

**Excerpt Sections**

**MDOT Right of Way Operations Manual**

**02/29/2016**

***For use as a guide by LPAs in Mississippi***

**Included Sections:**

***MDOT ROW LPA Coordinator***

***Title/Closings***

***Appraisal, Appraisal Review, and Waiver Valuation***

***Acquisition***

***Relocation***

***Legal***

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***Property Management***

***Utility Relocation***

**Mississippi Department of Transportation  
Right of Way Operations Manual**

**MDOT ROW LPA Coordinator**

The following procedures document the responsibilities of the MDOT ROW LPA Coordinator. The MDOT ROW LPA Coordinator serves as liaison between the MDOT ROW Division, MDOT LPA Division, MDOT District LPA Coordinators, Local Public Agencies, LPA Consultants, and FHWA. The MDOT ROW LPA Coordinator coordinates right of way activities, assesses and reports on right of way project progress and provides input and assistance to right of way project problems and has oversight over all Local Public Agency projects.

Please review all pertinent chapters in the Right of Way Operations Manual.

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**1. Represent Right of Way Division in the ROW Project Phases of LPA Projects**

The MDOT ROW LPA Coordinator is the main point of contact for the LPA regarding the ROW phase of the LPA project.

**1.1 Participate in LPA ROW Project Kickoff Meeting**

The MDOT ROW LPA Coordinator participates in the LPA kickoff meetings when right of way is required. The MDOT ROW LPA Coordinator shall address right of way considerations from the Local Public Agency as requested, offering guidance and oversight to the Local Public Agency for compliance with the requirements of the Uniform Act. At the Kickoff meeting, the LPA and/or their ROW Consultant will exchange necessary contact information, and the MDOT ROW LPA Coordinator shall discuss with the LPA whether the LPA will be seeking reimbursement or special match credit for ROW expenditures or if other funding actions will be applicable to the project.

**1.2 Participate in Field Visit Project Review**

The MDOT LPA District Coordinator coordinates and schedules the field visit. The MDOT ROW LPA Coordinator attends the field visit on LPA projects that require right of way acquisition and conducts a preliminary review of the project. During the field visit, the MDOT ROW LPA Coordinator reviews the project and the ROW plans for ROW considerations, providing oversight to the process as necessary. These right of way considerations may include the following:

- Easements for driveways or ponds
- Lack of access lines
- Historic sites
- Churches
- Cemeteries
- Parks
- Environmental concerns (such as, underground storage tanks, dry cleaners, funeral homes, farm shops, crop dusters)
- Personal property relocation
- Listing of secondary roads
- Utilities
- Encroachments
- Culverts and riprap (need to be on permanent right of way)
- Correct topography (fences, improvements, billboards, and signs)
- Proximity to improvements (if close, can it be pulled off or is there a need to acquire)

Upon completion of the field visit, the MDOT ROW LPA Coordinator maintains any notes of considerations and places them into the project file for future reference.

- 1.3 Procure Project Funding Estimates on LPA Projects Utilizing Federal Reimbursement**  
The LPA prepares a ROW Cost Estimate and Funding Authorization Request and submits it to the MDOT District LPA Coordinator for submission to the ROW Division. The MDOT ROW LPA Coordinator will review the request and make recommendation to the ROW Assistant Division Administrator to accept the ROW Cost Estimate and Funding Authorization Request.
- 1.4 Participate in Office Review in LPA Projects Requiring Right of Way**  
The LPA completes the project design and the MDOT District LPA Coordinator schedules and conducts an office review. The MDOT ROW LPA Coordinator attends the office review to represent potential right of way considerations.
- 1.5 Review Environmental Documentation**  
The MDOT ROW LPA Coordinator reviews the Environmental Documentation for any applicable ROW Commitments contained in the Environmental Document (see Gold Sheet), and provides oversight as necessary to LPA of those Commitments regarding right of way considerations.
- 1.6 LPA Project Development Management Team Participation**  
The MDOT ROW LPA Coordinator participates in the LPA District Project Development Management Team meetings throughout the course of a project. The MDOT ROW LPA Coordinator attends the District LPA PDPM meetings and provides the ROW Assistant Division Administrator and the LPA Division with initial and updated information on right of way considerations as necessary.
- 1.7 Participation in Other Project Meetings**  
The LPA, District, Roadway Design, Environmental, LPA Division or any other division may additionally request a site project review or an office review to specifically deal with an issue that is project-specific and may request that the MDOT ROW LPA Coordinator be present. The MDOT ROW LPA Coordinator should make every reasonable effort to attend project issue-specific requested meetings.

## **2. Project Oversight**

- 2.1 Preliminary Project Coordination Activities**  
Upon receipt of the first set of ROW Acquisition Plans from the MDOT LPA District Coordinator, the MDOT ROW LPA Coordinator reviews the plans and becomes familiar with the scope and right of way considerations of the LPA Project.
- 2.2 Review and Provide Oversight of Right of Way Consultant Selection**  
The MDOT ROW LPA Coordinator shall review all proposed LPA Contracts for Real Estate Services. The MDOT ROW LPA Coordinator, pursuant to the Stewardship Agreement with FHWA, shall provide oversight to ensure that the LPA provides adequate staffing with sufficient knowledge in all right of way functions to support the LPA project. The MDOT ROW LPA Coordinator shall make recommendations of staffing and/or terminology revisions. Once the MDOT ROW LPA Coordinator has reviewed the final draft of the Contract for Real Estate Services, the MDOT ROW LPA Coordinator shall make recommendation to the ROW Assistant Division Administrator for concurrence with the Contract for Real Estate Services, prior to the execution of the contract by the LPA. Once concurrence has been provided, the LPA may then finalize the Contract for Real Estate Services.

**2.3 Participate in Project Acquisition Kickoff Meeting.**

The LPA project acquisition kickoff meeting is held prior to the performance of the appraisal process on the project. The topics discussed may include, but not be limited to, the following:

1. Review project files and parcel file checklist
2. Project start and estimated date for all parcels to be acquired or recommended for condemnation, if known
3. Project purpose and benefits
4. Contact information for:
  - Project Engineer
  - Relocation Agent(s)
  - Acquisition Consultant(s)
  - Review Appraiser
  - Appraisal Consultant(s)
  - Property Management Agent(s)
  - Other acquisition team members, as appropriate
5. Review of right of way acquisition maps and plans
6. Determine the location and contact information of project office(s).
7. Tour the project to become familiar with and oriented to the proposed acquisition areas. Provide oversight to the LPA representative, ROW Consultants in attendance, and the MDOT District LPA Coordinator for recommendations of resolutions on right of way considerations.
8. Underground storage tanks as well as any other information on potentially contaminated sites.
9. Advise, if necessary, of any environmental commitments.
10. Review special construction features.

**2.4 Project Activity Report**

The MDOT ROW LPA Coordinator shall provide either an oral or written report, upon request, concerning right of way activities taking place on active LPA right of way projects.

**2.5 Provide Project Monitoring Activities**

The MDOT ROW LPA Coordinator monitors LPA ROW project phases to monitor Uniform Act compliance and make recommendations to LPA personnel and the MDOT District LPA Coordinator on right of way considerations which may need to be addressed.

**3. General Management/Administrative Activities****3.1 Prepare Weekly Itinerary**

The MDOT ROW LPA Coordinator provides a weekly itinerary to the ROW Assistant Division Administrator, Right of Way Division Administration, and, if requested, to the LPA Statewide Engineer and LPA Division staff, including the MDOT LPA District Coordinators. The MDOT ROW LPA Coordinator prepares said weekly itinerary on each Friday, but due to the nature of the responsibilities the itinerary may change frequently. Any changes to the itinerary are reported to the ROW Assistant Division Administrator, and, if requested, changes also are reported to the LPA Division. The LPA Division and the LPA District Coordinators have review only access to the calendar of the MDOT ROW LPA Coordinator to facilitate coordination of all LPA ROW activities statewide.

**3.2 Provide Assistance with Right of Way Certification**

The MDOT ROW LPA Coordinator, after review of right of way considerations on the project, and after reviewing all right of way files on any LPA project requiring right of way, shall:

- Receive and review LPA Request for Issuance of ROW Certificate;
- Verify ROW Status Report to determine if the rights of way and legal rights of entry have been acquired for the listed parcels;
- Verify the information contained in the Hazardous Waste Status Report;
- Verify the information contained in the Utility Status Report;
- Verify the information contained in the Asbestos Abatement Status Report;
- Verify the information contained in the Railroad Facilities Status Report;
- Verify the information contained in the Encroachment Status Report
- Perform a final project review to determine compliance with the Uniform Act;
- Provide guidance and technical assistance to the LPA on right of way consideration that may need attention ; and
- Recommend to the ROW Assistant Division Administrator that a Right of Way Certificate be issued for the project.

### **3.3 Provide Technical Assistance**

The MDOT ROW LPA Coordinator shall provide technical assistance and review on right of way procedures and considerations to the LPA, LPA Consultants, and MDOT LPA District Coordinators as needed.

### **3.4 Provide Management and Assistance with Special Match Credit**

The MDOT ROW LPA Coordinator shall, upon receipt of request for determination of eligible amount of Special Match Credit from the ROW Assistant Division Administrator, the LPA, or the MDOT LPA Division, complete a thorough review of all right of way files of the LPA project to determine any and all amounts expended for right of way related activities, including, but not being limited to, real estate services professional fees, acquisition and/or related costs, and any other right of way related expense, and to determine if said expenditures are eligible to be included for Special Match Credit. Upon completed review, the MDOT ROW LPA Coordinator shall make a recommendation to the ROW Assistant Division Administrator for the Memorandum of Special Match Credit eligibility to be issued.

### **3.5 Provide Management and Assistance with Reimbursable Right of Way Expenditures**

The MDOT ROW LPA Coordinator shall, upon receipt of request for reimbursement of right of way expenditures invoices, whether for real estate professional services, right of way acquisitions, right of way relocations, or other amounts expended for right of way related activities, complete a thorough review of the right of way files of the LPA project to verify all right of way activities have accurately occurred on the project, and have occurred in compliance with the Uniform Act. Once the MDOT ROW LPA Coordinator has verified the right of way activities have occurred, the MDOT ROW LPA Coordinator shall make recommendation to the ROW Assistant Division Administrator that the LPA invoices be approved for reimbursement.

### **3.6 Provide Management and Assistance with Right of Way LPA Training**

The MDOT ROW LPA Coordinator, shall, as requested by the ROW Assistant Division Administrator, provide assistance in revising all Right of Way LPA training materials, and shall assist with or provide training presentations on an individual LPA training meeting basis, or as necessary in conjunction with the LPA Division Statewide LPA PDM training.

### **3.7 Provide Technical Assistance with Right of Way LPA Forms and Materials**

The MDOT ROW LPA Coordinator, shall, as requested by the ROW Assistant Division Administrator, provide assistance in creating and/or revising any and all Right of Way LPA Forms and/or printed materials.

- 3.8 Provide Management and Assistance with ROW LPA Annual Statistical Report**  
The MDOT ROW LPA Coordinator will gather information regarding acquisition and relocation statistics from the LPA for each federal calendar year and will compile information to complete the ROW LPA Annual Statistical Report. Upon completion, the MDOT ROW LPA Coordinator will furnish the ROW LPA Annual Statistical Report to the ROW Assistant Division Administrator for submission to the FHWA.
- 3.9 Provide LPA Project Status Report.**  
The MDOT ROW LPA Coordinator will provide a monthly District LPA project status report to the ROW Assistant Division Administrator.

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**Title**

The following procedures document the responsibilities of the Title Section of the MDOT Right of Way Division for overseeing the delivery of title abstracts and other activities including final acquisition of a parcel of property acquired for public transportation projects.

Please review all pertinent chapters of the Right of Way Operations Manual, Assets Management Operations Manual and Roadway Design – Survey, Maps and Deeds Manual.

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Oversight of Title functions is conducted by the Right of Way Division's Title Officer. The MDOT uses consultants to perform title work and property closings. The following are the oversight responsibilities of the Title Officer:

- Assign title work, updates to title and property closing work.
- Monitor title work for compliance with MDOT policies, procedures and contract specifications for quality control.
- Resolve title issues.
- Ensure contract attorneys are current with their professional training and qualified to accomplish the assigned work.
- Ensure the proper distribution of work product to other MDOT Right of Way Sections and Divisions or MDOT consultants.
- Interpretation of official instructions and/or rules, contracts or agreements.
- Return significantly incomplete product to the consultant and consider invoking contract provision for dismissal of consultant.

#### **1.0 Title Abstracting**

When the Title Section receives preliminary ROW plans or design information for a public transportation project, the ROW Title Officer will contact a Title Firm with a current contract with the State of Mississippi. If no contract exists for a project, the ROW Title Officer, in coordination with the Attorney General's office, negotiates a contract with a Title Firm. The ROW Title Officer assigns work to the Title Firm under the contract and receives the Title Firm's work product after completion; monitoring progress in accordance with the project schedule. The Title Firm submits its invoice for completed work to the ROW Title Officer, who reviews it and forwards it for payment.

The ROW Title Officer contacts the Title Firm to engage an agent to go to the courthouse in the county in which the project is located and conduct a careful and thorough examination, investigation and analysis of all pertinent county public records for each parcel of real property affected by the project.

The title examination must cover a period of at least 32 years, based on the 10 year statute of limitations for adverse possession, plus the period dictated by the Rule Against Perpetuities, which states that title to real property must vest, if at all, within 21 years and some life in being

(meaning the nine month gestation period), the combined timeframe being rounded to 32 years.

Based on the results of the title examination, the Title Firm agent prepares a title abstract for each real property parcel in the project, which identifies the following information:

- Owner of the parcel;
- Status of real property taxes assessed against the parcel;
- Identification of any mortgages, liens, judgments and other encumbrances affecting the parcel;
- A deraignment of title for the period covered;
- Copies of all instruments in the chain of title; and
- A tax map depicting the parcel.
- Title Certificate which testifies to the accuracy of the title information provided for each real estate parcel abstracted.

Upon its request, abstracts are transferred to the Roadway Design Survey, Maps and Deeds Section.

## **2.0 Title Updates**

When a change of ownership or other title changes are discovered during a right of way project, typically by an appraiser or acquisition agent, notification is given to the appropriate District Coordinator, who submits a title update request to the ROW Title Officer. The ROW Title Officer forwards the request to the project Title Firm. After completion, the Title Firm sends the title update to the ROW Title Officer, who forwards a copy to the Roadway Design Survey, Maps and Deeds Section and downloads a copy into the Parcel Tracking System (PTS) for access by other project personnel.

Abstracts may also be updated when they are more than two years old if covering rural property or more than one year old if urban property.

## **3.0 Property Closing**

### **3.1 Preparation of property closing file.**

Once an agreement has been reached on property acquisition for a given ROW parcel, MDOT receives the property closing file from the acquisition consultant (which consists of the pay package and executed deed). Staff with acquisition responsibilities in the Operations Section review the property closing file, generate the invoice(s), send the invoice to the MDOT Financial Management Division (FMD) for issuance of a check, and forward the file to the Title Section.

When the ROW Title Section receives the printed check from FMD, it and a closing statement are added to the property closing file, which is forwarded to the Title Firm to complete the closing process. The Title Firm performs a thorough review of the file for verification of title and determination that all interests have been acquired. If everything is in order, the Title Firm examines the courthouse records to verify that no changes in ownership or liens have occurred.

If no changes are found, the Title Firm records the deed and any partial releases in the land records of the county where the property is located. If changes have occurred, the Title Firm updates the title abstract and proceeds as appropriate based upon the changes found.

### **3.2 Completion of property closing process**

Once the deed and any partial releases are recorded, the Title Firm completes the closing process by disbursing funds to the property owner and any lien holders and having the closing statement signed. The Title Firm forwards the recorded deed, signed closing statement, and a final title certificate to the Title Section staff, who enter the recording and payment information in the Parcel Tracking System (PTS). The Title Section also determines if the property owner is eligible for reimbursement of MDOT's pro-rata share of property taxes on the parcel acquired.

After property closings, the Title Section emails copies of recorded deeds to the District Coordinator of the appropriate district, and it provides the Asset Management Division with a list of uneconomic remnants purchased. The Asset Management Division adds those parcels to the Uneconomic Remnant (X-Deed) Purchased Inventory.

### **3.3 Quick Take and Eminent Domain Processing**

In the event of a Quick Take or Eminent Domain proceedings, the ROW Legal Section forwards files to the ROW Title Section for determination of property tax reimbursement eligibility. If the file meets the criteria for reimbursement, the Title Manager will process the reimbursement following MDOT financial procedures.

### **4.0 Disposal of Property- Identification of Parties with Statutory Interests – Title Report**

The Asset Management Division (AMD) Real Property Specialist submits a request to ROW - Title Section for the preparation of a title report. The title report is used to verify MTC ownership of the property. The title report also identifies parties with statutory interest in the property such as the original owner (total take), current owner (partial take), and adjoining property owners. The title report is returned back to the AMD Realty Specialists after it is reviewed and approved by the ROW Title Officer.

**Mississippi Department of Transportation**

**Right of Way Operations Manual**

**Appraisal, Appraisal Review, and Waiver Valuation**

The following procedures document the responsibilities of the Operations Section of Right of Way for appraising the property needed for public transportation projects.

Please review all pertinent chapters of the Asset Management Division Operations Manual, Roadway Design Operations Manual, Environmental Division Operations Manual and the Right of Way Division Operations Manual.

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Oversight of appraisal and other property valuation-related functions in connection with developing and reporting estimates of the fair market value of real property are conducted by the Right of Way Division's Operations Section. The MDOT uses consultants to perform all appraisals and review appraisals on all MDOT projects. The following are the oversight responsibilities of the Operations Administrator:

- Assign appraisals and appraisal reviews.
- Monitor appraisers and reviewers assignments for compliance with MDOT policies, procedures and contract specifications for quality control to ensure recommended compensation is reasonable, appropriate and supported.
- Resolve appraisal and appraisal review problems and issues.
- Encourage appraisal reviewers to be proactive in their assigned work in order to deal with new information and potential time delaying issues and problems before the appraisal report is submitted.
- Ensure contract appraiser and reviewers are current with their professional training and qualified to accomplish the assigned work.
- Interpretation of official instructions and/or rules, contracts or agreements.
- Ensure proper distribution of work product to other MDOT Right of Way Sections and Divisions or MDOT consultants.
- Return significantly incomplete product to the consultant and consider invoking contract provisions for dismissal of consultant.

Property valuation policies, processes, and procedures are governed by Federal Regulations, Mississippi Law, MDOT policies, and applicable appraisal standards.

As required by federal regulations at 23 CFR 710.201, this section of the Right of Way Operations Manual provides guidance and detailed information regarding policies, processes, procedures, and authorities applicable to real property valuation for governmental acquisition in the State of Mississippi.

## 1.0 General Appraisal Policies

### 1.1 Authorities in Law and Regulation.

In addition to the requirements in general law and regulation, the Mississippi Department of Transportation complies with the following laws and regulation that are specific to real property appraisal and property valuation for governmental acquisition or disposal:

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 et seq., (the Uniform Act)
- Title 49, Code of Federal Regulations, part 24
  - § 24.102 Basic Acquisition Policies
  - § 24.103 Criteria for Appraisals
  - § 24.104 Review of Appraisals
  - § 24.2 Definitions
- Title 23, Code of Federal Regulations, part 710
  - § 710.403 Management
- Mississippi Code of 1972, Annotated
  - § 11-27-19 Evidence of value; award and interest
  - § 11-27-21 Damage to remainder; determination
  - § 43-37-3 Acquisition of real property in publicly funded projects
  - § 43-37-11 Buildings, structures and improvements to be acquired with land
  - § 65-1-123 Sale or disposal of unnecessary property
- § 73-34 Mississippi Real Estate Appraiser Licensing and Certification Act of 1990, as amended (the Act). The Act incorporates the Uniform Standards of Professional Practice (USPAP)<sup>1</sup>
- Published Decisions of the Mississippi Supreme Court
- Case citation footnotes, excerpted text, and narrative explanations provided as applicable throughout this Chapter.

### 1.2 Qualifications of Appraisers and Review Appraisers.

The MDOT uses consultants to perform all appraisals and review appraisals on all MDOT projects. In compliance with 49 CFR 24.103(d)(1)(2) MDOT requires that all appraisers be licensed and in good standing with the Mississippi Appraisal Board. Furthermore, MDOT requires that the appraiser of record be a licensed and certified general real estate appraiser with experience in appraising real estate and interest in real property for the purpose of right of way acquisition. MDOT requires that the review appraiser must be a licensed and certified general real estate

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<sup>1</sup> USPAP, The Appraisal Foundation, Washington, D.C.

appraiser with a minimum of six (6) years of experience in appraisal and/or appraisal review of real estate and interests in real property for right of way acquisition.

### **1.3 MDOT Activities and Responsibilities that Require Real Property Valuation.**

The following are real property valuation activities:

- The acquisition of real property for transportation projects
- Determination of Fair Market Value for donated properties
- The acquisition of real property through the process of eminent domain
- The disposal of excess property
- The purchase of real property that is not subject to the eminent domain process (voluntary transactions)

### **1.4 Cost Estimates**

Upon request, appraisal consultant will provide cost estimates for proposed transportation projects based on the information about the project then available. The consultant as one of the representatives of the ROW Division shall attend and participate in the field review and provide written reports to the ROW Division, as described below. As part of the consultants reports the consultant shall provide comments and perspectives regarding the impacts and effects of the proposed right of way acquisitions, recommend possible design changes to mitigate the impacts and provide right of way cost estimate.

- A. Phase I – Attend field review as a representative of the ROW Division
  
- B. Phase II – Prepare and transmit a written field review report that contains the following:
  1. MDOT project number, list of persons in attendance, brief summary of project purpose and need, summary of plan recommended plan changes, and
  2. Right of Way cost estimate for land, improvements, damages, and uneconomic remnants
  
- C. Phase III - Upon receipt of final ROW plans from MDOT, the Consultant shall review the final ROW plans and provide an update to the original field review report to include:
  1. Any original recommendations that were applied to the final ROW plans
  2. Any original recommendations that were not applied to the final ROW plans
  3. The update ROW cost estimate

### **1.5 Application of the Before and After Rule in Mississippi.**

Mississippi's Before and After Rule (BAR) imposes unique constraints on the consideration of after condition remainder. Those legally imposed constraints can have a substantial impact on the calculation of the fair market value of the after condition remainder and, consequently, the

calculation of just compensation. This section begins with the foundational statement of the BAR as given in the case MSHC v. Hillman in 1940:

“When part of a larger tract of land is taken for public use, the owner should be awarded the difference between the fair market value of the whole tract immediately before the taking, and the fair market value of the that remaining immediately after the taking, without considering general benefits or injuries resulting from the use to which the land is to be put, that are shared by the general public.”<sup>2</sup>

Beyond the basic statement of the BAR appearing above, the Mississippi Supreme Court has provided further comment in other citations that more clearly define its meaning. For instance:

“This rule leaves no room for a deduction for any enhancement of the remaining land due to the nature of the facility to be built on the land taken. Furthermore, the landowner is entitled to due compensation not only for the value of the property actually taken, but also for the damages, if any, which may result to the landowner as a consequence of the taking without any deduction there from on account of any supposed benefits incident to public use for which the application is made.”<sup>3</sup>

With respect to eminent domain appraisal, there have been changes to the Mississippi Code since Hillman. One of the most significant changes was with respect to the consideration of project influence on the market value of the property being appraised. § 43-37-3 of the Mississippi Code states:

“Any person, agency or other entity acquiring real property for any project or program in which public funds are used shall comply with the following policies: . . .” “(c) . . . 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.”<sup>4</sup>

The following statement from the Mississippi Code should also be considered as being an integral part of the definition of Mississippi’s BAR since “damages to the remainder,” if any, are to be included in the compensation figure that results from the application of the before and after appraisal process. § 11-27-21 of the Mississippi Code states:

“In determining damages, if any, to the remainder if less than the whole of a defendant’s interest in property is taken, nothing shall be deducted there from

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<sup>2</sup>MSHC v. Hillman, 189 Miss. 850, 198 So. 565, (1940) Trustees of Wade Baptist Church v. MSHC, 469 So. 2d 1241, 1244 (Miss. 1985); Sanderson Farms, Inc. v. MSHC, 324 So. 2d 243, 244 (Miss. 1975); MSHC v. Hancock, 309 So. 2d 867, 871 (Miss. 1975); MSHC v. Hall, 174 So. 2d 488, 492 (Miss. 1965);

<sup>3</sup> Mississippi Code 1972 § 11-27-21; Pearl River Water Supply District v. Wood, 252 Miss. 580, 172 So. 2d 196 (1965); MSHC v. Hillman, 189 Miss. 850, 198 So. 565 (1940); MSHC v. Hancock, 309 So.2d 867 (Miss. 1975)

<sup>4</sup> Mississippi Code 1972 § 43-37-3

on account of the supposed benefits incident to the public use for which the petitioner seeks to acquire the property.”<sup>5</sup>

### 1.6 Prevention of Conflicts of Interest<sup>6</sup>

Conflicts of interest are prevented in the appraisal process through the following procedures:

- No Appraiser or Review Appraiser, or person designated to perform a waiver valuation has any direct or indirect interest in the real property being appraised that would in any way conflict with the preparation or review of the appraisal.
- No Appraiser or Review Appraiser acts as an Acquisition Agent for real property that they have appraised.
- Compensation for appraisal or appraisal review work is not based on the amount of the valuation.
- No person shall attempt to unduly influence or coerce an appraiser, review appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal, appraisal review or waiver valuation.
- Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work. For a program or project receiving Federal funding, the FHWA may waive this requirement if it determines it would create a hardship for the agency.

### 1.7 Scope of Work

The term scope of work defines the general parameters of the appraisal. It reflects the needs of the MDOT and the requirements of Federal and Federally-assisted program appraisal practice.

When project right of way plans and/or acquisition maps, depicting the parcel acquisition information for a specific project have been completed, they are distributed from the Roadway Design Division to the Right of Way Division (ROW). Using the project specific plans or maps, the ROW Assistant Division Administrator and ROW Operations Administrator determine the type of professional services that are needed, based on the requirements of the project. A scope of work for each parcel on the project is developed that determines the number and type of appraisals, appraisal review, and waiver valuations. This scope of work is used in the request for proposals from qualified consultant appraisers and review appraisers.

Once the consultant appraiser has been selected and the notice to proceed has been issued, the appraiser of record develops the appraisal scope of work for each appraisal assignment. During the appraisal development process, once the appraiser has inspected the property, a procedure is established whereby the appraiser may make a request for a change in the appraisal assignment from the initial scope of work described above. The request must have the concurrence of the review appraiser and the ROW Operations Administrator. As a result of this process the revised scope work is developed cooperatively by the assigned appraiser and the MDOT ROW Operations Administrator.

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<sup>5</sup> Mississippi Code 1972 § 11-27-21

<sup>6</sup> 49 CFR 24.102(n).

### 1.8 Types of Property Valuation<sup>7</sup>

The format and level of documentation for a property valuation may vary depending on the complexity of the valuation problem. The main types of property valuations are discussed below:

#### A. Appraisal Waiver and Waiver Valuations.

An appraisal is not required if:

- (1) The owner is donating the property and releases MDOT from its obligation to appraise the property; or
- (2) MDOT determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000, or less, based on a review of available data.<sup>8</sup> When an appraisal is determined to be unnecessary, the MDOT will prepare a waiver valuation. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

In the latter case, a Waiver Valuation documents the estimated value. Parcels may be selected by MDOT for waiver valuation if the parcel is a non-complex land only acquisition with nominal improvements and the damages, if any, consist of cost-to-cure items only. The basis of the valuation is documented in the waiver valuation report.

The person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency. They also may be authorized by the Agency to act as a negotiator for real property. Additional information on Waiver Valuations can be found in Acquisition Chapter and in Section 2 of this Chapter of the Right Of Way Operations Manual.

#### B. Preparation of Appraisals.

Acquisition of property generally requires completion of an appraisal to determine the offer of just compensation or FMVO. Exceptions are simplistic acquisitions acquired through Waiver Valuations and donations of property where the appraisal is waived. In all circumstances where the MDOT has determined that an appraisal is required, the Appraiser prepares either a narrative Appraisal Report of Land or Improved Property.

**C. Narrative Appraisal Report.** Acquisitions not valued via a Waiver Valuation are appraised via a Narrative Appraisal Report format. A list of the current narrative MDOT Appraisal Reports is as follows:

1. Appraisal Report of Land
2. Appraisal Report of Improved Property
3. Uneconomic Remnant Report
4. Appraisal Review Report

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<sup>7</sup>49 CFR 24.103(a).

<sup>8</sup>49 CFR 24.102(c).

5. Uneconomic Remnant Review Report
6. Appraisal Report of Excess Property
7. Appraisal Review Report of Excess Property
8. Restricted Use Appraisal Report
9. Appraisal Review Memorandum Report

**D. All Appraisals Reports.** All appraisals must be completed on the most current MDOT Appraisal Forms or on Forms approved by MDOT. All MDOT Appraisal Forms are compliant with the requirements of the Uniform Standards of Professional Appraisal Practice and with the requirements of 49 CFR 24.103 and 24.104. For a guide to the specific requirements that should be considered when completing the MDOT Appraisal Reports the MDOT Right of Way Division Appraisal Guide should be followed.

A properly documented real property before and after appraisal report shall include the valuation of compensable interests pertaining to the property appraised. As appropriate for the property appraised, interests valued include: the fee simple interest, leased fee, and leasehold interests, easement interests, access rights and any other interests in real property compensable under the laws of the State of Mississippi. A properly documented appraisal report shall also include, if applicable, the appraiser's determination as to whether the remainder property has been rendered an uneconomic remnant as defined by the Uniform Act. If applicable, an Uneconomic Remnant Report shall be included with the appraisal report and is to be considered a part of the appraisal report.

### 1.9 Appraisal Review Requirements.

MDOT's appraisal review process includes, at a minimum, the following procedures:<sup>9</sup>

- Assurance that a qualified Review Appraiser examines all appraisals to assure that they meet applicable appraisal requirements.<sup>10</sup>
- Delivery of a written report by the Review Appraiser that identifies the appraisal report(s) reviewed and documents the findings and conclusions arrived at during the review of the appraisal(s)<sup>11</sup>.
- If the Review Appraiser is unable to recommend approval of an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the Review Appraiser may develop appraisal documentation either independently or by reference to acceptable relevant information developed by others and in accordance with MDOT's Review Appraisal procedures and USPAP to support a recommended value.<sup>12</sup>

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<sup>9</sup> 49 CFR 24.104.

<sup>10</sup> 49 CFR 24.104(a)

<sup>11</sup> 49 CFR 24.104(c)

<sup>12</sup> 49 CFR 24.104(b)

## 2.0 Waiver Valuation Procedures.

MDOT may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated to be less than \$10,000, based on a review of available data.<sup>13</sup>

## 3.0 Appraisal Preparation Procedures (Pre-Owner Contact)

### 3.1 Preparation of the Comparable Sales Brochure

The appraiser shall prepare the Comparable Sales Brochure (CSB)(also referred to as the "Market Data Brochure") that includes the following: a record search list showing the Sections, Townships and Ranges that were searched for comparable sales along with the applicable date range of the records searched, a Comparable Sales Map, showing the location of the all sales, summary sheet of sales, and a completed Comparable Sales Data Form for each confirmed comparable sale record in the CSB. As each comparable sale is confirmed, the electronic record shall be entered in to the MDOT parcel tracking system.

Upon the initial completion of the CSB, a hardcopy shall be prepared by the appraiser and furnished to the review appraiser for review and acceptance before any appraisal development and reporting may proceed. During the project appraisal development and reporting phase, the appraiser shall update the CSB as new sales data is verified and confirmed. Upon completion and acceptance of all original project appraisals by the review appraiser, the appraiser shall provide the MDOT ROW Operations Administrator with an electronic copy of the CSB including any associated sale data and record search list used in the appraisal process. The appraiser shall also be responsible for entering all sales data in to the MDOT parcel tracking system.

## 4.0 Notice to Property Owner.<sup>14</sup>

### 4.1 Initial Property Owner Notification.

As soon as feasible, the Appraiser notifies the property owner by telephone, in person, or by registered/certified mail, of the MDOT's interest in acquiring the real property, and the property owner's basic protections under law which are to be provided in writing (the MDOT Citizen's ROW Guide).<sup>15</sup> In the initial phone call, in-person contact, or letter to the property owner [Owner-Appraiser Contact Letter], the Appraiser shall include the following items:

- Identifies themselves as an Appraiser acting on behalf of MDOT and provides their name, title and other contact information, as appropriate.
- Explains that MDOT is developing a transportation project and describe the acquisition of property that is needed.<sup>16</sup>

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<sup>13</sup> 49 CFR 24.102(c).

<sup>14</sup> 49 CFR 24.102(b)

<sup>15</sup> 49 CFR 24.102(b).

<sup>16</sup> 49 CFR 24.102(b)

- Requests permission to inspect the property. The property owner or their designated representative is to be offered the opportunity to accompany the Appraiser during the property inspection.<sup>17</sup> If relocation is a factor, the Relocation Agent is to be notified of the time and date of the property owner contact and inspection date.
- If the Appraiser or is unable to make contact with the property owner or their designated representative via telephone or in person, an initial contact package is prepared. This initial contact package is personally served, or sent by certified or registered first-class mail, return receipt requested, and documented as part of the appraisal report. Each notice shall indicate the name and telephone number of the Appraiser who may be contacted for answers to questions or other needed help.<sup>18</sup>

#### 4.2 Property Inspection.

The property owner must be contacted by registered/certified mail if the owner, or their representative, is not available to meet in person (see Section 4.1 above for the documents that must be mailed or given to the property owner).<sup>19</sup> The procedures for the property owner contact are provided below:

- Provide property owner with the *Citizen's Right of Way Acquisition Guide*, a copy of the highlighted ROW Acquisition Map for their parcel, and a business card. Review the *Citizen's Right of Way Acquisition Guide* and ROW Acquisition Map with the property owner and respond to the owner's questions.
- Determine whether the property owner wants to accompany the Appraiser during the inspection. Inspect the property and conduct the following activities:
  - Measure improvements
  - Photograph acquisition area, surrounding improvements, and road frontage
  - Make notes to determine real versus personal property
- Make notes to determine real versus personal property, if any potential contaminated sites, historic sites, or other environmentally sensitive areas are noted, the Appraiser shall notify the District Coordinator by memorandum who will forward to the MDOT Environmental Coordinator.

#### 4.3 Personal and Real Property Nature of Improvements.

The Appraiser and the relocation agent identify and coordinate determinations as to whether specific improvement structures are to be classified as personal property or real property. Every effort must be made to do this prior to, or at the time of, the appraisal.<sup>20</sup> The Appraiser notes the real or personal property status of each improvement in the appraisal report. The Appraiser documents all improvements, regardless of whether they have "contributory value."

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<sup>17</sup> 49 CFR 24.102(c).

<sup>18</sup> 49 CFR 24.5

<sup>19</sup> 49 CFR 24.102(b)

<sup>20</sup> 49 CFR 24.205(c)(2)(i)(c)

For mobile homes, determination of the real or personal nature of the improvement is made based on the following issues:

- (1) How is the mobile home affixed to the property?
- (2) Have the wheels and axles of the mobile home been removed?
- (3) Does the mobile home owner file for homestead exemption at the County Courthouse?
- (4) Does the mobile home have any additions to the original structure (e.g., rooms, deck, roof)?

The Operations Section has access to the real and personal property classification information in the appraisal report.

#### **4.4 Changes or Issues Identified during appraisal process or in the Property Owner Interview.**

If title issues, additional interests, mapping, or a need for other changes are identified during the appraisal process or in the property owner meeting, the Appraiser transmits a memorandum describing the issue or need for a change to the Review Appraiser for concurrence. Relevant issues and need for changes may include, but are not limited to name or ownership changes, property line changes, deaths, wills, X-Deed or Q-Deed requests. If the Review Appraiser concurs with the Appraiser's identification of the issue or need for change, the Review Appraiser forwards the memorandum to the District Coordinator who will distribute the memorandum and supporting documents to the Title Section.

## **5.0 General Appraisal Documentation Practices**

### **5.1 Identification of Environmental Concerns, Historic Sites, and Other Environmentally Sensitive Areas.**

If any environmental concerns (e.g., gas station, industrial sites, farms, back washing sites, junkyards, funeral homes, dry cleaners, aerial applicators (crop dusters), oil companies, etc.), historic sites, water wells or other environmentally sensitive areas are identified during the appraisal process, the Appraiser shall notify the District Coordinator, who, in turn, notifies the ROW Operations Administrator. The Operations Administrator will coordinate with the Environmental Coordinator of the MDOT – Environmental Division as appropriate for processing.

### **5.2 Influence of the Project on Just Compensation.<sup>21</sup>**

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

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<sup>21</sup>49 CFR 24.103.

deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property.<sup>22</sup>

### 5.3 Cost to Cure.

Under long-standing precedent expressed repeatedly in Mississippi case law, a property owner may be entitled to compensation for the cost of restoring specific functional utility(s) that is lost as a consequence of the acquisition. The principle for inclusion of “cost-to-cure” in the calculation of compensation to the property owner comes from Mississippi case law. However, the use of “cost-to-cure” must adhere to certain intent. The Mississippi Supreme Court has stated:

“Of course, in determining “after acquired value” of the property, the jury is authorized to take into consideration the necessity of rebuilding fences and wells, the necessity of relocating roads, and similar items. These items, however, are all part of the depreciated value of the property in the manner in which it has been used or for which it is best adapted.<sup>23</sup>

The phrases: “*the necessity of rebuilding....in the manner in which it has been used or for which it is best adapted*” are the key. In other words, “cost-to-cure” is about restoring a specific functional utility that is being lost as a consequence of the acquisition. The most commonly encountered example would be agricultural fencing that serves a livestock containment function. If a portion of the owner’s existing fence is within the acquisition area and will be destroyed, then the livestock containment function that existed in the before condition will be lost. In order to restore the functional utility of livestock containment, it will be necessary for the owner to construct new fencing. In the case of fencing, this principle has also been extended by the MSC to cases in which the fencing served only to show a property boundary or to prevent others from entering property.<sup>24</sup> Under Mississippi Law, the cost to restore such functional utility is to be included as part of the “depreciation” of the remainder property’s after condition valuation. This principle is applicable to other items, as noted in the excerpted text of the decision above.

### 5.4 Partial Acquisitions and Uneconomic Remnants (X-Deeds).

In the case of the partial acquisition of a property, the compensation for the property being acquired and the compensation for damages, if any, to the remaining property are separately stated in the FMVO.<sup>25</sup>

The term *uneconomic remnant* means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property, and which the MDOT has

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<sup>22</sup> Mississippi Code 1972 § 43-37-3(c)

<sup>23</sup> Emerson v. MSHC, 208 So.2d 441; Additional citations for this principle included MSHC v. Strong, 240 Miss. 756, 129 So.2d 349 (1961); MSHC v. Hail, 252 Miss. 863, 174 So.2d 488 (1965); MSHC v. Colonial Inn, Inc., 246 Miss. 422, 149 So.2d 851 (1963).

<sup>24</sup> Oughton v. Gaddis, 783 So.2d 390 (1996)

<sup>25</sup> 49 CFR 24.102(e)(1).

determined has little or no value or utility to the owner<sup>26</sup>If the partial acquisition is determined by the Appraiser to leave an uneconomic remnant, the Appraiser transmits a memorandum to the Review Appraiser for concurrence. If the Review Appraiser concurs, the Review Appraiser transmits the memorandum request, along with his/her concurrence, to the District Coordinator to establish an X-Deed in order to facilitate making an offer to the owner to acquire the uneconomic remnant. The District Coordinator distributes the memorandum as appropriate. The memorandum prepared by the appraiser is to include the following information.

- Description of the area for which the X-Deed is needed;
- Explanation of why an X-Deed is being requested;
- Project number, file number, property owner, county, and physical location;
- A copy of the ROW Acquisition Map with the X-Deed area highlighted

### **5.5 Quitclaim Deeds.**

Quitclaim Deeds (Q-Deed) convey only what present interest a person or other legal entity may have in a particular property without making any representations or warranties of title. Q-Deeds are used to acquire interests in property that are not fee simple, such as leases, easement interests, purchase options, timber interests, right of way, or other non-fee interests in real property.

### **5.6 Private Water Wells and Private Sewers**

If there is private water well or private sewer on the property, the Appraiser includes it in the appraisal and completes the following:

1. Gathers information on the water well/sewer including a list of households and businesses served by the water well/sewer and the location of the water well/sewer.
2. Prepares a memorandum to the District Coordinator that lists the impacted households and businesses, the station number, and other relevant information. The District Coordinator shall notify the MDOT Project Engineer of the water wells and sewer and the Environmental Operations Coordinator of the identified water well(s). The well(s) shall be plugged and abandoned in accordance with the Mississippi Department of Environmental Quality, Office of Land and Water Resources, prior to construction.
3. If a single party is affected, prepares a cost to cure in order to compensate the property owner. A cost to cure, however, is only prepared if the well contributes to highest and best use of the property.
4. If multiple parties are affected by the water well, prepares a Q-Deed [ROW 640D] for each party. All parties are compensated. In most circumstances, this compensation is handled through an administrative adjustment.

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<sup>26</sup> 49 CFR 24.2(a)(27)

### 5.7 Property Line Overlap

If an Appraiser finds a property line overlap, the Appraiser notifies the ROW District Coordinator to contact the Maps & Deeds Section of RWD for an investigation of the overlap. If there is an overlap, the Maps & Deeds Section of RWD corrects the ROW Acquisition Map and the deed(s). The Appraisal Section determines compensation for property owners on a case-by-case basis.

### 5.8 Crop Irrigation Systems

Crop irrigation systems consist of real and personal property components. Compensation associated with the acquisition of, or impact to, irrigation systems is normally addressed in the context of the market value of the land acquired and the reduction in value, if any, to the remainder tract that the irrigation system served.

If the well-head for the irrigation system is being acquired, then the real property elements of the system are addressed on the basis of the cost to reestablish irrigation to the remainder property, (cost-to-cure). If there remain portions of the remainder property that cannot have irrigation restored, then the measure of damages to that portion is the difference between market value of irrigated lands as compared to the market value of non-irrigated lands.

If the well-head is not being acquired, then and certain components of the irrigation system may need to be relocated, and the Appraiser transmits a notification to the Review Appraiser. With concurrence of the Review Appraiser, the notification is forwarded to the Relocation Section.

If the crop irrigation system is owned by an operator/tenant, any compensation allocated to the tenant-owner for reestablishment or loss of the system is based on the terms of the lease agreement and is included in the Q-Deed [ROW 640D] established for the tenant-owner.

### 5.9 Outdoor Advertising Signs, (OAS, Billboards)

OAS structures involve a variety of considerations in the appraisal process. In most situations, the OAS structure is owned by an advertising company that leases the site on which the sign is located. Upon arranging permission for a site inspection with the fee owner of the subject property, the OAS is inspected and checked for construction style, encroachment, and clearance from existing ROW, permit tags, electrical service, size, condition, and accessibility.

Mississippi case law directs the appraiser's consideration of the property status of the OAS structure. One of the court cases regarding OAS valuation is MDOT vs. Lamar No (684 So. 2d 601 Miss.1996). In that decision, the Mississippi Supreme Court ruled that outdoor signs are structures and should be valued accordingly. The decision also stated that if the sign can be relocated to the remaining land with same exposure then the cost of relocating the sign should be considered as an applicable measure of compensation.

If it is determined that it is possible for the OAS to be permitted by MDOT and relocated to the remainder tract, the appraiser must contact the sign company/owner to find out if relocation of the OAS

is acceptable to the sign owner. If the sign owner is agreeable to relocation, then compensation for the sign structure is handled by the ROW Division, Relocation Section, as personal property. If the OAS company/owner is not agreeable to relocation, or it is not possible to relocate the OAS structure to the remainder tract, and then the sign structure is valued by the appraiser as a real property item.

#### 5.10 Underground Storage Tanks (UST) and Associated Equipment

All USTs and associated underground equipment are to be appraised as real property. Associated equipment includes:

1. Piping leading from the UST to the pump island.
2. Vent pipes, access risers, riser covers
3. Monitoring wells.
4. Pipes or lines between UST's and pump islands, monitoring wells, or monitoring equipment.

The phrase "Associated Equipment" does not include the fuel or fluid dispensing units (the above-ground pump units). Fuel dispensing pumps are to be considered personal property and, while they are not included in the valuation of real property, they are to be identified as personal property items in the appropriate section of the appraisal report as applicable.

Prior to initiating the appraisal process for any property on a project each appraiser should log on to the Parcel Tracking System (PTS) and review the identification of contaminated sites for the project to which you are assigned. If the site has not been cleared for acquisition, the appraiser shall prepare a memorandum to the ROW District Coordinator that serves as notification of the lack of clearance for the site in PTS. A review of the project's environmental document should also be made by the appraiser, specifically, the section on potential contaminated sites. Normally, this will identify properties where USTs have been noted by MDOT environmental. Upon identifying the presence of USTs on any property during property inspection, the assigned appraiser shall prepare and submit to the ROW District Coordinator a memorandum identifying the presence of USTs.

For items such as USTs, and their associated underground equipment, the actual condition of such facilities cannot be known because they are not available for visual inspection and equipment testing is not performed as a part of the MDOT appraisal process. Information on the existence, age, and condition of USTs and associated equipment is first obtained from the property owner; the owner's designated representative, or the lessee of the property. If the underground equipment is owned by a tenant oil company or other entity, the appraiser shall contact the owner of the equipment to obtain information. In addition to the property owner or tenant owner, information on USTs at all registered sites in Mississippi is available from the Mississippi Department of Environmental Quality through the following link:

<http://muster.deq.state.ms.us/webreportapplication/USTSearchWF.aspx>

The information available at this site is substantial and includes the name of the owner, number and size of tanks, date of installation, operational status, etc. The information

available from the property owner, tenant owner, or MDEQ should be included in the appraisal report and the source (Owner, tenant, or MDEQ) clearly labeled. Ultimately, the condition of such underground equipment must be assumed based on information provided by others. The assumption of condition for USTs and associated equipment shall be stated in the appraisal report as an "Extraordinary Assumption" in the appropriate section of the report per the following language:

- *There exists on the subject property \_\_\_#\_\_\_ underground storage tank(s) and associated underground equipment. Because these items are to be valued as real property, but are underground and not available for viewing or assessment, an assumption must be made regarding their condition for purposes of real property valuation. Unless otherwise indicated in this report, all underground equipment is assumed to be in working order consistent with age. This constitutes an extraordinary assumption.*
- *The physical information for the subject site and the improvements as reported to us by others is assumed to be true and correct and constitutes an extraordinary assumption.*

USTs and associated equipment are often involved in a variety of ownership arrangements. At times the fee owner of the property also owns the USTs and related equipment. In other ownership arrangements the property is in the name of one corporation while the fuel storage and dispensing equipment is in the name of another. In still others, the fee owner of the property has a business arrangement or "agreement" whereby an oil "jobber" or company will put the USTs and related equipment in place on a property and the property owner or a lessee will collect a fee for each gallon of product sold. Because arrangement details regarding USTs and equipment differ from property to property, and the USTs are to be appraised as real property, it is essential that the assigned appraiser secure detailed information regarding the ownership of USTs and associated equipment on the property. If the owner of the USTs and associated equipment is not the same as the fee owner of the land, the appraiser shall compile all available information including copies of leases or agreements as applicable and prepare a memorandum to the ROW District Coordinator requesting a Q-deed for tenant-owned real property.

If a copy of the lease or agreement regarding the USTs and equipment cannot be obtained or if the lease/agreement is vague and/or incomplete with respect to what items are owned by the tenant and the fee owner of the land acknowledges that the USTs, and/or other items, are owned by another, the appraiser should obtain a signed "*Acknowledgment of Tenant-Owned Real Property*" (located under ROW Division, Appraisal Forms on MDOT@work web site) from the fee owner of the property identifying tenant-owned real property items, (. Upon obtaining the owner's signed acknowledgment for tenant-owned real property, a memorandum requesting a Q-deed is to be prepared and transmitted to the ROW District Coordinator with the original acknowledgment form attached.

The overwhelming majority of the MDOT's acquisitions are partial acquisitions. If a partial acquisition includes a UST and/or a portion of its associated facilities, the appraiser must determine if the acquisition of that item can be handled on a cost-to-cure basis. This will

involve a variety of considerations including setbacks, local zoning, space availability, traffic routing, clearances, etc., etc. These opinions will have to be rendered by the appraiser on a case by case basis. Items potentially eligible to be handled on a cost-to-cure basis include, but are not limited to: USTs, piping, monitoring wells, electrical conduit lines, monitoring lines, access risers and covers, parking pads, vents, walks, etc. This is not an all-inclusive list because the individual characteristics of a particular site, in the context of the specifics of the partial acquisition, will determine what is and is not curable.

If the partial acquisition includes a UST and/or a portion of its associated facilities, and the loss of those items cannot be dealt with on a cost-to-cure basis, then the appraised value of the item shall be its contributory value to the property in place, as determined by cost, sales, or income approach appraisal procedures.

### **5.11 Easements**

#### **A. Temporary Easements.**

Roadway Design prepares Temporary Easement instruments as necessary for land needed during the project construction period for construction purposes, but not needed as permanent right of way. The Appraiser calculates compensation for the easement based on rental of the land within the temporary easement area for a period of five (5) years.

#### **B. Permanent Easements.**

The acquisition of a Permanent Easement is sometimes required. The impact to the value of the owner's property can vary substantially based on the specific characteristics of the land and the purpose of the easement. The Appraiser calculates compensation for the easement on a case by case basis.

## **6.0 Appraisal Review Practices**

### **6.1 Agency Official Authorized to Establish the Amount Believed to be Just Compensation.**

The MDOT authorizes the ROW Operations Administrator to act for the Agency and, based on the recommended appraisal by a consulting review appraiser; establish the Amount Believed to be Just Compensation.<sup>27</sup>

### **6.2 Review Appraiser Field Inspection.**

The Review Appraiser performs a physical inspection of the appraised site to visually inspect the acquisition area, any improvements, and comparable sales and compare these to information provided in the appraisal report. The Review Appraiser verifies that all improvements are included in the appraisal sketch or report. All items that can affect the value of the property

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<sup>27</sup> 49 CFR 24.102(d)

being acquired and the effect on the remainder are reviewed. If significant errors or omissions are encountered, they are referred to the Appraiser via an Appraisal Deficiency Form for correction.

### **6.3 Appraisal Review Process and Documentation.**

Before acceptance of an appraisal, the Review Appraiser determines that the Appraiser's documentation, including valuation data and the analyses of that data, supports the Appraiser's opinion of value. The qualifications of the Review Appraiser and the level of explanation of the basis for the Review Appraiser's recommendation of the appraisal report depend on the complexity of the appraisal problem. The Review Appraiser completes the following forms during the review:

- Review Appraiser's Estimate of Fair Market Value
- Appraisal Summary
- Statement of Assumptions and Limiting Conditions of Review Appraiser
- Certificate of Review Appraiser
- Reviewer's Determinations (if applicable)

All Appraisals are examined for the following:

- Calculations are mathematically correct
- Completeness; any Sections marked "non-applicable" are justified
- Reasoning is clear and documentation is complete
- Assumptions about fact, law, and proposed construction are correct
- Logical consistency in evaluation is maintained throughout the area or project
- Value conclusions are fully supported and based on accepted appraisal practice
- Proper property owner contact was made
- Uneconomic remnants are properly identified in the appraisal report and accompanied by an "Uneconomic Remnant Report" as a separate document

The Review Appraiser examines all appraisals to ensure that they meet applicable appraisal requirements and, prior to recommendation of approval, obtains necessary corrections or revisions. While the Review Appraiser does not make any changes in the appraisal report document, they may make note of and correct minor mathematical errors in the appraisal review report where such errors do not significantly affect the final value conclusions. The Review Appraiser also may supplement the appraisal where minor factual data has been omitted. The Review Appraiser initials and dates any correction and/or factual data supplements to an appraisal report.

The Review Appraiser may address minor revisions that have been made to the ROW plans and maps and deeds by memorandum or letter report rather than requiring that a request for a revisions be sent back to the appraiser for a revised appraisal report.

### **6.4 Review Appraiser Approval and Independent Estimate.**

A Review Appraiser is authorized to recommend approval of an appraisal report as the basis for the establishment of just compensation, (See 6.1 authorizations). When evaluating the estimate of just compensation in the appraisal report under review, the Review Appraiser may recommend the value estimated by the Appraiser or make an independent estimate of value based on the appraisal report documentation. If the Review Appraiser is unable to recommend an appraisal as an adequate basis for the establishment of the amount believed to be just compensation and obtaining an additional appraisal is impractical, the Review Appraiser may accept the appraisal and develop appraisal documentation to support his or her own recommended value as part of the Appraisal Review<sup>28</sup>. When a review appraiser develops an independent value, while retaining the appraisal review, that independent value also becomes the approved/recommended appraisal of the fair market value for Uniform Act at 42 USC Chapter 61 Section 4651(3).<sup>29</sup>The Review Appraiser's reasons for not recommending the original appraisal are documented in the narrative review report. If the Review Appraiser develops an independent value on a parcel and that parcel is later condemned, then the Review Appraiser must complete a full appraisal report for this parcel and will testify to the value at the trial.

The Review Appraiser's certification of the recommended value of the property is set forth in Appraisal Review Report, identifying the appraisal reports reviewed and explaining the basis for approval. Damages to any remaining property also are identified in the statement.

#### **6.5 File Retention.**

A copy of the Appraisal Report and associated work file must be retained by the appraiser for a period of at least five (5) years after the preparation of an appraisal report or at least two (2) years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.<sup>30</sup>

#### **6.6 Property Owner Appraisal.**

If the owner expresses intent to provide an appraisal report, the MDOT will provide the owner and/or his/her appraiser Agency appraisal requirements and inform them that their appraisal should be based on those requirements.<sup>31</sup>If a property owner provides a privately obtained appraisal to a ROW Agent or appraiser for consideration, the ROW Agent or appraiser shall transmit the property owner's appraisal report to the Review Appraiser:<sup>32</sup> The following steps for completing this are:

- (1) The owner's transmission of the appraisal report to the MDOT, or a representative of the MDOT, makes that appraisal report a State Record and a part of the parcel file.
- (2) The Review Appraiser shall conduct an administrative evaluation of the owner's presentation.

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<sup>28</sup> 49 CFR 24.104(b)

<sup>29</sup> 49 CFR 24.104(b) Appendix

<sup>30</sup> USPAP 2014/2015 Record Keeping Rule

<sup>31</sup> 49 CFR 24.102(f) Appendix

<sup>32</sup> 49 CFR 24.102(f)

- (3) The Review Appraiser shall transmit an administrative evaluation to the District Coordinator.

#### **6.7 Updating the Offer of Just Compensation.<sup>33</sup>**

Information presented by the property owner (including the property owner's appraisal), or a material change in the character or condition of the property, may indicate the need for a new appraisal. All relevant facts and circumstances of such new information, the property owner's information, or material change in the character or condition of property are considered by a Review Appraiser or an MDOT official delegated the authority for the establishment of just compensation.

If the latest appraisal information indicates that a change in the market value is warranted, MDOT promptly reestablishes just compensation and offers that amount to the property owner in writing.

### **7.0 Appraisals for Court**

This section details the process for completing appraisals in preparation for eminent domain court testimony.

#### **7.1 Receipt of Appraisal for Court Request.**

The ROW Legal Section initiates the appraisal process for condemnation cases. The Legal Section submits a Court Appraisal Package to the ROW Operations Administrator requesting that an appraisal for Court be completed within 60 days of the first business day following the filing of the case with the Court. The ROW Operations Administrator provides this notification to the assigned Appraiser requesting the Appraiser prepare for court testimony.

#### **7.2 Materials Furnished to the Appraiser.**

The Court Appraisal Package furnished to the Appraiser contains the following:

- Court appraisal memorandum
- Exhibit A (most current legal description of the acquisition area)
- Two (2) ROW Acquisition Map (most current available, should match the acreage on the deed)

#### **7.3 Reviews Comparable Sales Brochure/Record Search Sheets.**

The Appraiser reviews the Record Search Sheets to determine dates and locations that county records were checked on the original project and subsequent updates of sales data by other appraisers. Record search sheets are stored electronically in the MDOT Sales Database of parcel tracking. Newly verified sales are to be entered into the MDOT Sales Database of parcel tracking.

#### **7.4 Parcel Inspection.**

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<sup>33</sup> 49 CFR 24.102(g)

The Appraiser of record must be the Appraiser who physically inspects the subject property during the court appraisal process. If the appraiser of record is in need of physically traversing the property for the court appraisal process, the appraiser shall contact the attorney retained by the MDOT for the case before entering that property.

#### **7.5 Appraisal for Eminent Domain Court Testimony.**

The Appraiser performs an appraisal in preparation for giving court testimony in the Special Court of Eminent Domain. The date of value for the appraisal must be the date of filing. Confirmation with the Trial Attorney is required.

The appraisal for court must be a total "Before and After" appraisal, or an update of the original before and after appraisal. If a total "Before and After" appraisal was not done originally, then, it must be prepared at this time. To complete a total "Before and After" appraisal, all improvements on the subject property must be valued. Some properties are large, divided by roads, or contain improvements that are not impacted. Valuation of certain components of the total property may not have to be valued if both the MDOT's attorney and the Landowner's attorney can reach an agreement that it is in the best interest of both parties and not necessary to value certain items. Such an agreement is referred to as a "Stipulation". Unless a stipulation can be obtained through agreement of the attorneys representing the MDOT and the property owner, the appraisal for court must value the Total Property including ALL Improvements. The total "Before and After" Appraisal must contain the following:

- Memorandum summarizing any changes from the original project appraisal
- Discovery Material Form, completed and attached to the Appraisal
- Applicable appraisal forms
- One (1) copy of the ROW Acquisition Map or condemnation plat

#### **7.6 Court Appraisal Review.**

Upon completion of the court appraisal, the Appraiser transmits the completed appraisal report, along with Discovery Form, and supporting documents, to the Review Appraiser. The court appraisal is reviewed for court testimony.

Once the Appraisal for court is reviewed and accepted for court testimony by the Review Appraiser, the Appraisal Report, and associated documents, are stored on the MDOT's Parcel Tracking System and is available to all Sections of the ROW Division as needed.

### **8.0 Other Appraisal Procedures**

#### **8.1 Real Property Disposal Appraisal**

The Real Property Specialist of the Asset Management Division (AMD) sends requests for appraisal of real property disposal to the Operations Administrator. The appraisal is used to determine fair market value or rent for the real property. The assigned appraiser must be a state licensed or certified appraiser. The request from AMD should include the District Engineer's

recommendation for disposal, the requesting party's written request, survey, quitclaim deed and ROW map. The Operations Administrator will return the appraisal and appraisal review to the Real Property Specialists of AMD upon completion of both products.

### 8.2 Hostile Landowner

MDOT staff members do not go onto the property of a property owner that has forbidden access to their property. If the property owner refuses to give permission to enter the property or is verbally hostile toward MDOT staff, explain to the property owner that Appraiser cannot come onto the property and an appraisal will be completed from the public right of way. If a hostile landowner is encountered, the Appraiser gathers all available information on the improvements from the property cards (available from count for assessor's office and provides property measurements, etc.) and, if available, the County Tax Assessor's Office.

All hostile property owners are reported to the Operations Administrator and District Coordinator immediately. The Appraiser also documents the hostile contact on the contact report of the appraisal so that subsequent Field Agents are aware of hostile landowner. The Appraiser also provides a written or verbal notice to other Field Agents about the hostile landowner.

### 8.3 Administrative Settlement

The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.

All relevant facts and circumstances should be considered by an MDOT official delegated this authority. Appraisers, including Review Appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.<sup>1</sup>

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<sup>1</sup> 49 CFR 24.102(i) Appendix

**Mississippi Department of Transportation  
Right of Way Operations Manual**

**Acquisition**

The following procedures document the responsibilities of Right of Way Agents for acquiring property needed for public transportation projects. Real property interests are acquired by donation, purchase, or eminent domain proceedings. "Right of Way Agents" include but are not limited to Right of Way Consultants contracted by the Mississippi Department of Transportation to provide Right of Way Services.

Please review all pertinent chapters of the Right of Way Operations Manual and the Roadway Design Division (RWD) – Survey, Map & Deed Section Operations Manual.

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Oversight of the acquisition function is conducted by the Right of Way Division Operations Manager. The MDOT uses consultants to perform the acquisition function. The following are the oversight responsibilities of the Operations Manager.

- Monitor consultant assignment for compliance with MDOT with policies, procedures and contract specification for quality control.
- Resolve acquisition problems and issues.
- Ensure that the selected consultant is qualified to accomplish the assigned task.
- Interpretation of official instructions and/or rules, contracts or agreements.
- Ensure proper distribution of work product to other MDOT Right of Way Sections and Divisions or MDOT consultants.
- Return significantly incomplete assigned work to the consultant and consider invoking contract provisions for dismissal of consultant.

**1.0 Acquisition Requirements and Policies**

**1.1 Authorized Acquisition Agents**

Only authorized MDOT Right of Way Division employees and consultants, attorneys representing MDOT, or private firms contracted by the Mississippi Transportation Commission to provide right of way services, and other state or local governmental agencies under written agreement may acquire land for the Mississippi Transportation Commission.

**1.2 Confidential Appraisals**

Field Agents must not share appraisals with property owners or other interested parties. Field Agents may inform the property owner which comparable properties were used in the MDOT appraisal, if requested. Acquisition Agents may explain to property owners how the appraisal process is completed, generally, for any property.

**1.3 Conflict of Interest**

Acquisition Agents cannot have any interest, direct or indirect, in the real property being acquired that would in any way conflict with the acquisition. Appraisers and Review Appraisers cannot act as an Acquisition Agent for real property that they have appraised, except where the acquisition is of low value (\$10,000 or less), in which case MDOT may permit the same person to both appraise and acquire a property.

**1.4 Initial Contact and Offer<sup>2</sup>**

MDOT will make reasonable efforts to contact the property owner(s) or the authorized representative(s) to discuss: (1) MDOT's written Fair Market Value Offer (FMVO) to purchase

the property, including the basis for the amount of just compensation; and (2) MDOT's acquisition policies and procedures.

**1.5 Expeditious Acquisition<sup>3</sup>**

MDOT makes every reasonable effort to acquire real property expeditiously through agreements with property owners.

**1.6 Prohibition of Coercive Action<sup>4</sup>**

MDOT will not advance the time of condemnation, defer the acquisition process, defer condemnation, defer the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

**1.7 Incidental Expenses<sup>5</sup>**

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**1.8 Appeals**

The property owner, or other interested party, may appeal the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations. The property owner must be given the opportunity to present evidence, including but not limited to, comparable sales data and appraisals that is contrary to the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations.

**2.0 Acquisition Preparation Procedures**

**2.1 Project Acquisition Kickoff Meeting**

Upon receipt of the project start date, the District Coordinator schedules a "project acquisition kickoff meeting" through appropriate personnel. The "project acquisition kickoff meeting" is a short meeting of the entire acquisition project team to establish the basic project objectives.

The project acquisition kickoff meeting is held prior to the performance of the appraisal process on the project. The topics discussed include the following:

1. Project start and end dates, if known
2. Contract letting schedule and desired possession date
3. Project purpose and benefits
4. Contact information for all appropriate project personnel

5. Review of maps
6. Identification of improved/unimproved parcels that were scoped to be appraised or valued utilizing Waiver Valuations
7. Discuss Staffing
8. Establish timelines
9. Identify priority parcels. Priority parcels may include those involving relocation of displacees, relocation of utilities, or other complex parcels (such as, those involving improvements, hazardous waste, government agencies, partnerships, businesses, churches, casinos, associations, estates, multiple owners, and out-of-state owners). Number and size of underground storage tanks as well as any other information on potentially contaminated sites.
10. Review environmental commitments.
11. Review special construction features.

## 2.2 Materials furnished to Acquisition Agents

- The ROW Acquisition Maps will be distributed by the District Coordinator
- An electronic file containing templates for FMVO, FMVO- X-Deed, Contact Report, Record of Heirs Form, 14 day Notice for Condemnation, Approved Clauses, Corporate Resolution and Order, Division of Proceeds, Project Status Report, Waiver Valuation, Establishment of Just Compensation, Deed Request, Partial Release Request, Third Party Release, Right of Way Invoice, Right of Way Invoice Codes, Agent Closing Statement, Bill of Sale-Mobile Home, Acknowledgments, Internal Revenue W-9 form, and Waiver of Appraisal form, distributed by the District Coordinator

## 2.3 Acquisition File Preparation

For each parcel assigned to them, the Acquisition Agent will find the following instruments and documents in the PTS parcel file room:

- Title abstract
- Deeds
- Appraisal

## 2.4 Review of Appraisal and Other Acquisition Materials

The Acquisition Agent reviews all material for an informed offer. If relocation is a factor in the acquisition, all materials are reviewed jointly with the Relocation Agent. Involvement of relocation is designated on the Review Appraiser Report. The Acquisition Agent familiarizes themselves with all factors that relate to the acquisition effort. Each factor is listed on the Pre-Acquisition Checklist, provided below.

### Pre-Acquisition Checklist as Necessary:

- Access controls
- Plans for replacing or moving utilities (water, gas, electric, phone and sewage lines, septic tanks, meters, utility poles, water towers, fire hydrants, water wells, public buildings or facilities)
- Comparable sales and other appraisal data supporting the FMVO.
- Appraised per acre value.
- Location of the property, according to stakes, including distances from existing highway centerline, and distance of current ROW from current highway centerline
- Ingress/egress ramp(s) before and after construction, as shown on ROW Acquisition Map
- Driveway widths allowed after construction and any existing wider driveways
- Number of lanes each direction
- Highway crossover locations on survey map

- Turn lane start and end points
- Location of present ROW markers
- Location of proposed ROW markers
- Signs on the ROW
- Purpose of acquiring the parcel
- Parcel status with Property Management Section. Cleared for acquisition?
- Status of parcel staking. If parcel is not staked, contact the District Coordinator
- Need for the agency to remove fuel tanks
- Property category in appraisal (agricultural, residential, timberland, commercial, etc.)
- Existence of any timber to be acquired.
- Structures or other improvements to be moved.
- Section, Township, Range are correct and match abstract and tax maps
- If parcel is in a city, the city is named in the indexing instructions
- Directions and distances (calls) are correct
- Hectares and acres are correct
- Access and non-access language in the deed are correct
- Name(s) on deed are correct and match the abstract
- Who must sign the deed and how they must sign their names
- Each partial release instrument is listed or implied in abstract
- Environmental commitments
- Need for any clause(s) in the deed (A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.)
- Need for Resolution and Order to be attached to the deed
- Deeds and ROW Acquisition Maps match

## **2.5 Appraisal Amendments**

If information presented by the property owner or a material change in the character or condition of the property indicates the need for a new appraisal, or if the time lapse between the appraisal completion date and date of FMVO is one (1) year or more, a new or amended appraisal must be prepared.<sup>6</sup> If a new or amended appraisal must be prepared, the Acquisition Agent returns the appraisal documents to the District Coordinator who will provide them to the Review Appraiser. If the latest appraisal indicates that a change in the FMVO is warranted, the Acquisition Agent promptly updates the FMVO and provides the revised FMVO to the property owner.<sup>7</sup>

## **2.6 Map Revisions**

During the life of a project, revisions may be made to maps and deeds to correct inaccuracies, accommodate project/plan changes, identify new land transfers, etc. The revised maps and deeds will be provided throughout the life of the project by the District Coordinator.

## **3. Acquisition Procedures**

### **3.1 Initial Acquisition Agent-Property Owner Contact (Introductory Phone Call)**

The Acquisition Agent's initial contact with the property owner(s) or authorized representative(s) is normally a telephone call to schedule an onsite meeting. If the property owner does not have a phone, the Acquisition Agent leaves a note and a business card attached to the property owner's door.. During this telephone call, the Acquisition Agent covers the following items:

- Explains the purpose of the meeting and informs the property owner(s) or authorized representative(s) that they are an Acquisition Agent and that they would like to meet with them to buy the property (and possibly other improvements). If relocation is involved, the Acquisition Agent explains that a relocation agent also will be assisting in relocation.
- Establishes a meeting time and place (the site of the property being acquired).
- Provides contact information, including an office and cell phone number.
- Verifies the property owner(s)'s full name to ensure the deed instrument(s) is correct.
- Requests that all property owners and spouses are present at the initial on-site meeting. If all property owners are not present, the Acquisition Agent must schedule additional meetings with the other property owners. All parties with an interest in the property (including heirs, estates, powers of attorney, churches, etc.) must be contacted and provided a FMVO, ROW Acquisition Map, *Citizen's Right of Way Acquisition Guide*, and an explanation of how the acquisition will affect the remaining property.

### 3.2 Property Owner Meeting(s)

Following the initial introductory contact, it is preferred that property owner meetings be held in person. In some situations, communication may be conducted by telephone and/or by mail, if necessary (for example, an out-of-state property owner).

The FMVO may be presented at the initial property owner meeting. Alternatively, more property owner meetings may be required prior to the Acquisition Agent's presentation of the FMVO. The purposes of these additional meetings may be to clear issues, clear title, obtain needed information, etc. Each acquisition is different and the Acquisition Agent adjusts and meets with the property owner as appropriate.

It should be noted that to meet minimum FHWA requirements, the property owner must be provided with an FMVO, the ROW Acquisition Map, and the *Citizen's Right of Way Acquisition Guide*. Please see Section 3 of this Chapter of the Right of Way Operations Manual for additional information on procedures regarding FMVO provision.

If relocation is a factor for the parcel, the Relocation Agent attends the property owner meeting, at which the FMVO is presented by the Acquisition Agent. It is the Acquisition Agent's responsibility to schedule the meeting with the Relocation Agent and property owner. All contact and communication with the property owner and other interested parties is documented (see Section 9.2 of this Chapter of the Right of Way Operations Manual for a discussion of the Contact Report).

During the initial in-person property owner meeting, the Acquisition Agent conducts the following activities:

- Provides *Citizen's Right of Way Acquisition Guide*
- Provides ROW Acquisition Map
- Explains ROW Acquisition Map noting the before and after condition of the property
- Inquires about condition of the Title
- Explains construction features affecting the remainder
- Inquires if there are mortgages, judgments, liens, etc. of which the agent is not aware
- When multiple signatories required, determines who should be listed on the check(s)
- Enters appropriate clauses in the deed(s) (A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.)
- Explains that the payment check will be made payable to all property owners, mortgage holders, judgment claimants, lien holders, lis pendens claimants, Quitclaim Deed

- interests, and any spouses who have homestead rights on the property, unless separate checks are requested
- Inquires if there are additional renters or leases. If so, asks for a copy of the lease agreement and sends it to the appropriate supervisor to determine if a Quitclaim Deed is needed
- Informs property owner(s) that the agency must acquire all interests before the deed(s) is accepted, recorded, and paid
- If issues arise that warrant a closing, the Acquisition Agent consults with the Acquisition Officer and Title personnel to arrange a closing on the property using an approved Title Attorney
- Ensures all pages of any deed or easement are initialed by the property owner(s) and the Acquisition Agent.

### 3.3 Uneconomic Remnants<sup>8</sup>

If the acquisition of a portion of a property leaves the property owner with a remainder that is of little or no value to the property owner, the agency offers to acquire the uneconomic remnant along with the portion of the property needed for the transportation project. The uneconomic remnant is acquired as an uneconomic remnant property. The agency does not acquire uneconomic remnants through eminent domain. The FMVO for the uneconomic remnant property states that the FMVO expires 90 days after Mississippi Transportation Commission obtains title to the property necessary for the construction of this project by deed, or immediately following recommendation for condemnation.

If agreement on the terms for the ROW acquisition cannot be reached, eminent domain proceedings begin for the ROW (See Section 8 of this Chapter of the ROM and the Legal Chapter of the Right of Way Operations Manual for additional information on eminent domain proceedings). Property owners should be advised that eminent domain will not include uneconomic remnant property.

### 3.4 Changes in Ownership, Judgments, or Liens

If the Acquisition Agent is informed of potential changes in ownership, judgments, liens, etc. through either the property owner or another source, the Acquisition Agent verifies this information according to the procedures below:

- A. **Change in Ownership.** If a property owner states that they have sold the property or if the Acquisition Agent obtains other information regarding ownership of the parcel that is inconsistent with the project abstract/deed, the Acquisition Agent notifies the District Coordinator who then sends a request for a title update to the Title Officer.
- B. **Change in Judgment or Lien.** If there has been a potential change in a judgment or lien, the Acquisition Agent verifies the change at the Courthouse and obtains a copy of the most recent documentation. The Acquisition Agent then attaches this new documentation to the deed and sends the deed and documentation to the District Coordinator who forwards it to the Title Section Officer for updating of the abstract. If the judgment value is greater than that of the acquisition offer, the acquisition then goes to condemnation, unless the property owner pays off the judgment. The Acquisition Agent, however, does not wait for documentation of the potential change to obtain signatures on deeds. The Acquisition Agent may request that the property owner sign the deed before pursuing verification of the potential change at the Courthouse.

If the property owner states that the mortgage is paid in full or cancelled, but the abstract lists a mortgage or lien holder, the Acquisition Agent obtains a copy of the cancellation at the Courthouse as documentation. Once this documentation is obtained the lien holder's name is not required on the check. Alternatively, the Acquisition Agent may request the property owner to provide a copy of the "Authority to Cancel" or a Deed of Trust with "Cancellation" stamped on it from the Chancery Clerks office. The Acquisition Agent also

may review the "Authority to Cancel" books and the Deed of Trust books at the Chancery Clerks office to obtain a copy of a canceled mortgage. The cancellation is recorded in the "Authority to Cancel" book and the original Deed of Trust is stamped satisfied and canceled.

In the instance of change of ownership or a change in a Judgment or Lien, the Acquisition Agent may be unable to obtain the supporting documentation. If this occurs, the Acquisition Agent simply notifies the District Coordinator that a title update is needed. The District Coordinator then requests a title update from the Title Officer.

- C. Dissolved Corporation.** Since acquisitions involving dissolved corporations are rare occurrences, the Acquisition Agent seeks guidance from the Title Section. If a property is listed as owned by a corporation, and the property owner claims the corporation is dissolved, the corporation must have been formally dissolved by a meeting of the board, a Resolution and Order, and then formally recorded and dissolved by the Office of Secretary of State. If the owner of a corporation dies, the corporation is not automatically dissolved. The corporation's assets must have been properly distributed. If land was distributed by deed, it must be recorded at the County Chancery Clerk's office.
- D. Bankruptcy, Federal Tax Liens, State Tax Liens.** If a property is in bankruptcy or has federal or state tax liens, the Acquisition Agent consults with the District Coordinator and Title Officer for the appropriate acquisition procedures.

### 3.5 Deed Clauses

The Legal personnel maintain a list of approved standard deed clauses as well as alternate deed clauses for use when a property owner objects to a standard clause. A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual as well as in the electronic file mentioned in Section 1.2 of this document.

The Acquisition Agent determines before, or at, the initial contact meeting if deed clauses are needed. If it is unclear whether a deed clause is needed, the Acquisition Agent contacts the District Coordinator for direction. If it is clear at the initial meeting which deed clause is needed, the Acquisition Agent includes the clause on deed and explains it to property owner, prior to asking them to sign deed.

Prior to replacing a standard deed clause with an alternate deed clause, the Acquisition Agent obtains approval from the District Coordinator. The Legal Section must approve any change in the wording of a standard, or an alternate, deed clause on a case-by-case basis. Insertion of unapproved deed clauses, or unapproved changes to deed wording, by the property owner are not accepted by MDOT. Only clauses that are pre-approved by MDOT, and written exactly from the MDOT list of approved clauses, can be inserted in the deed.

The property owner and Acquisition Agent must initial all changes on deeds.

### 3.6 Homestead Rights

On property that is defined as the homestead, the spouse of the property owner also must sign all deeds and instruments.

### 3.7 Heir Searches

The Acquisition Agent conducts an heir search when the property owner shown in the abstract is deceased. Upon receiving notification to provide heir information, the Acquisition Agent takes the following actions:

- Assembles all known heir information.

- Searches the following potential sources of heir information, as applicable: current property owner(s), relatives, neighbors, attorneys, MDOT and county ROW records, banks, real estate offices, US Post Office, county courthouse records (wills, deeds, marriage, divorce), State Department of Health records (birth, death certificates), churches, funeral homes, cemetery records, schools, census, etc.
- Obtains copies of deeds, wills, birth certificates, death certificates, and other documents or records.
- Requests heir information in writing [see Acquisition Forms Index - Identification of Heirs Letter] and requests information providers to complete and sign the Record of Heirs Form
- If the heir ship information provided in the title abstract or obtained by the Acquisition Agent is extremely complex, the Acquisition Agent should consult with the Acquisition Officer and Title Officer as to whether acquisition or condemnation is the appropriate course of action.
- A will doesn't pass title unless it has been probated through the Chancery Court. An open probate estate requires approval from the court prior to acquisition by MDOT. A closed estate will contain a Final Judgment acknowledging the record owner per the estate proceedings.
- If the deceased party has a will that has not been probated, the Acquisition Agent obtains a Record of Heirs form. [See Acquisition Forms Index]
- If a property owner has Power of Attorney (POA), the Acquisition Agent obtains documentation of the POA. It must be of record in a county courthouse to be valid, and must grant specific authority to convey property.

If a person is the sole survivor of a family with no will, or a gap in the trail of deeds and/or wills exists, the Acquisition Agent consults with the Title personnel on how to proceed with the acquisition. The "sole survivor-at-law" deed clause is needed in all heir ship property. A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.

### **3.8 Deceased Owner, Survived by Partner**

If a spouse is deceased, and "joint tenant with rights of survivorship" is noted on the abstract, the Acquisition Agent proceeds with following actions:

- Requests that the surviving spouse sign the deed;  
Obtains proof of death (death certificate, obituary, or funeral statement from courthouse);

### **3.9 Obtain Releases to Encumbrances (or Interests) to the Title**

The Acquisition Agent must obtain releases to encumbrances (or interests) to the title prior to payment of the property owner. These encumbrances may include mortgages, judgments, liens, etc. Note that it is not necessary to pursue partial release(s) once a parcel is recommended for condemnation.

The acquisition agent is not required to obtain a partial release on Deeds of Trust on parcels where the fair market value offer is less than \$5,000.00. However, the holder of the Deed of Trust must be included on the check along with the name of the property owner.

The process of obtaining executed Partial Release of Mortgages must be initiated early in the acquisition process. Acquisition Agents must ask the property owner(s) if they have any liens and/or encumbrances against their property. The Acquisition Agent also must review files to determine the status of mortgages (still in effect or cancelled). Since the property owner's warrant must include the financial institution holding the Deed of Trust, it is imperative that

the most current and correct financial institutions are included on the warrant. It also is imperative that the most current and correct Deeds of Trust are listed on the executed Partial Release of Mortgage instruments.

Alternatively, the lien holder can opt to waive payment. The lien holder must provide a written statement if they opt to waive payment [see Acquisition Forms Index - Lien Holder Waiver of Payment]. If the property owner indicates that the mortgage is paid in full, but the mortgage was not properly satisfied at the Chancery Clerk's office, the Acquisition Agent contacts the mortgage holder and requests that the mortgage be cancelled at the Courthouse. Acquisition Agents also must resolve inaccurate judgments or liens (for example, property owners with common names).

The steps to obtaining releases include the following:

1. Report the existence of a new mortgage via a memorandum to the District Coordinator and attach a copy of the discovered Deed of Trust and/or cancelled mortgage(s).
2. Obtain all phone numbers, names of contact persons, and addresses for financial institutions involved. This information is maintained and updated in each Acquisition Agent's electronic miscellaneous field file. This information is shared among all Acquisition Agents. Obtaining this information prevents delays once the deed is signed.
3. Contact mortgage bank in person, if possible, and provide written request for partial release [see Acquisition Forms Index - Partial Release Request Letter]. Some banks may have an Officer assigned to handle Partial Release of Mortgages, rather than the Loan Officer that manages the property or customer account. Obtain Partial Release of Mortgage from the assigned Partial Release Officer or the Loan Officer, as appropriate.
4. When Partial Release of Mortgage(s) is obtained, submit Partial Release of Mortgage(s) to the agency along with all signed deeds.
5. Check the abstract to verify that the agency has received all executed partial releases on the project.
6. If the mortgage company is unwilling to sign a Partial Release of Mortgage prior to receiving compensation, inform the District Coordinator. The District Coordinator, in consultation with the Title Section, decides whether to process the parcel for payment through an Attorney Closing, or to recommend the parcel for condemnation.
7. If it is decided to process the parcel for payment through an Attorney Closing, the Title Officer arranges a closing with an approved Title Attorney. The Acquisition Agent must obtain a form from the property owner authorizing the closing attorney to speak with the lienholder. [See Acquisition Forms Index]
8. If it is decided to recommend the parcel for condemnation, the District Coordinator instructs the Acquisition Agent to complete a Recommendation for Condemnation Form.

If a mortgage holder requires the agency to pay a fee to obtain an executed Partial Release of Mortgage, the Acquisition Agent takes the following actions:

- a. If the property owner is required by the mortgage holder to complete and sign a form, request that the mortgage holder send the form to the property owner immediately.
- b. Ask the property owner to complete any forms required by the mortgage holder, return forms to the mortgage holder, and send a copy of each form to Acquisition Agent.
- c. Request that mortgage holder submit the request for the fee on company letterhead and include a signed W-9 Form to the DOT Manager to begin processing the fee payment check.

- d. DOT Manager obtains fee payment check, and notifies the Acquisition Agent who disburses accordingly.
- e. Acquisition Agent coordinates and tracks the delivery or mailing of the fee payment check to the mortgage holder.

#### 4. **Fair Market Value Offer (FMVO)**

##### **Provision of FMVO**

The property owner(s), or authorized representative(s), are provided a written FMVO. In some cases, the Acquisition Agent may choose to present the written FMVO at their first meeting with the property owner while, in other cases, the Acquisition Agent may choose to present the written FMVO at a later meeting. For example, the Acquisition Agent may prefer to wait until issues on other parcels are resolved, until the title is cleared, a relationship with the property owner is established, or more information on the parcel is needed.

When purchasing property, all parties with an interest in the property must be contacted and provided a written FMVO, ROW Acquisition Map, *Citizen's ROW Acquisition Guide*, and an explanation of how the acquisition will affect the remaining property. Parties with an interest in the property may include heirs, estates, powers of attorney, and churches, among others. The property owner(s) can have a designated representative (if approved by all property owners) but each property owner and interested party must receive a written FMVO, ROW Acquisition Map, *Citizen's ROW Acquisition Guide*, and an explanation of how the acquisition will affect the remaining property, either in person or by mail. It is best to have all property owners present when presenting the written FMVO.

If at all possible, presentation of the written FMVO is made in person. Please refer to Section 1 of this Chapter of the ROM for guidelines related to meeting with property owners. FMVOs should be made within 3 days of receipt the Establishment of Just Compensation unless there are extenuating circumstances. The Acquisition Agent presents the property owner(s) the following documents at the FMVO meetings:<sup>9</sup>

1. *Citizen's Right of Way Acquisition Guide* (may have been provided at earlier meetings)
2. ROW Acquisition Map, with the parcel to be acquired highlighted (may have been provided at earlier meetings)
3. Internal Revenue Service W-9 form
4. An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) that are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, identify any separately held ownership interest in the property, (a tenant-owned improvement) and indicate that such interest is not covered by the FMVO. (may have been provided at earlier meetings)
5. FMVO. Sign and date the written FMVO, in the property owner(s) presence. The date is that of the original FMVO presentation. If all of the property owners are not present at the initial FMVO meeting, when re-presenting the written FMVO later to the other property owners, present a copy of the written FMVO only, and write "COPY NO. 1" on the copy.
6. Proposed instrument(s) of conveyance (such as, deed(s)). Ask property owner(s) to sign and execute the instrument(s). Date the deed using the date that the first person signed the deed
7. Partial Release(s) of Mortgage(s).

If the written FMVO cannot be provided in person, the written FMVO is provided via mail. The Acquisition Agent informs the property owner(s) that the documents are being mailed, that they need to sign and notarize the documents, and return them by a specified date. The written FMVO mailing includes the documents listed above as well as a cover letter and a W-9 for each property owner. If sent via certified mail, the Acquisition Agent retains the original receipt for certified mail and the certified mail receiving notice in the parcel file for submission with closing papers.

If the property is being acquired from an heir, the Acquisition Agent must state, along with the written FMVO that the recipient has identified themselves as an heir to the property owner.

Some corporate property owners also may request the Market Data Comparison Report, CAD Maps, and environmental documents in conjunction with the written FMVO.

#### **4.2 Joint Acquisition and Relocation Offer Policy**

A displacee must receive a notice of eligibility that informs them that they will be displaced and may be eligible for relocation benefits. This notice should be issued on the same day, or as soon thereafter as possible, as the provision of the FMVO or other offer of just compensation. If delivery on the same day is not possible, the notice of relocation eligibility is typically delivered within seven (7) days.

Where feasible, MDOT provides the acquisition FMVO and relocation offer letter at the same time. If the property is only occupied by a tenant, the FMVO and relocation offer are provided separately. If the offers cannot be made at the same time, the Acquisition Agent notifies the Relocation Section promptly of the provision of the FMVO.

#### **4.3 Waiver Valuation Acquisitions**

MDOT may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated not to exceed \$10,000.00. A Waiver Valuation acts as the offer of just compensation.

- **Identifying Parcels for Waiver Valuation.** Parcels may be selected for Waiver Valuation if the valuation of the parcel is uncomplicated and the value does not exceed \$10,000.00.
- **Documenting Waiver Valuations.** Based on 3 of the comparable sales for each identified parcel provided by the Review Appraiser, the Acquisition Agent or Agency Designee establishes a value for each parcel that qualifies as a Waiver Valuation. The Acquisition Agent or Agency Designee prepares a Waiver Valuation Form for each parcel that serves as documentation to present an offer of just compensation for the acquisition of these properties. The Waiver Valuation is submitted to the Right of Way Operations Administrator to review and, upon approval, execute an Establishment of Just Compensation (EJC). The completed EJC and Waiver Valuation are entered into the Parcel Tracking System and scanned to the PTS parcel file room, in lieu of an appraisal. (Agency Designee determined according to 49 CFR 24.102 (B))

#### **4.4 Donations of Property**

The owner of real property, required for a project, may donate the property to the agency. Prior to the agency accepting the property donation, the property owner is informed of their right to receive just compensation for the property. The property owner also is informed of their right to an appraisal of the property. If an appraisal is declined, a clause is inserted in the deed stating that the owner waived their right to an appraisal. A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.

If a property owner donates their real property, the Donation Clause is inserted in the deed. (A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual). It is necessary to obtain the partial release of mortgage and other required releases. A property owner also may donate their property without waiving their right to an appraisal.

#### **4.5 No Oral Agreements**

Acquisition Agents are prohibited from making oral agreements. All agreements with property owners and other interested parties must be made in writing.

#### **4.6 Exceptions to What Acquisition Includes**

Fee acquisitions include all rights, title, and interests in and to the property being acquired, except the following:

1. All oil and gas therein and there under on all projects where the property is being acquired under statutory authority, Section 65-1-47, Mississippi Code 1972 Annotated and Amended.
2. Other rights, titles, or interests which are specifically reserved in the deed, condemnation petition, judgment, or stipulation settling a condemnation proceedings.

### **5. Special Acquisition Circumstances**

#### **a. Protective Buying and Hardship Acquisitions**

MDOT will comply with Section 23 CFR 710.503 of the Code of Federal Regulations.

Protective buying - The STD must clearly demonstrate that development of the property is imminent and such development would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

Hardship acquisitions - The STD must accept and concur in a request for a hardship acquisition based on a property owner's written submission that:

(1) Supports the hardship acquisition by providing justification, on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship compared to others; and

(2) Documents an inability to sell the property because of the impending project, at fair market value, within a time period that is typical for properties not impacted by the impending project.

#### **b. Mobile Home Acquisition Procedure**

The Acquisition Agent obtains a determination from the approved appraisal regarding whether the mobile home is real property or personal property, if not so identified the Review Appraiser is notified to assist in the determination. In most instances, if the mobile home is personal property, the mobile home is relocated to a new lot by the Relocation Agent. If the mobile home is real property, the Acquisition Agent acquires it and compensates the property owner in the FMVO. In those instances when a mobile home cannot be relocated to similar

conditions, zoning, etc., the Relocation Agent requests of the Review Appraiser, in writing, that the mobile home be acquired.

If the Acquisition Agent acquires the mobile home, the Acquisition Agent conducts the following activities:

- Adds the Mobile Home Clause to the deed with the mobile home's serial number, make, and model. The Acquisition Agent and the property owner(s) initial the clause. A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.
- Obtains the original bill of sale from the mobile home owner and attaches the bill of sale to the signed deed.
- Prepares a bill of sale for the property owner(s) to sign and date. This bill of sale must be notarized.
- Coordinates with the Title personnel to check for any Uniform Commercial Code (UCC) liens that prevent passing of clear title to the agency.
- Obtains the original title to the mobile home. If the title cannot be obtained, the Acquisition Agent must document the file accordingly and MDOT cannot sell the mobile home.

When acquiring a mobile home that is owned by one (1) party, but is on a different property owner's land and the mobile home is mortgaged, the Acquisition Agent ensures that the following items are placed in the Parcel File:

1. Property owner's Warranty Deed
2. Mobile home owner's Quitclaim Deed with Mobile Home Clause inserted.
3. Partial Release of Mortgage.
4. Uniform Commercial Code 3 (UCC-3) release from mortgage company.
5. Notarized Bill of Sale from mobile home owner.
6. Mobile home title from the mortgage company. The mortgage company typically sends the title to the mobile home owner. MDOT then obtains the signed title from the mobile home owner. In most cases, only newer mobile homes have a title or certificate of origin." Please note that if it is not possible to obtain the title, then the Acquisition Agent should document in the file that the title could not be obtained so therefore MDOT cannot sell the mobile home.
7. US Department of Housing and Urban Development (HUD) Form signed by the property owner.

**Shared Acquisition Payment** If more than one party is sharing the acquisition payment, the percentage of the payment that goes to each individual is stated in the deed as a Disbursement Clause. A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.

**c. Crop Agreements**

This section describes the potential situations that may occur when an acquisition project includes land with existing, growing crops. In all cases, the Acquisition Agent provides all crop agreements to the Property Management Section as notification of the agreement.

**Harvest Prior to Letting.** If agreed to by the agency, the property owner can harvest existing, growing crops after the agency acquires the property, but before project

construction. Approval for the harvest completion date is obtained from the District Coordinator to ensure harvesting does not interfere with project letting. The Acquisition Agent provides the property owner with the deadline for harvesting as a Crop Clause in the deed or by a signed memorandum from agency authorities (A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual). After the agreed upon harvest completion date, any crops not harvested become the property of the agency. Agency employees must not suggest that a property owner abandon a growing crop prior to ROW deed conveyance. Until this date, the property owner should never abandon a growing crop.

**Unable to Harvest Prior to Letting.** If the project is let prior to harvesting the current crop and the property owner is unable to harvest the crop by the agreed upon deadline, an estimate of the damages is prepared either by a Review Appraiser's determination, a revised appraisal, or an administrative adjustment as determined by the Acquisition Officer.

**Utility Relocation Requires Access/Potential Crop Damage.** Relocation of utilities in the pre-construction phase may require access that could damage a growing crop. The utility company, however, must access the property to relocate the utility in time for project letting. In these instances the utility company determines the damages in coordination with the owner of the crops and establishes damages prior to initiating the relocation. The damages are provided to the crop grower by the utility company.

**Potentially Contaminated or Other Environmentally-Sensitive Sites.** Farming operations also may contain potentially contaminated sites or other environmentally-sensitive areas. If a Field Agent discovers a potentially contaminated site(s) or other environmentally sensitive area, not already identified by the Property Management personnel, the Field Agent reports the site(s) to their supervisor and the Property Management personnel. Once reported, the acquisition process is discontinued until a determination is made.

**Farmer Plants Crop After Signing the Deed.** If the farmer plants a crop on the right of way after signing the deed, this is done so at the farmer's risk.

d. **Timber Agreements**

If the timber is a separate item on the appraisal (that is, it is part of timberland, not timber on residential land), the property owner may elect to harvest the timber. If the property owner elects to harvest the timber, the Acquisition Agent subtracts the value of the timber from the total FMVO. The deed must contain a Timber Clause with a clear deadline for timber removal (A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual). The Acquisition Agent obtains approval for the harvest completion date from the District Coordinator to ensure harvesting does not interfere with project letting. The Acquisition Agent provides all timber agreements to the Property Management personnel to ensure they are notified of the agreement.

e. **Life Estate Interests**

In some instances, a life estate owner's deed states that they have interests in timber on the property, any rent resulting from the property, or other income producing features of the property. The life estate interest also usually has the right to live on the homestead until their death. In these cases, the fee owner may be compensated through a Warranty Deed for the value of the land and the life estate owner may be compensated through a Quitclaim Deed for the value of timber, rent, etc. However, there are some instances where the life estate owner executes the same Warranty Deed as the remainder men, and no quitclaim deed is obtained.

f. **Fence Relocation**

If there are fences to be compensated for within the acquisition area on the parcel being acquired, and the property owner wishes to keep the fence, the agency and the property owner may agree in writing that the property owner may remove the fence from the acquired property. The Acquisition Agent obtains approval for the fence removal date and clause from the District Coordinator to ensure the fence does not interfere with project letting. The deadline for the removal of the fence must be stated in a Fence Clause in the Deed. If the fence is not removed within that timeframe, the construction contractor demolishes the fence. A list of approved deed clauses is included in the attachments to this Chapter of the Right of Way Operations Manual.

If the fence is appraised as an improvement, the Acquisition Agent notifies the Property Management personnel to ensure they are aware of the acquisition of the fence.

**g. Billboard and Sign Acquisitions**

The location of a billboard/sign is obtained from the topo information on the ROW Acquisition Map or through the OAS website or by line of site by the appraiser or ROW field agents. The appraisal determines if the billboard/sign is on present right of way or private land. When a billboard or sign is acquired by the agency, the Acquisition Section, in conjunction with the Relocation Section notifies the Property Management personnel. A sign/billboard also may be relocated depending on the condition of the sign, remaining land, length of lease, and zoning. The relocation of a billboard should be coordinated with the MDOT- Maintenance Division Outdoor Advertising Section to determine if the relocation of a billboard is permissible.

**h. Acquisition of Land For Other Purposes (This section is MDOT specific, it may or may not apply to other agencies)**

Upon receipt of a request from a District Office or MDOT Division and authorization from the MDOT Executive Director to acquire land not for a transportation construction project, the RWD Survey, Maps & Deeds Section prepares maps and deeds and the Appraisal Section prepares an appraisal of the property. Acquisition Agents then tender an offer for the property.

On occasion, MDOT acquires property for the purpose of wetland banking. The Environmental Division informs the Assistant Chief Engineer for Preconstruction that property is needed for wetland banking. Upon approval by the Assistant Chief Engineer for Preconstruction and the Mississippi Transportation Commission, the Acquisition Section acquires the designated property through a Warranty Deed. Upon completion of the acquisition, a copy of the signed deed is provided to the Environmental Division for wetland banking purposes.

**i. Acquisition from Political or Public Corporation**

If the property owner is a political or public corporation (municipality, county, etc), the Acquisition Agent ensures that the seal of the corporation is attached to the instrument and is attested to by the secretary or clerk of such corporation.<sup>10</sup> The seal and the attest must be part of the actual instrument. It is not sufficient for the seal and the attest to be only on the Resolution and Order or minutes.

**j. Acquisition of Lands Under Control of Another State Agency**

An agency occasionally acquires land from other state agencies. The method for acquiring this land is determined by the type of ownership that the state agency has of the property. If there are no restrictions on the agency passing the title, the agency will acquire the property through a Warranty Deed. If this is not possible, the property is acquired through a permanent easement. Some state agencies must have legislative approval prior to conveying property. This approval is coordinated through the Legal Section.

**k. Grave Relocation**

If a grave must be relocated in the acquisition process, a court order is required. The agency provides counsel to handle the legal process of the grave relocation. A ROW Agent (typically a Relocation or Acquisition Agent) provides counsel with the names of any relatives of the buried deceased, name of the deceased, contact information for the funeral home conducting the relocation, and the new location of the grave. If relatives exist, the relatives may decide where to relocate the grave. If no relatives exist, the courts determine where to relocate the grave. The ROW Agent also obtains quotes for the relocation costs from two (2) to three (3) funeral homes for the relocation services and provides this information to the attorney. Once the Court Order is obtained, the funeral director conducts the relocation and invoices the ROW Division for the cost of the relocation services.

**6. Easements**

An easement is the right to the limited use by the agency in the land of a property owner. An easement is a non-possessory and intangible interest. The agency may require either temporary or permanent easements.

**a. Pre-1949 (Whitworth) Acquisitions (MDOT Specific)**

All acquisitions that occurred prior to September 14, 1949 were acquired via permanent easement.<sup>11</sup> It is not necessary for MDOT to acquire properties where MDOT owns such an easement.

**b. Temporary Easements**

The agency's policy is to acquire Temporary Easements for ramps, culverts, and ponds on property surrounding the project site. All other construction-related activities such as detour roads, sloping and grading, etc. must be acquired under a Warranty Deed.

**c. Permanent Easements**

In some cases, the agency acquires the property through a Permanent Easement. When obtaining a Permanent Easement on property, the procedures followed by the Acquisition Agent are similar to those followed when acquiring property through a deed. The procedures specific to Permanent Easements are described below.

**A. Federal Agency Permanent Easements**

Agencies cannot exercise eminent domain over any Federal/United States Government Agency or Reservations for Native Americans (which are under the umbrella of the United States Department of Interior, Bureau of Indian Affairs). Government Agencies from which agencies frequently acquire property via Permanent Easement includes the following:

- United States Department of Interior, Bureau of Indian Affairs (Reservations for Native Americans)
- Federal Highway Administration
- Army Corps of Engineers (thru FHWA)
- United States Department of Agriculture, Forest Service (thru FHWA)
- Drainage District Boards (thru FHWA)
- Levee Boards (thru FHWA)
- 16 Section Lands – County Board of Education (thru FHWA)
- Army or Air Force
- Navy
- Veterans Administration
- NASA

When obtaining an easement on property owned by a Federal Agency, the Acquisition Agent provides the Agency with a cover letter that states the location and number of acres and requests their signature on the Permanent Easement. Attached to the letter are a ROW Acquisition Map, the FMVO, and the Permanent Easement. The Acquisition Agent contacts the Agency to ensure that they sign and return the Permanent Easement. After the Acquisition Agent receives the executed Permanent Easement, the Acquisition Agent arranges for the easement to be approved. Upon approval, the Acquisition Agent processes payment. [See Federal Land Transfer section of the ROM for additional information].

Title personnel determine if a property is owned by a Native American Tribe. When obtaining an easement on property owned by a Native American Tribe, the Acquisition Agent provides the Tribe with a cover letter that states the location and number of acres involved and requests their signature on the Permanent Easement. Attached to the letter are a ROW Acquisition Map, the FMVO, and the Permanent Easement. The Acquisition Agent contacts the Tribe to ensure that they sign and return the Permanent Easement. After the Acquisition Agent receives the executed Permanent Easement, the Acquisition Agent arranges for the easement to be approved. Upon approval, the Acquisition Agent processes payment.

It is important to note that Native Americans who live on the Reservation do not own the land on which their house sits. The Reservation's Housing Authority owns all of the land and the residents pay "rent" to Housing Authority for the land on which their house sits. Residents of the Reservation, however, may own their house. As a result, when obtaining easements on Reservation property, the agency provides just compensation to the Reservation and, in turn, the Reservation provides residents, who own their homes, compensation for the house. When acquiring property on a Reservation, the Reservation also may donate the land to the agency. In these instances, the agency may agree to allow the Reservation to remove any timber on the land prior to the donation.

#### **B. Railroad Company Permanent Easements**

The acquisition of easement of property owned by a railroad company is provided by an Agent of the Bridge Division. The Bridge Division Agent provides the railroad company with a cover letter stating the location and number of acres involved in requesting their signature on the Permanent Easement. Attached to the letter are three (3) ROW Acquisition Maps, three (3) construction sheets, three (3) cross sections showing the subject property and the railroad, the FMVO, and three (3) Permanent Easements. The Bridge Division Agent contacts the Railroad to ensure that they sign and return the Permanent Easement.

In most instances, the Permanent Easement is not obtained until the construction agreement is executed. The construction agreement involves the railroad, Bridge Division, and Roadway Design. After the Bridge Division Agent receives the executed Permanent Easement from the Railroad, they submit a pay package to the Acquisition Section for processing through regular channels.

### **7. Acquisition Issue Resolution Procedures**

#### **a. Addressing Property Owner Concerns**

ROW Agents respond to property owner questions promptly. If the Agent cannot answer the property owner's question, the Agent raises the question with appropriate agency personnel. The Agent documents all questions in the Contact Report. The agent assures the property owner that their question will be answered promptly and specifies an approximate timeframe

for response. Agents ensure that property owner questions are fully addressed. Outstanding property owner concerns or questions may prevent or delay property acquisition. The property owner must be given the opportunity to present evidence, including but not limited to, comparable sales data and appraisals that are contrary to the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations.

**b. Irrigation System Concerns**

Irrigation systems on cropland properties may be affected by construction projects. The farmer and/or property owner determines the effects of construction on the irrigated land, well, and/or pivot system. The Acquisition Agent, at the property owner's request can request a survey through the District Coordinator and a center pivot radius to determine the construction project's effect on the irrigated land, well, or pivot system. The survey and center pivot radius determine whether the project will negatively affect the crop and, if so, the amount of acreage and irrigation area that will be affected. Upon making the survey request, the Review Appraiser is notified as any irrigated crop land vs. non crop land could require an appraisal update.

If the well-head for the irrigation system is within the acquisition area, then the system is appraised and acquired via cost to cure. Upon acquisition of a well-head, the Acquisition Section notifies the Property Management personnel. The Property Management personnel are responsible for closing the well, as necessary. If the well-head is not within the acquisition area, then the irrigation system may be relocated and the Appraiser notifies the Relocation Agent.

**c. Exchange for "Consideration" Concerns**

In some cases a property owner may refuse to sign the deed(s) because it states they have received 'consideration' (i.e., payment), when in fact payment is made only after all deeds to the parcel have been recorded. In these cases, the Acquisition Agent must obtain approval from the District Coordinator to request that the property owner submit a copy of the signed deed and enable the property owner or their legal representative to retain the original deed until the payment is received.

**d. Construction and Survey Issues and Concerns**

If construction and survey issues or concerns are raised by the property owner, the ROW Agent may go to the District Coordinator to request that a District staff person meet with the Acquisition Agent and the property owner at the property to explain construction or survey issues and answer questions.

**Ramp Change Requests**

If a property owner requests a ramp change, the Acquisition Agent contacts the District Coordinator about the requested ramp change. The District Coordinator discusses the ramp change with the Project Engineer. Roadway Design and the Project Engineer together make a decision regarding the ramp change. The District Coordinator provides this decision to the Acquisition Agent and copies the Project Engineer. For the change to be finalized, Roadway Design Division provides the ROW Division with an official design change. The decision notes the location of the ramp identified by file number and station number. Based on the final Roadway Design Division plan revision, the Acquisition Agent provides the landowner a copy of the revised ROW Acquisition map which reflects the change.

**e. Property Owner Acquisition Review Request**

The property owner, or other interested party, may request a review of the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations. Each review process is described below.

#### **A. Title Transfer and/or Litigation Expenses**

The owner of the real property may be reimbursed for all reasonable expenses the property owner necessarily incurred for.<sup>12</sup>

These fees are approved by the District Coordinator prior to committal. Whenever feasible, the agency pays these costs directly so that the owner does not have to pay such costs and then seek reimbursement from the agency.

1. Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the agency. However, the agency is not required to pay costs solely required to perfect the owner's title to the real property; and
2. Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
3. The pro rata portion of any prepaid real property taxes which are allocable to the period after the agency obtains title to the property or effective possession of it, whichever is earlier.

The owner of the real property also is reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner incurred because of a condemnation proceeding, if.<sup>13</sup>

1. Final judgment of the court is that the agency cannot acquire the real property by condemnation; or
2. Condemnation proceeding is abandoned by the agency other than under an agreed-upon settlement; or
3. Court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the agency effects a settlement of such proceeding.

#### **B. Fair Market Value**

When property owners dispute the FMVO monetary amount, the Acquisition Agent asks the property owner why they think the property is worth more. If appropriate, the Acquisition Agent submits this information to the District Coordinator who forwards it to the Review Appraiser for consideration. The Review Appraiser provides the District Coordinator with a determination of whether the appeal is valid. If the appeal is valid, the appraisal may be revised and a copy of the revised appraisal is sent to Acquisition Agent. The property owner must be given the opportunity to present evidence that is contrary to the amount of reimbursement of expenses related to transfer of title or litigation, the amount of the FMVO, or other considerations.

If a property owner provides a privately obtained appraisal to the Acquisition Agent for consideration, the Acquisition Agent takes the following actions:

1. Sends privately obtained appraisal via memorandum to the District Coordinator
2. District Coordinator forwards the appraisal to the Review Appraiser for review and comment

3. .
4. Does not make copies of the privately obtained appraisal, this is a proprietary document.
5. When the appraisal is returned from the Review Appraiser, the Acquisition Agent returns the private appraisal to the property owner in person and in original condition
6. Provides the property owner with a verbal explanation of MDOT's findings and status of the decision.

After the FMVO is presented to the property owner, Agency's Appraisers (assigned to the project or otherwise) do not discuss the appraisal or the appraisal process with the property owner. Acquisition Agents contact only Review Appraisers or the District Coordinator to convey property owner requests or concerns concerning appraisals. It is preferred that the Acquisition Agent discuss appraisal issues with the Review Appraiser rather than the Appraiser.

### **C. Administrative Adjustment Request<sup>14</sup>**

Administrative adjustments are used as an alternative to judicial resolution of a difference of opinion on the value of a property or the terms and conditions of the acquisition process or highway design to avoid unnecessary litigation and congestion in the courts.<sup>15</sup> All administrative adjustments are associated with a unique property feature and justified.

In some instances, the property owner may submit appraisal or sales data for consideration. The Acquisition Agent forwards this to the District Coordinator who forwards to the Review Appraiser, who may or may not make any adjustments to the FMVO.

An Acquisition Agent may not make an offer in excess of the FMVO based on an administrative adjustment unless specifically authorized by the District Coordinator. The following is the process by which an administrative adjustment may be made:

1. Following the failure of reasonable efforts to come to an agreement with the property owner, the Acquisition Agent prepares for the District Coordinator an Administrative Adjustment Form presenting the property owner's compensation or acquisition issue. [See Acquisition Forms Index]
2. The landowner must present written substantiation for the amount compensation they are seeking in order to justify any adjustment.
3. District Coordinator, after consulting with the DOT Manager, may authorize approval of an administrative adjustment if the settlement is reasonable, prudent, and in the public interest.
4. Upon approval or denial, the Acquisition Agent is notified.
5. The approval or denial of the administrative adjustment is documented in the contact record. The Acquisition Agent then contacts property owner and obtains execution of the instruments.
6. The administrative adjustment is documented on the Invoice.
7. Administrative adjustment amounts are not added to an FMVO. The FMVO matches the appraisal amount and the invoice matches the deed amount.

### **D. ROW Consideration Request**

In some cases, the agency agrees to a right of way consideration, such as a driveway or frontage road access to finalize the acquisition. An agreement for such a consideration between the property owner and the agency must be documented in writing.

In the case of most driveways or ramps, if the Acquisition Agent is informed by the property owner that such a consideration would enable finalization of the acquisition; the Acquisition Agent takes the property owner's request directly to the District Coordinator

and the Project Engineer. The District Coordinator then obtains the approval of the Project Engineer and the District Engineer, documents the agreement, and conveys the terms of the agreement to the property owner in coordination with the Acquisition Agent.

## **8. Acquisition Acceptance and Closing**

For additional property closing procedures and detail, please refer to the Property Closing Chapter of the Right of Way Operations Manual.

### **8.1 Acceptance of FMVO or Waiver Valuation**

When the property owner accepts the FMVO or Waiver Valuation, the Acquisition Agent conducts the following activities with the property owner:

- Ask if name on the deed(s) is exactly correct.
- Ask for correct address to enter on the deed(s) and Internal Revenue Service W-9 Form(s).
- Request to see each property owner's social security number identification.
- If future address is not yet known, or available, remind the property owner to establish forwarding address at the US Postal Service when the future address is known.
- Execute and properly notarize the deed(s)
  - Where it is advantageous to the property owner, suggest that a witness be present for deed execution.
  - If property ownership includes any life estate interests, the deed(s) requires signatures of all parties who have an interest to convey the property.
  - If the property owners have homestead rights, both partners must sign the deed(s). A Power of Attorney signature is not acceptable on homestead property.
- If there are multiple property owners, and the property owners request separate checks, separate checks can be issued. An Internal Revenue Service W-9 form and invoice are created for each property owner.
- If there are multiple property owners listed on one check, the Acquisition Agent must obtain an IRS W-9 Form from one of the named property owners. That person will receive the IRS W-9 Form unless the property owners request to have multiple checks issued. If possible, the Internal Revenue Service W-9 Form should have the same address as the address on the deed. If this is not possible, the Internal Revenue Service W-9 Form must indicate the address where the payment is to be made. The address on the invoice must match the address on the Internal Revenue Service W-9 Form. Ask the property owner to sign and date the Internal Revenue Service W-9 Form.
- Direct property owner(s) to cash payment checks as soon as possible, but not later than 365 days.

### **8.2 Signature Requirements for Instruments**

The following requirements must be adhered to when obtaining signatures on instruments:

- If the individual has signed the instrument using a name that is not exactly the same as the name typed on the instrument, add an "also known as (AKA)" signature. The notary references the "also known as (AKA)" signature also.
- When using a corporate or representative notary acknowledgement, where more than one person signs the instrument (such as for a company, institution, etc.), the Acquisition Agent adds more pages to the instrument to enable the notary to notarize each person's signature.

- When the Acquisition Agent acts as a subscribing witness, the Acquisition Agent requests that all property owners observe the Acquisition Agent sign as the witness to their signature. The Acquisition Agent signs as a witness in their presence, immediately after the property owner signs. If the Acquisition Agent is acting as a subscribing witness, stamp "Witness" beside the Acquisition Agent's signature on the deed.
- Persons signing as a representative of a company, institution, etc. add their title below their signature.
- For a property owner who cannot write, the Acquisition Agent:
  - Requests that two (2) unaffected witnesses attend the meeting.
  - Instructs the property owner to touch (tot) the pen and make their mark. The property owner may make an "X" or other mark.
  - For a signer by mark, the notary and two (2) witnesses unaffected by the document observe the affixation of the mark, both witnesses sign their own names beside the mark, and the notary writes below the mark: "mark affixed by (name of signer by mark) in presence of (names and addresses of two (2) witnesses) and undersigned notary; or
  - For a person physically unable to sign or make a mark, the person directs the notary to sign on his or her behalf in the presence of the person and two (2) witnesses unaffected by the document, both witnesses sign their own names beside the signature, and the notary writes below the signature: "Signature affixed by notary in presence of (names and addresses of person and two (2) witnesses).

### 8.3 Acquisition Agent Closing Procedures

Upon the property owner's acceptance of the FMVO, the Acquisition Agent completes the acquisition closing procedures listed below:

1. Finalize the Contact Report
2. Complete the Acquisition Closing Statement
3. Invoice to the Closing Attorney handling the file
3. Draft an invoice to the closing attorney assigned to the file
4. Update Parcel Tracking to reflect the Pay Package Submitted date.
5. Forward the closing file and all related documents to the ROW Operations Administrator Assistant who performs a cursory review of the file. In order to comply with the FMS accounting system an invoice from the Closing Attorney is required. The ROW Operations Administrator Assistant forwards the acquisition invoices for the interests acquired to the Closing Attorney who prepares and returns an invoice to the ROW Operations Administrator Assistant for the Acquisition funds. The pay package (closing document(s)) is taken to the Acquisition Section Administrative Assistant who scans the pay package to the PTS parcel file room. The Closing Agent invoice is used to process the acquisition invoices for payment by FMS. The file is then taken to the Title Section. See Title Section ROM for closing procedures. The closing file includes lien holder names, property owner name(s), Resolution and Order or minutes of corporation or non-profits, all signed instruments, notaries, signatures, and a draft invoice. The Acquisition Agent attaches the Property Closing Checklist to the closing file. The Property Closing Checklist includes the following items.
  - Name and address on the deed match the name and address on the invoice. Check home and business telephone numbers.
  - Check the Tax Identification Number on the Internal Revenue Service W-9 form against the invoice.
  - Dollar amount on the deed equals the dollar amount on the invoice.
  - Deed acreage equals invoice acreage.

- Check the notary and seal for spelling of names, dates, etc.
- Compare names on the deed to ownership on abstract. Include proper documentation, if there are differences; such as heir ship forms, wills, trusts, life estates, etc.
- Check abstract for mortgages. List mortgages on the invoice if they apply or supply documentation if they are cancelled, released, satisfied, etc.
- List all liens, judgments, or lis-pendens on the invoice or send proof of payment.
- Check for unpaid taxes: (county, city, school, etc.). Unpaid taxes need to be listed on the invoice.
- Check potentially contaminated sites list. If the property is listed, contact the Property Management Section before acquiring and get the status of the parcel.
- Check deed clauses; proof and ensure that they are initialed.

Note any administrative adjustment amount and the date it was approved.

6. The Relocation Section will receive notification from the Parcel Tracking System the property has been acquired or condemned.

## 9. Condemnation

Additional Information on Condemnation proceedings can be found in the Legal SOP and Legal Chapter of this Right of Way Operations Manual.

### 9.1 Identification of Parcels for Condemnation

Acquisition Agents may identify parcels that the agency normally acquires through eminent domain. Some common reasons for eminent domain filing are listed here:

1. Property owner is a state legislator. Prevents any appearance of a conflict of interest. The property owner is provided an FMVO and notified that the acquisition is going directly to condemnation.
2. Title issues
3. Property owner declines to sign the deed
4. Property owner opposition to language in the deed or easement

Acquisition Agents send the property owner a final notice before recommending the parcel for condemnation. [See Acquisition Forms Index]

### 9.2 Recommendation for Condemnation

If a potential condemnation is identified, the Acquisition Agent creates a Recommendation for Condemnation File. The Recommendation for Condemnation File includes the following items and is provided to the ROW Operations Administrator for review.

- Signed Recommendation for Condemnation Form;
- Copy of Agent's FMVO;
- Contact Report completed and signed;
- W-9 Form (Acquisition Agent should make a good faith effort to get the W-9 signed and completed by the property owner. If the property owner refuses to sign W-9 Form, the Acquisition Agent will leave the form with the property owner and note this on the Contact Report and Invoice;
- Physical addresses (not a post office box) of out-of-state owners of property being condemned, including lessors, renters, and easement holders; and
- Physical addresses (not a post office box) of in-state owners of property being condemned, including lessors, renters, and easement holders.

Upon receipt of a Recommendation for Condemnation File, the ROW Operations Administrator reviews all documentation associated with the parcel. The ROW Operations

Administrator may request another acquisition attempt, request additional information, or approve the Recommendation for Condemnation. If the Recommendation for Condemnation is approved, the Acquisition Section Administrative Assistant scans the Recommendation for Condemnation into the PTS parcel file room and enters the Recommended Date for Condemnation date into PTS and forwards the file to the Legal Section.

When the Recommendation for Condemnation package is submitted to the ROW Operations Administrator, the Acquisition Agent conducts the following activities:

- Informs the Relocation Section of the date the Recommendation for Condemnation package and Form was submitted (if parcels involving relocation are condemned).
- Discontinues seeking Partial Release of Mortgage(s) and deeds.
  
- Prior to submitting a recommendation for condemnation, the ROW Agent notifies the property owner of the submittal of the recommendation for condemnation on the parcel and that the agency may proceed immediately to seek to acquire the property through eminent domain proceedings.
  
- Discontinues contact with the property owner(s) and their designated attorneys or representatives once the file is sent to the attorney. If contacted by the property owner(s), or their designated representatives, the Acquisition Agent should contact the Acquisition Officer or the Legal Section to determine the status of the Eminent Domain proceedings. If the file has not been sent to the attorney, the Acquisition Agent may discuss any issues of the landowners including possible acquisition of the parcel.

## **10. Ongoing Acquisition Procedures**

### **10.1 Acquisition Status Report**

The Acquisition personnel prepares a weekly Acquisition Status Report [see Acquisition Forms Index - Acquisition Status Report] for each project, listing all parcels and their status. In the Acquisition Status Report, the following information is provided:

1. Number of Files on the project (Note: one File may include several instruments, i.e., W-Deed, Q-Deed, Permanent Easement, Temporary Easement, G-Deed, X-Deed, and Partial Release of Mortgage).
2. Number of Files "in negotiation" (Acquisition Agents have received funding, abstracts, all known instruments, reviewed appraisals, and environmental clearances).
3. Number of Files "acquired" (Acquisition Agents have received and submitted all executed instruments to the Acquisition Officer).
4. Number of Files "condemned" (Acquisition Agent has submitted a Recommendation for Condemnation package to Acquisition Officer).
5. Number of appraisals needed (difference between total Files and Files "in negotiation," "acquired," and "condemned").

The Acquisition Status Report only states that the Acquisition Agent has mailed or delivered these documents to the Acquisition Officer. The Acquisition Status Report does *not* report or guarantee that the Acquisition personnel or Title personnel have received, accepted, rejected, and/or processed the documents. The Acquisition Status Report is *not* a conclusive report that all instruments required by the agency to acquire complete Title to the subject land have actually been received, accepted, processed, recorded, paid, and archived by the agency.

**10.2 Contact Report**

Each Acquisition Agent maintains a Contact Report for each parcel they are acquiring. The Contact Report typically is used only by the Acquisition Agent, but can be used by any agency employee or representative that has contact with a property owner. The Contact Report documents interactions and conversations with the property owner, but is not a verbatim record of events. After each contact with the property owner, the Acquisition Agent records the following information in the Contact Report.

- Confirmation of the names and addresses of all property owners and lien holders (initial contact),
- Date and place of contact,
- Persons present,
- FMVO(s) provided,
- Any counter offers, issues, concerns, problems,
- Reasons property owner would not sign deed (if property owner will not sign the deed),
- Recommendation for resolving issues or condemnation, and all other pertinent data.

All correspondence between the Acquisition Agent, the property owner(s), and lien/mortgage holders is attached to the Contact Report. The Contact Report is signed and dated by the Acquisition Agent.

**10.3 Guidelines for Terminology**

In all contact with property owners or their designated representatives, agency personnel avoid use of the terms "offer," "negotiate," or "take" in both conversation and in writing.

**10.4 Property Owner Seeks Higher Authority than Agent**

If the property owner or designated representative demands to speak with a higher authority, the Acquisition Agent refers the property owner to the Acquisition Officer.

**10.5 Environmental Concerns**

Agency personnel, including all ROW Agents, immediately report any potentially contaminated sites or other environmentally sensitive areas to the Environmental Coordinator.

**10.6 Staking Requests**

The District Coordinator is responsible for requesting that the Project Engineer stake the project to clarify ROW boundaries. If the property owner requests staking the Acquisition Agent submits the request to the District Coordinator. If the District Coordinator is not available that day, submit the request to the Project Engineers Office and send a copy of the request to the District Coordinator. ROW Agents do not rely on concrete markers for determining ROW boundaries. ROW Agents refer all ROW staking, construction limit, and access questions to the District Coordinator who works with the Project Engineer to respond to such questions.

**10.7 Title Update**

The condition of the title may change between the time the initial abstract was completed and the time of the acquisition. The Acquisition Agent, upon becoming aware of any change in title, immediately notifies the District Coordinator, who requests that Title section confirm such changes and obtain an updated title. An updated title must be obtained prior to submitting an invoice to pay for the property specified in the executed instrument.

**Acquisition Chapter Attachments****Pre-Approved Deed Clauses****1. Ingress-Egress Clauses:**

**Ingress-Egress Clause.** "This conveyance includes all improvements, if any, located on the above described land and partially on Grantor's remaining land. The Grantee herein, its Agents, and/or Assigns are hereby granted the right of Ingress and Egress on Grantor's remaining land for removing or demolishing any improvements. The consideration herein named is in full payment of all said improvements."

**Alternative Ingress-Egress Clause.** "This conveyance and the consideration named herein include all improvements located on the above-described land and any improvements which are located and situated in such a manner so as to rest and lie upon both the above described property and the remaining real property of the Grantor(s). The Grantee herein, its agents and/or assigns are hereby granted the right of ingress and egress on the remaining property of the Grantor(s) for the limited purpose of removing or demolishing those improvements which are located and situated in such a manner so as to rest and lie upon both the above described property and the remaining real property of the Grantor(s). This right of ingress and egress does not extend to any improvements, which are located entirely upon the remaining property of the Grantor(s). The consideration named herein is in full payment of all said improvements."

**Alternative Ingress-Egress Clause.** This is a special ingress/egress clause in case of Drainage District approved by the MDOT ROW Title Section.

"The Grantee herein reserves the right of ingress and egress on the above described land for the purpose of clearing debris, dredging and maintenance of (example Hickahala Creek)."

**2. Minerals Clause.** "This conveyance is less and except all oil, gas and other minerals which may be produced through a well bore in accordance with Section 11-27-85 of the Mississippi Code."

**3. Keep Fences Clause.** "The Grantor reserves the right to remove any and all fences from the above described land on or before \_\_\_\_\_, or said fences become the property of the Mississippi Department of Transportation."

**4. Keep Timber Clause.** "There is reserved unto the Grantor(s) hereof the right to cut and remove all merchantable timber located on the lands hereby conveyed, provided such removal is made on or before \_\_\_\_\_. After said date all timber rights and interests, present or future, become vested in the Mississippi Department of Transportation."

**5. Damage Clause.** "It is further understood and agreed that the consideration herein named is in full payment and settlement of any and all damage and compensation which would be allowable under a decree were it rendered by the Court and jury in an Eminent Domain proceeding under the provision of the applicable laws and statutes of the State of Mississippi."

**6. Donations Clause.** Should a property owner wish to donate real property, the donations clause will either be inserted in the deed or incorporated into a separate notarized agreement. It will be necessary to obtain mortgage and/or other normal required releases. A property owner may donate without waiving the right to an appraisal.

"I/We fully understand that we have the right to receive just compensation for the real property herein described based on an appraisal of said property. I/We hereby waive our right to just compensation and donate the real property herein described to the Mississippi Transportation Commission. I/We further understand that we have the right to request that a fair market value appraisal of the property be made and we hereby waive that right."

**7. Assignment Clause.** "The above Deed of Trust was assigned to \_\_\_\_\_, on \_\_\_\_\_, in Deed Record Book \_\_\_\_\_, Page \_\_\_\_\_, Chancery Clerk's Office of \_\_\_\_\_ County, Mississippi.

**8. Heirship Clauses:**

**Heirship Clause 1:** Should be used when all heirs sign the same deed.  
"The parties hereto acknowledge that they are the sole surviving heir(s) at law of \_\_\_\_\_, deceased."

**Heirship Clause 2:** To be used when the heirs do not all sign the same deed.  
"Grantor herein acknowledges that he/she is one of \_\_\_ surviving heirs at law of \_\_\_\_\_, deceased, said heirs being \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. By this instrument \_\_\_\_\_ is conveying all his/her right, title and interest in and to the above described property."

**9. Undivided Interest Clause.** "This conveyance is of and for the Grantor(s) undivided interest in and to the above described property."

**10. Disbursement Clause.** "Each Grantor hereof authorizes and directs the Grantee to pay all of the above named consideration to \_\_\_\_\_, and \_\_\_\_\_'s receipt thereof shall be the same as if receipted for by the Grantor(s) hereof."

**11. Ramp/Driveway Clause.** As a further consideration, Grantee agrees to construct a ramp, driveway, or skirt at or about Station \_\_\_\_\_.

**12. Total Take Clause.** This is a total take clause and should be used when the whole piece of property is being bought. This should be typed at the end of the deed.  
"It is the intention of this instrument to convey all of that certain parcel of land as recorded in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Chancery Clerk's Office of \_\_\_\_\_ County, Mississippi.

**13. Crop Clauses**

"It is understood and agreed between the parties hereto that the consideration herein named does include damage for destruction of growing crops located on the lands hereby conveyed."

"It is understood and agreed between the parties hereto that the farming operations on said lands is under a Lease Agreement and that no part of the consideration set out above is intended to cover crop damages to the tenant. Should there be any damages to the growing crops, a separate instrument must be taken from the tenant."

"The Grantors reserve the right to harvest the growing crops on above described land and agree to remove said crops on or before \_\_\_\_ (Date)"

**14. Mobile Home Clause.** "Grantor warrants to grantee mobile home: Make \_\_\_\_\_, Model \_\_\_\_\_, and serial number \_\_\_\_\_."

**B. Endnotes**

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- <sup>1</sup> 49 CFR 24.103(e)
- <sup>2</sup> 49 CFR 24.102(d)
- <sup>3</sup> 49 CFR 24.102(a)
- <sup>4</sup> 49 CFR 24.102(h)
- <sup>5</sup> 49 CFR 24.106
- <sup>6</sup> 49 CFR 24.102(g)
- <sup>7</sup> 49 CFR 24.102(g)
- <sup>8</sup> 49 CFR 24.102(k)
- <sup>9</sup> 49 CFR 24.102(e)
- <sup>10</sup> Mississippi Code of 1972 § 89-1-21
- <sup>11</sup> *Whitworth v. Mississippi State Highway Commission*, 33 So.2d 612
- <sup>12</sup> 49 CFR 24.106
- <sup>13</sup> 49 CFR 24.107
- <sup>14</sup> 49 CFR 24.102(i)
- <sup>15</sup> 49 CFR 24.102(i), appendix

**Mississippi Department of Transportation**

**Right of Way Operations Manual**

**Relocation**

The following procedures document the responsibilities of Right of Way Division for relocating individuals, businesses and farm operations as needed for public transportation projects. The following procedures are written and implemented according to applicable laws, regulations and policies including the Uniform Relocation and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601 et seq.), 49 CFR Part 24 and authorized by Senate Bill 1831 of the 1970 Regular Session of the Legislature of the State of Mississippi, as amended (43-37-1 et seq. and 43-39-1 et seq., MS Code of 1972).

Please review all pertinent chapters of the Right of Way Operations Manual.

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The Operations Manager of the Right of Way Division of MDOT administers and provides oversight of Relocation activities. This document provides details on the procedures for consistent execution of relocation activities. Relocation activities provide efficient, cost effective and uniform relocation benefits and services including: advisory assistance, moving cost payments, replacement housing payments and other expense payments to insure that individuals do not suffer disproportionate injuries as a result of a project designed for the benefit of the public as a whole.

**1.0 Relocation Duties**

**Execution of Duties.**

Relocation activities may be performed by MDOT staff or by a consultant contracted through MDOT contract processes, under the direction and review of the ROW Operation Manager. The following are the oversight responsibilities of the Operations Manager:

- Assign relocation activities to MDOT staff or consultants.
- Monitor MDOT relocation staff or consultants and relocation reviewer assignments for compliance with the Uniform Act (49 CFR 24; Subpart C), MDOT policies, procedures and contract specifications for quality control.
- Resolve relocation problems and issues.
- Encourage relocation reviewers to be proactive in their assigned work in order to deal with new information and potential time delaying issues and problems before the relocation offer is submitted.
- Ensure Relocation MDOT staff and consultants are current with their professional training and qualified to accomplish the assigned work.
- Interpretation of official instructions and/or rules, contracts or agreements.

- Ensure proper distribution of work product to other MDOT Right of Way Sections and Divisions or MDOT consultants.
- Return significantly incomplete product to the consultant and consider invoking contract provisions for dismissal of consultant.

**Relocation Process.**

The ROW Operations Manager will designate staff or a consultant to perform the following:

- Initial examination of property along with the appraiser
- Initial contact with property owner to be displaced
- Determination of property type (Business, residence, non-profit)
- Coordination of data for relocation estimates is performed by Relocation agent
- Initial offer activities
- Coordination with displacees for relocation
- Inspection of new residence
- Oversight of claims
- Review of reimbursements related to relocation
- Confirm completion of the move

**1.1 Relocation Reviewer**

A Relocation Reviewer reviews any documentation and computations for all relocation offers. Also, a Reviewer reviews all claims for payment and signs off on any invoices. The Relocation Reviewer also signs off on all files prior to closing them.

**2.0 General Relocation Policies****2.1 Applicability.**

A displaced person must be fully informed of his or her rights and entitlements to relocation assistance and payments under this program.

**2.2 Appeals.<sup>1</sup>**

Any aggrieved person may file a written appeal with MDOT if the person believes that MDOT has failed to properly consider his or her application for assistance. Within 30 days of receipt of the appeal, MDOT staff shall review and respond in writing to the appeal. If the aggrieved party remains unsatisfied, the aggrieved party must, within 30 days of receipt, notify MDOT in writing of his or her refusal to accept the decision of MDOT reviewing staff. The appeal shall then be referred to an independent hearing officer selected by the Office of the Attorney General. A recorded hearing will be held at a time and place and in the manner prescribed by the hearing officer not to exceed 60 days of receipt by MDOT. Further, appeals from this hearing shall be in accordance with Section 43-39-25 MCA 1972 annotated.

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<sup>1</sup> 49 CFR 24.10(b).

**2.3 Availability of Comparable Replacement Dwelling before Displacement.<sup>2</sup>**

Except in the case of an emergency move (a case involving a serious threat to life or property), a displacee is not required to move from his/her dwelling unless at least one (1) comparable replacement dwelling has been made available to the person.

**2.4 Eligibility for Relocation Assistance.<sup>3</sup>**

Occupants seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify that they meet the requirements for citizenship or residency in accordance with state and federal regulations.

**2.5 Relocation Assistance Advisory Services.<sup>4</sup>**

MDOT's relocation assistance advisory program satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 CFR 11527, November 24, 1962), and offers the services described in 49 CFR 24.205(c)(2).

**2.6 Moving Payments.<sup>5</sup>**

Residential displacements qualify for either actual, reasonable and necessary moving expenses or moving expenses based upon a room count schedule (See Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, Fixed Residential Moving Cost Schedule in Relocation Forms Index). Nonresidential displacees qualify for actual, reasonable and necessary moving expenses, other related expenses and/or a fixed payment. In addition to moving expenses, a small business, farm, or nonprofit organization also may be entitled to receive a reestablishment payment. Moving payments may be paid, regardless of whether or not the deed has been signed.

**2.7 Replacement Housing Payments.<sup>6</sup>**

A tenant or owner-occupant that meets certain eligibility requirements may be entitled to a replacement housing payment(s).

**3.0 Notices to Displacees****3.1 Manner of Notices.**

Each notice which MDOT is required to provide to a property owner or occupant under this part, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the relocation file. Each notice shall be written in plain,

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<sup>2</sup> 49 CFR 24.204(a-c).

<sup>3</sup> 49 CFR 24.208.

<sup>4</sup> 49 CFR 24.205(c)(1).

<sup>5</sup> 49 CFR 24.301, 49 CFR 24.302, 49 CFR 24.303, 49 CFR 24.304, 49 CFR 24.305, and 49 CFR 24.306.

<sup>6</sup> 49 CFR 24 Subpart E.

understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

### 3.2 General Information Notice.

At an early stage of the project, MDOT provides general information about the project and the relocation program to persons who might be displaced. The *Relocation Assistance Guide* is distributed at all related public meetings to all persons whom believe that they may have to move.<sup>7</sup> The *Relocation Assistance Guide* provides a general written description of MDOT's relocation program including the following information:

- Informs the person that they may be displaced and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).
- Informs the person that, if displaced, he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.
- Informs the person that, if displaced, he or she will not be required to move without at least a 90 day advance written notice, and informs any person to be displaced from a dwelling that he or she cannot be required to move unless at least one comparable replacement dwelling has been made available.
- Informs the person that aliens not lawfully present in the United States are ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.
- Describes the person's right to appeal MDOT's determination as to his or her application for relocation assistance for which they may be eligible.

### 3.3 Relocation Eligibility and Ninety Day Notice.<sup>8</sup>

MDOT issues a Relocation Eligibility and Ninety Day Notice [Eligibility Letter – Residence and Eligibility Letter – Business or Farm ROW 701] on the same day or as soon thereafter as possible, as the provision of the FMVO or other offer of just compensation to the property owner. If delivery on the same day is not possible, the Relocation Eligibility and Ninety Day Notice are delivered within ten (10) days. The Relocation Eligibility and Ninety Day Notice inform the displacee that:

- They will be displaced by the project and will be eligible for relocation benefits appropriate to their situation; and
- Residential occupants do not have to move until at least 90 days after receipt of notice of replacement housing availability.<sup>9</sup> The 90-day period does not begin until at least one

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<sup>7</sup> FHWA Project Development Guide. Section 10. Relocation Assistance Guide. Revised May 18, 2000.

<sup>8</sup> 49 CFR 24.203.

comparable dwelling is made available. The 90-day notice informs the displacee that in not less than 60 days MDOT will provide a second notice which will state a specific date by which a move will be required, and that this notice will provide no less than 30 days advance notice. MDOT must acquire the property in question or have right of entry before issuing the 30-day notice.

- In unusual circumstances, an occupant may be required to vacate the property with less than 90 days advance written notice if MDOT determines that a 90-day period is impracticable because continued occupancy of the property would constitute a substantial danger to health or safety<sup>10</sup> The ROW Officer must approve an exemption from the 90-day period. A copy of MDOT's determination for exemption from the 90-day period is placed in the Master Relocation File and the Field File.

### 3.4 Thirty-Day Notice.

Once the Relocation Agent is notified that the right of way deed has been recorded (or MDOT has right of entry), and comparable replacement housing has been offered that is not based upon cost of new construction and a minimum of 60 days has passed since the 90-day notice was sent to the displacee, then the Relocation Agent sends a 30-Day notice [ROW 706] to the displacee notifying them that they have 30 days to relocate from the premises.

### 3.5 Notice of Intent to Acquire.

A notice of intent to acquire is MDOT's written communication that is provided to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of Federal financial assistance to the activity, which clearly sets forth that the MDOT intends to acquire the property. A notice of intent to acquire establishes eligibility for relocation assistance prior to the initiation of negotiations and/or prior to the commitment of Federal financial assistance.

## 4.0 Relocation Advisory Services

### 4.1 Persons Eligible for Advisory Services.

There are five (5) categories of persons eligible to receive advisory services:

- (1) **A displaced person, lawfully present in the United States, who must move from real property to be acquired for the project.** Most people to whom Relocation Agents provide advisory services fall into this category. This may include owners and tenants of residences, businesses, farms, and non-profit organizations.
- (2) **Persons occupying real property adjacent to that being acquired who are caused substantial economic injury by the acquisition.** While such persons are not displaced persons and, therefore, not entitled to relocation payments, MDOT does make available relocation assistance advisory services to them. For businesses, such

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<sup>9</sup> 49 CFR 24.203(c)(1-2).

<sup>10</sup> 49 CFR 24.203(c)(4).

services might include consultation on space needs, current market conditions, or traffic patterns or transportation as they relate to relocating the business, information regarding availability of relocation sites, or information about and referral to the Small Business Administration.

- (3) **Persons who occupy property which was acquired for the project and choose to relocate their adjacent residence, business or farm operation.** For example, the owner of a business that is being displaced by the project lives across the street in a dwelling which is not being acquired. When the business relocates across town, the owner chooses to move his/her residence also.
- (4) **Persons who move into property after MDOT acquires it and are permitted to occupy the property by short-term agreement subject to termination when the property is needed for the project.** In such cases, the tenants move in with the knowledge that they shall move out when the project requires and that they will not receive relocation payments to assist with the move. Such short-term occupants are entitled to advisory services.
- (5) **Persons who are unlawfully present in the United States who can demonstrate that denial of relocation benefits will result in an exceptional and extremely unusual hardship to the person's spouse, parent, or child (if that spouse, parent or child is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States).**

#### 4.2 Required Advisory Services.

Relocation Agents provide a range of advisory services; however, MDOT must make available the following basic services to all displaced persons:

- Determine the relocation needs and explain advisory services and appropriate relocation.
- Explain eligibility requirements for each relevant type of relocation payment and determine eligibility for payments of each displacee.
- Provide verbal and written information that only persons who are lawfully in the United States are eligible to receive relocation advisory assistance and payments.
- Determine any special needs of the displacees that may require additional advisory assistance.
- Make every effort to help meet the needs identified, while recognizing the importance of displaced person's priorities and their desire, or lack of same, or assistance.
- Provide the following specific types of services, as appropriate:
  - Provide current listings, including prices or rents, of replacement properties comparable to the acquired dwelling and explain that the displacee cannot be required to move until at least one comparable dwelling has been made available.
  - Inform the displacee in writing of the specific comparable replacement dwelling and the price used for establishing the upper limit of the replacement housing payments and the basis for the determination so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

- Provide information concerning federal and state housing and other programs offering relocation or related types of assistance, as needed.
- Assist in obtaining and completing application or claim forms for relocation payment or other related assistance, as needed.
- Offer transportation to inspect potential housing to which they are referred.
- Provide reasonable opportunities for minority persons to relocate to DSS replacement dwellings not located in an area of minority concentration that are within their financial means. This policy, however, does not require MDOT to provide a person a larger payment than is necessary to enable to locate to a comparable replacement dwelling. This subsection is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.
- Advise any displaced person that may be eligible for government housing assistance at the replacement dwelling of any requirements of such government housing assistance program that would limit the size of the replacement dwelling, as well as the long term nature of such subsidy and the limited duration of the relocation rental assistance payment.
- Provide specific non-residential advisory assistance, as appropriate:
  - Provide current listings, including prices or rents, of replacement properties suitable for displaced businesses or farms.
  - Determine the business replacement site requirements, current lease terms and other issues that may impact the business's ability to accomplish the move.
  - Determine the need for outside specialists to plan the move or to actually move and reinstall the personal property at the replacement location.
  - Identify and resolve the personal/realty issues prior to or at the time of the appraisal.
  - Estimate the length of time required for the business to vacate the acquisition site.
  - Provide information concerning federal, state and other programs offering relocation or related types of assistance, as needed.

## 5.0 Eligibility – Citizenship<sup>11</sup>

Relocation Agents explain eligibility requirements for each relevant type of relocation payment and determine each displacee's eligibility for payments. Relocation Agents also provide verbal and written information explaining persons without to a legal right to be in this country are not eligible to receive relocation payments. Displacees certify their eligibility by signing the certificate of eligibility on ROW 680 for residential or ROW 679 for non-residential and ROW 679 for personal property. The forms include a statement attesting to their eligibility for relocation payments based on citizenship or a legal right to reside in the country.

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<sup>11</sup> 49 CFR 24.208.

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

- 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.
- 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. This certification may be made by the head of household on behalf of family members.
- In the case of an unincorporated business, farm, or nonprofit organization, that each property 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 property owner, manager, or operating officer on behalf of other persons with an ownership interest.
- 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 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 that member. Any payment(s) for which such occupant 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.

The Relocation Agent considers the certification provided by the individual to be valid, unless MDOT determines that it is invalid based on information that MDOT considers reliable and appropriate that triggers a review of an alien's documentation.

Any review of the certifications described in this section shall be conducted in a nondiscriminatory fashion. All Relocation Agents apply the same standard of review to all such certifications, except that such standard may be revised periodically.

If, based on a review of an alien's documentation or other credible evidence, MDOT has reason to believe that a person's certification is invalid (for example a document reviewed does not on its face reasonably appear to be genuine), and that, as a result, such person may be an alien not lawfully present in the United States, MDOT obtains the following information before making a final determination:

- (1) If the Relocation Agent has reason to believe that the certification of a person who has certified that he or she is an alien lawfully present in the United States is invalid, MDOT obtains verification of the alien's status from the local Bureau of Citizenship and Immigration Service (BCIS). A list of local BCIS offices is available at <http://www.uscis.gov/graphics/fieldoffices/alpha.htm>. Any request for BCIS verification shall include the alien's full name, date of birth and alien number, and a copy of the alien's documentation. If MDOT is unable to contact the BCIS, MDOT may

contact FHWA in Washington, DC at 202-366-2035 (Office of Real Estate Services) or 202-366-1371 (Office of Chief Counsel), for a referral to the BCIS.

- (2) If the Relocation Agent has reason to believe that the certification of a person who has certified that he or she is a citizen or national is invalid, MDOT requests evidence of United States citizenship or nationality from such person.

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 MDOT'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.

For purposes of this subsection, "exceptional and extremely unusual hardship" to such spouse, parent, or child of the person not lawfully present in the United States means that the denial of relocation payments and advisory assistance to such person will directly result in:

- (1) A significant and demonstrable adverse impact on the health or safety of such spouse, parent, or child;
- (2) A significant and demonstrable adverse impact on the continued existence of the family unit of which such spouse, parent, or child is a member; or
- (3) Any other impact that MDOT determines will have a significant and demonstrable adverse impact on such spouse, parent, or child.

#### **5.1 Eligibility – Lawful Occupancy.<sup>12</sup>**

Any person who occupies the real property, either in person or via personal property, and is in lawful occupancy on the date the FMVO is provided, is presumed to be entitled to relocation payments and other assistance set forth in this part unless MDOT determines that:

- (1) The occupant received an eviction notice prior to the provision of the FMVO and, as a result of that notice, is later evicted; or
- (2) The occupant is evicted after the provision of the FMVO for serious or repeated violation of material terms of the lease or occupancy agreement; or
- (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 this part.

### **6.0 Residential Relocation Process**

Residential displacees are entitled to moving expenses, replacement housing payments (RHP) and advisory services. Eligibility is based on the status as an owner or tenant, the length of occupancy in the residence at the time of the FMVO, and the status as a United States resident. To receive any or all of the calculated RHP, the displacee must occupy a DSS property within the

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<sup>12</sup> 49 CFR 24.206.

prescribed time period and file a claim within the prescribed time period. Displacees must spend at least the amount determined in order to receive the full amount of the RHP.

#### **6.1 Residential Move.**

Any owner-occupant or tenant who qualifies as a displaced person and who moves from a dwelling (including a mobile home) is entitled to payment of his or her actual, reasonable and necessary moving and related expenses. If the mobile home is not acquired as real estate, but the homeowner-occupant obtains a replacement housing payment, the homeowner-occupant is not eligible for payment for moving the mobile home, but may be eligible for a payment for moving personal property from the mobile home.

#### **6.2 Moves from a Dwelling.**

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a dwelling may be determined based on the cost of one, or a combination of the following methods:

- Commercial move(s) performed by a professional mover.
- Self-move(s) that may be performed by the displaced person in one or a combination of the following methods (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section):
  - Fixed Residential Moving Cost Schedule. Eligible displacees (including seasonal residents) are entitled to a fixed payment based on the number of rooms containing personal property. The Relocation Agent should determine the number of eligible rooms before starting a move. A "room" is a space in a dwelling containing the typical quantity of household furniture, appliances or other personal property. This includes living rooms, dining rooms, kitchens, family rooms, and bedrooms. Other rooms, garages or storage areas may be counted as additional rooms. Most bathrooms do not count as a room.
  - Actual Cost Move. Supported by receipted bills for labor and equipment. Hourly rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

#### **6.3 Moves from a Mobile Home.**

A displaced person's actual, reasonable and necessary moving expenses for moving personal property from a mobile home may be determined based on the cost of one, or a combination of the following methods (in addition to the items in Section 6.2, the owner-occupant of a mobile home that is moved as personal property and used as the person's replacement dwelling, is also eligible for the moving expenses described in Section 7.1 (C):

- Commercial move(s) performed by a professional mover.
- Self-move(s) that may be performed by the displaced person in one or a combination of the following methods (self-moves based on the lower of two bids or estimates are not eligible for reimbursement under this section):

- Fixed Residential Moving Cost Schedule. Eligible displacees (including seasonal residents) are entitled to a fixed payment based on the number of rooms containing personal property. The Relocation Agent should determine the number of eligible rooms before starting a move. A “room” is a space in a dwelling containing the typical quantity of household furniture, appliances or other personal property. This includes living rooms, dining rooms, kitchens, family rooms, and bedrooms. Other rooms, garages or storage areas may be counted as additional rooms. Most bathrooms do not count as a room.
- Actual Cost Move. Supported by receipted bills for labor and equipment. Hourly rates should not exceed the cost paid by a commercial mover. Equipment rental fees should be based on the actual cost of renting the equipment but not exceed the cost paid by a commercial mover.

## 7.0 Eligible Actual Moving Expenses

A displaced person is entitled to payment for the following:

- Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless MDOT determines that relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating of the personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.
- Storage of the personal property for a period not to exceed 12 months, unless MDOT determines that a longer period is necessary. The need for storage must be documented and pre-approved.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering loss, theft, or damage is not reasonably available.
- Other moving-related expenses that are not listed as ineligible, as MDOT determines to be reasonable and necessary.
- The reasonable cost of disassembling, moving, and reassembling any appurtenances attached to a mobile home, such as porches, decks, skirting, and awnings, which were not acquired, anchoring unit, and utility “hook-up” charges.
- The reasonable cost of repairs and/or modifications so that a mobile home can be moved and/or made decent, safe, and sanitary.
- The cost of a nonrefundable mobile home park entrance fee, to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or MDOT determines that payment of the fee is necessary to effect relocation.

### 7.1 Ineligible Moving Expenses.

A displaced person is not entitled to payment for the following:

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

## **7.2 Owner-Occupant of At Least 90 Days.**

### **A. Eligibility Requirements**

A 90 day owner-occupant is entitled to replacement housing payments if:

- He or she is in possession and occupancy at the initiation of negotiations for the acquisition of the real property;
- Such occupancy and possession has been for at least 90 days immediately prior to the initiation of negotiations;
- The property was acquired by MDOT, or MDOT issued an order to vacate even though the property is not acquired;
- The displacee purchases and occupies a DSS dwelling within a one (1) year period beginning on the latter of the following dates:
  - a. The date the person receives final payment for the acquired dwelling, or in the case of condemnation, the date the amount is deposited in the court, or
  - b. The date MDOT makes comparable housing available.
- The claims for the payments must be submitted to MDOT not later than 18 months from the latter of :
  - a. The date the person receives final payment for the acquired dwelling, or
  - b. The date the person moves from the acquired dwelling.

### **B. Replacement Housing Payments**

Replacement housing payments are limited to an amount up to the cost of the comparable replacement dwelling within one (1) year from the date the displaced owner occupant is paid for the displacement dwelling or the date a comparable replacement dwelling is made available to such person, whichever is later. The payments include:

- The amount by which the cost of the comparable replacement dwelling exceeds the acquisition cost of the displacement dwelling (price differential);
- Compensation for the loss of favorable financing on the existing mortgage such as increased interest costs and other debt service costs which are incurred in connection with the mortgagees on the replacement dwelling;
- The reasonable one-time expenses incidental to the purchases of the replacement dwelling.

The combined total of these amounts may not exceed the \$31,000 limit allowed by FHWA except as provided in last resort housing. If the displaced owner elects to rent a replacement

dwelling, he or she may be eligible for a rental assistance payment not to exceed what he or she would have received under the price differential option.

### C. Price Differential

The price differential to be paid is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- (1) The reasonable cost of a comparable replacement dwelling, or;
- (2) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

The upper limit of a price differential shall be based on the cost of a comparable replacement dwelling, considering the following:

- If available, at least three comparable replacement dwellings shall be examined and the limit computed on the dwelling most nearly representative of , and equal to or better than, the displacement dwelling;
- If the site of the comparable chosen lacks a major exterior attribute of the displacement dwelling site (e.g. the site does not have a swimming pool), the contributory value of such attribute shall be subtracted from the acquisition cost of the displacement property for the purpose of calculating the upper limit;
- If the acquisition portion of a typical residential property causes the displacement of the owner and the remainder is not a buildable residential lot, MDOT may offer to purchase the entire property. If the owner chooses not to sell the remainder, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for the purpose of calculating the upper limit.
- If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered.
- If the displacement dwelling has a carport and the comparable does not have a carport or a reasonable trade-off, the cost of the replacing carport is added to the price of the comparable before the price differential is calculated.
- To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling.
- When the displacement property is appraised at a higher and better use (land as vacant), use the acquisition cost for the land area that represents a typical lot size plus the contributory value of the dwelling as indicated in the appraisal.
- If the occupant has a partial interest ownership, the price differential will be computed in the normal manner. The occupant's actual share of the acquisition will not be taken into account for the original calculation. However, if the occupant spends his or her share of the

acquisition plus the amount of the price differential for a DSS replacement dwelling, he or she may receive the full price differential.

**D. Increased Interest Payment [ROW 696, Increased Mortgage Interest]**

The increased interest payments are to compensate for the additional expense, if any, by paying for a higher interest rate for a new mortgage on a replacement property than the displacee was paying on an existing mortgage on the property acquired, plus other debt service costs paid by the displacee, if not paid as an incidental expense.

To be eligible, the acquired dwelling must have been encumbered by a bona fide mortgage that was a valid lien for at least 90 days prior to the initiation of negotiations. Reimbursement for purchaser points and/or a loan origination fee also are possible, if such fees are normal to real estate transactions in the area. The payment for increased mortgage interest cost is equal to the amount that will reduce the mortgage balance on a new mortgage to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling.

Computation of the increased mortgage interest costs payment, which is contingent upon a mortgage being placed on the replacement dwelling, is calculated as follows:

- (1) The payment is 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) compute in the buy down determination the payment is prorated and reduced accordingly. In the case of a home equity loan the unpaid balance is 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 is 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: they are not paid as incidental expenses, they do not exceed rates normal to similar real estate transactions in the area, MDOT determines them to be necessary, and 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.

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.

**E. Incidental Expenses**

Reimbursable incidental expenses are those actual, reasonable and necessary costs incurred by the displaced person incident to the purchase of a replacement dwelling provided such expenses are non-recurring and customarily paid by the buyer.

When there is no bona fide mortgage on the displacement property, the incidental expenses associated with obtaining financing on the replacement property are not considered to be necessary and therefore, not eligible for reimbursement. However, if MDOT determines that the displacee needs to obtain a loan to relocate (as in a partial interest owner-occupant), then the cost of obtaining the loan could be considered necessary.

When purchasing a DSS replacement, examples of eligible incidental expenses include the following:

- Legal, closing, and related costs including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees;
- Lender, FHA, or VA appraisal fees;
- FHA or VA application fee;
- Professional home inspection, certification of structural soundness and termite inspection;
- Up to 120 days of construction cost interest up to the cost of the comparable, if replacement housing offer is based upon construction cost new;
- Engineer's Inspection Report;
- Escrow agent's fee;
- Owner's and mortgagee's evidence of title; or
- Other costs as MDOT determine to be necessary.

Reimbursable incidental expenses, however, do not include prepaid expenses such as real estate taxes and property insurance.

Incidental expenses based on the price of the replacement dwelling, such as title insurance, are limited to the amount based on the listing price of the comparable.

### **7.3 Owner-Occupant of Less Than 90 Days.**

#### **A. Eligibility Requirements**

A less than 90 day owner-occupant displaced from a dwelling is entitled to payment in accordance with the \$7,200 limit allowed by FHWA for down payment assistance or rental assistance, if such displaced person:

- Is in possession and occupancy at the initiation of negotiations for the acquisition of the real property;
- Such occupancy and possession has been less than 90 days immediately prior to the initiation of negotiations;
- The property was acquired by MDOT, or MDOT issued an order to vacate even though the property is not acquired;
- The displacee purchases and occupies a DSS dwelling within a one (1) year period beginning on the latter of the following dates:

- a. The date the person receives final payment for the acquired dwelling, or in the case of condemnation, the date the amount is deposited in the court, or
  - b. The date MDOT makes comparable housing available.
- The claims for the payments must be submitted to MDOT not later than 18 months from the latter of :
  - a. The date the person receives final payment for the acquired dwelling, or
  - b. The date the person moves from the acquired dwelling.

**B. Replacement Housing Payments**

The rental assistance payment shall be 42 times the amount obtained by subtracting the base monthly rent for the displacement 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.

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

- (1) The fair market rent for the displacement dwelling; or
- (2) Thirty (30) percent of the person's average gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs.

An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount calculated for the rental assistance payment. At the discretion of MDOT, a down payment assistance payment may be increased to any amount not to exceed the limits allowed by FHWA. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive if he or she met the 90 day occupancy requirement. MDOT's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 90 day owner occupant is not eligible for this payment.

**7.4 Tenant of at Least 90 Days.**

**A. Eligibility Requirements**

Residential tenants of at least 90 days are eligible for relocation benefits. To obtain full relocation benefits, tenants must have legally occupied the property for at least 90 days prior to initiation of negotiations. A tenant displaced from a dwelling is entitled to a payment in accordance with the \$7,200 limit allowed by FHWA for rental assistance or down payment assistance.

**B. Replacement Housing Payments**

The rental assistance payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

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

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

- (1) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by MDOT;
- (2) Thirty (30) percent of the person's averages gross household income. Thirty (30) percent of the person's average gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs; 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.

The down payment assistance payment shall not exceed the amount the person would receive under a rental assistance payment. At the discretion of the MDOT, a down payment assistance payment may be increased to any amount allowed by FHWA.

Alternatively, tenants of at least 90 days are eligible for assistance toward expenses related to the purchase of a replacement dwelling (down payment and other incidental expenses incurred in the purchase of a replacement dwelling). Up to the limit allowed by FHWA or the amount of the rent supplement, whichever is greater, may be used toward expenses related to the purchase of a replacement dwelling.

#### **7.5 Less Than 90 Day Occupant.**

##### **A. Eligibility Requirements**

A displaced person who has occupied the displacement dwelling for a period of less than 90 days prior to the initiation of negotiations or who took occupancy after the initiation of negotiations has not met the length of occupancy requirement; however, the displacee is eligible for replacement housing payments. A tenant displaced from a dwelling is entitled to a payment not to exceed the \$7,200 limit allowed by FHWA or rental assistance or down payment assistance; however, because this occupant did not meet the length of occupancy requirements, any payment is considered a last resort housing payment calculated using the same method as those for a displacee who meets the length of occupancy requirement.

##### **B. Replacement Housing Payments**

The rental assistance payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

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

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

- (1) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by MDOT;
- (2) Thirty (30) percent of the person's average gross household income. Thirty (30) percent of the person's average gross household income if the amount is classified as "low income" by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs; 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.

The down payment assistance payment shall not exceed the amount the person would receive under a rental assistance payment.

#### **7.6 Mobile Home Relocation.**

The Appraiser determines whether the mobile home is real or personal in the appraisal report. If the mobile home is determined to be personal property, the relocation will be in accordance with section 24.502 of the Uniform Act.

#### **7.7 Last Resort Housing.**

The methods of providing last resort housing include, but are not limited to the following:

- Rehabilitation of and/or addition to an existing replacement dwelling;
- Construction of a new replacement dwelling;
- Provision of a direct loan;
- Provision of a replacement housing payment. All payments exceeding federal limits will be considered and documented as last resort housing. A rental assistance subsidy under this section may be provided in installments;
- Relocation and, if necessary, rehabilitation of an existing dwelling;
- Purchase of land and/or replacement dwelling by MDOT and subsequent sale or lease to or exchange with a displaced person;
- Removal of barriers to disabled persons;
- Change in status, with the displaced person's consent, from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment; and
- Under special circumstances, consistent with the definition of a comparable replacement dwelling, modified methods of providing replacement housing of last resort permit consideration of replacement housing based on space and physical characteristics different

from those in the replacement dwelling such as the use of a mobile home to replace a very substandard or non-decent, safe, and sanitary conventional dwelling, only a portion of which is being used as living quarters by the occupants. However, in all cases the replacement dwelling must be adequate to accommodate the displaced person and be functionally equivalent to the displacement dwelling.

## 8.0 Non Residential Relocation

### 8.1 Non-Residential Move.

When relocation assistance is provided to a business, farm, or nonprofit organization, the Relocation Agent estimates and provides moving expenses to the displacee. MDOT is not obligated to make available a replacement site, however, listings of available suitable replacement sites, if any, and other relocation advisory services shall be provided. To be eligible for reimbursement for the actual reasonable moving expenses, the displacee is required to:

- (1) Provide MDOT with reasonable advance notice of the approximate date of the start of the move or disposition of personal property; and
- (2) Provide MDOT with a certified inventory of the items of personal property to be moved; and
- (3) Permit MDOT to make reasonable and timely inspections of personal property at both the displacement and replacement sites, and to monitor the move.

Displaced businesses (including landlords of rental property, if qualified), farm operations, and nonprofit organizations are entitled to reimbursement of moving and related expenses for the removal and installation of personal property which is required to be moved as a result of the acquisition. A displacee's actual, reasonable and necessary moving expenses may be determined based on the cost of one, or a combination of the following methods:

#### A. Commercial Moves

Commercial moves are moves provided through the services of a professional moving company. All expenses must be supported by receipted bills.

#### B. Self-Moves

Self-moves are moves that may be performed by the displaced person in one or a combination of the following methods:

- (1) Self-move based on lower of two (2) estimates. If the nonresidential displacee elects to take full responsibility for all or part of the move, MDOT may approve a payment for moving expenses in an amount not to exceed the lowest acceptable bid or estimate. This payment is based on a certified inventory of the personal property and can be claimed without submission of any additional documentation;
- (2) Actual cost move. Supported by receipted bill for labor and equipment.

#### C. Eligible Actual Moving Expenses

- Transportation of the displaced person and personal property.
  - Transportation costs for a distance beyond 50 miles are not eligible, unless MDOT determines that relocation beyond 50 miles is justified.
- Packing, crating, unpacking, and uncrating of the personal property.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated personal property, this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
- Storage of the personal property for a period not to exceed 12 months, unless MDOT determines that a longer period is necessary. The need for storage must be documented and pre-approved.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- Other moving-related expenses that are not listed as ineligible, as MDOT determines to be reasonable and necessary.
- Any license, permit, fees 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, fees or certification.
- Professional services as MDOT determines to be actual, reasonable and necessary for:
  - Planning the move of the personal property;
  - Moving the personal property; and
  - Installing the relocated personal property at the replacement location.
- Re-lettering signs and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.
- 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 in place of the item, as is for continued use, 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 MDOT 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 prices); or
  - b. The estimated cost of moving the item as is, but not including any allowance for storage, or for reconnecting a piece of equipment if it is in storage or not being used at the acquired site. If the business or farm operation is discontinued, the

estimated cost of moving the item shall be based on a moving distance of fifty (50) miles.

- The reasonable cost incurred in attempting to sell an item that is not to be relocated.
- 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 but with no allowance for storage. At MDOT's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.
- Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, not to exceed the \$2,500 limit allowed by FHWA as MDOT determines to be reasonable, which are incurred in searching for a replacement location, including:
  - Transportation;
  - Meals and lodging away from home;
  - Time spent searching, based on reasonable salary or earnings;
  - 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 sites;
  - Time spent in obtaining permits and attending zoning hearings;
  - Time spent negotiating the purchase of a replacement site based on a reasonable salary or earnings.

All such expenses, except actual time spent in search and the actual value of time and mileage driven in a personal vehicle must be supported by receipted bills. Payment for actual time spent searching shall be based on the current hourly wage of the person(s) conducting the search, but may not exceed \$20 per hour. Actual mileage claimed for use of a personal vehicle in search shall not exceed the prevailing rate authorized for reimbursement to state employees for use of a personal vehicle. A daily log of time spent and mileage must be kept. A certified statement of time spent, hourly wage(s), and mileage driven shall accompany the claim.

- Low value/high bulk. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of MDOT, the allowable moving cost payment shall not exceed the lesser of:
  - a. The amount which would be received if the property were sold at the site; or
  - b. The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, metals and other similar items of personal property as determined by MDOT.

#### **D. Ineligible Moving and Related Expenses**

A displaced person is not entitled to payment for:

- The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
- Interest on a loan to cover moving expenses;
- Loss of goodwill;
- Loss of profits;
- Loss of trained employees;
- Any additional operating expenses of a business or farm operation incurred because of operating in a new location;
- Personal injury;
- Any legal fees or other costs for preparing a claim for a relocation payment or for representing the claimant before the Agency;
- Physical changes to the real property at the replacement location of a business or farm operation;
- Costs for storage of personal property on real property already owned or leased by the displaced person, and
- Refundable security and utility deposits.

#### **8.2 Related Non-Residential Eligible Expenses.**

The following expenses, in addition to those provided for moving personal property, shall be provided if MDOT determines that they are actual, reasonable and necessary:

- Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). A reasonable pre-approved hourly rate must be established
- Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by MDOT.

#### **8.3 Reestablishment Expenses.**

In addition to the payments available under actual move and other non-residential expenses, a small business, farm, or nonprofit organization is entitled to receive a payment, not to exceed the limit \$25,000 allowed by FHWA, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

**A. Eligible expenses**

Reestablishment expenses must be reasonable and necessary, as determined by MDOT. They include, but are not limited to, the following:

- Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.
- Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.
- Construction and installation costs for exterior signing to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.
- Advertisement of replacement location.
- Estimated increased costs of operation during the first two (2) years at the replacement site for such items such as:
  - Lease or rental charges;
  - Personal or real property taxes;
  - Insurance premiums; and
  - Utility charges, excluding impact fees.
- Other items that MDOT considers essential to the reestablishment of the business.

**8.4 Ineligible expenses.**

The following is a non-exclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

- Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.
- Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home which does not contribute materially to the household income.

Reestablishment expenses must be verified by receipted bills and/or other valid documentation. In no event may the sum of all reestablishment expenses exceed the statutory maximum.

**8.5 Fixed Payment.**

Displaced businesses, farm operations, and nonprofit organizations also may qualify for a fixed payment in addition to actual moving expenses, other related expenses and reestablishment expenses. The fixed payment is based on the average annual net earnings, based upon tax returns, of the displaced business, farm operation, or nonprofit organization. The payment must be pre-approved before submitting a claim.

**A. Business**

A displaced business may be eligible for a fixed payment and actual moving and related expenses, and actual reasonable reestablishment expenses provided. The fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, but not less than \$1,000 nor more than the \$40,000 limit allowed by FHWA. The displaced business is eligible for the payment if MDOT determines that:

- 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;
- 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 MDOT determines that it will not suffer a substantial loss of its existing patronage;
- The business is not part of a commercial enterprise having more than three (3) other entities which are not being acquired by MDOT, and which are under the same ownership and engaged in the same or similar business activities;
- The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others;
- The business is not operated at the displacement site solely for the purpose of renting the site to others; and
- The business contributed materially to the income of the displaced person during the two (2) taxable years prior to the displacement.

**B. Farm Operation**

A displaced farm operation may qualify for a fixed payment in an amount equal to its average annual net earnings, but not less than \$1,000 nor more than the \$40,000 limit allowed by FHWA. 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 MDOT determines that:

- (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- (2) The partial acquisition caused a substantial change in the nature of the farm operation.

**C. Nonprofit Organization**

A displaced nonprofit organization may qualify for a fixed payment of \$1,000 to the \$40,000 limit allowed by FHWA, if MDOT 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 MDOT demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two (2) 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two (2) year's annual gross revenues less administrative expenses.

**D. Average Annual Net Earnings of a Business or Farm Operation**

The computation of the fixed payment is based upon the average annual net earnings for two (2) taxable years immediately preceding the taxable year during which the enterprise is relocated. Information must be provided to support the net earnings.

If the business or farm was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected at an annual rate. Average annual net earnings may be based upon a different period of time when MDOT 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 MDOT proof of net earnings through income tax returns, certified financial statements, or other reasonable documentation.

#### **8.7 Notice of Denial of Payment Claim**

If MDOT disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, MDOT promptly notifies the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

### **9.0 Relocation Payments and Closing**

#### **9.1 Payment Documentation<sup>13</sup>**

Any claim for a relocation payment must be supported by a reasonable amount of documentation to support the expenses incurred. Examples of such documentation include: bills, certified prices, appraisals, or other evidence of such expenses. The displacee completes a Claim for Payment Form [ROW 690 or ROW 704], attaches documentation, and submits it to the Relocation Agent. The Relocation Agent provides assistance necessary to complete and file any required claim for payment.

MDOT may make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate<sup>14</sup>

#### **9.2 Expeditious Payments<sup>15</sup>**

Relocation Agents must complete claims in an expeditious manner. The claimant is promptly notified as to any additional documentation that is required to support the claim. Payment for a valid and approved claim is made as soon as feasible following receipt of sufficient documentation to support the claim.

#### **9.3 Advance Payments<sup>16</sup>**

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<sup>13</sup> 49 CFR 24.207(a)

<sup>14</sup> Appendix 49 CFR 24.201(a)

<sup>15</sup> 49 CFR 24.207(b)

If a displacee demonstrates the need for an advance relocation payment to avoid or reduce a hardship, MDOT issues the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

#### **9.4 Time Limit for Filing<sup>17</sup>**

All claims for relocation payments must be filed with MDOT within 18 months after either:

- For tenants, the date of displacement;
- For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period may be waived by MDOT for good cause.

#### **9.5 Payment to Multiple Occupants of One Displacement Dwelling<sup>18</sup>**

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

#### **9.6 Deductions from Relocation Payments<sup>19</sup>**

MDOT deducts the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. MDOT does not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

#### **9.7 (9.8) Owner Retention**

If the owner retains ownership of the dwelling, moves it from the displacement site and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

- (1) The cost of moving and restoring the dwelling to the condition of the improvement prior to the move; and
- (2) The cost of making the unit a decent, safe, and sanitary replacement dwelling; and
- (3) The current fair market value for residential use of the replacement site, unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
- (4) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

#### **9.8 Supplement Revisions**

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<sup>16</sup> 49 CFR 24.207(c)

<sup>17</sup> 49 CFR 24.207(d)

<sup>18</sup> 49 CFR 24.403(5)

<sup>19</sup> 49 CFR 24.207 (f)

The Relocation Agent must review the supplement to determine the need to re-compute and approved replacement housing payment when:

- The sale or rent price of the selected comparable changes, or comparable housing is no longer available at or below the original established price and the displacee is required to vacate the needed right-of-way and is actively looking for a replacement; or
- The displacement dwelling's value changes due to re-appraisal; or
- The amount of just compensation payable for a parcel is increased or decreased by a final court judgment, or an administrative settlement.

#### **9.9 Ownership of Replacement Dwelling Before Displacement**

Any displacee may occupy a dwelling owned prior to the displacement or build on land owned as the replacement dwelling as long as the dwelling is DSS and all other requirements are met. The current fair market value of the property is used to determine the amount "spent" when qualifying for the replacement housing payments.

### **10.0 Relocation Appeal**

#### **10.1 Time Limit for Initiating Appeal**

Displacees may file written appeals to MDOT within 60 days of receiving written notification of MDOT's relocation assistance determination of eligibility, offer amount, or denial of claim.

#### **10.2 Appeal Format**

Any aggrieved displacee may file a written appeal with MDOT if the displacee believes that MDOT has failed to properly consider the person's application for relocation assistance. Such assistance may include, but is not limited to, the person's eligibility for, or, the amount of, a litigation or relocation payment. The displacee is provided with Relocation Appeal Form [ROW 692]. MDOT considers a written appeal regardless of the form (letter, Relocation Appeal Form [ROW 692], or other format).<sup>20</sup>

The displacee can appeal payments or eligibility. The appeal may be given to any Relocation Agent or mailed to the ROW Division Administrator.

#### **10.3 Receipt and Notification of Appeal**

The recipient of the appeal (typically the Relocation Agent or the ROW Division Assistant Administrator) informs the District Coordinator and the ROW Officer of the appeal via memorandum.

#### **10.4 Continuation of Acquisition and Relocation**

The acquisition and relocation can continue on a property undergoing appeal, at the discretion of the ROW Officer and/or Operations Administrator.

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<sup>20</sup> 49 CFR 24.10(a).

### **10.5 Appeal Review**

MDOT promptly reviews appeals in accordance with the requirements of applicable laws and regulations.<sup>21</sup> In deciding an appeal, MDOT considers all pertinent justification, all materials submitted by the displacee, and all other available information to ensure a fair and full review of the appeal.<sup>22</sup> The Assistant Division Administrator<sup>23</sup> reviews the appeal, other information submitted by the displacee, and all other available information.

MDOT permits a displacee to inspect and copy all materials pertinent to his or her relocation assistance appeal, except materials that are classified as confidential by MDOT. MDOT may, however, impose reasonable conditions on the displacee's right to inspect, consistent with applicable laws.<sup>24</sup>

### **10.6 Appeal Response**

Within 30 days of receipt of the appeal, MDOT Right of Way Division Assistant Division Administrator shall review and respond in writing to the appeal. If the aggrieved party remains unsatisfied, the aggrieved party must, within 30 days of notice, notify MDOT in writing of their refusal to accept the decision of the Right of Way Division Assistant Division Administrator. The appeal shall then be referred to an independent hearing officer selected by the Office of the Attorney General. A recorded hearing will be held at a time not to exceed 60 days from date of receipt by MDOT, and place and in the manner prescribed by the hearing officer. Further, appeals from this hearing shall be in accordance with Section 43-39-25 MCA 1972 annotated.

### **10.7 Displacee Right to Representation<sup>25</sup>**

A displacee has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the displacee's own expense, unless otherwise ordered by the court.

### **10.8 Incentive Payments**

An Incentive Payments Program may be offered on any project as needed, at the discretion of MDOT in conjunction with FHWA. The DOT Manager will inform the Relocation Agents or Relocation Consultants when incentive payments are to be used on a particular project. Incentive payments may be paid, regardless of whether or not the deed has been signed. The utilization and implementation of relocation incentives will be in accordance with the April 26, 2006 Memorandum on Policy and Guidance for Acquisition and/or Relocation Incentive Program-Voluntary from Susan B. Lauffer, Director, and FHWA Office of Real Estate Services.

### **10.9 Protective Rents**

Protective Rents may be offered and are designed to compensate owners for lost rental income, when their tenants vacate the premises, prior to the conveyance of title, in response to our right

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<sup>21</sup> 49 CFR 24.10(a).

<sup>22</sup> 49 CFR 24.10(f).

<sup>23</sup> 49 CFR 24.10(h).

<sup>24</sup> 49 CFR 24.10(e).

<sup>25</sup> 49 CFR 24.10(d).

of way acquisition process. Protective Rents benefits MDOT by mitigating the costs associated with relocation, including moving expenses and supplemental housing payments. Protective Rents are only authorized subsequent to the approval of the Right of Way Division Director. MDOT will execute a lease agreement (see Relocation Section Forms).

## **11.0 Ongoing Relocation Services**

### **11.1 Environmental Concerns**

MDOT personnel, including all ROW Agents, immediately report any potentially contaminated sites, historical sites, archaeological sites, or other environmental concerns to the Environmental Division.

### **11.2 Relocation Assistance Officers Statement**

The Relocation Assistance Officers Statement [ROW 681] is used to document any interactions with displacees and any new information such as claims, or other items that need review. A new form is used for each interaction.

### **11.3 Notification of Acquisition of New Relocation Cases**

Appraisers note all known relocation cases on the appraisal. During the project, additional relocation cases may be identified. Upon identification of an additional relocation case, the Relocation Agent notifies the District Coordinator of the relocation case via memorandum.

### **11.4 Correspondence by Registered/Certified Mail**

If not delivered in person, correspondence may be sent by either certified or registered mail with the mail receipts placed in the Master Relocation File and a copy in the Field File.<sup>26</sup>

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<sup>26</sup> 49 CFR 24.5.

**Mississippi Department of Transportation  
Right of Way Operations Manual**

**Legal**

The following procedures document the responsibilities of the Right of Way Division Legal Section. Eminent domain (also called "condemnation") is the power of the Mississippi Transportation Commission to acquire property for public uses, such as transportation projects, in exchange for payment of just compensation.

Please review all pertinent chapters in the Right of Way Operations Manual and the Roadway Design Operations Manual.

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## **1. Pre-Trial Eminent Domain Procedures**

### **1.1 Identification of Potential Eminent Domain Cases**

Acquisition Agents may identify parcels that can only be acquired through eminent domain. Some common reasons for filing for eminent domain are listed here:

1. Property owner is a state legislator. Prevents any appearance of a conflict of interest. The property owner is provided an FMVO and notified that the acquisition is going directly to condemnation;
2. Title issues;
3. Property owner declines to sign the deed due to the amount of just compensation;
4. Property owner opposition to language in the deed or easement.

If a potential condemnation is identified, the Acquisition Agent creates a Recommendation for Condemnation. The Recommendation for Condemnation includes the following items and is provided to the District Coordinator for review:

- Signed Recommendation for Condemnation Form [See Acquisition Forms Index - ROW 683];
- Copy of Agent's FMVO [See Acquisition Forms Index - ROW 205];
- Contact Report [See Acquisition Forms Index - ROW 520] completed and signed;
- W-9 Form (Acquisition Agent should make a good faith effort to get the W-9 signed and completed by the property owner. If the property owner refuses to sign W-9 Form, the Acquisition Agent will leave the form with the property owner and note this on the Contact Report and Invoice [See Acquisition Forms Index - ROW 320]);
- Physical addresses (not a post office box) of out-of-state owners of property being condemned, including lessors, renters, and easement holders; and
- Physical addresses (not a post office box) of in-state owners of property being condemned, including lessors, renters, and easement holders.

The District Coordinator may request another acquisition attempt, request additional information, or approve the Recommendation for Condemnation. Upon approval of the Recommendation for Condemnation by the ROW Operations Administrator, these documents are included in the parcel file, which is routed to the ROW Legal Section for review. In addition, following the ROW Operations Administrator's approval, the Acquisition Section Administrative Assistant notes in the Parcel Tracking System that the parcel is in condemnation, specifying a date of condemnation.

After submitting the Recommendation for Condemnation to the ROW Operations Administrator, the Acquisition Agent discontinues contact with the property owners, their

attorneys, or other designated representatives once the file is sent to the Trial Attorney. If the property owner or designated representative contacts any Acquisition Agent, the Acquisition Agent should contact the District Coordinator or the Legal Section to determine the status of the Eminent Domain proceedings. If the file has not been sent to the Trial Attorney, the Acquisition Agent may discuss any issues of the landowners including possible acquisition of the parcel.

## **1.2 Initiation of Condemnation Process**

Upon receipt of the parcel file including the Recommendation for Condemnation forms, the ROW Legal Section initiates the following activities:

- Adds the condemnation to the Eminent Domain Section of the Parcel Tracking System;
- Submits a request to the Special Assistant Attorney General for assignment of an attorney to the case. The Attorney General's Office selects an attorney from a pre-approved list based on the location of the condemnation case and the attorney's experience; and
- Prepares the recommended for condemnation case for inclusion on the next Mississippi Transportation Commission agenda.

The Legal Section passes the file on to the Roadway Design Division (RWD) Survey, Maps & Deeds Condemnation Squad Leader, who copies pertinent information from the file to send to the District Office for requesting survey or field verification.

The Survey, Maps & Deeds Condemnation Squad Leader holds the file until: 1) an attorney is assigned by the Attorney General's Office; 2) the file is approved for condemnation by the Mississippi Transportation Commission; and 3) the survey or sufficient field data is received to prepare a correct description of the property being acquired.

## **1.3 Obtain Mississippi Transportation Commission Approval**

The project number, file number, property owner's name, project termini, and county are provided on the agenda for each parcel that the ROW Division is requesting the Mississippi Transportation Commission to officially condemn.

If condemnation is approved, the Mississippi Transportation Commission's Secretary completes the Order to Condemn and the Controlled Access Order, if applicable, and sends these documents to the ROW Legal Section. The ROW Legal Section sends the Orders to the designated Attorney and places a copy of each document in the parcel's condemnation file. In the rare instance that condemnation is not approved, the file is returned to the ROW Operations Administrator for further action.

## **1.4 Condemnation Survey Request**

For every approved condemnation case, the RWD Survey, Maps & Deeds Condemnation Squad Leader sends the District Office or applicable consultant a condemnation survey request with the following documents attached:

- Property owner's record title description,
- ROW Acquisition Map, and
- Legal description (Exhibit A).

## **1.5 Trial Attorney Selection**

The Attorney General's Office provides the ROW Legal Section with a copy of the executed work assignment agreement between the attorney and the Attorney General's Office.

**1.6 Attorney Condemnation Package**

Following notification of an attorney assignment by the Attorney General's Office, approval of the condemnation by the Mississippi Transportation Commission, and upon receipt of proper field data or survey, the condemnation file is provided to the Legal Secretary. The Legal Secretary prepares a cover letter to the attorney that contains instructions for the condemnation case. The Legal Secretary provides this cover letter to the ROW Legal Section Attorney who prepares the Attorney Condemnation Package containing:

1. Attorney Condemnation Package Cover Letter;
2. Mississippi Transportation Commission Order;
3. Legal description (Exhibit A);
4. Title report (deraignment);
5. Four (4) ROW Acquisition Maps with the acquisition area shaded;
6. Relevant Condemnation documents including but not limited to the Acquisition Agent's Recommendation for Condemnation, FMVO, and Contact Reports;
7. One (1) Survey Plat; and
8. Other relevant documents.

At this point, the Legal Section adds information on the case to the Parcel Tracking System and adds an adhesive label to the file notifying that this is a condemnation file and it should not be returned to the File Room until closed by the attorney.

**1.7 ROW Acquisition Map and Legal Description Update**

Upon receipt of the survey completed for condemnation from the District, RWD Survey, Maps & Deeds Section prepares a new ROW Acquisition Map and an amended Exhibit A if applicable. The Survey, Maps & Deeds Condemnation Squad Leader sends the ROW Legal Section the new ROW Acquisition Map. The ROW Legal Section then forwards the new ROW Acquisition Map and amended Exhibit A to the assigned appraiser, Project Engineer, and the Trial Attorney. A copy of the updated ROW Acquisition Map and original updated deed description are placed in the condemnation file.

**1.8 Trial Displays**

The Trial Attorney may request additional trial displays, such as enlarged images of specific areas of the property. The ROW Legal Section works with the RWD Survey, Maps & Deeds Section to prepare these displays.

**1.9 Filing the Condemnation Complaint**

The Trial Attorney is responsible for filing the condemnation complaint in the proper court. Once the condemnation complaint has been filed, the Trial Attorney notifies the ROW Division Legal Section of the date the complaint was filed. The ROW Legal Section then logs this activity into the Parcel Tracking System. If any changes are made to the trial date, the Trial Attorney informs the ROW Legal Section immediately.

**1.10 Appraisal Update Request Package**

The ROW Operations Administrator submits a court appraisal request to the Appraiser of Record asking that a court appraisal be completed in 60 days of the filing date. Included with this request is the following information:

1. Legal description (Exhibit A),
2. ROW Acquisition Map,
3. Trial Attorney's name and address

For a detailed description of the court appraisal process, see the Appraisal Chapter of the Right of Way Operations Manual.

**1.11 Statement of Value Form**

Based on the final court appraisal, the ROW Legal Section prepares a *draft* Statement of Value (SOV) Form. The *draft* SOV Form and completed Discovery Material Form are submitted to the Attorney a minimum of 25 days before trial.

The Trial Attorney prepares the *final* SOV Form and files the form with the court a minimum of 20 days prior to trial.

**1.12 Settlement Offers During Condemnation Process**

If MDOT receives a settlement offer from a property owner during the condemnation process, the ROW Division's Legal Section reviews the offer and makes a recommendation regarding its reasonableness. The offer is then forwarded to the ROW Division Director and the Office of the Attorney General for review. If approved by the Office of the Attorney General and the ROW Division Director, a memorandum stating the terms of the acceptance of the offer is sent to the Attorney. Based on this memorandum, the Attorney prepares an Agreed Judgment and a trial is avoided. A copy of the Agreed Judgment is sent to the Legal Section for payment processing. If the acceptance of an offer requires a significant adjustment from the FMVO, a memorandum must be prepared and given to the Division Director for concurrence and submitted to the parcel file justifying the adjustment.

If the offer is declined, the Attorney is informed and MDOT and the Trial Attorney proceed towards trial.

**1.13 Quick Take**

MDOT is authorized by Mississippi Code (Sections 11-27-81 to 11-27-89) to utilize a "quick take" procedure to acquire property where negotiations to purchase the property have failed.

Under the quick take procedure, based upon a court appointed appraisal, the Court awards MDOT right of immediate title and possession. MDOT makes a deposit with the Court for not less than eighty-five percent (85%) of the amount of the compensation and damages as determined by the court appointed Appraiser or MDOT's fair market value, whichever is greater. This grants MDOT immediate right of entry, while allowing for a court hearing of the eminent domain case at a later time to determine just compensation.

The Trial Attorney provides the order granting right to immediate title and entry to ROW Legal Section and the ROW Legal Section processes the deposit payment. The District Coordinator then delivers the deposit payment to the Circuit Clerk.

**1.14 Pre-trial Meeting**

The Trial Attorney arranges a pre-trial meeting to walk through the specifics of the case and discuss testimony. This meeting includes all witnesses including an engineering witness and a value witness. Other specialty witnesses may be called on an as-needed basis. The witnesses should be present at the pretrial meeting together.

Note: Pre-trial guidelines for the value witness are contained in the Appraisal Chapter of the ROM.

**2. Condemnation Trial and Post-Trial Procedures****2.1 Trial Scheduling**

Trial Attorneys should schedule trials as soon as possible and coordinate with witnesses as to their availability to attend and testify. The Attorney General's Office and the Legal Section should be notified of trial dates as soon as possible.

## 2.2 Trial (or Settlement) Report

Upon completion of trial proceedings (or completion of a settlement), the Trial Attorney submits a Trial (or Settlement) Report to the ROW Legal Section and the Attorney General's Office. This report includes the following:

1. Caption of the case including case number, case name, and court;
2. Parcel, project, and highway numbers;
3. MDOT estimates of value and dates such estimates were made;
4. All other appraisal estimates of value and dates they were made;
5. Date, place, and length of trial;
6. Brief factual report of the trial, including range of testimony of the parties, etc.;
7. Statement of the major issues;
8. Major differences in approaches to value among the State's witnesses and those of the property owner;
9. Explanation of any substantial variance between the numbers in the Statement of Value and the State's actual testimony;
10. Candid evaluation of the quality of MDOT's witnesses;
11. Candid evaluation of the judge;
12. Comments on possible legal error in the record, explanation of the State's action regarding motions, objections, etc., and the court's ruling relative thereto; and
13. Recommendations regarding motions for new trial, remittitur, or appeal, and the reasons therefore.

## 2.3 MDOT Condemnation Appeal

If the trial verdict is unfavorable for MDOT, the ROW Legal Section and the Attorney General's Office determine if an appeal is reasonable. This decision can be based on economics, legal issues, or the need for clarification of an issue. Appeals are handled by the Trial Attorney in accordance with statutes and court rules.

## 2.4 Complying with the Final Decision

Following issuance of the final decision by the Court, the Legal Section calculates interest owed and any amount above the original quick take deposit. The Legal Section processes an invoice to be paid to the Circuit Clerk.

The Trial Attorney records the judgment in the Land Records Office of the appropriate county and sends the judgment and Trial (or Settlement) Report to the ROW Legal Section and the Attorney General's Office. These documents are placed in the Condemnation File.

## 2.5 Condemnation File Close-out

The Legal Section files the Condemnation File in the ROW Division's File Room. The Condemnation File contains the following completed documents:

1. Trial (or Settlement) Report;
2. Judgment (copy);
3. Notice stating that deposit was received by the clerk;
4. Refund from clerk (if any); and
5. All other documents involved in litigation of that parcel.

The Legal Secretary updates the Parcel Tracking System with the final status of the condemnation case.

**2.6 Reimbursement of Property Owner Litigation Expenses<sup>1</sup>**

The property owner is reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which were incurred due to a condemnation proceeding, ONLY if:

1. The final judgment of the court is that MDOT cannot acquire the real property by condemnation; or
2. The condemnation proceeding is abandoned by MDOT other than under an agreed-upon settlement; or
3. The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or MDOT effects a settlement of such proceeding.

**3. Other ROW Legal Responsibilities**

**3.1 Approval of Deed Clauses**

Approval of all deed clauses is kept current by Legal Section staff.

**3.2 Other Legal Functions**

The ROW Division Legal Section Senior Attorney renders routine advice on matters pertaining to the proper execution of deeds; procedures when the owner is under a legal disability; matters regarding contracts entered into by the ROW Division; matters regarding the status of utility company property interests; and other matters in which the ROW Division requires legal advice.

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<sup>1</sup> 49 CFR 24.107

**Mississippi Department of Transportation**  
**Right of Way Operations Manual**  
**Property Management**

The following procedures document the responsibilities of Right of Way Division's Property Management Section regarding the inspection and disposal of improvements.

Please review all pertinent chapters in the Right of Way Operations Manual and the Environmental Division Operations Manual.

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**Property Management** activities occur under the direction of the Operations Section of the MDOT Right of Way Division (ROW). The Operations Manager provides oversight of The Property Management Section which is responsible for the identification of improvements that can be impacted by the project and has oversight of the removal of said improvements.

### 1.0 Cost Estimates

As part of determining the total costs of acquiring the property, subsequent to the field review, the Property Management Section receives roadway design plans from the Roadway Design Division and reviews them for improvements that may require disposal. An estimate for asbestos abatement and demolition is prepared and added to the cost estimate. Once all of the estimates are received, the Property Management Section completes preparation of the cost estimate and submits them to the District Coordinators to be entered into PTS.

### 2.0 Asbestos Removal

The Property Management Supervisor is responsible for coordinating and managing all information related to the removal of asbestos on property to be acquired. The ROW Agent will perform an asbestos inspection and work with the Environmental Coordinator to complete the assessment. Once acquisition is approved, the Property Management Section will follow MDOT contract processes to evaluate bids and select a contractor to remove the asbestos.

### 2.1 Process of Approval for Asbestos Consulting Services

ROW Property Management Agent

- Conducts initial inventory of improvements during field review;
- Confirms inventory and enters data into PTS with pictures
- Submits request to ROW Property Management Supervisor for Asbestos Consulting Services work assignment
  - a. Includes the actual number of inspections required and the number of inspections requested

ROW Property Management Supervisor

- Prepares a state estimate for the estimated cost of the work assignment
- Creates an ADM-301 in the CSTS System; waits for approval of ADM-301 before contacting CONSULTANT.
- Contacts selected CONSULTANT and discusses the project at hand and requests pricing for the following:
  - a) Asbestos inspections (tell them how many inspections are REALISTICALLY going to be performed)
  - b. Plans & Specifications for Asbestos Abatement
  - c. Air Monitoring Services (use 10-hour days or 12-hour days – Make sure pricing is for the correct number of hours)

- d. Project Management Services
  - Prepares work assignment with above information and form 485-C
    - Submit completed work assignment and form 485-C to CSU for review (must submit the editable Word format of work assignments and an Excel document if there are separate cost sheets)
    - Accepts all changes to the work assignment that CSU has made, be sure to call or visit with CSU if there are changes you don't understand or disagree with
    - Submits the work assignment to the CONSULTANT for execution.
    - The CONSULTANT must return three (3) signed originals of the work assignment and one (1) signed form 485-C
    - The CONSULTANT may return the signed originals to ROW or directly to CSU. The Notice to Proceed will be distributed via email from CSU to ROW
    - Forwards the Notice to Proceed to the CONSULTANT and the ROW PM agent working the project

#### ROW Property Management Agent

1. Contacts Asbestos CONSULTANT for availability
2. Contacts property owners/residents to schedule inspection
3. Accompanies CONSULTANT to perform Asbestos Inspections
4. Enters inspection date into PTS
5. Receives and reviews Asbestos Material Survey (AMS) reports
6. Enters results of AMS into PTS
7. Notifies PM Supervisor when all reports are completed and data entered

### 2.3 Process of Approval for Asbestos Abatement and Demolition

#### ROW Property Management Agent

- Verifies inventory of improvements for removal
- Submits request to ROW PM Supervisor for Asbestos Abatement and Demolition work assignment

#### ROW Property Management Supervisor

- Prepares a state estimate for the estimated cost of the work assignment
- Creates an ADM-301 in the CSTS System (If the state estimate exceeds \$100K, select "Best Value")
- Prepares a list of improvements from PTS using the Demo Cost Request report, checks box to include pictures (make sure all improvements have a value for asbestos type, if AMS NOT PERFORMED is seen, this must be corrected as the AMS data has not been entered into PTS)
- Waits for ADM-301 to be approved, if BEST VALUE was selected, proceed to step 5, if not, proceed to step 6
- Requests BEST VALUE cost estimates
- a. Prepares an email outlining the following information:
  - i. MDOT Project Number
  - ii. Termini
  - iii. County
  - iv. Instructions to complete the cost estimate on the attached Demo Cost Request form
  - v. Time and location of field inspection so all CONSULTANTS can review the project at the same time
  - vi. Instructions on how to be considered for project and specifics on the deadline and location for packets to be returned to MDOT (provide a location for all

- packets to be opened at the same time with CONSULTANTS present that wish to be present)
- vii. Point of contact for all questions (all questions and responses shall be shared with all CONSULTANTS that were on the original request)
  - b. Opens all valid bid packages received (any invalid packages should not be opened)
  - c. Evaluates bid packages at the opening (inform all present the award will not be finalized until all packages are double checked for errors)
    - Sends the CONSULTANT selected on the ADM-301 the Demo Cost Request (with pictures) report for the project and request the form be completed with asbestos abatement and demolition cost
    - Enters cost received from the CONSULTANT into PTS
    - Exports data from PTS via the Demo WA Cost Sheet (select create Excel file when running report)
    - Prepares work assignment with above information and form 485-C
    - Submits completed work assignment and form 485-C to CSU for review (must submit the editable Word format of work assignments and an Excel document if there are separate cost sheets)
    - Accepts all changes to the work assignment that CSU has made, be sure to call or visit with CSU if there are changes you don't understand or disagree with
    - Submits the work assignment to the CONSULTANT for execution.
  - d. The CONSULTANT must return three (3) signed originals of the work assignment and one (1) signed form 485-C
  - e. The CONSULTANT may return the signed originals to ROW or directly to CSU. The Notice to Proceed will be distributed via email from CSU to ROW
    - Forwards the Notice to Proceed to the CONSULTANT and the ROW PM agent working the project

#### ROW Property Management Agent

- Prepares the MDEQ Notification by running the PTS report MDEQ Notification Form and submitting the report to the asbestos abatement and demolition CONSULTANT (be sure the address field is complete for all parcels)
- Receives notification via PTS that a parcel has been acquired and all relocation completed and the property is ready for demolition
- Verifies the improvements are clear of personal property and ready for demolition
- Updates PTS with the proper status
- Prepares and submits an Improvement Status Update Report to the asbestos consultant, the Mississippi Department of Environmental Quality and the asbestos abatement and demolition consultant to release the parcels for demolition
- Verifies all improvements are removed
- Updates PTS and notifies Property Management Supervisor the parcel is clear
- Repeats as necessary until all improvements are removed

## 2.4 The Consultant's Responsibilities

The CONSULTANT shall provide the following services, at a minimum:

- Submit a STATE OF MISSISSIPPI DEMOLITION/RENOVATION NOTIFICATION FORM to the Mississippi Department of Environmental Quality for the project. A copy of the notification form shall be submitted to the MDOT;
- Perform asbestos abatement in accordance with the plans and specification, as required. Asbestos abatement shall be performed by a Mississippi certified.

asbestos abatement contractor;

- Providing air-monitoring services during asbestos abatement activities. Air monitoring services shall be provided by a third party consultant; and
- Remove, sell or/demolish all improvements located within the proposed right-of-way.

## **2.5 Parcel Clearance**

Once acquisition and relocation activities are complete, the Property Management Section will inspect the property to ensure that it is clear and note any additional improvements on the property. If there are improvements remaining, the Property Management Section will either notify the Consultant to have the remaining removed or inform the Construction Division to include the remaining in the road construction contract, based upon the project schedule. Once the clearance activities are complete, the Property Management Section will verify that demolition and update PTS.

## **2.6 Final Audit of Improvements**

Following abatement, demolition, and contract removal of improvements, the Property Management Section conducts a final audit of the entire acquisition area to ensure improvements are removed prior to contract letting

## **3.0 Environmental**

Including but not limited to, all environmentally sensitive, historical and potentially contaminated sites and if needed, remediation of contaminated site will be handled by the Environmental Division.

## **4.0 Leases**

In the event that a displacee needs an extended time frame to move off the new right of way during the acquisition of a project, a lease can be entered into between the displacee and the MTC, at the discretion of ROW Administration. The displacee shall pay market rent, as determined by an appraiser for the MTC.

**Mississippi Department of Transportation  
Right of Way Operations Manual**

**Utility Relocation**

The following procedures document the responsibilities of the Right of Way Utility Section and District Utility Coordinators for the relocation of utilities from transportation projects rights of way.

Please review all pertinent chapters in the Right of Way Operations Manual.

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## **1.0 General Utility Relocation Policies**

The utility relocation duties of the MDOT District Utility Coordinator and ROW Division Property Management Utility Section function include the administration of the relocation and adjustment of public utilities. The Mississippi Transportation Commission and the Mississippi Department of Transportation is granted statutory power by Mississippi Code Section 65-1-8(2)(e) to re-align, adjust, relocate, encase, or otherwise move utility lines, public or private, so as not to cause an impediment to the construction of a project in accordance with Mississippi Code Section 65-1-8(2)(e). Failure or refusal of any utility to comply with requests for agreements or to move or adjust as required by a permit shall give rise to a cause of action for ejectment by the Mississippi Transportation Commission against any company, public or private, or individual.

### **1.1 Overall Authority and Responsibility**

The MDOT District Utility Coordinator consults and coordinates with utility companies, attorneys, and consulting engineers about utility-related design, right of way, and legal matters and is the liaison between MDOT and the utility industry. The MDOT District Utility Coordinator provides oversight of all phases of the utility relocation process. While the District Utility Coordinator provides oversight of the utility relocation process, the overall responsibility for individual field inspections of and for utility relocation rests with the District Engineer. The District Utility Coordinator coordinates with the ROW Utility Section the processing and payment of utility and engineering agreement once those agreements are reviewed and approved by the District Utility Coordinator. The ROW Utility Section serves as the liaison between the District Offices and the Mississippi Transportation Commission. The ROW Utility Section submits the utility and engineering agreements to the Mississippi Transportation Commission for approval. The agreements must be approved by the Mississippi Transportation Commission and executed by MDOT's Executive Director.

### **1.2 Utility Relocation Agreements**

Where utilities must be relocated, the utility company and MDOT agree in writing on their separate responsibilities for financing and accomplishing utility relocation work by executing the appropriate Utility Agreement Form (ROW 800). When the first Utility Agreement is received on a project, this triggers the Division Administration to request authorization for funding of said utility detail.

### **1.3 Initiation of Work**

A utility company shall not be compensated for any work, other than preliminary engineering, that is initiated prior to approval of a Utility Relocation Agreement by the Mississippi Transportation Commission and execution by the Executive Director.

### **1.4 Final Utility Relocation Invoice**

MDOT must receive a final invoice from the utility company within twelve (12) months of the final inspection, unless an extension is requested. If a final invoice is not received in this timeframe, no further invoices are accepted by MDOT and the project is closed.

## 2.0 Utility Relocation Procedures

### 2.1 Materials Provided for Utility Relocation

District Office personnel locate and submit to the Roadway Design Division complete survey data on every utility that may conflict with the proposed transportation project construction. This survey information includes both the existence and location of underground utilities and is incorporated into the final ROW plans.

### 2.2 District Utility Coordinator Site Visit and Final ROW Plan Review

The District Utility Coordinator conducts a site visit to verify the existence and location of the utilities noted on the final ROW plans. Any differences in the final ROW plans and the site are noted and changes to the final ROW plans are requested of the District Construction Engineer or the Assistant District Construction Engineer.

### 2.3 District Utility Coordinator Preliminary Cost Estimate Preparation

Based on the site visit and final ROW plan review, the District Utility Coordinator develops a preliminary estimate of utility relocation costs. Factors considered in developing the cost estimate include the number of poles, square footage, and historical cost evidence. Cost estimates are completed and the District Utility Coordinator adds an additional 15 percent to the cost estimate for Consulting Engineering costs associated with the utility relocation, and inputs the cost estimate into Parcel Tracking.

### 2.4 Initial Notification to Utility Companies

The District Utility Coordinator decides when the utility company will be notified and provided with the final ROW plans. This decision is based on the construction letting date and other project-specific circumstances. All utility companies are given as much advance notice as possible.

### 2.5 Utility Relocation Project Control Sheet

Following notification of the utility companies, the Project Engineer initiates the Utility Relocation Project Control Sheet to monitor the utility relocation project. The Utility Relocation Project Control Sheet tracks each utility company's progress and adherence to the agreed upon start and completion dates. The information from the Utility Relocation Project Control Sheet is entered into parcel tracking and is shared with the ROW Utility Section for verification.

### 2.6 Project Engineer Utility Relocation Responsibilities

The Project Engineer is responsible for authorizing physical utility adjustments, maintaining daily inspection records, and entering the information from the Utility Relocation Project Control Sheet into the MDOT Parcel Tracking System (PTS). Upon completion of each utility company adjustment, the Project Engineer certifies to the ROW Utility Section, with a copy to the District Utility Coordinator, that the utility work is complete, acceptable, and in accordance with the terms of the Utility Relocation Agreement.

### 2.7 Field Inspection

The District Utility Coordinator conducts a field inspection and meets with a representative of the utility company to determine the extent of utility conflicts and if the utilities are located on private or public right of way. The District Utility Coordinator verifies that all utility facilities are shown on the construction plans and ensures that the utility company representative understands the extent to which costs are to be absorbed by the utility company. The District Utility Coordinator also advises the utility company of potential eligibility for 100 percent reimbursement of relocation costs in accordance with Senate Bill 2183 or Senate Bill 2250.

After the field inspection, the District Utility Coordinator reports the results of the inspection in a Field Inspection Memorandum. The Memorandum includes the name of the utility company,

names of field inspection participants, date of inspection, extent of relocation required, proportionate share of costs to be borne by each party, cost ratios for the project, and other pertinent facts. The Utility Coordinator then sends a copy of the Field Inspection Memorandum to the District Engineer with copies to the ROW Utility Section, FHWA (as required), and other relevant parties.

**2.8 Utility Relocation Agreement and Engineering Agreement Preparation and Approval**

The utility company and MDOT must agree in writing on their separate responsibilities for financing and accomplishing the relocation work. The Utility Relocation Agreement (federal [ROW 800] must be supported by plans, specifications (when required), and itemized cost estimates of the work agreed upon, including appropriate credits to the project, and shall be sufficiently informative and complete to provide MDOT and FHWA with a clear description of the work required.<sup>i</sup> When the relocation involves both work to be done at MDOT's expense and work to be done at the expense of the utility, the written agreement states the share to be borne by each party.<sup>ii</sup>

**A. Preparation of Utility Relocation and Engineering Agreements**

Based on the instructions provided in the Notification Letter from MDOT and the Field Inspection Memorandum, the utility company prepares a Utility Relocation Agreement. This agreement is prepared on Form ROW 800. The District Utility Coordinator responds to any inquiries of the utility company as they complete the Utility Relocation Agreement and ensures that the Agreement is completed in a timely manner. The Utility Company submits the Utility Relocation Agreement and attachments to the District Engineer. The Utility Relocation Agreement and attachments include, at a minimum, the following:

1. A written recommendation for acceptance.
2. An estimate of total cost including the proration to be borne by each party. The estimate sets forth direct labor, labor surcharges, overhead and indirect construction charges, materials and supplies, handling charges, transportation, equipment, right of way, preliminary engineering, construction engineering, salvage credits, betterment credits, and accrued depreciation credits. The proration of cost is calculated using the entire length of relocation required on private right of way or easement along the center line of the utility (gas line, power line, transportation line, etc.) to the total length of existing utility on public right of way measured along the utility. For example:  
MDOT Proration =

Length of existing utility in conflict with the project and on private ROW  
Total length of existing utility in conflict with the project

$$\text{MDOT Proration} = \frac{100 \text{ (private)}}{300 \text{ (total)}} = 0.333$$

Utility Proration =

Length of existing utility in conflict with the project and on public ROW  
Total length of existing utility in conflict with the project

$$\text{Utility Proration} = \frac{200 \text{ (public)}}{300 \text{ (total)}} = 0.667$$

The cost of utility adjustments is reimbursable according to the following guidelines:

- Where utilities are located on private property and the utility company has a compensable interest, the cost of required adjustments or relocation is borne by MDOT.
- Where utilities are located on public right of way (except lands owned by the United States Forest Service) and highway construction or maintenance requires their relocation or adjustment, costs are borne by the utility company.

- Where water, sewer and gas utilities are owned by a municipality with a population under 10,000, a rural water/sewer association, or a non-profit water/sewer association, the costs of any relocation or adjustment of these facilities are borne 100 percent by MDOT. (As self-certified by the utility in the utility agreement on Form ROW 800)
  - Where there is no record of a highway right of way purchase but a road has been maintained as a public thoroughfare and where construction or maintenance requires the adjustment or relocation of a utility within monument right of way lines, removal or adjustment costs are borne by the utility company. Monument lines determine the width of the right of way claimed by MDOT and may be fence lines, and mowing lines intersect of slopes with the natural ground, etc.
3. Plans or drawings showing the existing facilities and the temporary or permanent changes to be made. The plans are an exhibit to the Utility Relocation Agreement and must include the following data:
    - a. Location, length, size and/or capacity, type, class, and pertinent operating conditions and design features of existing, proposed, and temporary facilities including proposed changes thereto and disposition thereof by appropriate nomenclature, symbols, legend, notes, color-coding, or the like;
    - b. Project number, plan scale, and date;
    - c. Horizontal and, where appropriate, vertical location of the utility facilities in relation to the highway alignment;
    - d. Geometric features;
    - e. Stationing;
    - f. Grades;
    - g. Structures and other facilities;
    - h. Proposed and existing right of way lines;
    - i. Access control lines, where applicable; and
    - j. Limits of right of way to be acquired from, by, or on behalf of the utility, where applicable.
  4. That portion of the work, if any, to be accomplished at the sole expense of the utility.
  5. Evidence of compensable property interest of the utility.
  6. Evidence of engineering staff or consultant. If a utility company does not have engineering personnel on staff or a continuing contract with an engineering consultant, the utility company should obtain an engineering consultant. During the field inspection, the District Utility Coordinator provides an Engineering Agreement [ROW 044] between the utility and the utility's engineer to be completed by the utility's engineer and returned for approval. The District Utility Coordinator responds to any inquiries of the utility company as they complete the Engineering Agreement [ROW 044] and ensures that the Agreement is completed in a timely manner. The Utility Company submits the Engineering Agreement [ROW 044] and attachments to the District Engineer who forwards it to the District Utility Coordinator for review. Following the District Utility Coordinator's review, the District Utility Coordinator sends it to the utility section recommending approval. The utility section submits the Engineering Agreement [ROW 044] to the Mississippi Transportation Commission for approval.
  7. Value of any potential damage to crops, if applicable. Relocation of utilities may require access that may damage growing crops. The utility company determines the value of crops in coordination with the owner of the crops to establish a value of the crop prior to initiating the relocation.

#### **B. Review of Submitted Utility Engineering and Relocation Agreements**

Following submittal of the Engineering Agreement [ROW 044] and Relocation Agreements to the District Engineer, the District Utility Coordinator reviews the agreements and requests any necessary changes from the utility company. The District Utility Coordinator reviews the plans, estimates, and agreements to determine conformity with the agreement reached during the field inspection and to the policies and procedures of MDOT. If the utility company is non-responsive to the District Utility Coordinator's requests, the District Utility Coordinator may request District Engineer assistance. Where an Engineering Agreement [ROW 044] is required, it must be approved prior to the relocation agreement. Following the District Utility Coordinator's review, the District Utility Coordinator sends the agreements to the utility section recommending approval.

#### **C. Approval of Utility Relocation and Engineering Agreements**

Once the Utility Relocation Agreement and the Engineering Agreement [ROW 044] are satisfactory and finalized, they are approved by the District Engineer and submitted to the Utility Section for review. Following the ROW Utility Section review, the ROW Utility Section submits the agreements to the Mississippi Transportation Commission for approval. The agreements must be approved by the Mississippi Transportation Commission and executed by MDOT's Executive Director.

#### **D. Notice to Proceed**

Following Mississippi Transportation Commission approval and execution by the Executive Director, the Utility Section forwards an executed copy of the Utility Relocation Agreement with an instructional letter [Notice to Proceed Letter, Advertise for Bids Letter, Lump Sum Notice to Proceed Letter] to the utility company with copies provided to District Utility Coordinator, consultants, the District Engineer, the Project Engineer, appropriate MDOT Divisions, and other interested parties. When federal funds are involved, the executed utility agreement is submitted to FHWA for approval prior to authorization of the work.

#### **E. Parcel Tracking System Update**

Upon approval of the utility relocation agreement, the Utility Section updates the parcel tracking system to show the utility agreement is approved.

### **2.9 Agreements with Municipal Utilities**

The policy of the Mississippi Transportation Commission regarding payment for relocating and adjusting utilities within the corporate limits of a municipality is as follows:

1. A municipality makes adjustments to its own facilities located within a dedicated street right of way coincident with a highway project at no cost to MDOT.
2. MDOT reimburses a municipality for relocating or adjusting its facilities located within a dedicated street right of way crossed by a highway project not coincident with a city street.
3. If a municipality has a compensable property interest, MDOT reimburses the costs of relocating or adjusting the municipal facilities located outside a dedicated street right of way.
4. On projects with full control of access where a municipality has a compensable property interest or where the municipal facilities are located on a dedicated street right of way, MDOT reimburses costs of relocating or adjusting the facilities.
5. A municipality is responsible for the relocation, at no cost to MDOT, of any non-municipal utilities located within a dedicated street right of way.
6. If a non-municipal utility has a compensable property interest, MDOT reimburses the cost of relocating or adjusting its facilities.

**2.10 Utility Contract Supplemental Agreements**

If there are changes in the scope of work covered by the approved Utility Relocation Agreement, a Supplemental Utility Agreement must be approved. This Supplemental Utility Agreement must be requested by the utility prior to any work proceeding.

To obtain a Supplemental Utility Agreement, the utility must make a request in writing. This request constitutes the Supplemental Utility Agreement and is provided to the District Utility Coordinator who forwards it to the utility section via a Supplemental Utility Agreement Memorandum [Sample Supplement Memo] that includes the following information:

- Original Utility Relocation Agreement amount,
- Amount of the requested supplement,
- Revised total agreement amount,
- Justification for the supplement such as identification of additional utilities in the project area),
- Recommendation signature from the District Engineer, and
- Space for recommendation signatures of the Utility Section, Assistant Division Administrator, and the Assistant Chief Engineer for Pre-Construction. (See ROW Utility Section for additional information)

**2.11 Reimbursable Costs**

MDOT reimburses utility companies for costs incurred in the relocation of facilities if such costs are in accordance with the statement of work contained in the Utility Relocation Agreement or modifications, adequately documented, incurred subsequent to the date of authorization, and are not in violation of state or federal laws and regulations.

**2.12 Lump Sum Contracts**

When the estimated cost of the proposed utility relocation work on a project for a specific utility company is \$100,000 or less, MDOT may enter into an agreement with the utility for a lump-sum payment without later confirmation by audit of actual costs.<sup>iii</sup>

**2.13 Invoice Processing**

Utility company invoices should follow the general order of the items in the cost estimate portion of the Utility Relocation Agreement and modifications. The utility company must indicate on the invoice whether it is a progress or final invoice. Utility company invoices for final billing or progress billing are submitted to the District Utility Coordinator, or designated representative, for examination and recommendation for approval of payment. Invoices are then forwarded to the ROW Utility Section for processing. (Please refer to the ROW Utility Section for additional information).

**2.14 Final Relocation Inspection**

Once utility relocation is complete, the District Utility Coordinator requests that the Project Engineer conduct a final inspection and certify that relocation is complete. The Project Engineer prepares a statement certifying that work is complete in accordance with the details of the Utility Relocation Agreement and all modifications. This certification is provided to the Utility Section with a copy to the District Engineer, the District Utility Coordinator, and ROW Administration Section, and is included with the ROW certification (please refer to the Administrative ROW Operations Manual for additional information on the ROW Certification).

**3.0 The ROW Utility Section**

The Utility Section coordinates between the Districts and the utility companies providing oversight of all phases of the utility relocation process. The Section reviews the agreements, after the review is final; the Section submits the agreements to the Mississippi Transportation Commission for approval. Upon approval,

**3.1 Preparation of the Utility Project Miscellaneous File**

The Utility Section prepares a Utility Project File for general correspondence on the project that is not specific to individual utilities. The following information is added to the Utility Project File throughout the utility relocation process:

- Final ROW plans and accompanying transmittal memorandum from the Roadway Design Division,
- Monthly Utility Relocation Project Control Sheets [ROW 480],
- Cost Estimate Memorandum,

The Utility Section sends the Notification Letter to the utility company (ies) with a copy to the District Utility Coordinator. This Notification Letter includes the following items:

1. A letter describing the proposed construction and specific instructions for completing the Utility Agreement Form [ROW 800]

### **3.2 Parcel Tracking System**

The Utility Section enters the utilities that are contacted for the project and the date of the Notification Letter into the parcel tracking system.

### **3.3 Individual Utility Company File**

The Utility Section creates an Individual Utility Company File for the project for each affected utility. Individual Utility Company File for the projects may include the following:

- All correspondence
- Initial Notification Letter [Notification Letter]
- Engineering Agreement (ROW 044)
- Utility Agreement Forms [ROW 800]
- Field Inspection Memorandum
- Supplemental Agreements
- Invoices
- Audit Requests
- Other information that relates to that specific utility

### **3.4 Utility Closing**

The ROW Utility Section will enter all utility information in MDOT Parcel Tracking System (PTS) for the District Utility Coordinator to complete the processing of all agreements. Once the agreements are complete, the ROW Utility Section will place the utility agreements on the Mississippi Transportation Commission agenda to be approved. Upon approval, The Section updates PTS and sends approved documents to the District and the utility company.

The Row Utility Section is also responsible for the final approval of invoices for work related to the relation of utilities on acquired property.

### **3.5 Utility Contract Supplemental Agreements**

The Utility Section submits the Supplemental Utility Agreement to the Mississippi Transportation Commission for authorization of MDOT Executive Director Approval. MDOT Executive Director Approval and Mississippi Transportation Commission authorization are attached to the Supplemental Utility Agreement. The Utility Section forwards copies of the approved Supplemental Utility Agreement with a cover letter (Supplemental Approval Letter) the District Utility Coordinator, consultants, District Engineer, Project Engineer, appropriate MDOT divisions, and other interested parties. The original Supplemental Utility Agreement is maintained in the Individual Utility Company File for the project. No work can be performed before notification of approval.

### **3.6 Invoice Processing**

The Utility Section enters the invoice into the Financial Management System (FMS) and updates the Parcel Tracking System, as applicable.

The Financial Management Division provides payment checks to the Utility Section and the ROW Utility Section drafts a letter to the utility company to accompany the payment. If the payment is made in full, a copy of the audit report is attached. The payment check and accompanying letter is sent to the utility company via registered/certified mail or via electronic deposit. Except for lump sum agreements, the ROW Utility Section forwards final invoices by memorandum [Request Audit Memo] to the MDOT Audit Division for review and approval. Final payment is not made prior to the issuance of an audit report.

Upon receipt of the final invoice, the MDOT Auditor recommends final payment including payment of retainage. Upon receipt of the audit report, the Utility Section requests a check through the Financial Management System. The Utility Section drafts a letter to the utility company to accompany the payment. If the payment is made in full, a copy of the audit report is attached. The payment check and accompanying letter is sent to the utility company via registered/certified mail or via electronic deposit.

Invoices are recorded in the Parcel Tracking System including FMS transaction number, warrants, and mailing of checks. This information in Parcel Tracking System enables a monitoring of each Utility Agreement. All utility company cost records and accounts relating to the project are subject to audit by representatives of the state and federal government for a period of three (3) years from the date final payment has been received by the utility.<sup>iv</sup> MDOT must receive a final invoice for payment on utility relocation from the utility company within twelve (12) months of final inspection, unless an extension is requested.<sup>v</sup>

<sup>1</sup> 23 CFR, Part 645, Subpart B

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

Source: 50 FR 20354, May 15, 1985, unless otherwise noted.

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<sup>3</sup> 23 CFR 645.113(c).

<sup>4</sup> 23 CFR 645.113(d).

<sup>5</sup> 23 CFR 645.113(f).

<sup>6</sup> 23 CFR 645.117

<sup>7</sup> 23 CFR 645.117(i)(2).