.12 of this section, but not less than \$1,000 or more than \$40,000. The displaced business is eligible for the payment if the District Manager determines that:

1. The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site;
2. The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the District Manager determines that it will not suffer a substantial loss of its existing patronage;
3. The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the WVDOH and which are under the same ownership and engaged in the same or similar business activities;
4. The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;

5. The business is not operated at the displacement site solely for the purpose of renting the site to others; and
6. The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement.

#### **12.12.10 - FARM FIXED PAYMENT "IN LIEU OF"**

A displaced farm operation may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph 12.12.12 of this section, but not less than \$1,000 or more than \$40,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the District Manager determines that:

1. The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
2. The partial acquisition caused a substantial change in the nature of the farm operation.

#### **12.12.11 - NONPROFIT FIXED PAYMENT "IN LIEU OF"**

A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$40,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the District Manager determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the District is supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses. The Right of Way Forms utilized for this payment are the same as a business. Any payment in excess of \$1,000 must be supported with financial statements for the twelve (12) month period prior to the acquisition. The amount to be used for the payment is the average of two (2) years annual gross revenues less administrative expenses.

#### **12.12.12 - AVERAGE ANNUAL NET EARNINGS BUSINESS OR FARM**

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time

when the Central Office determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the WVDOH proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence with the concurrence of Central Office. (The Right of Way Forms to be used are the same as in Section 12.12.8)

### **12.12.13 - FILING OF "IN LIEU OF" CLAIM**

The invoice packet will be submitted by the Right of Way Agent and once the move, including services performed, has been completed and verified by the Right of Way Agent, the check will be delivered. (See Appendix 12-12)

### **12.12.14 - DETERMINING THE NUMBER OF BUSINESSES**

In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered including the extent to which:

1. The same premises and equipment are shared;
2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
3. The entities are held out to the public, and to those customarily dealing with them, as one business;
4. The same person, or closely related persons own, control, or manage the affairs of the entities.

### **12.12.15 - MOVING PAYMENTS ADVERTISING SIGNS**

Generally, advertising signs are acquired under procedures established in Chapter 6 of the West Virginia Department of Transportation, Division of Highways' Right of Way Manual. In those cases where the advertising sign is not included as part of the fair market value, the owner of the sign is entitled to receive payment for moving expenses if it is necessary for the sign to be moved because of highway construction. For reimbursement purposes, signs are considered to be "businesses" and are paid their actual reasonable costs of moving, except the amount of a payment for direct loss of an advertising sign(s) which is personal property shall be the lesser of:

1. The depreciated reproduction cost of the sign(s) as determined by the WVDOH, less the proceeds from its sale; or
2. The estimated cost of moving the sign(s), but with no allowance for storage.

An advertising sign that is otherwise eligible for moving payments will not be eligible when it is moved to a site in violation of State, Federal, or local regulations.

The provisions of this paragraph do not apply separately to an advertising sign owned by and located on the business or farm being displaced. Such signs are to be considered items of the business or farm.

## **REPLACEMENT HOUSING**

### **12.13 - GENERAL**

Individuals and families relocated from a dwelling, including condominium or cooperative apartments and mobile homes, acquired for highway projects may be eligible for replacement housing payments provided they meet the requirements for a "Displaced Person."

#### **12.13.1 - OCCUPANCY STATUS**

The relocated individual or family is not required to relocate to the same occupancy (owner to tenant) status but has other options according to his or her ownership status and tenure of occupancy.

#### **12.13.2 - ONE YEAR PERIOD TO OCCUPY DECENT, SAFE AND SANITARY HOUSING**

Unless a written waiver for good cause is obtained from the WVDOH, a displaced person must occupy a decent, safe and sanitary replacement dwelling within a one (1) year period beginning:

For 90 Day Owners, on the later of the following dates:

1. The date on which the owner received from the WVDOH final payment for all costs of the acquired dwelling in negotiated settlements; or, in the case of condemnation, the date on which the required payment is deposited with the court for the benefit of the owner; or
2. The date on which he or she was offered a comparable replacement dwelling. (The date on Form RW 12.13.)

For 90 Day Tenants, on:

1. The date of the move.

### **12.13.3 - INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS**

Before making payment to the relocatee, a Relocation Agent inspects the internal and external inspection of the replacement dwelling and determines that it meets the standards for decent, safe, and sanitary housing. The District Manager may utilize the services of any public agency ordinarily engaged in housing inspection to make the inspection. Such determination by the Relocation Agent that a dwelling meets the standards for decent, safe and sanitary housing is made solely for the purpose of determining the eligibility of relocated individuals and families for payments under these procedures and is not a representation for any other purpose. (See Form RW 12.10 – Replacement Housing Inspection Sheet)

### **12.13.4 - EXCEPTIONS TO STANDARDS FOR DECENT, SAFE AND SANITARY HOUSING**

If decent, safe and sanitary housing standards cannot be adhered to by the relocatee because the standards are beyond his or her control, exceptions may be made on a parcel by parcel or project basis by Central Office. (With Federal Highway Administration concurrence on Federal Aid projects.)

Approved exceptions to decent, safe, and sanitary housing standards do not affect the computation of the replacement housing payment.

In making claim for a replacement housing payment, a claimant must indicate that, to the best of his or her knowledge and belief, the replacement dwelling meets decent, safe, and sanitary standards and that he or she, the relocatee, is eligible for the payment claimed.

### **12.13.5 - STATEMENT OF ELIGIBILITY TO LENDING AGENCY**

Upon the relocatees request, the District Manager can state to any interested party that the relocatee will be eligible for the payment of a specific sum provided he or she meets all the requirements of the regulations. Prior to making this statement, the District Manager shall, have the proposed dwelling inspected for decent, safe and sanitary standards.

### **12.13.6 - TIME PERIOD FOR FILING CLAIM**

To receive payment, an eligible relocatee must make claim for replacement housing payment on WVDOH's claim form, which claim is filed within 18 months after:

1. Tenants - the date of the move.
2. Owners - the date of the move or the date the owner receives final payment for the real property, whichever is later.

3. The time limit can be waived by the Director of the Right of Way Division for a good cause.

### **12.13.7 - TO WHOM PAYMENT MAY BE MADE**

The payments described may be made payable and mailed or delivered directly to the relocated individual or family or, by written request from the relocatee, directly to the lessor for rent or the seller for use towards the purchase of a decent, safe, and sanitary dwelling or to the relocatee and the seller as co-payees. If an applicant so requests, the WVDOH may make payment into escrow prior to the relocatee's moving; provided, the applicant is otherwise eligible for a replacement housing payment and the escrow agent agrees to withhold the payment until the relocatee meets the needed requirements.

### **12.13.8 - PAYMENT AFTER DEATH**

A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall **not** be paid to the heirs or assigns, except that:

1. The amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.
2. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling selected in accordance with these procedures.
3. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

### **12.13.9 - ONE REPLACEMENT HOUSING PAYMENT FOR A SINGLE-FAMILY DWELLING AND EXCEPTIONS**

Due to the definition of "Household," multiple occupancy of a single dwelling unit will rarely occur. In those cases, with Central Office approval, the following procedure will apply:

1. If two or more occupants of the subject dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the WVDOH of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling.
2. If the WVDOH determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

A price differential or rent supplement payment for each family will be based on housing which is comparable to the quarters separately occupied by each family plus community rooms which have been shared with other occupants. The acquisition price to be used as the basis for the owner price differential payment computations is that amount each owner received from the total payment for the property to be acquired. For tenants, the rent supplement payment will be computed by using the amount of rent actually paid by each family or market rent, subtracted from the rent on a comparable dwelling.

#### **12.13.10 - REPLACEMENT HOUSING PAYMENT ELIGIBILITY CLASSIFICATIONS**

90 Day Owner-Occupants - Owners who have owned and occupied the subject property not less than 90 days immediately prior to the start of negotiations. Eligibility includes Price Differential, Incidental Closing Expenses and Increased Mortgage Interest Payments not to exceed \$31,000.00

90 Day Occupants - Tenants who have occupied the subject property not less than 90 days immediately prior to the start of negotiations. Eligibility includes rental replacement housing payment or down payment assistance payment not to exceed \$7,200.00.

Less Than 90 Day Occupants – Displaced persons who do not meet the 90-day occupancy requirement as an owner or tenant may be eligible for replacement housing payments under Last Resort Housing when comparable replacement rental housing is not available within the displaced person's financial means. (See 12.31, Definition of "Comparable Replacement Dwelling, 8(c)") Replacement housing payments for less than 90-day occupants must be approved in writing by the Relocation Manager.

#### **12.13.11 - WHEN PAYMENTS EXCEED \$ 7,200.00 OR \$ 31,000.00**

If the WVDOH determines that comparable replacement housing is not available within the maximum statutory payment amounts, the parcel file will be so documented and "Last Resort Housing" procedures (paragraph 12.28 *et seq.*) will apply.

### **90 DAY OWNER-OCCUPANTS**

#### **12.14 – REPLACEMENT HOUSING PAYMENTS FOR 90 DAY OWNER-OCCUPANT**

An eligible 90-day owner-occupant of a dwelling may receive replacement housing payments, the combined total of which may not exceed \$31,000.00. This amount shall be the sum of:

1. The amount to purchase replacement housing as specified in paragraph 12.14.3, "PRICE DIFFERENTIAL PAYMENT."

2. The amount to compensate the owner for the loss of favorable financing on his or her existing mortgage in the financing of replacement housing as specified in paragraph 12.15, "INCREASED MORTGAGE INTEREST PAYMENTS."
3. The amount to reimburse the owner for expenses incidental to the purchase of replacement housing when such costs are incurred as specified in paragraph 12.16, "INCIDENTAL EXPENSES FOR REPLACEMENT PROPERTY."

#### **12.14.1 – ELIGIBILITY QUALIFICATIONS FOR REPLACEMENT HOUSING PAYMENTS**

A displaced person is eligible for the replacement housing payments for a 90-day owner-occupant if the person meets the following qualifications:

1. He or she owns and is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part, and such ownership and occupancy has been for not less than 90 consecutive days immediately prior to the date of initiation of negotiations.
2. He or she purchases and occupies a decent, safe, and sanitary replacement dwelling, within a one (1) year period beginning on the later of:
  - (a) The date on which the owner receives from the WVDOH final payment for the acquired dwelling in a negotiated settlement; or in the case of condemnation, the date on which the WVDOH deposits the required amount in court for the benefit of the owner; or
  - (b) The date on which he or she was offered a comparable replacement dwelling. (The date shown on their Form RW 12.13.)
  - (c) The Director of the Right of Way Division may extend the one-year period for good cause.
3. The District Manager inspects or causes an inspection to be made (evidenced by completion of Form RW 12.10), of the replacement dwelling and determines that it meets decent, safe, and sanitary standards as specified in paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
4. The purchaser-occupant indicates, to the best of his knowledge and belief, the replacement dwelling meets decent, safe, and sanitary standards as specified in paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
5. The purchaser - occupant files his or her claim, for payment within 18 months from the date of relocation.

6. If otherwise eligible, the owner-occupant may receive these payments if the District Manager issues an order to vacate even though the property is not acquired.

### **12.14.2 – PURCHASE OF REPLACEMENT DWELLING**

For replacement housing purposes, a displaced person purchases a dwelling when he or she:

1. Acquires an existing dwelling.
2. Purchases a life estate in a retirement home. The actual cost will be the entrance fee plus any other monetary commitments to the home, except periodic service charges may not be considered. The replacement housing payment is limited to the reasonable cost of purchasing a comparable replacement dwelling, less the acquisition cost of the acquired dwelling.
3. Purchases and relocates and/or rehabilitates a dwelling which he or she owns or acquires. When the replacement dwelling selected by the displacee has decent, safe and sanitary deficiencies, with prior approval of Central Office, the cost to correct such deficiencies is eligible to the extent that the purchase price, cost of the replacement dwelling and the cost of correcting the deficiencies do not exceed the maximum replacement housing payment based on comparable replacement properties.
4. Constructs or contracts for the construction of a new decent, safe, and sanitary dwelling on a site which he or she owns or acquires.
5. Currently owns a previously purchased dwelling and site. The valuation shall be based on its current fair market value.

### **12.14.3 – PRICE DIFFERENTIAL PAYMENT**

The price differential payment is the amount, if any, when added to the amount for which the WVDOH acquired his or her dwelling, equals the actual cost which the owner is required to pay for a decent, safe, and sanitary dwelling or the amount determined by the Replacement Housing Appraiser as necessary to purchase a comparable replacement dwelling, whichever is less. Soon after a copy of the transmittal of fair market value is received by the Relocation Section, the replacement housing appraisal is prepared (See Appendix 12-16).

**Note:** The following documentation and forms are required for invoicing:

- Form RW 12.04 – Relocation Claim, Residential
- Form RW 12.10 – Replacement Housing Inspection Sheet
- Form RW 12.11, Form RW 12.11A, and Form RW 12.11B from the Replacement Housing Appraisal.

- Supporting documentation verifying the purchase of the replacement property.
- Form RW 12.02B – Final Contact Sheet

#### **12.14.3.1 - OCCUPANT WITH PARTIAL OWNERSHIP**

When a single-family dwelling is owned by several persons and occupied by only one or some of the owners, the price differential payment 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 dwelling; or
2. The difference between the total acquisition cost of the acquired dwelling and the amount determined by the WVDOH as necessary to purchase a comparable dwelling.

If the displaced owner-occupant chooses not to purchase and occupy a decent, safe, and sanitary dwelling, they will be entitled to receive a computed rent supplement payment if they rent and occupy a decent, safe, and sanitary rental unit.

#### **12.14.4 - REPLACEMENT HOUSING APPRAISAL**

The Replacement Housing Appraiser determines the probable cost of a comparable dwelling by analyzing at least three comparable dwellings representative of the dwelling unit to be acquired. Prior to completing the Replacement Housing Appraisal, it is necessary to contact the property owner for the subject property (unless they decline or are not available to meet) and complete Form RW 12.01 – Residential Relocation Questionnaire to obtain the necessary information to generate the Replacement Housing Appraisal. For all non-residential and businesses, you will need to complete Form RW 12.01A – Nonresidential Relocation Occupant/Structure Data. The comparables are found from multiple locations (MLS listings from realtors, local real estate offices, internet, etc.) Fewer than three comparables may be used for this determination with additional documentation. The basic replacement dwelling used in computing the replacement housing payment must be comparable to the living unit acquired (this information is obtained from the appraisal report) and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment can be made to the asking price of any dwelling, if such an adjustment is considered justified by the Replacement Housing Appraiser. An obviously overpriced dwelling may be ignored. To the extent feasible, comparable replacement dwellings shall be selected from neighborhoods in which the displaced dwelling was located or if not possible in nearby or similar neighborhoods where housing costs are generally the same or higher. (See Appendix 12-18)

**Note:** The following R/W Forms must be used to complete a Replacement Housing Appraisal:

90 Day Owners:

- Form RW 12.11, Form RW 12.11A, Form RW 12.11B, Form RW 12.13, Form RW 12.01, and Form RW 12.03 for each comparable used.

Tenants:

- Form RW 12.11, Form RW 12.11A, Form RW 12.11E, Form RW 12.13(Tenant), Form RW 12.01, Form RW 12.01B (along with verification of income if needed to compute the payment), and Form RW 12.03 for each comparable used.

If housing of last resort is utilized, then a memo will be needed

If carve-outs are needed, then a memo from the Appraisal Section will be needed.

### **12.14.5 - COMPARABLE REPLACEMENT HOUSING**

A comparable replacement dwelling is one which is:

1. Decent, safe, and sanitary.
2. Functionally equivalent to the displacement dwelling.

NOTE: See definition of Comparable Replacement Dwelling in 12.31 for further details.

### **12.14.6 - OWNER RETENTION**

During the negotiation process, the owner may be allowed the option of retaining his or her dwelling. The price differential payment in cases of owner retention is computed in accordance with the following paragraphs.

If the dwelling is decent, safe, and sanitary, the payment, if any, is the amount by which the costs to relocate the retained dwelling exceed the acquisition price of the dwelling. The costs to relocate may include the reasonable costs of retaining and moving the dwelling plus the costs of acquiring a new site, or if the dwelling is moved on his or her remaining land, the current fair market value for residential use is the basis for the replacement housing payment.

If the dwelling is not decent, safe, and sanitary, the payment is computed as shown above except that, with prior approval of Central Office, the costs to cure the decent, safe, and sanitary deficiencies are included in the costs to relocate.

The payment so computed under the specifications of this section may not exceed the amount which the owner would have obtained under paragraph 12.14.3, "PRICE DIFFERENTIAL PAYMENT".

#### **12.14.7 - "BREAKOUT" MAJOR EXTERIOR ATTRIBUTE**

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

#### **12.14.8 - "BREAKOUT" PARTIAL TAKES**

If the acquired dwelling is located on a tract typical in size for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling on a tract typical in size for the area less the acquisition price of the acquired dwelling and the tract on which it is located.

If the acquired dwelling is located on a tract larger in size than typical for residential use in the area, the maximum replacement housing payment is the probable selling price of a comparable replacement dwelling and the tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling plus the acquisition price of that portion of the acquired land which represents a tract typical in size for residential use in the area.

#### **12.14.9 - "BREAKOUT" HIGHER AND BETTER USE OF SUBJECT**

Where the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the acquisition price of the acquired dwelling plus the fair market value of that portion of the acquired land which represents a tract typical for residential use in the area.

#### **12.14.10- "BREAKOUT" ACQUIRED RESIDENCE IN A STRUCTURE OTHER THAN NORMAL SIZE**

Where relocated individuals or families occupy living quarters on the same premises as a relocated business, farm, or nonprofit organization, such individuals or families are separate relocatees for purposes of determining entitlement to relocation payments.

The procedure for computing replacement housing payment amounts to owners of multi-family dwelling who occupy one unit is as follows:

1. Comparability: The comparable dwelling (when possible) should be the same as the acquired (if the acquired property is a triplex, then the comparable should be a triplex). If comparables are not available, then structures of the next lowest density must be used (if a comparable triplex is not available, use a duplex). If multi-family units are not available, then the comparable is a single-family residence. A higher density unit is not generally used as a comparable.

2. Payment Determination: The value of the owner's unit, as determined by the Appraisal Section, is used as the basis for the replacement housing payment determination not the fair market value of the whole subject property. If the comparable is a triplex, the replacement housing payment, if any, is the difference between the fair market value of the subject owner-occupied unit and the probable selling price of a comparable unit in a triplex available for sale in the private market. If the comparable is a duplex, the probable selling price of one unit in the duplex is used to determine the replacement housing payment. If the comparable is a single-family residence, the probable selling price of the entire dwelling is used to determine the replacement housing payment.

#### **12.14.11 - OWNERSHIP OF REPLACEMENT DWELLING PRIOR TO DISPLACEMENT**

Any person who has obtained legal ownership of a replacement dwelling on land upon which his or her replacement dwelling is constructed either before or after displacement and occupies the replacement dwelling after being displaced and within the time period described in paragraph 12.13.2, "ONE YEAR PERIOD TO OCCUPY DECENT, SAFE AND SANITARY HOUSING", is eligible for a replacement housing payment if the replacement dwelling meets the requirement of paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS". The current fair market value as determined by the WVDOH for residential use by the relocatee constitutes the "actual cost" in the replacement housing payment determination.

#### **12.14.12 - ADVANCE REPLACEMENT HOUSING PAYMENT IN CONDEMNATION CASES**

If the owner requests, an advance replacement housing payment can be computed and paid to a property owner if the determination of the acquisition price of the WVDOH is delayed pending the outcome of condemnation proceedings. Since the amount of the replacement housing payment cannot be determined due to the pending condemnation proceedings, a provisional replacement housing payment may be calculated by using the WVDOH's maximum offer for the property as the acquisition price. Payment of such amount may be made upon the owner-occupant's agreement that:

1. Upon final determination of the condemnation proceedings the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined by the WVDOH as necessary to acquire a comparable, decent, safe, and sanitary dwelling; and
2. If the amount awarded in the condemnation proceeding as the fair market value of the property acquired plus the amount of recomputed replacement housing payment exceeds the price paid for, or the WVDOH determined cost of a

comparable dwelling, he or she will refund to the WVDOH from his or her judgment an amount equal to the amount of the excess. However, in no event is he or she required to refund more than the amount of the replacement housing payment advanced.

### **12.14.13 - DELIVERY OF PAYMENT AND PRE-DRAW HARDSHIP CLAIM**

Replacement housing payments can be mailed directly to the relocatee or assignee only after he or she has owned and occupied a decent, safe, and sanitary dwelling. In cases where it would create a hardship on the claimant to wait for his or her claim to be processed in a routine manner, a "Pre-Draw Hardship Claim" can be processed prior to the actual "owning and occupying" by the claimant. The payment can be delivered directly to the relocatee upon his or her completion of his or her eligibility requirements. (See Appendix 12-10)

## **INCREASED MORTGAGE INTEREST PAYMENT**

### **12.15 - GENERAL**

Increased mortgage interest payments are provided to compensate an owner-occupant for the increased interest costs he or she is required to pay for financing a replacement dwelling. The increased interest computation is the responsibility of the Relocation Section.

#### **12.15.1 - ELIGIBILITY SITUATION**

The increased mortgage interest payment is allowed only when both of the following conditions are met:

1. The dwelling acquired by the WVDOH was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 90 days prior to the initiation of negotiations.
2. The mortgage on the replacement dwelling bears a higher rate of interest than the mortgage interest rate on the acquired dwelling.

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.04 – Relocation Claim, Residential
- Form RW 12.14A – Interest Differential Mortgage Data (This information must be filled out by the mortgage provider)
- Mortgage Tool Box Interest Differential Computation (This form is located on the FHWA Website)
- Copy of old Deed of Trust and the new Deed of Trust
- Form RW 12.02B – Final Contact Sheet

**Note:** Points to remember regarding the Mortgage Interest Differential Payment Invoice:

- The dwelling acquired was encumbered by a bona fide mortgage which was a valid lien for no less than 180 days prior to the established eligibility date.
- The mortgage on the replacement dwelling has a higher rate of interest than the mortgage interest rate on the acquired dwelling.
- Point and/or loan origination fees are considered as part of the Mortgage Interest Differential Payment unless they are paid in the incidental expenses.

### **12.15.2 - PAYMENT**

The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on the new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as is on the subject property.

### **12.15.3 - COMPUTATION**

The amount of the increased interest payment will be computed by the Relocation Manager on Form RW 12.14 and in accordance with the following procedures:

1. The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buydown determination the payment will be prorated and reduced accordingly. In the case of a home equity loan the unpaid balance shall be that balance which existed 90 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
2. The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
  - (a) They are not paid as incidental expenses;
  - (b) They do not exceed rates normal to similar real estate transactions in the area;
  - (c) The WVDOH determines them to be necessary; and

- (d) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

#### **12.15.4 - "BREAKOUT" PARTIAL ACQUISITION NORMAL TRACT**

Where the dwelling located on a tract normal for residential use in the area is involved in partial acquisition, the interest payment is reduced to the percentage ratio that the acquisition price bears to the before value; except the reduction does not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

#### **12.15.5 - "BREAKOUT" PARTIAL ACQUISITION TRACT NOT NORMAL**

Where a dwelling located on a tract larger than normal for residential use in the area is involved in partial acquisition, the interest payment is reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance is paid.

#### **12.15.6 - "BREAKOUT" MULTI-USE PROPERTIES**

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

#### **12.15.7 - "BREAKOUT" ACQUISITION OF HIGHER AND BETTER USE PROPERTIES**

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

#### **12.15.8 - DOCUMENTATION FOR PAYMENT**

The District must submit Form RW 12.14A to Central Office prior to the mortgage interest payment computation. A copy of the lender's closing statement or copy of deed of trust for the replacement property and a copy of the deed of trust or deed of trust note on the subject property must accompany the Form RW 12.14A. The information provided on the documentation for payment must be completed by the financial institution. The above documentation **MUST** include the interest rate for both old and new loans. (See Appendix 12-24)

### **12.15.9 - DELIVERY OF PAYMENT**

The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

## **INCIDENTAL EXPENSES FOR REPLACEMENT PROPERTY**

### **12.16 - GENERAL**

The incidental expenses payment is the amount necessary and reasonable to reimburse the homeowner for the actual costs incurred in purchasing the replacement dwelling. Such costs may include the following items if normally paid by the buyer:

1. Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
2. Lender, FHA, or VA appraisal fees and application fees.
3. Loan origination or assumption fees that do not represent prepaid interest and were not paid as part of the Mortgage Interest payment.
4. Certification of structural soundness and termite inspection when required.
5. Credit report.
6. Owner's and mortgagee's evidence or assurance of title. (Not to exceed costs for comparable replacement dwelling.)
7. Escrow agent's fee.
8. State revenue or transfer taxes (not to exceed the costs for a comparable replacement dwelling). (Not Tax Stamps except in those cases where the relocatee moves to an area where it is customary for a buyer to pay).
9. Professional home inspection.
10. Such other costs as the WVDOH determines to be incidental to the purchase. (Central Office approval necessary for other costs.)

The closing statement of the lending agency and/or receipts from the vendor of the service are accepted in support of incidental expenses when properly executed.

Normally the charges for abstract and/or survey must occur no later than at the time of the closing on the replacement property. Exceptions to this procedure must be approved by the Relocation Manager.

The incidental expenses claimed by the relocatee should be summarized by the Relocation Agent on Form RW 12.15 and included with the invoice.

**Note:** The following documentation and forms are required for invoicing:

- Form RW 12.04 – Relocation Claim, Residential
- Supporting documentation (Closing Statement or other property documentation to support the money being expended).
- Statement from an Attorney documenting Attorney fees, abstract, survey, etc.
- Form RW 12.15 – Summary of Incidental Costs
- Form RW 12.15A – Eligible Cost Reimbursement Form
- Form RW 12.02B – Final Contact Sheet

### **12.17 - COMBINED PAYMENTS NOT TO EXCEED \$31,000**

The combined total relocation payments, excluding moving costs and last resort housing payments for a 90-day owner-occupant who purchases may not exceed \$31,000. This payment may include price differential, mortgage interest differential, and certain incidental closing costs.

## **FIRST NEGOTIATION CONTACT**

### **12.18 - FIRST CONTACT BY NEGOTIATOR**

At the initiation of negotiations for an owner-occupied parcel, the negotiator or the negotiator and the Relocation Agent deliver to the owner a Relocation Brochure that adequately describes the relocation program. A current Relocation Brochure can be obtained from the Central Office Relocation Section or District Office.

The negotiator further discusses the relocation benefits and may on this first negotiation contact offer the owner his or her maximum replacement housing payment and delivers to him or her a notice titled “90 Day Letter” that assures at least 90 days occupancy. The negotiator also informs the relocatee of the location of the comparable used to calculate the replacement payment. The negotiator further advises of other available properties for sale and/or rent and offers assistance in finding financing for the replacement property if needed. If the replacement housing payment and the 90-day Letter are not offered on the first contact, they will be offered in a prompt manner on a subsequent contact. The property used as a comparable must be available to the relocatee and a new replacement housing determination will be requested by the District Manager when the Relocation Agent can no longer offer housing which is comparable and available to the relocatee.

### **12.18.1 - "OWNER" FOLLOW-UP RELOCATION CONTACT**

After having been notified that negotiations have begun on a parcel, the District Manager notifies the Relocation Agent to make subsequent relocation contacts and provide advisory assistance. The Relocation Manager fully explains applicable parts of the Relocation Brochure and the relocation program, including moving costs. The Agent completes the First Contact Sheet (Form RW 12.02) on this first relocation contact. The Relocation Agent further advises of the location of properties for sale or for rent and offers assistance in finding financing for the replacement property. Other services, including relocation payments and right to appeal are explained by the Agent. The Agent completes the Follow-Up Contact Sheet (Form RW 12.02A) for all additional contacts. Advisory assistance is continued until the relocatee moves and all relocation claims are processed and paid, including costs incident to purchasing a replacement dwelling and interest differential, if any.

### **90 DAY OWNER-OCCUPANT RENTAL PAYMENT**

#### **12.19 – GENERAL**

A displaced 90-day owner-occupant of a dwelling who could be eligible for a replacement housing payment as described in Section 12.14, but elects to rent a replacement dwelling, is eligible for a rental assistance payment.

#### **12.19.1 - QUALIFICATIONS TO APPLY FOR PAYMENT**

The owner-occupant qualifies to apply for such payment when:

1. He or she is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or in part; or
2. Such ownership and occupancy has been for at least 90 consecutive days immediately prior to the date of initiation of negotiations.
3. He or she meets the requirements of a "Displaced Person".

#### **12.19.2 - ELIGIBILITY TO RECEIVE PAYMENT**

The owner-occupant is eligible to receive his or her rental replacement housing payment if any, when:

1. The dwelling he or she owns and occupies is acquired from him or her by the WVDOH.
2. He or she occupies a decent, safe and sanitary dwelling within a one (1) year period beginning on the later of:

- (a) The date on which the owner receives from the WVDOH payment for the acquired dwelling in negotiated settlement; or in the case of condemnation, the date on which the WVDOH deposits the required amount in court for the benefit of the owner; or
  - (b) The date on which he or she was offered decent, safe and sanitary replacement property. (The date as shown on Form RW 12.13.)
3. The District Manager inspects or causes an inspection of the replacement dwelling (Form RW 12.10) and determines that it meets decent, safe and sanitary standards as specified in paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
4. The occupant indicates (Form RW 12.04) to the best of his or her knowledge and belief, the replacement dwelling meets decent, safe and sanitary standards as specified in paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
5. The occupant files his or her claim for payment within 18 months. (Form RW 12.04)
6. The occupant submits to the WVDOH either a rent receipt for at least the first month's rent or a copy of a lease agreement that verifies actual rent being paid.

### **12.19.3 - RENTAL REPLACEMENT HOUSING PAYMENT DETERMINATION**

The amount of the rental replacement housing payment is determined by the replacement housing appraiser and **SHALL NOT** exceed the amount of original price differential determination for the 90 Day owner-occupant.

### **12.19.4 - RENTAL REPLACEMENT HOUSING PAYMENT COMPUTATION**

The rental assistance payment for a 90-day owner-occupant is based on a determination of the market rent for the acquired dwelling compared to a comparable rental dwelling available on the market.

1. The amount of this payment is 42 times the amount obtained by subtracting the fair market rent and the average monthly cost for utilities at the subject dwelling for a reasonable period prior to displacement from the lesser of:
  - (a) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

- (b) The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.
2. The payment limits for 90-day tenants under 12.21 do not apply.
3. Under **NO** circumstances would the rental assistance payment exceed the amount the 90-day owner-occupant could have received for a price differential payment under 12.14.3 had the 90-day owner-occupant elected to purchase a comparable replacement dwelling.

#### **12.19.5 - COMPARABLE REPLACEMENT HOUSING**

The rental replacement housing comparable is based upon data as described in paragraph 12.14.5, "COMPARABLE REPLACEMENT HOUSING" and in 12.31, Definitions.

#### **12.19.6 - DISBURSEMENT OF RENTAL PAYMENT**

The WVDOH normally makes one payment to an owner-occupant who rents. Exceptions can be made by the District Manager on a case by case basis to provide annual installments. Prior to each installment, the claimant must certify to the WVDOH that he is occupying decent, safe and sanitary housing. Appropriate forms for this annual certification and claim will be provided by the WVDOH. The annual installment will be made subject to inspection of the property by the WVDOH to ensure its decent, safe, and sanitary condition.

#### **12.19.7 - COMBINED PAYMENTS NOT TO EXCEED \$31,000.00**

If an owner-occupant has received a rental payment and within one (1) year after relocation elects to purchase a decent, safe, and sanitary dwelling, he/she may receive an additional replacement housing payment, less the rental payment previously received; however, the combined total may not exceed the original determination.

### **90 DAY TENANT**

#### **12.20 - GENERAL**

A displaced tenant displaced from a dwelling may receive a replacement housing payment not to exceed \$7,200.00 for either rental assistance or down payment assistance.

#### **12.20.1 - QUALIFICATIONS TO APPLY FOR PAYMENT**

The occupant qualifies to apply for such payments when:

1. He or she has actually and lawfully occupied the displacement dwelling for at least 90 days prior to the initiations of negotiations.

2. He or she meets the requirements of a "Displaced Person."

### **12.20.2 - ELIGIBILITY TO RECEIVE PAYMENT**

1. The tenant is eligible to receive his or her replacement housing payment, if any, when he or she has rented or purchased and occupied a decent, safe, and sanitary replacement dwelling within one (1) year of the date he or she moves from the displacement dwelling.
2. The District Manager inspects or causes an inspection to be made (See Appendix 12-15) of the replacement dwelling and determines that it meets decent, safe, and sanitary standards as specified in paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
3. The occupant indicates, to the best of his or her knowledge and belief, the replacement dwelling meets decent, safe, and sanitary standards.
4. The occupant files his or her claim for payment within 18 months.
5. The tenant-occupant submits to the District Manager either a rent receipt for at least the first month's rent or a copy of a lease agreement that verifies actual rent being paid or submits receipts that verify the purchase price and amount of down payment if applying for a down payment assistance payment.

### **12.20.3 - DELIVERY OF PAYMENT AND PRE-DRAW HARDSHIP CLAIM**

Replacement housing payments may be mailed directly to the relocatee or assignee only after he or she has occupied a decent, safe, and sanitary dwelling. In cases where it would create a hardship on the claimant to wait for his or her claim to be processed in a routine manner, a "Pre-Draw Hardship Claim" can be processed prior to the actual "renting or owning and occupying" by the claimant, but the payment cannot be delivered until the relocatee's completion of his or her eligibility requirements. Where practical all payments should be hand delivered.

## **RENTAL ASSISTANCE PAYMENT**

### **12.21 - 90 DAY TENANT RENTAL REPLACEMENT HOUSING PAYMENT CALCULATION**

The amount of the rental replacement housing payment is determined by the Replacement Housing Appraiser and shall not exceed \$7,200.00. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the subject dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
2. The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.04 – Relocation Claim, Residential
- Form RW 12.10 – Replacement Housing Inspection Sheet (This must include the floorplan and pictures)
- Form RW 12.11, Form RW 12.11D, and Form RW 12.11E from the Replacement Housing Appraisal
- Supporting documentation such as a copy of the lease, rent receipts, etc. to support the rent at the new location.
- Form RW 12.02B – Final Contact Sheet

### **12.21.1 – BASE MONTHLY RENTAL FOR DISPLACEMENT DWELLING**

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

1. The average monthly cost for rent and utilities at the subject dwelling for a reasonable period prior to displacement. (For an owner-occupant, use the fair market rent for the subject dwelling. For a tenant who paid little or no rent for the subject 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 person's average gross household income if determined to be low income based on the U. S. Department of Housing and Urban Development income limits. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in 12.21.1 of this section. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise); or
3. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

**NOTE:** The average monthly rent for the subject is determined by the Replacement Housing Appraiser and in those cases where the actual rent for the subject is lower than market rent because the tenant furnishes some service in lieu of rent or some other unusual situation, market rent shall be used for the subject rent in the replacement appraisal calculation.

### **12.21.2 - COMPARABLE REPLACEMENT HOUSING**

The rental replacement housing comparable is based upon data as described in paragraph 12.14.5, "COMPARABLE REPLACEMENT HOUSING" and the definition in 12.31.

### **12.21.3 - DISBURSEMENT OF RENTAL PAYMENT**

The WVDOH normally makes one payment to a tenant who rents. Exceptions can be made by the District Manager on a case by case basis to provide installment payments.

**In Last Resort Housing cases** where the replacement payment exceeds \$7,200.00, the payment will be disbursed to the relocatee in one lump sum payment. Exceptions to this may be made on a case by case basis with prior approval of Central Office.

### **12.21.4 - COMBINED PAYMENTS NOT TO EXCEED \$7,200.00**

If a 90-day tenant occupant has received a rental payment and within one (1) year after relocation elects to purchase a decent, safe and sanitary dwelling, he or she may receive an additional replacement housing payment, less the rental payment previously received; however, the combined total may not exceed the original determination.

## **DOWN PAYMENT ASSISTANCE PAYMENT**

### **12.22 - 90 DAY TENANT DOWN PAYMENT COMPUTATION**

An eligible displaced tenant who purchases a replacement dwelling is entitled to a payment for down payment assistance up to, but not to exceed, \$7,200.00, unless the rental assistance payment was originally computed under housing of last resort.

If a relocatee chooses to purchase and occupy a decent, safe, and sanitary replacement, he or she can apply any or all of his or her \$7,200.00 replacement housing eligibility toward the down payment and related incidental expenses.

The full amount of the payment must be applied to the purchase price of the replacement dwelling and its related incidental expenses.

**Note:** The following documentation and forms are required to process this claim:

- Form RW 12.04 – Relocation Claim, Residential
- Form RW 12.10 – Replacement Housing Inspection Sheet (This must include the floorplan and pictures).
- Supporting documentation showing the relocatee has spent the full amount for the payment on the new replacement site.
- Form RW 12.02B – Final Contact Sheet

NOTE: A displaced owner who is eligible for 90-day owner-occupant benefits is not eligible for down payment benefits as described above.

## **FIRST RELOCATION CONTACT**

### **12.23 - "TENANT" FIRST RELOCATION CONTACT**

After having been notified that negotiations have begun on a parcel, the District Manager advises the Relocation Agent to promptly contact all tenants occupying that property.

If the first contact is a personal contact, the Relocation Agent delivers and explains the Relocation Brochure and the entire relocation program, including moving costs. The Relocation Agent also informs the relocatee of the location of the comparable used to calculate the replacement housing payment. The Relocation Agent further advises of other properties available for rent or for sale and offers assistance in finding financing for the replacement property if needed. Other services including relocation payments and right to appeal are offered and explained by the Agent. The Agent may on the first contact offer the supplemental housing payment (Form RW 12.13 - Tenant) and deliver to him or her a 90 Day Letter (See Appendix 5-27) that assures at least 90 days occupancy. If not delivered on the first contact, they will be delivered on a subsequent contact. On the first relocation contact, the Agent will complete the First Contact Sheet (Form RW 12.02). The property used as a comparable must be available to the relocatee at the time of the offer. If the comparable is not available at the time of offer a new replacement housing determination will be requested by the District Manager.

If the first contact is by certified mail, the Relocation Agent within 7 days from the initiation of negotiations for the purchase of the dwelling personally contacts the relocatee and offers all the advisory services described in the preceding paragraph. Advisory services are continued, as necessary, until the relocatee moves and all relocation claims are processed and paid, including costs incident to purchasing a replacement dwelling. On subsequent relocation contacts the Agent completes Follow-Up Contact Sheets (Form RW 12.02A).

## **MOBILE HOMES - REPLACEMENT HOUSING**

### **12.24 - GENERAL**

Generally, mobile homes are considered as **PERSONALTY**. However, under certain circumstances, mobile homes are considered as realty when so determined by the Appraisal Section. Some of the circumstances may be:

1. The mobile home unit has been stripped of all mobile mechanical parts and securely placed on a permanent foundation.
2. The mobile home unit has been improved with "add-on" rooms, porches, or other additions that would cause substantial damage to the mobile unit if the additions were removed.

3. The cost of preparing the mobile unit or altering the land in preparation for removal would be disproportionate to the value of the mobile home.
4. The structural condition of the mobile home is such that it cannot be moved without substantial damage or unreasonable cost.

The mobile home may be purchased from its owner, whether realty or personalty, when the mobile home unit:

1. Is not decent, safe, and sanitary; or
2. Cannot be moved without substantial damage or unreasonable cost; or
3. Cannot be moved because there is no available comparable replacement site; or
4. Cannot be moved because it does not meet mobile home park entrance requirements.

#### **12.24.1 - MOBILE HOME PARKS**

When it has been determined that a sufficient portion of a mobile home park is taken to justify the operator of such park to move his business or to go out of business, the owners, and occupants of the mobile home dwellings not within the actual taking but who are forced to move are eligible to receive the same payment benefits as though their dwellings were within the actual taking.

#### **12.24.2 - MOBILE HOMES AS REPLACEMENT DWELLINGS**

A mobile home may be considered as a replacement dwelling provided it meets applicable decent, safe, and sanitary standards.

#### **12.24.3 - MOBILE HOME COMPARABLES**

When computing the amount of a replacement housing payment for a person displaced from a mobile home, the cost of a comparable replacement dwelling is the reasonable cost of a comparable replacement mobile home, including the site. This applies whether the displaced person's actual replacement dwelling is another mobile home or a conventional home.

If a comparable replacement mobile home is not available, the replacement housing payment shall be computed using a comparable conventional dwelling.

#### **12.24.4 - MOVING EXPENSES**

Moving expenses of mobile homes are adequately described under Sections 12.11.1 through 12.11.3, "MOVING EXPENSES OWNERS OF THE MOBILE HOME "NON-OCCUPANT".

#### **12.24.5 - MOBILE HOME PARK ENTRANCE FEES**

If the displacee is required to pay an entrance fee in order to enter a mobile home park, such fee may be included in the moving costs provided:

1. The park with the fee is the only comparable park available.
2. The fee is not returnable to the tenant, as a security deposit would be. (See Section 12.11 "MOBILE HOME MOVING COST PAYMENTS".)

#### **12.24.6 - PERSON MOVES MOBILE HOME**

The owner is not eligible for the reimbursement for the cost of moving the mobile home under these procedures, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site. All efforts should be made to purchase the existing mobile home.

#### **12.24.7 - PERSONS WITH BOTH AN OWNERSHIP AND TENANT INTEREST**

A displaced mobile home occupant may own the displacement mobile home and rent the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section. The total replacement housing payment to a person shall not exceed the maximum payment (either \$31,000.00 or \$7,200.00) permitted under the section that governs the computation of the mobile home.

#### **12.24.8 - DELIVERY OF PAYMENT**

Replacement housing payments may be mailed directly to the relocatee or assignee only after he or she has occupied a decent, safe, and sanitary dwelling. In cases where it would create an undue hardship on the claimant to wait for his or her claim to be processed in a routine manner, a "Pre-Draw Hardship Claim" can be processed prior to the actual "owning and occupying" by the claimant, but the payment cannot be delivered until the relocatee's completion of his or her eligibility requirements. Where practical all payments should be hand delivered.

**MOBILE HOME REPLACEMENT HOUSING PAYMENT  
90 DAY OWNER-OCCUPANTS**

**12.25 - REPLACEMENT HOUSING ELIGIBILITY QUALIFICATIONS 90 DAY  
OWNER**

A relocated 90-day owner-occupant of a mobile home and site may receive additional payments not to exceed \$31,000.00 if:

1. The person both owned the subject mobile home and occupied it on the site for at least 90 days immediately prior to the initiation of negotiations.
2. The person meets the other basic eligibility requirements.

**12.25.0 - ELIGIBILITY TO RECEIVE PAYMENT**

The owner-occupant is eligible to receive his or her replacement housing payment, if any, when:

1. He or she purchases and occupies a decent, safe, and sanitary dwelling, within a one (1) year period beginning on the later of:
  - (a) The date on which the owner receives from the WVDOH final payment for the acquired dwelling in negotiated settlement; or in the case of condemnation, the date on which the WVDOH deposits the required amount in court for the benefit of the owner.
  - (b) The date on which he or she was offered decent, safe, and sanitary replacement property. (The date as shown on Form RW 12.13.)

**12.25.1 - REPLACEMENT HOUSING DETERMINATION HOME AND SITE  
ACQUIRED -- 90 DAY OWNER**

For the mobile home owner-occupant who purchases a replacement dwelling, the replacement housing payment shall be an amount not to exceed \$31,000.00, if any, which when added to the amount for which the WVDOH acquired his or her mobile home and site equals the lesser of:

1. The amount the owner is required to pay for a decent, safe and sanitary conventional dwelling, or a decent, safe and sanitary replacement mobile home and site; or
2. The amount determined by the Replacement Housing Appraiser as necessary to purchase a comparable mobile home and site; plus
3. Increased mortgage interest costs, if applicable; and

4. Closing costs incident to the purchase of a replacement property.
5. If the owner-occupant elects to rent, the amount of the rental replacement housing payment is determined by the Replacement Housing Appraiser and shall not exceed the amount of the original price differential determination for the 90-day mobile home owner-occupant.
  - (a) The amount of the payment is 42 times the amount obtained by subtracting the fair market rent for the acquired mobile home and site and average monthly cost for utilities for a reasonable period prior to displacement from the lesser of the monthly rent and estimated average utilities for a comparable mobile home and site; or the monthly rent and estimated average utilities for the mobile home and site actually occupied by the displaced owner-occupant.
  - (b) The payment limits for 90-day tenants under 12.21 do not apply.
  - (c) Under no circumstances would the rental assistance payment exceed the amount the 90-day mobile home owner-occupant could have received for a price differential payment if he or she had elected to purchase a comparable mobile home and site.

#### **12.25.2 - REPLACEMENT HOUSING DETERMINATION SITE ONLY ACQUIRED --90 DAY OWNER**

If the mobile home owner-occupant purchases a comparable replacement site, the replacement housing payment is the amount, not to exceed \$31,000.00, if any, which when added to the amount for which the WVDOH acquired his or her mobile home site, equals the lesser of:

1. The amount the owner is required to pay for a comparable site; or
2. The amount determined by the Replacement Housing Appraiser as necessary to purchase a comparable home site; plus
3. Costs incident to settlement on his or her replacement property; and
4. An increased mortgage interest differential, if applicable.

If the owner-occupant elects to rent, the rental replacement housing payment shall be the difference in the amount determined by the Replacement Housing Appraiser as necessary to rent a comparable mobile home site for a period of 42 months or the rent he or she actually pays, whichever is less, and 42 times the market rent of the site acquired, not to exceed \$7,200.00.

### **12.25.3 - REPLACEMENT HOUSING DETERMINATION -- MOBILE HOME ACQUIRED -- RENTS SITE -- 90 DAY OWNER**

If the mobile home owner-occupant purchases a replacement dwelling, the replacement housing payment will be the amount, if any, when added to the amount for which the WVDOH acquired his or her mobile home equals the lesser of:

1. The amount the owner is required to pay for a replacement dwelling; or
2. The amount determined by the Replacement Housing Appraiser as necessary to purchase a comparable mobile home; plus
3. Closing costs incidental to purchase on a replacement dwelling; and
4. An increased mortgage interest differential, if applicable; plus
5. The amount of a rental assistance payment for a comparable mobile home site as determined by the Replacement Housing Appraiser. Such payment shall be 42 times the amount determined by subtracting the average monthly rent and utilities for a reasonable period prior to displacement from the lesser of the monthly rent and estimated average utilities for a comparable mobile home and site; or the monthly rent and estimated average utilities for the mobile home and site actually occupied by the displaced owner-occupant, not to exceed \$7,200.00.
6. In no event may the total of the payments listed above (1 through 5) exceed \$31,000.00, unless last resort housing is necessary.

If the owner-occupant elects to rent a replacement mobile home, the rental assistance payment for a comparable mobile home will be determined by the Replacement Housing Appraiser. Such payment shall be 42 times the amount determined by subtracting the fair market rent and average monthly utilities for a reasonable period prior to displacement from the lesser of the monthly rent and estimated average utilities for a comparable mobile home; or the monthly rent and estimated average utilities for the mobile home actually occupied by the displaced owner-occupant. The amount of the rental payment is limited as stated in 12.25.1.

### **MOBILE HOME REPLACEMENT HOUSING PAYMENT 90 DAY TENANTS**

#### **12.26 - GENERAL**

A tenant-occupant displaced from a mobile home may receive a replacement housing payment not to exceed \$7,200.00 for either rental assistance or down payment assistance.

### **12.26.1 - QUALIFICATIONS TO APPLY FOR PAYMENT**

The tenant occupant qualifies to apply for such payments when:

1. The occupant has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations.
2. The occupant meets the requirements of a "Displaced Person."

### **12.26.2 - ELIGIBILITY TO RECEIVE PAYMENT**

1. The 90-day tenant is eligible to receive his or her rent supplement payment, if any, when he or she has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year of the date he or she moves from the displacement dwelling.
2. The District Manager inspects or causes an inspection of the interior and exterior to be made (Form RW 12.10) of the replacement dwelling and determines that it meets decent, safe, and sanitary standards as specified in paragraph 12.13.3, "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
3. The occupant indicates, to the best of his or her knowledge and belief, the replacement dwelling meets decent, safe, and sanitary standards.
4. The occupant files his or her claim for payment within 18 months.
5. The tenant-occupant submits to the District Manager either a rent receipt for at least the first month's rent or a copy of a lease agreement that verifies actual rent being paid or submits receipts that verify the purchase price and amount of down payment if applying for a down payment assistance payment.

### **12.26.3 - DELIVERY PAYMENT AND PRE-DRAW HARDSHIP CLAIM**

Replacement housing payments can be delivered directly to the relocatee or assignee only after they have occupied a decent, safe, and sanitary dwelling. In cases where it would create a hardship on the claimant to wait for his or her claim to be processed in a routine manner, a "Pre-Draw Hardship Claim" can be processed prior to the actual "owning or renting and occupying" by the claimant, but the payment shall not be delivered until the relocatee's completion of his or her eligibility requirements.

## **MOBILE HOME RENTAL ASSISTANCE PAYMENT**

### **12.26.4 – 90 DAY OCCUPANT RENTAL REPLACEMENT HOUSING PAYMENT CALCULATION**

The amount of the rental replacement housing payment is determined by the Replacement Housing Appraiser and shall not exceed \$7,200.00. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the subject dwelling from the lesser of:

1. The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
2. The monthly rent and estimated average monthly cost of utilities for the decent, safe and sanitary replacement dwelling actually occupied by the displaced person.

NOTE: Base monthly rental for displacement dwelling. The base monthly rental for the displacement dwelling is the lesser of:

1. The average monthly cost for rent and utilities at the subject dwelling for a reasonable period prior to displacement. (For an owner-occupant, use the fair market rent for the subject dwelling. For a tenant who paid little or no rent for the subject 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 person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in 1. and 2. of this section. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise); or
3. The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

NOTE: The average monthly rent for the subject is determined by the Replacement Housing Appraiser and in those cases where the actual rent for the subject is lower than market rent because the tenant furnishes some service in lieu of rent or some other unusual situation, market rent shall be used for the subject rent in the replacement appraisal calculation.

### **12.26.5 - COMPARABLE REPLACEMENT HOUSING**

The rental replacement housing comparable is based upon data as described in paragraph 12.14.5, "COMPARABLE REPLACEMENT HOUSING" and in 12.31, Definitions.

### **12.26.6 - DISBURSEMENT OF RENTAL PAYMENT**

The WVDOH normally makes one payment to an occupant who rents. Exceptions can be made by the District Manager on a case by case basis to provide annual installments. Prior to each installment, the claimant must certify to the WVDOH that they are occupying decent, safe and sanitary housing. Appropriate forms for this annual certification and claim will be provided by the WVDOH. The annual installment will be made subject to inspection of the property by the WVDOH to ensure its decent, safe and sanitary condition.

### **12.26.7 - COMBINED PAYMENTS NOT TO EXCEED \$7,200.00**

If a 90-day tenant occupant has received a rental payment and within one (1) year after relocation elects to purchase a decent, safe, and sanitary dwelling, he may receive an additional replacement housing payment, less the rental payment previously received; however, the combined total

### **MOBILE HOME DOWN PAYMENT ASSISTANCE PAYMENT**

#### **12.26.8 - 90 DAY TENANT DOWN PAYMENT COMPUTATION**

An eligible displaced tenant who purchases a replacement dwelling is entitled to a payment for down payment assistance up to, but not to exceed \$7,200.00, unless the rental assistance payment was originally computed under housing of last resort.

If a relocatee chooses to purchase and occupy a decent, safe, and sanitary replacement, he or she can apply any or all of his or her \$7,200.00 replacement housing eligibility toward the down payment and related incidental expenses.

The full amount of the payment must be applied to the purchase price of the replacement dwelling and its related incidental expenses.

NOTE: A displaced owner who is eligible for 90-day owner-occupant benefits is not eligible for down payment benefits as described above.

### **MAJOR DISASTER PROJECTS**

#### **12.27 - GENERAL**

The policies and procedures pertaining to relocation services and replacement housing payments, including costs incident to purchase of a replacement dwelling and interest differential, as applicable to a displaced person described for other Federal or Federal-aid highway projects, are applicable to persons displaced because of a major disaster. Moving costs as described for Federal or Federal-aid projects are applicable to displaced persons except

expenses are based upon moving from the temporary location rather than from the location designated prior to the major disaster.

### **12.27.1 - MODIFICATIONS OF POLICY AND PROCEDURE TENURE OF OCCUPANCY**

Individuals and families whose homes have been damaged or destroyed by a major disaster and who have not been able to reoccupy their homes by the start of negotiations for the parcel, may be considered to be in constructive occupancy and relocation services and payments are available to such displaced persons provided that location approval for the project had been given prior to the major disaster by the Federal Highway Administration, and the displaced person occupied property within the proposed or modified right of way.

### **12.27.2 - COMPUTATION OF REPLACEMENT HOUSING PAYMENT**

The price differential replacement housing payment, if any, is the difference between the acquisition price and the actual cost the owner is required to pay for a decent, safe and sanitary dwelling or the amount determined by the Replacement Housing Appraiser as necessary to purchase a comparable dwelling, whichever is lesser, less any proceeds received by the displaced person for payment of damages to his or her residence as a result of the major disaster, from any source, such as flood insurance or cancellation of a portion of a Small Business Administration loan is to be deducted from the replacement housing payment for which the relocatee is eligible.

## **LAST RESORT HOUSING**

### **12.28 - GENERAL**

When comparable replacement housing is not available, the WVDOH will implement a last resort housing program.

The provisions of this section do not deprive any displaced person of his or her rights to receive relocation assistance, moving costs or replacement housing payments for which he or she may be otherwise eligible nor of his or her freedom of choice in the selection of replacement housing. The WVDOH may not require a displaced person, without his or her written consent, to accept a dwelling provided by the WVDOH under these procedures in lieu of his or her acquisition payment, if any, for the real property from which he or she is displaced or the replacement housing or rent supplement payment for which he or she may be eligible. However, the WVDOH's obligation of providing comparable replacement housing will have been discharged when comparable replacement housing has been made available to the displaced person in compliance with the Uniform Act. If the displacee does not accept the comparable replacement housing provided by the WVDOH but obtains and occupies other decent, safe and sanitary housing, the replacement housing payment shall be the amount necessary to provide comparable replacement housing or the amount actually incurred by the displacee for decent, safe and sanitary housing, whichever is the lesser.

### **12.28.1 - UTILIZATION OF LAST RESORT HOUSING**

Last Resort Housing may be provided when:

1. Comparable replacement housing is not available for the displaced person; or
2. Comparable replacement housing is available for the displaced person within his or her financial means but:
  - (a) the computed replacement housing payment exceeds the \$31,000.00 limitation; or
  - (b) the computed rent supplement exceeds the \$7,200.00 limitation.
3. The relocatee does not meet the 90-day time requirement for replacement housing and when the available housing is not within his or her financial means. (See definition of Comparable Replacement Housing at 12.31.)

### **12.28.2 - METHODS OF PROVIDING LAST RESORT HOUSING**

When comparable replacement housing is not available and cannot otherwise be made available, the WVDOH may provide such housing by methods which include but are not limited to the following:

1. Rehabilitation of and/or additions to an existing replacement dwelling.
2. The construction of a new replacement dwelling.
3. The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
4. A replacement housing payment in excess of the limits. (A rental assistance subsidy under this Subpart may be provided in installments.)
5. The relocation and, if necessary, rehabilitation of a replacement dwelling.
6. The purchase of land and/or a replacement dwelling by the displacing WVDOH and subsequent sale or lease to, or exchange with, a displaced person.
7. The removal of barriers to the handicapped.

### **12.28.2.1 - ELIGIBLE COSTS**

The actual reasonable costs incurred by the WVDOH in providing last resort housing may include but are not limited to:

1. The acquisition price of land and/or dwellings and costs incidental thereto.
2. Moving of houses.
3. Site development.
4. Architect and engineer fees.
5. Landscaping.
6. Rehabilitation of existing housing.
7. Construction of new housing.
8. Legal fees and expenses.
9. Other expenditures necessary to produce dwelling units which are compatible with other dwellings in the neighborhood in which they are constructed and acceptable to the general real estate market.
10. Any other direct costs of providing last resort housing.

## **RELOCATION RECORDS**

### **12.29 - GENERAL**

The WVDOH maintains records in Central Office files that are available at reasonable hours for inspection by representatives of the Federal Highway Administration. The records indicate:

1. State or Federal project and parcel identification (See Appendix 12-1).
2. Names and addresses of displaced persons and their complete original and new addresses and telephone numbers (if available after reasonable effort to obtain where relocatee moved without assistance). (See Appendix 12-4).
3. Personal contacts made with each relocated person, including for each relocated person:
  - (a) Date of notification of availability of relocation payments and services.

- (b) Name of the official offering or providing relocation assistance.
- (c) Dates and substance of subsequent follow-up contacts.
- (d) Date on which actual relocation occurred. An approximate date for actual relocation is acceptable if the relocatee moves without assistance.
- (e) Type of tenure before and after relocation.

### **12.29.1 - INDIVIDUAL FAMILIES**

For displacement from dwelling:

- 1. Number in family.
- 2. Type of property (single detached, multi-family, etc.).
- 3. Monthly rent.
- 4. Number of rooms occupied.

### **12.29.2 - BUSINESSES**

For relocated businesses:

- 1. Type of business.
- 2. If relocated, distance moved (estimate acceptable).

### **12.29.3 - FARMS**

For relocated farms:

- 1. If relocated, distance moved (estimate acceptable).

### **12.29.4 - MOVING EXPENSES**

For moving expenses:

- 1. The date the removal of personal property was accomplished.
- 2. The location from which and to which the personal property was moved.

3. If the personal property was stored temporarily, the location where the property was stored, the duration of such storage, and storage charges.
4. Itemized statement of the costs incurred supported by receipted bills or other evidence of expenses.
5. Data supporting any determination that a business cannot be relocated without a substantial loss of its existing patronage and that it is not part of a commercial enterprise having at least one other establishment not being acquired by the State or the United States (See Appendix 12-11), supported by a memorandum of justification from the District Manager.
6. When an "In Lieu Of" payment is made to a business or farm operation, data showing how the payment was computed (memorandum from District Manager).
7. When moving expense payments are made in accordance with a schedule, the data called for in (3) and (4) above need not be maintained; instead, records showing the basis on which payment was made shall be maintained (including number and type rooms).

#### **12.29.5 - REPLACEMENT HOUSING PAYMENT**

For replacement housing payment:

1. The date of the claim for payment.
2. The date on which each payment was made.
3. Supporting data explaining how the amount of the supplemental payment to which the applicant is entitled was calculated.
4. A copy of the closing statement to support the purchase or down payment, and incidental expenses when replacement housing is purchased. (To support purchase and closing statement or receipts from performer of services to support incidental costs.)
5. The individual responsible for determining the amount of the replacement housing payment shall place in the file a signed and dated statement.
6. The relocation records must be available at reasonable hours for inspection by representatives of the Federal Government who have an interest or responsibility in the matters relative thereto.

## **12.30 – REPORTS**

The WVDOH shall submit a report of its real property acquisition and displacement activities to the Federal Highway Administration. A report will not be required more frequently than every three (3) years, or as the Uniform Act provides.

## **12.31 – DEFINITIONS**

ACQUIRED - The date on which the WVDOH obtains legal possession of the real property.

ACQUISITION COST - Price paid the owner for property rights acquired.

APPEAL - Any party aggrieved by the eligibility determination made by the WVDOH concerning their replacement housing offer, moving costs, incidental costs, or mortgage interest differential payment may appeal.

BREAKOUT - The Fair Market Value of the dwelling and its site, exclusive of any excess land or other improvements.

BUSINESS - The term "business" means any lawful activity, except a farm operation, that is conducted primarily:

1. For the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacturing, processing and/or marketing of products, commodities, and/or any other personal property; or
2. For the sale of services to the public; or
3. By a nonprofit organization that has established its nonprofit status under applicable Federal and State laws; or
4. For outdoor advertising display purposes, when the display must be moved as a result of the project.

COMPARABLE REPLACEMENT DWELLING - A comparable replacement dwelling is one which is:

1. Decent, safe and sanitary as defined under "INSPECTION FOR DECENT, SAFE AND SANITARY STANDARDS".
2. Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in

determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the WVDOH may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling.

3. Adequate in size to accommodate the occupants;
4. In an area not subject to unreasonable adverse environmental conditions;
5. In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
6. On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses.
7. Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.
8. Within the financial means of the displaced person.
  - (a) A replacement dwelling purchased by a homeowner in occupancy for at least 90 days prior to initiation of negotiations (90-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at paragraph 12.14.3, all increased mortgage interest cost as described at paragraph 12.15.3, and all incidental expenses as described at paragraph 12.16, plus any additional amount required as "Last Resort Housing", paragraph 12.28.
  - (b) A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the subject dwelling as described at paragraph 12.21.1.
  - (c) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements comparable replacement rental housing is considered to be within the person's financial means if the WVDOH pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described at paragraph 12.21.1. Such rental assistance must be paid under replacement housing of last resort.

CONTRIBUTES MATERIALLY - The term "contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs, or during such other period as the WVDOH determines to be more equitable, a business or farm operation:

1. Had average annual gross receipts of at least \$5,000.00; or
2. Had average annual net earnings of at least \$1,000.00; or
3. Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.
4. If the application of the above criteria creates an inequity or hardship in any given case, the WVDOH may approve the use of other criteria as determined appropriate.

CONTROL OF THE PROPERTY - Is the earliest of the following dates:

1. The WVDOH accepts the option to purchase.
2. Right of entry granted, in writing, by the property owner.
3. Fair Market Value determination amount tendered to the clerk of the court.

DECENT, SAFE AND SANITARY DWELLING - The term decent, safe and sanitary means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code, such following standards shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair.
2. Contain a safe electrical wiring system adequate for lighting and other electrical devices.
3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70° Fahrenheit) for a displaced person, except in those areas where local climatic conditions do not require such a system.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

5. 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 two (2) means of egress.
6. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such a displaced person.

DISPLACED PERSON - Any person who moves from the real property or moves his or her personal property from the real property:

1. As a direct result of the WVDOH's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations. In the case of a partial acquisition, the WVDOH shall determine whether the person is displaced as a direct result of the partial acquisition; or
2. As a result of a written order from the WVDOH to vacate such real property for the project; or
3. As a result of the WVDOH's acquisition of, or written order to vacate, other real property for a project on which the person conducts a business, farm operation, or is a nonprofit organization. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance advisory services and moving expenses.

PERSONS NOT DISPLACED. The following is a non-exclusive listing of persons who do not qualify as a displaced person under these regulations.

1. A person who moves before the initiation of negotiations; unless the WVDOH determines that the person was displaced as a direct result of the project.
2. A person who initially enters into occupancy of the property after the date of its acquisition for the project; or
3. A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act; or
4. A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the WVDOH in accordance with any guidelines established by the Federal agency funding the project; or
5. 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 WVDOH will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or

6. A person whom the WVDOH determines is not displaced as a direct result of a partial acquisition; or
7. A person who, after receiving a notice of relocation eligibility, is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the WVDOH agrees to reimburse the person for any expenses incurred to satisfy any obligations entered into after the effective date of the notice of relocation eligibility; or
8. An owner-occupant who conveys his or her property as described in 49 CFR 24.101(a)(2) or 49 CFR 24.101(b)(1) or (2), after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the WVDOH will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;
9. A person who retains the right of use and occupancy of the real property for life following its acquisition by the WVDOH.
10. A person who is determined to be in unlawful occupancy prior to or after the initiation of negotiations, or a person who has been evicted for cause, under applicable law. However, advisory assistance may be provided to unlawful occupant at the option of the WVDOH in order to facilitate the project.
11. A person who is not lawfully present in the United States and who has been determined to be ineligible for relocation assistance; or
12. Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance provided under the American Dream Downpayment Initiative (ADDI) authorized by Section 102 of the American Dream Downpayment Act.

DWELLING - The place of permanent or customary and usual residence of a person, according to local custom or law, including a single-family house; a single-family unit in a two-family house; a single-family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

EXISTING PATRONAGE - The term "existing patronage", except in the case of a nonprofit organization, means the average annual net dollar volume of business transacted during the two (2) taxable years immediately preceding the taxable year in which the business is relocated.

FAMILY – Two (2) or more individuals living together in a single-family dwelling unit who:

1. Are related by blood, adoption, marriage or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

2. Are not related by blood or legal ties but live together by mutual consent. (See definition of "HOUSEHOLD".)

FARM OPERATION - The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

FUNCTIONALLY SIMILAR (EQUIVALENT) - This term is used as one part of the definition of "Comparable Replacement Dwelling" and means that the comparable must perform the same function and provide the same utility as the subject. While it need not possess every feature of the subject, the principal features must be present.

HOUSEHOLD - Those who dwell under the same roof and compose a family are considered a household. Also, a social unit comprised of those living together in the same dwelling. (See definition of "FAMILY".)

INITIATION OF NEGOTIATIONS - On Highway projects the term "initiation of negotiations" means the delivery of the initial written offer of just compensation by the WVDOH to the owner or the owner's representative to purchase the real property for the project. However, if the WVDOH issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery to the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

On projects other than Highway related, the definition of the term may be altered as appropriate to fit the situation on Federally assisted projects or programs on a project by project basis.

MORTGAGE - The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the law of the State of West Virginia, provided the real property is located in the State, together with the credit instruments, if any, secured thereby.

NONPROFIT ORGANIZATION - The term "nonprofit organization" means an organization that is incorporated under the applicable laws of West Virginia as a nonprofit organization and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501).

OWNER OF DWELLING - A term owner of dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or
2. An interest in a cooperative housing project which includes the right to occupy a dwelling; or

3. A contract to purchase any of the interests or estates described in subparagraphs (1) or (2) of this paragraph; or
4. Any other interest, including a partial interest, which in the judgment of the WVDOH warrants consideration as ownership.

90 DAY OWNER - An occupant who has actually owned and occupied the dwelling from which he or she is being displaced for at least 90 days immediately prior to the initiation of negotiations.

90 DAY TENANT - A tenant who has actually and lawfully occupied the subject dwelling for at least 90 days immediately prior to the initiations of negotiations.

LESS THAN 90 DAY OCCUPANT – A tenant or owner who has actually and lawfully occupied the subject dwelling less than 90 days immediately prior to the initiation of negotiations or occupies the subject property after the initiation of negotiations and prior to the date of acquisition.

PERSON - The term "person" means any individual, family, partnership, company, corporation, or association.

RELOCATEE (DISPLACEE) - Any person who meets the definition of a displaced person.

SALVAGE VALUE - The term "salvage value" means the probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be re-used or recycled when there is no reasonable prospect for sale except on this basis.

SMALL BUSINESS - A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of 49 CFR 24.304.

TENANT - The term tenant means a person who has the temporary use and occupancy of real property owned by another.

UNLAWFUL OCCUPANT - A person who occupies without property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under West Virginia law. The WVDOH, at its discretion, may consider such person to be in lawful occupancy for relocation purposes.

UTILITY COSTS - The term utility costs means expenses for electricity, gas, other heating and cooking fuels, water and sewer.