

# **Right of Way Manual**

## **Chapter 3**

### **Appraisal and Appraisal Review**

#### **Policies, Procedures and Information**

**Colorado Department of Transportation**

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## SECTION 3.1 – GENERAL APPRAISAL POLICIES AND REQUIREMENTS

### 3.1.1 – Acronyms Common to the Right of Way (ROW) Manual and CDOT

BLM	Bureau of Land Management (Department of Interior)
BPR	Bureau of Public Roads (Predecessor to Federal Highway Administration)
BuRec	United States Bureau of Reclamation (Department of Interior)
CAD	Computer Aided Drafting
CE	Categorical Exclusion
CDPHE	Colorado Department of Public Health and Environment
CDOT	Colorado Department of Transportation
CFR	Code of Federal Regulations
CHARN	Colorado High Accuracy Reference Network
CJI	Colorado Jury Instructions, Civil
CPA	Certified Public Accountant
CPW	Colorado Division of Parks and Wildlife (Colorado Department of Natural Resources)
CRS	Colorado Revised Statutes
DORA	Colorado Department of Regulatory Agencies
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
EPS	Extended Purchasing System
ESA	Environmental Site Assessment
FEIN	Federal Employer Identification Number
FEMA	Federal Emergency Management Agency (U.S. Department of Homeland Security)
FHA	Federal Housing Administration (United States Department of Housing and Urban Development)
FHWA	Federal Highway Administration
FIR	Field Inspection Review
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (a federal law enacted in the wake of the savings and loan crisis of the 1980's)
FLPMA	Federal Land Policy and Management Act of 1976 (Public Law 94-579 94 <sup>th</sup> )
FLTC	Federal Land Transfer Coordinator
FMV	Fair Market Value
FONSI	Finding Of No Significant Impact
FOR	Final Office Review
FS	Feasibility Study
GLO	General Land Office (US Dept of Interior, Bureau of Land Mgmt)
GPS	Global Positioning System
HB	House Bill
HBU	Highest and Best Use
HED	Highway Easement Deed
HLR	Housing of Last Resort
HUD	United States Office of Housing and Urban Development
IGA	Intergovernmental Agreement

ISA	Initial Site Assessment
LOC	Letter of Consent
LPA	Local Public Agency
LSCD	Land Survey Control Diagram
MAP-21	Moving Ahead for Progress in the 21st Century, P.L. 112-141
MESA	Modified Environmental Site Assessment
MIDP	Mortgage Interest Differential Payment
MOA	Memorandum of Agreement
MOO	Memorandum of Ownership
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NGS	National Geodetic Survey (National Oceanic and Atmospheric Administration - NOAA)
NHS	National Highway System
NRHP	National Register of Historic Places (National Parks Service, US Dept of the Interior)
NSRS	National Spatial Reference System (National Oceanic and Atmospheric Administration - NOAA)
PBS	Primary Base Series (USGS Mapping Program)
PCD	Project Control Diagram
PL	Public Law
PLS	Public Land Surveyor (Licensed in the State of Colorado by Colo Dept of Regulatory Agencies)
PS&E	Project Specifications and Estimates
PSI	Preliminary Site Investigation
QA	Quality Assurance
QAL	Qualified Appraisers List
QC	Quality Control
QRAL	Qualified Review Appraisers List
REPM	Regional Environmental Project Manager
RFP	Request for Proposal
RHP	Replacement Housing Payment
RI	Remedial Investigation
ROD	Record of Decision (US Environmental Protection Agency)
ROW	Right Of Way
ROWPR	Right Of Way Plan Review
RS	Revised Statute (Federal - first official codification of the Acts of Congress)
RTD	Regional Transportation Director
SPCC	Spill Prevention and Countermeasure Plans
SSN	Social Security Number
STIP	Statewide Transportation Improvement Program (4 year transportation planning document required by FHWA)
STURRA	Surface Transportation and Uniform Relocation Assistance Act of 1987
SUP	Special Use Permit
TE	Transportation Enhancement (Moving Ahead for Progress in the 21st Century Act MAP-21) replaced the TE Activities with the Transportation Alternatives Program (TAP)
TEA 21	Transportation Equity Act for the 21st Century (enacted June 9, 1998 as Public Law 105-178)
TMOSS	Terrain Modeling Survey System (InRoads Computer Software)

Uniform Act	Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as Amended (42 USC 4601 et seq)
USC	United States Code
USCIS	United States Citizenship and Immigration Services (Homeland Security)
USDOT	United States Department of Transportation
USFS	United States Forest Service
USGS	United States Geological Survey
USPAP	Uniform Standards of Professional Appraisal Practice

### 3.1.2 – Authorities

References to authorities, public law, Code of Federal Regulations (CFR), and Colorado Revised Statutes (CRS) are:

5th and 14th Amendments, U.S. Constitution  
Article II, Section 15, Colorado Constitution  
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 B.S.C. 4601 et seq.), as amended (the Uniform Act)  
49 CFR Part 24 Subpart B  
23 CFR Part 710  
§ 24-56-101 et seq., CRS  
§ 38-1-101 et seq., CRS  
§ 12-61-701 et seq., CRS  
CDOT ROW Manual, Chapter 3, Appraisal and Appraisal Review

### 3.1.3 – Purpose

This manual sets out CDOT policies and procedures necessary to appraisal, appraisal review and other appraisal-related functions in eminent domain. Policies and procedures comply with FHWA, State of Colorado, and CDOT requirements.

### 3.1.4 – Eminent Domain

Authority to exercise the right of eminent domain for public use is based upon the government’s power as a sovereign to take private property for the public good. Agencies created by the state to serve the public may exercise the right of eminent domain.

### 3.1.5 – Uniform Act

Federal and state policies establish uniform, fair, and equitable treatment of persons displaced by the acquisition of real property. For federally-assisted programs and projects, state agencies and political subdivisions of the state must comply with the federal Uniform Act. Basic requirements for appraisal stated in Colorado law (CRS 24-56-117 and 38-1-121) and federal regulation (49 CFR 24, Subpart B) are similar to the Uniform Act:

- Before the initiation of negotiations, the Agency shall estimate the value and establish an amount which it believes is just compensation for the real property acquired.



- The owner or the owner’s designated representative has the right and shall be given an opportunity to accompany the appraiser during the appraiser’s inspection of the property. This opportunity extends to all owners of any interest in the property including tenant owners.
- To the extent permitted by applicable law, the appraiser shall disregard any increase or decrease in the reasonable market value of the real property appraised caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than physical deterioration within the reasonable control of the owner.
- Appraisers shall not give consideration to nor include in their appraisals any allowance for relocation assistance benefits.

### 3.1.6 – Just Compensation

U.S. and state constitutions, various state statutes, case law, and public policies prescribe procedures for estimating compensation when private property is acquired or taken from a property owner. The Fifth Amendment of the U.S. Constitution requires the federal government to pay just compensation and states “No person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.” The Fourteenth Amendment to the U.S. Constitution requires state governments to pay just compensation and states...“nor shall any state deprive any person of life, liberty, or property without due process of law.”

The Colorado Constitution guarantees property owners their property may not be taken for public use without payment of just compensation. Article II, Section 15, Colorado Constitution states:

“Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.”

For highway acquisition, if an entire tract or parcel of property is taken, the amount of compensation is the reasonable market value of the entire property on the date of valuation.

If only a portion of a tract or parcel of land is taken, the damages and special benefits, if any to the residue of the property are to be determined. In determining the amount of compensation to be paid for a partial taking, the compensation for the property taken and damages to the residue of the property will be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed fifty percent of the total amount of compensation to be paid for the property actually taken. (§ 38-1-114(2)(b, c & d), CRS)

The Agency's offer to the owner is “just compensation” and may not be less than the amount established in the approved appraisal report as the fair market value for the property. If it

becomes necessary for the acquiring Agency to use the condemnation process, the amount paid through the court will be just compensation for the acquisition of the property. Appraisers do not determine just compensation. Appraisers are charged with the duty and responsibility to estimate compensation based upon the reasonable market value for the property taken and damages and special benefits, if any, to the residue. Review appraisers for the State of Colorado recommend a compensation amount based on appraisal of the subject property and part acquired. The Region Transportation Director or designee is the agency representative authorized to establish the amount believed to be just compensation.

It is the duty of the state, in the conduct of an inquest by which the compensation is ascertained, to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it. *Williams v. City & County of Denver*, 147 Colo. 195, 363 P.2d 171 (1961).

### **3.1.7 – Definition of Appraisal**

The term appraisal means “a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.” (49 CFR § 24.2(a)(3)). This same definition is quoted in Colorado statute § 24-56-117(1)(k).

A federal waiver valuation does not meet the definition of an appraisal under Colorado statute 12-10-602(1)(c). "Appraisal," "appraisal report," or "real estate appraisal" does not include a federally authorized "waiver valuation," as defined in 49 CFR 24.2 (a)(33), as amended.

### **3.1.8 – Conflict of Interest – 49 CFR § 24.102(n)**

The overall objective of the conflict of interest provision in 49 CFR § 24.102(n) is to minimize the risk of fraud while allowing CDOT to operate as efficiently as possible. There are three parts to this conflict of interest provision.

The appraiser, review appraiser, or person performing an appraisal or federal waiver valuation shall not have any interest, direct or indirect, in the real property being valued for CDOT. Wages or fees paid for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.

No person shall attempt to influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators for a project or program may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work. The intent of this conflict of interest provision is to ensure appraisal/valuation independence and to prevent inappropriate influence.

An appraiser, review appraiser or Waiver Valuation preparer is authorized by CDOT to also negotiate for the acquisition of the property for which that person has prepared an appraisal or waiver valuation of \$10,000 or less. Property acquisitions based on appraisals or waiver valuations that are more than \$10,000 must be negotiated by someone other than the person

who prepared them. All appraisals must be reviewed in accordance with 49 CFR § 24.104. Waiver valuations will be reviewed by the Right of Way Manager or their designee (typically the Acquisition Supervisor or a Review Appraiser).

### **3.1.9 – Criteria for Appraisals**

Appendix A to 49 CFR § 24.103 discuss appraisal requirements and standards:

“The term "requirements" is used throughout this section to avoid confusion with The Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) "standards." Although this section discusses appraisal requirements, the definition of "appraisal" itself at § 24.2(a)(3) includes appraisal performance requirements that are an inherent part of this section.

The term "Federal and federally-assisted program or project" is used to better identify the type of appraisal practices that are to be referenced and to differentiate them from the private sector, especially mortgage lending, appraisal practice.”

### **3.1.10 – Appraisal Requirements**

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce credible assignment results. A scope of work is acceptable when it meets or exceeds the expectations of parties who are regularly intended users for similar assignments; and what an appraiser’s peers’ actions would be in performing the same or a similar assignment (USPAP Scope of Work Rule).

CDOT has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal depends on the complexity of the appraisal problem.

Thus, it is the appraiser’s responsibility to produce a credible appraisal that meets or exceeds CDOT’s expectations.

- 1) 49 CFR § 24.103(a). Real property acquisition appraisal requirements for Federal and federally-assisted programs are stated in 49 CFR § 24.103(a):

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

- 1) The Agency acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the

appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem.

- 2) The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in § 24.2(a)(3) and the five following requirements: (See appendix A, §§ 24.103 and 24.103(a).)
  - i. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. (See appendix A, § 24.103(a)(1).)
  - ii. All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. (See appendix A, § 24.103(a).)
  - iii. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
  - iv. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
  - v. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.”
- 2) 49 CFR, Appendix A, § 24.103(a). Additional comments on appraisal requirements and “scope of work” are stated in Appendix A to 49 CFR § 24.103(a) as follows:

“Section 24.103(a) Appraisal requirements. The first sentence instructs readers that requirements for appraisals for Federal and federally-assisted programs or projects are located in 49 CFR part 24. These are the basic appraisal requirements for Federal and federally-assisted programs or projects. However, Agencies may enhance and expand on them, and there may be specific project or program legislation that references other appraisal requirements.

These appraisal requirements are necessarily designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements.” They are also considered to be consistent with USPAP. “Consistency with USPAP has been a feature of these appraisal requirements since the beginning of USPAP. This “consistent” relationship was more formally recognized in OMB Bulletin 92-06. While these requirements are considered consistent with USPAP, neither can supplant the other; their provisions are neither identical, nor interchangeable.

Appraisals performed for Federal and federally-assisted real property acquisition must follow the requirements in this regulation. Compliance with any other appraisal requirements is not the purview of this regulation.”

An appraiser who is committed to working within the bounds of USPAP should recognize that compliance with both USPAP and these requirements may be achieved by using the Jurisdictional Exception Rule of USPAP, where applicable.

“The term "scope of work" defines the general parameters of the appraisal. It reflects the needs of the Agency and the requirements of Federal and federally-assisted program appraisal practice. It should be developed cooperatively by the assigned appraiser and an Agency official who is competent to both represent the Agency's needs and respect valid appraisal practice. The scope of work statement should include the purpose and/or function of the appraisal, a definition of the estate being appraised, and if it is fair market value, its applicable definition, and the assumptions and limiting conditions affecting the appraisal. It may include parameters for the data search and identification of the technology, including approaches to value, to be used to analyze the data. The scope of work should consider the specific requirements in 49 CFR 24.103(a)(2)(i) through (v)” (as noted above) “and address them as appropriate.

Section 24.103(a)(1). The appraisal report should identify the items considered in the appraisal to be real property, as well as those identified as personal property.

Section 24.103(a)(2). All relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach. This should be reflected in the scope of work.”

CDOT has appraisal requirements that supplement the requirements stated above. Additional requirements are detailed in later sections of this chapter.

Appraisals for CDOT may not include any payment of relocation assistance benefits or consider that such relocation payments will be made. Appraisals must be independently prepared and each appraisal must be signed by the individual making the appraisal and include the appropriate certification prior to submittal for review.

Qualifications of all appraisers who contribute to the report must be in the report. Fee (contract) appraisers hired to develop appraisals for CDOT must be qualified and competent to perform the appraisal. Appraisals must be consistent with 49 CFR § 24.103, USPAP, and in some cases, UASFLA.

### **3.1.11 – Record Keeping**

Appraisers – and not CDOT – are responsible to comply with USPAP appraisal-related record-keeping requirements per their own understanding. Record keeping requirement contained in the USPAP 2020-21 Ethics Rule is:

“An appraiser must retain the work file for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last.”

### CDOT Appraisal-Related Record-Keeping Requirements

CDOT appraisal staff will provide the following original signature material (as available, otherwise electronic copy) to the Region Acquisition Unit for ultimate delivery in print or electronic format to HQ ROW Program/Acquisition:

- Agency and property-owner appraisal reports, appraisal review reports, litigation-related appraisal documents (rebuttal material, updates, letters), FMVs, appraiser-prepared waiver valuations and similar appraisal-related documents, letters of information to the appraiser (LOI), signed Certified Inventory of Real and Personal Property (CIRPP).
- Region appraisal staff are encouraged to save these documents into CDOT’s ProjectWise or other current documents management system per current protocol set out by Region management or Project Development/ROW Program. Contact these units for more information.

### Retention Periods and Responsibility

- Region ROW units are responsible to maintain a copy set of the documents above for the duration of the project, providing original signature (or otherwise acceptable) materials to Project Development/ROW Program.
- Project Development/ROW Program is responsible to maintain original signature or otherwise acceptable documents described above to CDOT’s current record-keeping requirements.
- CDOT’s minimum records retention period for the described documents is 3.5 years after CDOT’s Project 950 closure date (project is built, complete, and all contractor claims are settled). This time frame will typically exceed the minimum federal right-of-way records retention of 3 years after each property and each person displaced from the property receives the final payment that he or she is entitled to for property rights acquired and/or for relocation (49 CFR § 24.9(a)). Certain ROW records will retain for 7 years after the Project 950 closure date, and some records or portions thereof are permanent records. Project Development/ROW Program is responsible to meet these requirements.

### **3.1.12 – Definition of Reasonable Market Value**

Compensation for property acquired or taken for public purposes in Colorado is based upon reasonable market value. Appraisals prepared for CDOT are based upon this definition of reasonable market value. CJI 36:3, defines “reasonable market value” as:

“...the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so.

In determining the market value of the property actually taken, you are not to take into account any increase or decrease in value caused by the project for which the property is being acquired.”

The appraiser shall not link an estimate of market value for CDOT land acquisition purposes to a specific exposure time. The definition of reasonable market value does not call for the value estimate to be linked to a specific exposure time. The value estimate is based on a specific date when the property is actually taken by agreement, stipulation, court order to take possession, or the date of the trial or hearing to assess compensation, whichever is earlier (§ 38-1-114(2), CRS). Compensation includes damages and benefits as of the specific date and is not linked to a specific exposure time. This is an assignment condition contrary to USPAP Standards Rule 1-2 and Standards Rule 2-2 (sixth edition UASFLA, Interagency Land Acquisition Conference, Washington, D.C., 2016, p. 95).

### **3.1.13 – Definition of Larger Parcel**

In eminent domain litigation valuation, the larger parcel concept is used. Generally, the larger parcel must have unity of title, unity of use, and contiguity. The larger parcel must be determined while analyzing highest and best use. Unity of highest and best use may or may not be the same as the current or actual and physical use of the property. After a taking, the residue of a larger parcel may have compensable damages and/or special benefits. Following is the definition of the larger parcel:

“The larger parcel, is defined as that tract, or those tracts, of land which possess a unity of ownership and have the same, or an integrated, highest and best use. Elements of consideration by the appraiser in making a determination in this regard are contiguity, or proximity, as it bears on the highest and best use of the property, unity of ownership and unity of highest and best use (Interagency Land Acquisition Conference, UASFLA 2016, p. 16 and 110)

### **3.1.14 – Determination of Affected Area as the Larger Parcel**

It is possible for a larger parcel to contain several independent economic uses. At times it is proper to value a portion, or an affected area, of the larger parcel. Typically, an affected area is hypothetically created and defined by the appraiser. If an affected area instead of the entire ownership is valued, a description providing information and the rationale behind establishing the affected area as an economic unit is required. An affected area should be supportable as a readily achievable economic unit and is not to be confused with the acquisition area of a partial taking. The intent is not to artificially subdivide property contrary to Colorado case law (e.g., Dept. of Highways v. Schulhoff, 167 Colo. 72, 445 P.2d 402 (1968)). A plat delineating the affected area is required to be included in the appraisal report.

Caution should be taken in determining a hypothetical affected area appraised. Damages cannot accrue to or be considered off-site or outside the affected area parcel.

In some partial takings, an affected area could be the actual part to be taken. This may occur when the part to be taken does not have a unity of use with the rest of the larger parcel and is a distinct and separate economic parcel. In essence, the part to be taken as a part of the larger

parcel is a total taking. Since the take is considered a total taking, there cannot be any damages and/or benefits.

### **3.1.15 – Definition of Residue**

Residue, at times called the remainder, is property retained by the owner and is not taken or acquired. Analysis of the residue's value is critical and required for estimating compensation for damages and/or special benefits. CJI 36:4 defines residue as:

“Residue’ means that portion of any property which is not taken but which belongs to the respondent, and which has been used by, or is capable of being used by, the respondent, together with the property actually taken, as one economic unit.”

### **3.1.16 – Definition of Damages**

Damages are a result of a decrease in residue value after take. CJI 36:4 defines damages as follows:

“Any damages are to be measured by the decrease, if any, in the reasonable market value of the residue, that is, the difference between the reasonable market value of the residue before the property actually taken is acquired and the reasonable market value of the residue after the property actually taken has been acquired. Any damages which may result to the residue from what is expected to be done on land other than the land actually taken from the respondent and any damages to the residue which are shared in common with the community at large are not to be considered.”

### **3.1.17 – Definition of Benefits (Special Benefits)**

Special benefits are an integral part of compensation. General benefits are not considered. CJI 36:4 defines benefits as follows:

“Any benefits to the residue are to be measured by the increase, if any, in the reasonable market value of the residue due to the (construction) (improvement) of the (insert brief description of the proposed improvement). For anything to constitute a special benefit, however, it must result directly in a benefit to the residue and be peculiar to it. Any benefits which may result to the residue but which are shared in common with the community at large are not to be considered.”

### **3.1.18 – Formula for Computing Compensation**

The formula for computing compensation for highway acquisitions stated in § 38-1-114(2), CRS is:

“(2) (a) For highway acquisition, the right to compensation and the amount thereof, including damages and benefits, if any, shall be determined as of the date the petitioner is authorized by agreement, stipulation, or court order to take possession or the date of trial or hearing to assess compensation, whichever is earlier, but any amount of compensation determined initially shall remain subject to adjustment for one year after the date of the initial determination to provide for additional damages or benefits not reasonably foreseeable at the time of the initial determination.



(b) If an entire tract or parcel of property is condemned, the amount of compensation to be awarded is the reasonable market value of the said property on the date of valuation.

(c) If only a portion of a tract or parcel of land is taken, the damages and special benefits, if any to the residue of said property shall be determined. When determining damages and special benefits, the appraiser shall take into account a proper discount when the damages and special benefits are forecast beyond one year from the date of appraisal.

(d) In determining the amount of compensation to be paid for such a partial taking, the compensation for the property taken and damages to the residue of said property shall be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed fifty percent of the total amount of compensation to be paid for the property actually taken.”

### **3.1.19 – Modified State Before-and-After Rule (Partial Acquisitions)**

Colorado uses a modified state before-and-after rule to develop a compensation estimate for partial acquisitions. The modified state before-and-after rule is used to:

- 1) Estimate the reasonable market value of the property actually taken.
- 2) Estimate compensable damages, if any, to the residue after take.
- 3) Estimate special benefits, if any, to the residue after take.

Steps to develop a compensation estimate for the acquisition of real property are:

#### 1) Larger Parcel Value before Take

The first step in the appraisal process is to develop the reasonable market value of the subject larger parcel had there been no taking or any effect on value due to the proposed transportation project. It is an assignment condition in Colorado eminent domain appraisal to ignore Project Influence in the Before Valuation of the Larger Parcel (see USPAP 2020-21 FAQs #122 and 235).

“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, shall be disregarded in determining the compensation for the property.” (§24-56-117(1)(c), CRS)

#### 2) Value of Part Taken (Including Easements Acquired)

In the second step, the reasonable market value of the land or property actually taken is developed, again, under the assignment condition to ignore any Project Influence. The value of land taken is based on its value as part of the whole or the larger parcel. Value of improvements taken is based on their contributory value to the larger parcel. (49 CFR § 24.103(a)(2)(iv); §§ 38-1-114(2) and 115(b), CRS; and CJI 36:3)

#### 3) Residue Value before Take

The third step is calculating the reasonable market value of the residue before the property actually taken has been acquired. This step sets the initial basis for the ascertainment of damages and/or special benefits to the residue. The reasonable market value of the residue before the take is the mathematical difference of step 1 (larger parcel value before take) minus step 2 (value of part taken).

#### 4) Residue Value after Take (Including Encumbered Easement Areas Acquired)

The fourth step is to develop the reasonable market value of the residue after the real property actually taken has been acquired and proposed project improvements have been constructed. In this step, the reasonable market value of the residue after the taking no longer ignores Project Influence. Instead, the appraiser must value the remainder to include any influence on value of the project improvements as if completed. The Residue Value After Take conclusion – as compared to the Residue Value Before conclusion – will encompass whether there is any decrease or increase in value of the residue resulting from the project. However, any indicated benefits resulting from the public project that are shared in common with the community at large (general benefits) are excluded for compensation offset purposes (CJI, 36:4), but may be shown in the appraisal with explanation how the benefits are general and not specific to the residue property.

The market value of the residue after take is predicated on the “as is” or “uncured” condition of the residue after the acquisition. Any decrease or increase in value of the residue after take is based on market evidence. Damage to the residue must be established before a cost to cure can be considered to mitigate some or all damage. Special benefits may accrue to the uncured residue after take.

#### 5) Acquisition Analysis of Damages and/or Benefits

Fifth step in the process involves analysis of damages and benefits to the residue after the take. Depending upon the extent of damages and cost to cure, performance of another appraisal of the “cured” residue after take may be required. Residue value after take may include analyses of the following:

- Indicated Damages and/or Benefits
  - Compensable Damages and/or Offsetting Special Benefits
    - Compensable Damages – Incurable
      - Compensable Damages -curable (Net cost to cure) including:
        - Cost to cure
        - Feasibility of cost to cure damages (possible re-appraisal of residue After Cure\*)
        - Net cost to cure
    - Indicated Offsetting special benefits – Residue Value As I or As Cured

\*If damage to the residue is substantial and the cost to cure is not minor, an appraisal of the residue as cured may be necessary to analyze the feasibility of the cure. If the cost to cure is minor, an analysis of the feasibility of the cost to cure damages is not required.

## 6) Rental Value of Temporary Easements.

Sixth step in the process is the estimate of reasonable rental value for the time the temporary easement is used. A temporary (construction) easement is used for a limited time period and is terminated after the construction of the highway improvements. The unencumbered fee interest in the land reverts to the owner when the temporary easement expires.

## 7) Estimate of Compensation Summary

The final step is a compensation summary. The compensation summary includes the following:

- Reasonable Market Value - Land and/or Real Property Taken
- Compensable Damages – Curable – Net Cost to Cure (residue after take / as is)
- Compensable Damages – Incurable (residue after take / as is)
- Offsetting Special Benefits (residue after take / “as is” or “as cured”)
- Temporary Easements Rental Value
- Total Compensation Estimate

Special Benefits to the residue property can offset 100% of compensable damages and / or up to 50% of the value of the part taken, as described in § 38-1-114(2)(d), CRS.

“In determining the amount of compensation to be paid for such a partial taking, the compensation for the property taken and damages to the residue of said property shall be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed fifty percent of the total amount of compensation to be paid for the property actually taken.”

CDOT requires that the appraiser balance or adjust the compensation for the property actually taken and damages to the residue by any special benefits. The purpose for balancing or adjusting is to develop and report a total compensation estimate for CDOT and other intended users of the appraisal.

### **3.1.20 – Undivided Basis Rule (Undivided Fee)**

#### 1. Colorado Statute

The State of Colorado follows the “undivided basis” rule. Based upon state statute, this is a jurisdictional exception to USPAP Standards Rule 1-4(d) and (e). Property to be taken by a condemning agency is to be valued on an undivided basis instead of a “sum of the interest” approach. Sum of the interest approach involves valuing the lessor’s (leased fee estate) and lessee’s (leasehold estate) interests separately and then adding the two interests together to arrive at a value for the property taken. It is not proper to value a leasehold separately for litigation valuation purposes in Colorado.

Under the undivided basis rule, compensation awarded for the fee can be later apportioned between the lessor and lessee in a separate and subsequent hearing. A lessee is entitled to participate in the valuation trial. A lessee may join with the property

owner to present evidence as to reasonable market value of the undivided fee and to cross-examine testimony of appraisers.

Colorado Revised Statutes, Title 38, Article 1, Section 105(3) (§ 38-1-105(3), CRS) states:

“...If there is more than one person interested as owner or otherwise in the property and they are unable to agree upon the nature, extent, or value of their respective interests in the total amount of compensation so ascertained and assessed on an undivided basis by either a commission or a jury, the nature, extent, or value of said interests shall thereupon be determined according to law in a separate and subsequent proceeding and distribution made among the several claimants thereto.”

## 2. Colorado Case Law

The undivided basis rule is also a jurisdictional exception to USPAP based upon Colorado case law. Colorado case law, *Montgomery Ward & Co. v. City of Sterling*, 185 Colo. 238, 523 P.2d 465 (1974) provides further explanation of the undivided basis rule. The following annotation of *Montgomery Ward & Co. v. City of Sterling* is contained in Colorado Revised Statutes 2002, Vol. 10, Property-Real And Personal, Bradford Publishing Co., Denver, 2002, p. 1154-55.

- **“This state follows version of undivided basis rule.** Where a lessor holds a fee simple subject to an encumbrance, such as a lease, this state follows the rule that the property must be valued on an undivided basis, but with some distinctions from the strict undivided fee rule.”
- **“Under undivided basis rule, parties have opportunity to agree on apportionment of award,** thereby avoiding completely the difficult task of ascertaining the value of the separate interests.”
- **“Encumbrance adding or subtracting from fair market value not ignored.** The undivided basis rule, as applied in Colorado and, as distinguished from the undivided fee rule adopted in some states, does not ignore the value which an encumbrance may add to or subtract from the fair market value of the property as a whole.”
- **“Contract rental adding to value relevant.** The undivided basis rule contemplates that where a contract rental adds to the fair market value of the property, evidence of that rental is relevant in determining the compensation to be paid.”
- **“If contract rental less than fair rent, latter relevant.** Under the undivided basis rule, where a contract rental is less than the fair rental, the fair rental and not the contract rental is the relevant evidence on the issue of compensation. This assures a fair return for the property valued as a whole.”

### 3.1.21 – Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA)

The UASFLA – also known as the “Yellow Book” – presents guidelines and requirements for land acquisition appraisals for federal agencies. These standards have been prepared to promote uniformity in the appraisal of real property among various agencies acquiring property on behalf of the United States. CDOT’s Appraisal Program recognizes Yellow Book material as largely necessary and relevant to eminent domain appraisal for CDOT/LPA right-of-way

acquisitions, and recommends following UASFLA guidelines and requirements except where contradictory to Colorado law and case law. UASFLA material is otherwise incorporated by reference and is considered a supplement to this manual for instruction and guidelines in eminent domain appraisal, appraisal review and other appraisal-related functions.

### **3.1.22 – Uniform Standards of Professional Appraisal Practice (USPAP)**

USPAP embodies the generally accepted and recognized standards of appraisal practice in the U.S. Colorado is a “mandatory” state for appraisal licensing, which means all persons working as appraisers in Colorado must be properly licensed and are subject to USPAP, which is adopted in its entirety (as updated) as appraisal regulation by the Colorado Board of Real Estate Appraisers (BOREA).

USPAP was developed by and is updated every two years by the Appraisal Standards Board, an independent board of the Appraisal Foundation.

Appraisals prepared in connection with federal-aid projects must meet minimum federal and state requirements for eminent domain or disposal appraisal. Federal regulations for eminent domain appraisal, as described in the Uniform Act, are intended to be consistent with USPAP. However, there are circumstances (outlined elsewhere in the ROW Manual chapter) where federal and state law/regulation and eminent domain case law supersede USPAP, usually handled in appraisal reports either by appraisal assignment condition or a Jurisdictional Exception to USPAP.

#### USPAP Appraisal Complaints

CDOT and LPA appraisal reports of every type prepared for the Agency in connection with federal-aid projects or for other purposes are expected to meet applicable USPAP requirements.

Appraisal reports provided to CDOT and LPAs by property owners or others are independently prepared and might not meet applicable USPAP requirements for the assignment described by the appraiser. These reports are reviewed for whether they are acceptable or perhaps recommended, for example, as basis for an offer to purchase property from an owner for a transportation project. However, these reports are not reviewed for the purpose for working with the appraiser to ensure the report meets USPAP or other regulatory requirements.

Agency staff or contract review appraisers represent CDOT or the LPA. There might be circumstances where a review appraiser or other staff person or consultant believes that a USPAP complaint should be made to BOREA on an appraisal that is believed not to comply with USPAP.

The review appraiser or other staff person or consultant who represent the Agency will raise the concern up through the CDOT ROW Program chain, beginning with their Region ROW manager or supervisor. Decisions to file an appraisal complaint to BOREA will be accomplished in consultation with CDOT management.

### **3.1.23 – CDOT Appraiser and Review Appraiser Qualifications**

All real estate appraisers (except trainees) performing appraisal services for CDOT must be licensed by the Colorado Board of Real Estate Appraisers, as provided for in §§ 12-10-601 et. seq., CRS

Eminent domain appraising is a specialized field within the appraisal profession. Appraisal basics and advanced procedures must be understood before eminent domain appraisal can be mastered. Only senior staff appraisers and approved, as needed qualified outside appraisers can serve as review appraisers, thus they must have gained knowledge of the applicable valuation law and techniques through appraisal assignments.

Colorado law defines an appraisal as a written analysis, opinion or conclusion as to the nature, quality, value or utility of interests in or aspects of real estate. While Colorado law specifies that an “appraisal,” or “appraisal report” or “real estate appraisal” can be a written or oral analysis, CDOT requires the report to be submitted in writing, whether in hard copy or electronic format, before any reimbursement payment for the appraisal is sought and which may be considered by CDOT in determining the value of the property. CDOT requires licensing and competency at various levels to provide appraisal and advanced appraisal-related services, depending upon the job grade. Competency requires: the ability to properly identify the problem to be addressed; the knowledge and experience to complete the assignment competently; and recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment.

Educational qualifications are at minimum a bachelor's degree. In some instances, experience can be substituted for education. All experience requirements are of professional experience in occupational field. The current minimum qualifications for CDOT eminent domain real property appraisers are listed below:

Level/Class Code	Experience	State Licensing
Appraiser I / H1F1XX	None	Certified General
Appraiser II / H1F2XX	One Year	Certified General
Appraiser III / H1F3XX	Two years	Certified General

A CDOT review appraiser is required to have a Certified General Appraiser license and have at minimum an Appraiser II classification title.

Any fee/contract appraiser or review appraiser hired by CDOT must be qualified for the assignment being outsourced.

### **3.1.24 – Legal Opinions**

All appraisers will consider legal problems involved in the appraisal process and procedures. Care must be exercised to see that legal opinions are clearly defined and resolved. Fee appraisers should consult with the CDOT Appraisal Contract Administrator when such problems are first encountered. The appraisal CDOT Appraisal Contract Administrator may provide the appraiser with copies of case law so the appraiser can develop their own opinion. The CDOT Appraisal Contract Administrator may need to request legal advice from the Office of the Attorney General. It may be desirable to obtain legal advice for matters concerning general and

special benefits, compensable damages, extent of larger parcel, personal property versus real property, valuations of dedications, encroachments, etc. The Office of the Attorney General will not give legal opinions as this may be construed as instructing the appraiser.

### **3.1.25 – Property Inspection and Appraiser-Owner Contact Sheet**

#### **1. Property Inspection with Owner and Interview**

The owner or owner's designated representative will be given an opportunity to accompany the appraiser during the inspection of the subject property. An owner inspection also includes a tenant who is the owner of tenant real property. In some situations, it may be advisable that a written offer to accompany the appraiser be given by return receipt Certified Mail to each owner in order to protect the appraiser and CDOT. § 24-56-117(1)(b), CRS states:

Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property; except that the department of transportation may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

During the interview, it will be necessary to discuss the landowner's operations as to current and proposed usage, the land usage and what facilities would be required to maintain such usage, proposed structures, animal unit carrying capacities, irrigation facilities and rights, etc. During this interview, the appraiser should use extreme caution not to make any commitments on design or construction features beyond those presently on the ROW plans.

During the property inspection and owner interview, the appraiser will not discuss the subject property value, directly ask owners for their opinion of value for the parcel being appraised, or disclose values on which the appraisal of the subject property is based. Discussion of property value at this time is not an acceptable or permitted and will be construed as beginning negotiations before completion of the appraisal. Doing so may jeopardize funding for the project. Appraisers should be cognizant that statements they make to landowner's or their representatives can be used in depositions or cross examinations.

#### **2. Owner-Appraiser Contact Sheet (CDOT Form #1144a 9/94) and Right of Way Booklet**

An owner-appraiser contact sheet must be provided with each parcel appraisal when the report is delivered to CDOT. Include a brief summary of the party contacted, if a ROW booklet was provided, and any pertinent comments concerning the owner interview and inspection. The ROW booklet is published by CDOT. The booklet provides the owner with pertinent information concerning appraisal, acquisition, and relocation processes.

### **3.1.26 – Acquisition Payment Minimums**

CDOT's minimum acquisition payment policy recognizes that some right of way acquisitions at fair market value are not motivating to the property owner's time and effort in working with CDOT to come to an agreement for the acquisition.

CDOT ROW acquisitions will follow the minimum compensation payment schedule shown below for acquisitions that meet the described criteria that follows.

#### Waiver Value or Appraisal-based Acquisition Payment Minimums

Fee Taking (RW parcel) = \$1,000

Permanent Easement (PE, UE, RE, SE) = \$800

Temporary Easement (TE) = \$500

Minimum compensation payments will tie to the eminent domain larger parcel concept – the larger parcel being all that owner's property that generally meets at least two or all three of the following conditions:

- 1) the owner owns all the property subject to the ROW acquisition (unity of title)
- 2) the property ownership is contiguous across all the property subject to the ROW acquisition (contiguity)
- 3) all the property subject to the ROW acquisition has unity of use and/or highest and best use

Minimum acquisition payments are not the sum of minimums for different property rights acquired from the same owner, but it is the minimum payment assigned to the single most significant property right acquired among all rights to be acquired from the same property owner – all tied to the larger parcel concept.

### **3.1.27 – Rounding Calculations**

Rounding calculations and mathematical sums in appraisal reports, waiver valuations, FMVs and related valuation or summation documents is neither required nor prohibited.

When rounding is applied in such documents, it may be applied largely at the discretion of the staff or contract appraiser, review appraiser, valuer or other person who is rounding the numerical information.

However, the user's discretion in rounding is limited in a certain few circumstances where a rounding protocol must be followed if rounding is applied. See below for rounding guidelines and certain limited requirements:

#### Rounding in Total Take Appraisal and Disposal (Excess Parcel et al.) Appraisal

Calculations and sums may be rounded to commonly accepted norms in Total Take and Disposal appraisal reports at every mathematical level in the report as the appraiser determines appropriate. However, such rounding should show conclusions or sums that are within the



adjusted bracketed data set or other relevant range in the appraisal report. Rounding in Total Take and Disposal appraisal may be used in (but not limited to):

- Sales Comparison, Cost, Income approach conclusions
- Reconciliation/Final Value conclusion
- Other relevant data brackets as appropriate

#### Rounding in Partial Take Appraisal and Waiver Valuation

Rounding of calculations in Partial Take appraisal or waiver valuation may follow the protocol described above for Total Take and Disposal appraisal, however, excluding total compensation estimate and applied as cautioned and clarified below:

Rounding is discouraged in the appraisal conclusions of the Remainder Value Before Take and Remainder Value After Take. This is because rounding these calculations can result in minor differences between the two valuations that would suggest a damage or benefit where there is none, but was caused by differences in rounding at opposite ends of the Before/After valuation spectrum. If the appraiser applies rounding in the remainder value conclusions before and after take, the rounding should account for this prospect.

- **The total compensation summation in a Partial Take appraisal or waiver valuation, if rounded, will round up to the next \$10.**

#### Rounding the FMV – Next Highest \$10 if Rounding is Applied

The review appraiser may round only the *Compensation Estimate Recommended for Approval* line item on the FMV to the next highest \$10, or instead may round according to the appraiser's rounding in the appraisal report if such rounding in the report fits within the parameters of this section 3.1.27.

The review appraiser will not double round in the FMV – will not further round already rounded numbers expressed in the appraisal that is basis for the FMV.

### **3.1.28 – Required Appraisal Documentation and Reporting**

Basic documentation and reporting requirements involve sale transaction data sheets, price adjustments, verifications and reporting, inspection of sales, and enhancement or diminution due to the project and/or taking.

#### 1. Required Sale Transaction Data Sheet

CDOT requires a sale transaction data sheet for each sale used in the valuation process be included in the appraisal report. The principal appraiser signing the report must examine the sale transaction deed (or except for litigation appraisal, CDOT may allow sale deed review by others or waive such examination entirely). Refer to the appraisal report exhibits in the appendices for an example sale data sheet. As an example, a sale transaction data sheet must include the following:

- a. Sale number assigned to the sale transaction.
- b. Photograph of the sale with description of view, name of the person who personally took the photograph and the date the sale was inspected by the signing appraiser.
- c. Location description of the sale referring to address, lot and block, or abbreviated legal description of section, township and range. Also include a locational map such as the assessor plat map or an aerial with the sale location clearly noted.
- d. Assessor tax schedule number.
- e. Legal description (if minimal)
- f. Name of grantor.
- g. Name of grantee(s).
- h. Name of the grantor, grantee (both when possible) or other party involved in the transaction who confirmed details of the transaction to the principal appraiser signing the appraisal report or to the person assisting in the appraisal process.
- i. Name of the person (see above) who confirmed the sale transaction and the date the sale was confirmed.
- j. Date of the sale, type of sale deed (e.g., warranty, special warranty, etc.), recordation data (e.g., book/page, reception number, etc.), property rights conveyed, financing source and method, conditions of sale, selling price, and unit price (e.g., price per square foot, price per acre, etc.).
- k. Land area, shape, topography, drainage, flood plain, access, utilities, zoning, stage of development, highest and best use, and use at the time of the sale. Other characteristics may also be analyzed.
- l. For improved sales, all necessary information about the improvements such as size, age, type, condition, income and expense data, etc.
- m. Additional comments concerning other pertinent details of the transaction such as post-sale expenses and project influence.

## 2. Sales Discussion and Transaction Price Adjustments

The sales used in direct comparison to the subject will be analyzed in the report to include appropriate and supported adjustments for all elements of comparison that affect value, including but not limited to the following:

- Real property rights conveyed
- Financing terms
- Conditions of sale
- Expenditures made immediately after purchase
- Project influence
- Market conditions

Also

- Location
- Physical characteristics (e.g., shape, topography, age, condition of improvements, utilities, etc.)
- Economic characteristics
- Highest and Best Use
- Legal characteristics (land use, zoning)

- Non-real property components of value

Additional elements of comparison may be necessary depending upon the appraisal situation.

Comparable sales adjustments applied may be qualitative and/or quantitative. All adjustments applied must be supported with market data. That market support may be reported in the appraisal report or retained in the appraisal work file. Adjustment support must be documented and available upon request.

### 3. Required Sale Transaction Verifications and Sale Deed Examination

The appraiser is required to verify details of the direct comparable sales analyzed in the appraisal report, including but not limited to the following information:

- the sale price
- rights conveyed
- financing terms
- conditions of sale
- project influence upon the sale price
- if the sale was an arm's length transaction.

Any other pertinent elements of the sale relevant to the appraisal process also should be confirmed.

**Minimum required sales data verification for all appraisal reports is with a person involved in the transaction.** The principal appraiser signing the report must confirm all comparable sales that have been relied upon for the value opinion conclusion with a person involved in the sales transaction. Supplemental (not primary) sale data confirmation might derive from county assessor records, multiple listing (or similar) service, sale deed records and similar sources. CDOT recommends appraisers check these sources as available for base level information.

**Litigation appraisal requires buyer/seller sale confirmation:** In litigation appraisal, the principal appraiser signing the appraisal report must confirm all comparable sales that have been relied upon for the value opinion conclusion with the buyer and/or seller, and preferably with both. This is CDOT's "gold standard" for all sales transaction verification for all appraisal reports and may be required by the Region ROW Manager for any given assignment. This level of verification will be communicated via the letter of information and/or contract task order.

**Examine Recorded Sale Transaction Deed:** The appraiser will examine a copy of each direct sale comparable transaction deed analyzed in the appraisal report. CDOT also recommends a copy of the deed be retained in the appraiser's working file. For litigation appraisal, this is an absolute requirement that must be fulfilled by the principal appraiser signing the appraisal report, not an associate appraiser or other person. Excluding litigation appraisal, the requirement that the appraiser review sale deeds for all CDOT appraisal reports may be waived only at CDOT's discretion.

In reviewing sales transactions deeds, it also is often useful to check among the recorded documents for financial and/or legal papers related to the transaction that are commonly found immediately before or after the recorded sale deed, as these related documents can provide useful information related to the sale, including parties involved in the sale and possibly their contact information.

**The basis for required buyer/seller verifications and reviewing recorded sale deeds in litigation appraisal is found in Colorado Revised Statutes:**

§ 38-1-118, CRS states the following:

**“Evidence concerning value of property.** Any witness in a proceeding under articles 1 to 7 of this title, in any court of record of this state wherein the value of real property is involved, may state the consideration involved in any recorded transfer of property, otherwise material and relevant, which was examined and utilized by him in arriving at his opinion, if he has personally examined the record and communicated directly and verified the amount of such consideration with either the buyer or seller. Any such testimony shall be admissible as evidence of such consideration and shall remain subject to rebuttal as to the time and actual consideration involved and subject to objections as to its relevancy and materiality.”

Per the statute, Colorado Eminent Domain law precludes appraisers from testifying about particular sales unless the appraiser has “personally examined the record and communicated directly and verified the amount of such consideration with either the buyer or seller.” This requirement – that appraisers both (1) review a recorded document transferring property, and (2) communicate with either the buyer or seller to verify the sale – is critical because the failure to do so carries a strong risk that such sales will be inadmissible in court. If an appraiser’s sales are inadmissible for courtroom purposes, the appraiser will not be able to use them as a basis to support his or her opinion of value, and CDOT’s position of value is severely diminished. Accordingly, appraisers should document details about when he or she communicated and verified the sale amount with the buyer or seller as well as who the appraiser spoke to.

**Purchases by entities with the power of condemnation, also distress sales, forced sales, and sales with unusually generous financing terms should generally not be used for comparison.** If such sales are necessary due to the lack of available market data, it is important that detailed verification and proper adjustment be made. Sales involving trades or exchanges are generally considered unreliable for the Sales Comparison Approach. Sales between family members may involve other considerations and are not typically open market transactions. Sales of farms that include livestock, farm tools, and equipment such as tractors, trucks, etc. should not be used unless the sales can be logically adjusted to reflect only the real property transaction.

4. Required Inspection of Sales

The principal appraiser signing the appraisal report is required to personally inspect sales used in the appraisal for comparison purposes. This also includes properties used for rental and income comparison and improvements used for cost comparisons. All photographs should be identified, show the date the photograph was taken, and the name or initials of the person who took the photograph, and the direction of the photograph. The purpose of inspecting sales is to gain firsthand or direct knowledge of the sale or rental and how it compares to the property being appraised.

5. Enhancement or Diminution in Value Due to the Proposed Project (Project Influence)

It is required that sale transactions used for comparison purposes are examined for possible enhancement or diminution in value due to the proposed project. The indicated value developed by the sales or income should not reflect any increase or decrease in value before the take due to the proposed project. If during confirmation of the sales or rental transaction it is revealed the project influenced the price or rental paid for the property, an appropriate adjustment is required. Each appraisal should contain a sufficient description of the sale or rental and the influence of the project on the price or rental in order for the review appraiser to understand the conclusions of the appraiser.

Project Influence from the federal view, Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA, "Yellow Book"), considers when in time the subject property from which a right-of-acquisition is necessary was encompassed in the scope of the government project and whether the government is committed to the project, after which point Project Influence must be ignored.

Three legal requirements to constitute a "project" as to the Project Influence rule is that: there must be a public purpose requiring the acquisition of land, the particular lands required for the public purpose must be identified, and finally, such imminent acquisition must be evident to the public.

### 3.1.29 – Parcel Numbering and Groups

1. Parcel Numbering

The parcel numbering shown on the ROW maps and approved for ROW acquisition will be used in the appraisal report. Parcel numbering also will appear on plan tabulation sheets, ROW exhibits, memorandums of ownership, legal descriptions, etc.

2. Parcel Groups – Multiple Parcels Under One Ownership

A project may contain several parcels owned by the same owner. The multiple parcels under one ownership may not meet the test for a larger parcel. The multiple parcels may not have unity of use. In this case, each parcel appraisal report should refer to the other parcels being taken from the same owner.

3. Parcel Groups – Larger Parcel (Integrated Operation)

A larger parcel comprised of several separate parcels which are under the same ownership, and are considered to have unity of use (integrated operation and highest and best use), will be included in one appraisal report though the parcel numbering may not be sequential. An explanation or description supporting the conclusion of the larger

parcel as an integrated operation must be included in the report. The recapitulation section of the appraisal report will summarize the value of the parcels and compensation for the parcels.

When inclusion of all parcels comprising the larger parcel in one appraisal report appears cumbersome or impractical, a request may be made of the CDOT Appraisal Contract Administrator to separate the parcel group into separate appraisal reports. The interrelationship of the larger parcel should be stated in each appraisal report.

### **3.1.30 – Required Letter of Information to the Appraiser**

A letter of information to the appraiser is fundamental to getting the appraiser started with a good understanding of the project and individual parcels being acquired for the project. The required Letter of Information is provided to the fee appraiser or staff appraiser who is preparing the appraisal.

Following are examples of general items, problems/concerns, unusual or special items, and particulars concerning temporary easements that are recommended for inclusion in the Letter of Information. The Region should use appropriate judgment on the extent of the Letter of Information. At a minimum, the Letter of Information should be sufficient in scope to provide the appraiser with adequate data to address the appraisal problem. Include any other items the appraiser should consider in the appraisal. Specific issues relating to individual parcels must be included.

#### **1. Items to Consider in the Letter of Information**

- General description and purpose for the proposed project.
- Proposed start-up date.
- Anticipated completion date.
- Does the project include additional lanes? Bridge replacement? Safety project?
- Project limits (general location).
- Copy of Permission to Trespass form on each parcel should be attached to the Letter of Information.
- Environmental data and/or reports should be attached to the Letter of Information.
- Known phone numbers of owners or their representatives previously contacted by the region.
- Names of experts in the project area which may be used for specialty reports on wells, septic/leach field systems, irrigation sprinkler systems, structural engineering, etc.
- Name and phone number of Project Manager if it is different from the Region ROW Manager.
- Name and phone number of person to contact to obtain construction plans and data.
- Pertinent exceptions and other information obtained from a title commitment.

#### **2. Brief Description of Problems/Concerns on Each Parcel to Consider**

Information gathered during early contacts by Region ROW personnel will assist and aid the appraiser in ordering specialty reports by independent experts.

### 3. Survey Staking Considerations

- Has the existing and proposed ROW been staked?
- If not, when is the property scheduled for staking?

### 4. Unusual or Special Items for Consideration

#### a. Advertising signs

- Region sign inspector should provide available lease information, age, size, and milepost location of the sign.
- Who owns the sign? Is it an on-premise or off-premise sign?
- The Region will provide information regarding the legal or illegal existence of a sign or billboard. This information should be included in the Letter of Information.

#### b. Access

- Will access be controlled by an "A" line?
- Will there be any "lost" points of access?
- What size curb cut will be installed for any remaining access points?
- How will access to the subject properties be handled during construction?
- Include proposed location of and proposed size of curb cuts.
- How is access to remainders to be handled?
- List parcels and show or explain access to remainders, service roads, trails, cattle passes, etc.

#### c. Driveways

- Will affected driveways be paved up to the new ROW line?
- What type material will be installed from the driveway back to the new ROW line; asphalt, concrete, class 6 road base, gravel?

#### d. Grade changes

- Indicate where significant grade changes and percent of grade of driveway slopes effected by the project.
- Along with Right of Way plan sheets, a set of centerline profile sheets for the project should be included as part of the appraisal package.

#### e. Irrigation ditches and structures

- Inform whether the ditch facilities owner(s) will be compensated through the valuation process to restore or replace these facilities on their own, or that the affected facilities will be restored or replaced by the project. In either case the appraiser will explain this in the appraisal.

- If irrigation ditch facilities will be handled in the appraisal, the Region should develop or obtain cost information to design and replace or restore the affected improvements. The cost estimates should include 1) RCN of the affected ditch facilities, and 2) Cost new to construct replacement ditch facilities on the remainder property.

f. Fencing and gates

- Does the private owner or CDOT own existing fences and gates in the area of acquisition?
- What type fencing and gates will replace the existing fence and gates, if any (include "M" standard for replacement fencing)?

g. Utilities

- Which utilities and utility companies will be effected by the proposed project?
- Provide names, addresses, and telephone numbers of contact persons of the utility companies.
- Will any of the utilities be relocated as a part of the project, and if so, where will they be relocated?
- Will the utilities be buried or overhead?

h. Landscaping

- Will replacement of private landscaping be a construction item or is the contributory value of landscaping to be included in the appraisal report?

i. Agreements

- Include any previous agreements with other governmental agencies: e.g.: cities, counties, regional and /or special districts.

j. Wells and individual wastewater treatment systems

- Please indicate locations, by station, distance left or right of centerline, of any known wells and/or septic, and leach field systems. Please state if quantity and quality tests have been completed for wells, which are in proximity to the acquisition and/or new roadway?
- New technology available for location of septic tanks - electronic mouse/bug transmitter placed in system and tracked by a receiver. Cost is minimal.

5. Temporary Easement Considerations

- State and explain the specific intended purpose for temporary easements.
- What is the length of time the temporary easement will need to be rented?
- Will improvements in the area of the temporary easement be taken care of as a construction item, or will it be handled in the appraisal?



- Will man-made improvements be disturbed and paid for in the appraisal, or will they be protected during construction?
- Will trees and landscaping be disturbed and paid for, or will they be protected during construction?

#### 6. Other Considerations

- Explain the nature of existing easements and new easements shown on the plans.
- Explain any other unusual information pertaining to the project, which the appraiser should consider when making the appraisal, including construction items that may affect the value of the remainder.
- Document requirement for verification of sales with buyer and/or seller if the Region ROW Manager is requiring this level of sales confirmation.

## SECTION 3.2 – GENERAL APPRAISAL REPORTING INFORMATION

For acquisitions estimated to be \$5,000 or more, the property owner has the right to obtain their own appraisal. CDOT will pay the reasonable fee for the appraisal (§ 38-1-121(1), CRS).

Only data appropriate to the property being appraised should be included in the individual report. All direct sales relied upon to complete each appraisal are required to be included in the appraisal report. Larger groups of sales relied on for general analysis, or sales needed to develop support for adjustments, and other sales data should be included in the report as necessary or useful, or as CDOT ROW staff may require.

All sales used in direct sales comparison must be inspected and photographed by the principal appraiser signing the report (photos by others is permissible by CDOT permission only). The appraiser or other knowledgeable person must confirm each transaction with either the buyer or seller (or both when possible) or with a person involved in the transaction, and must examine the sale transaction deeds (these requirements may be waived or refined at CDOT's discretion). For a litigation appraisal, the principal appraiser who signs the report must confirm the sale details with the buyer or seller (preferably both) and must view the sale deeds to meet statutory requirements.

At minimum, a narrative summary of sale adjustments is necessary. However a comprehensive narrative description combined with dollar or percentage adjustments for property rights conveyed, favorable financing terms, conditions of sale, project influence on price, market conditions, and property adjustments may be required.

It may be necessary for a CDOT review appraiser to request additional information or analyses contained in the appraiser's work file in order to properly review an appraisal report.

Appraisal assignments involving more than one parcel in a project, the State, Regional and/or Metropolitan data will be prepared with one copy for the CDOT main project file. Reference the main file copy in the body of the appraisal reports. Inclusion of neighborhood data is required in each appraisal report.

There is no dollar limit established that requires two CDOT appraisals on a single parcel assignment. The decision for a second appraisal on a parcel or property will be made by the CDOT Appraisal Project Manager and Region ROW Manager on a case by case basis. This decision should be made when ROW plans are received so as not to cause delays in project scheduling.

### 3.2.1 – Waiver Valuation

**“Waiver Valuation** – The term *waiver valuation* means the valuation process used and the product produced when the Agency (CDOT or LPA) determines that an appraisal is not required, pursuant to (49 CFR) § 24.102(c)(2) appraisal waiver provisions.” (§ 24.2 (a) 33)

Waiver valuations are specific to use in federal-aid projects and are not defined as appraisals in the federal Uniform Act. Their purpose is to save time and money among the numerous functions necessary to acquire real property rights for transportation projects.

#### Colorado Statute

Upon CDOT-sponsored amendments to state laws governing real estate appraisal and appraisers that were signed into law in 2018, the amended state laws defining what is an appraisal and who is an

appraiser should encourage appraisers of their ability to perform waiver valuations without concern for violating USPAP.

**Definition of an appraisal – CRS 12-10-602(1)(c)**

"Appraisal," "appraisal report," or "real estate appraisal" does not include a federally authorized "waiver valuation," as defined in 49 CFR 24.2 (a)(33), as amended."

**Definition of who is an appraiser – CRS 12-10-602(9)(b)(VI)**

(b) **“Real estate appraiser” or “appraiser” does not include:**

(VI) “A right-of-way acquisition agent, an appraiser who is licensed and certified pursuant to this part 6, or any other individual who has sufficient understanding of the local real estate market to be qualified to make a waiver valuation when the agent, appraiser, or other qualified individual is employed by or contracts with a public entity and provides an opinion of value that is not represented as an appraisal and when, for any purpose, the property or portion of property being valued is valued at twenty-five thousand dollars or less, as permitted by federal law and 49 CFR 24.102 (c)(2), as amended;

As quoted above, Colorado law clarifies that a federal waiver valuation is not an appraisal. This means a federal waiver valuation does not have to be developed or reported according to USPAP standards for an appraisal. The law also states that licensed individuals employed or contacted with a public entity may develop waiver valuations up to \$25,000. **Primarily the CDOT or contract appraiser who prepares a waiver valuation must not misrepresent their role or mislead the intended user (not acting as an appraiser) in preparing a waiver valuation.**

See chapter four of the Right of Way Manual for specific guidance on preparing waver valuations.

### **3.2.2 – Restricted Appraisal Report Information**

Restricted appraisal reports as defined by USPAP are not acceptable for CDOT eminent domain valuation or condemnation proceedings. Restricted appraisal reports are designed only for internal use by CDOT. Eminent domain appraisal reports prepared for CDOT involve many intended users and therefore must not be restricted appraisal reports. In some limited situations, a restricted appraisal report may apply purely for CDOT internal use. If a fee appraiser is contracted for a restricted appraisal report, the appraisal services Scope of Work will include all applicable criteria.

### **3.2.3 – Total Take Appraisal Information**

CDOT staff appraisers and CDOT contract fee appraisers are required to use the Total Take report format for appraisals of the acquisition of an entire ownership, except when the total acquisition is for a residential property. In the case of a residential total take, a form report may be acceptable. The CDOT Total Take report format is available online or from the Statewide Appraisal Program Manager or from CDOT Appraisal Project Administrators. Refer to the Total Take report format in the exhibits to this chapter. The format has been designed to be flexible and may be adapted to different appraisal problems involved with total takes.

The Total Take appraisal report requires:

- Signed letter of transmittal which contains content and wording in the Total Take report format.
- Signed certification of appraiser which contains content and wording shown in the report format.
- Reasonable market value definition from CJI 36:3.
- Definitions, as applicable, contained in the report format.

Delete or add items to the format to adapt the format to the appraisal problem. For example, if the appraisal assignment is the total take of vacant land, delete format sections for owner improvements data, tenant improvements data, cost approach, etc.

Region appraisal project managers or their superiors may always require separate land/site valuation in a total take appraisal report, otherwise this is at the discretion of the appraisal project manager and only if the appraisal analysis without separate land/site valuation will yield credible results. A total take appraisal that includes a Cost Approach for any reason will include land/site valuation.

An exception to using the total take appraisal format exists when the acquisition is for a residential property. In the case where a residential property is being taken in its entirety, a standard residential appraisal format may be acceptable. The appraisal report format must be reviewed and approved by the CDOT Appraisal Project Administrator on a project by project basis.

### **3.2.4 – Partial Take Appraisal Information**

CDOT appraisers and CDOT contract appraisers are required to use the appropriate one of two CDOT partial take report formats for partial take appraisals. To encourage uniformity in the presentation of data and to assure pertinent data and analyses are included in each appraisal report, CDOT has developed two partial take report formats. One is titled Standard Partial Take report format and the second is titled Complex Partial Take report format.

Both partial take appraisal report formats require:

- Signed letter of transmittal which contains content and wording shown in the report format.
- Signed certification of appraiser which contains content and wording shown in the report format.
- Reasonable market value definition from CJI 36:3.
- Definitions, as applicable, contained in the report format.
- Other Pertinent Reports and Exhibits. These would include, for example, any written instructions given to the appraiser by the agency or its legal counsel, any specialist reports, any pertinent title documents, and any charts or illustrations that may have been referenced in the body of the report.

#### **1. Standard Partial Take report format**

This format has been designed to be flexible and may be adapted to different appraisal problems involved with partial takes. As with the Total Take report format, delete or add items to the format to adapt the format to the appraisal problem.

The Standard Partial Take report format may be used on uncomplicated acquisitions. Use the Standard Partial Take report format when the following (but not limited to) appraisal factors are involved:

- The valuation problem is not complex.
- Highest and best use of the property is not controversial.

- Present use or similar use is highest and best use of the property.
- Highest and best use of the property is the same before and after take.
- Zoning of the property is not in question.
- Property improvements are consistent with highest and best use.
- Value conclusions are based on readily available market data.
- Main improvements or structures will not be affected by the partial take.
- Only the value of the underlying land and impacted minor improvements in the take area require valuation (based on concurrence with CDOT and appraisal services Scope of Work).
- No substantial question concerning damages and/or benefits to the residue.
- Cost to cure damage is minor or nominal.
- No significant portion of the estimate of compensation is compensable damages.
- Property is not contaminated.
- No incurable damages result from the acquisition.
- No special benefits will result from the project or from a cost to cure.

## 2. Complex Partial Take report format

This format has been designed to be flexible and may be adapted to different appraisal problems involved with partial takes. As with the Standard Partial Take report format, delete or add items to the format to adapt the format to the appraisal problem.

Use the Complex Partial Take report format when the following (but not limited to) appraisal factors are involved:

- The valuation problem is complex.
- Highest and best use of the property is controversial.
- Present use is not highest and best use of the property.
- Reasonable probability of rezoning the property exists.
- Property improvements are not compatible or consistent with the highest and best use.
- A complex specialty report is needed.
- Market data for a sales comparison approach is inadequate and consideration must be given to the cost and/or income approaches, as appropriate.
- Value conclusions may be based upon opinion due to inconclusive or scarce market data.
- Substantial questions may exist concerning damages to the residue after take.
- Substantial questions may exist concerning special benefits to the residue after take.
- Significant portion of the estimate of compensation is compensable damages.
- Cost to cure is substantial.
- Residue after take requires valuation as cured.
- Property is contaminated.
- Decreases or increases in market value due to the proposed projects improvements are involved.
- Possibility of litigation proceedings is high.

If there is any doubt as to which report format to use, the CDOT Appraisal Project Manager will ask for a Complex Partial Take report format. Appraisal report format

changes later can cause scheduling problems and delays in meeting appraisal completion delivery dates.

It is the responsibility CDOT Appraisal Project Manager to select the most appropriate appraisal report format option. If a question still remains as to which appraisal report format to use, contact the CDOT Statewide Appraisal Supervisor in the Project Development Branch, Headquarters ROW.

### **3.2.5 – Specialty Appraisal Report Information**

A specialty appraisal report is any specialized expert's report on the value of a portion of a property. Refer to Section 3.12.18, Appraisal Review, for additional comments. The principal appraiser signing the appraisal report may find it necessary to rely upon a specialty report. If the appraiser relies on a specialty report, the appraisal report must include the findings of the specialty report. A specialty report is a valuation of some aspect of the property that is unique, such as machinery or equipment, mineral rights, etc.; that may not fall within the expertise of the real property appraiser.

If a separate valuation for specialty items such as machinery, bulk plant equipment, restaurant equipment or other items is necessary, the specialty report shall be included in the appraisal report. Improvements included in the specialty report must be appraised according to their contributory value to the reasonable market value of the larger parcel or for their salvage value (value for removal), whichever is greater. The principal appraiser is responsible for incorporating the specialty report into the appraisal report (UASFLA 1.13 and USPAP SR 2-3). The principal appraiser will perform their own research and analysis to support acceptance or rejection of the conclusions contained in the specialty report.

As a minimum, specialty reports normally should contain:

- Project number, project code number, parcel number, location, and name of owner.
- Identification of the property being appraised including identified photos of property taken or damaged.
- Statement of the purpose of the appraisal, the value appraised, date of valuation, and interest to be acquired.
- Statement of any assumptions or contingent and limiting conditions.
- Descriptions of the items appraised including type, effective age, model, actual age, size, condition, purpose, obsolescence, date of any additions or modifications, and general analysis of the total plant or operation involved.
- Property owned by the real estate owner and property owned by tenants must be separately valued if there is agreement as to ownership.
- Show the data and analysis to explain, substantiate, and document the estimate of reasonable market value of the specialty items in their entirety and the remainder and partial takings as well as any separate interest. Show cost new, the specific source of cost and all calculations. Any depreciation must be explained and supported for each type (i.e., physical deterioration, functional, and economic obsolescence).
- Final estimate of value of the specialty items in their entirety with a breakdown of any separate interest involved.
- The specialty appraiser's certificate including signature and date.

- Appendices: any other exhibits or descriptive materials such as maps, charts, photos, appraiser qualifications, plans and other data not included in the body of the report except by reference.

It should be noted that in the instance where the individual application of the cost new, in place value, or cost to move and reinstall the specialty item does not contribute value or apply to the valuation process, the specialty item might be excluded. If a specialty item is excluded, then a full explanation is required.

The Comment to USPAP Standards Rule 2-3 (certification) states:

When a signing appraiser(s) has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work. The signing appraiser(s) is required to have a reasonable basis for believing that those individuals performing the work are competent. The signing appraiser(s) also must have no reason to doubt that the work of those individuals is credible.

UASFLA. 1.13. Appraiser's Use of Consultant's Reports states:

...the appraiser cannot merely accept such consultant reports as accurate, but rather must review such reports and adopt them only if reasonable and adequately documented and supported. The results of secondary valuation reports, such as mineral, fixture, or timber valuations, cannot simply be added to the value of the land to arrive at a value of the property as a whole without proper analysis by the appraiser. To do so is a violation of the unit rule and professional standards. The appraiser must consider these components of the property in light of how they contribute to the market value of the property as a whole.

Specialty reports most often provide value information but they are not limited for that purpose. Should an appraiser deem a specialty report necessary to better understand a special use property and/or the industry in which it a part of, the appraiser may request a specialty report. For these types of requests, the appraiser will coordinate with the CDOT Project Manager for obtaining these special reports.

### **3.2.6 – Mobile Home Information**

The term mobile home includes manufactured homes and recreational vehicles used as residences. (49 CFR § 24.2(a)(17)). Mobile homes connected to electric, water, and sewer facilities will be appraised as real property. This does not include recreational vehicles, which are considered personal property in Colorado. The determination as to a mobile home being real or personal property will be made by the CDOT Appraisal Project Manager at the time the appraisal process is started.

Appendix A to § 24.2(a)(17) provides additional guidance on mobile and manufactured homes:

“For HUD programs, mobile home is defined as "a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such terms shall include any structure which meets all the

requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act, provided by Congress in the original 1974 Manufactured Housing Act." In 1979 the term "mobile home" was changed to "manufactured home." For purposes of this regulation, the terms mobile home and manufactured home are synonymous. When assembled, manufactured homes built after 1976 contain no less than 320 square feet. They may be single or multi-sectioned units when installed. Their designation as personalty or realty will be determined by State law. When determined to be realty, most are eligible for conventional mortgage financing. The 1976 HUD standards distinguish manufactured homes from factory-built "modular homes" as well as conventional or "stick-built" homes. Both of these types of housing are required to meet State and local construction codes."

### 3.2.7 – Donation of Property Information

The donation of property is addressed in 49 CFR § 24.108, 23 CFR § 710.505, and § 24-56-117(1)(j), CRS. Additional donation information is addressed in Chapters 4 and 8 of the CDOT ROW Manual.

**Note: Before accepting a donation, CDOT should determine whether or not the property is contaminated or has hazardous wastes present.**

#### 1. Value of a Donation

A donation of real property may have separate values for differing purposes. The value of the donation to the agency will be the fair market value of the donated property. A value determined as a result of negotiation with a property owner is not acceptable as a basis for determining a credit to CDOT's share of project costs. The value of the donated property must be based on an appraisal or waiver valuation as appropriate, and prepared by persons qualified to perform the work.

It is the property owner's responsibility to ascertain the fair market value of the property for tax purposes, since such donations may be tax deductible to the donor. For the donor to claim the value of the property donated to CDOT as a deduction against taxable income, an independent appraiser must determine its value. The independent appraiser must be hired by the donor because IRS regulations prohibit the appraisal for tax purposes from being prepared by an employee of the agency. This precludes the donor from utilizing CDOT's fair market value estimate prepared by either its staff or fee appraiser for tax purposes. CDOT may pay the reasonable costs of an appraisal made by an independent appraiser for the property owner if the value is estimated to be more than \$5,000.

#### 2. Appraisal for Purposes of Donation

As stated above, donations of real property may have separate values for different purposes. For the purpose of establishing a credit to CDOT's participation in project costs, the fair market value of the property is used. Where CDOT has an eminent domain appraisal of property which includes donated property, it may use an appraisal made specifically for the purpose of determining the amount of credit, or the amount may



be abstracted from a current eminent domain appraisal made by CDOT if the conditions listed in the preceding section are met.

The value of the donated property must be estimated by a qualified appraiser unless the owner releases CDOT from such obligation in writing. The date of value is the same as the date of donations, i.e., the date the donation becomes effective, or when equitable title vest in the State, whichever is earlier. The agency appraiser must appraise the property in conformity with the provisions of 49 CFR §§ 24.103 and 24.104 subject to the following conditions.

- Increases and decreases in the value of the donated property caused by the project are to be excluded.
- The appraisal shall not reflect damages or benefits to the remaining property.
- The value of the donated property includes the contributory value of any improvements.

The owner should be advised to consult a tax consultant, tax attorney, CPA, or the Internal Revenue Service concerning donation tax implications. CDOT will pay the reasonable cost of an independent appraisal (subject to § 38-1-121 CRS) engaged by the property owner if the donation value is estimated at \$5,000 or more, provided a copy of the owner appraisal is provided to CDOT.

### 3. Donation of Property with Value of \$25,000 or Less

If CDOT determines the value of the donation is \$25,000 or less, the department must either appraise the fair market value of the donated property or prepare a Waiver Valuation, as appropriate

If CDOT determines the value of the donated property is \$5,000 or less, the owner will have to pay for their own appraisal if an appraisal is required for donation tax purposes. The owner should be advised to consult a tax consultant, tax attorney, CPA, or the Internal Revenue Service concerning donation tax implications.

### 4. Donation of Property with Value Greater Than \$25,000

If the value of the donation is greater than \$25,000, an appraisal of the donated property's fair market value must be made.

### 5. Donation in Exchange for Construction Features

CDOT may accept a property owner's offer to donate property or a portion thereof in exchange for construction features or services rendered that will benefit the property owner. However, for the purpose of crediting the value of the donation to CDOT's share of project costs, such donation is limited to the fair market value of the property donated less the value of the construction features or services received by the donor.

What must be considered is the value of the agreed upon construction features versus the value of the property donated. If the value of the donated property exceeds the value of the construction features, then the difference between these two may be eligible

for a credit to CDOT's share of project costs. However, if the value of the donated property is less than or equal to the agreed upon construction features, then no credit to CDOT's share of project costs can be given. An appraisal by a qualified appraiser must be conducted to determine the relative values of the property donated and the agreed upon construction features or services.

#### 6. ROW Plan Requirements for Donations

ROW plans are required for all donations. Refer to Chapter 2, Right of Way Plans, CDOT ROW Manual.

#### 7. Donation Form

Refer to the Exhibits section of Chapter 4, Right of Way Acquisition, CDOT ROW Manual, for a copy of the donation form.

## **Section 3.3 – VALUE CONCEPTS AND CONSIDERATIONS**

Property rights will be appraised at current reasonable market value. The appraisal is made on the basis that easements, encumbrances, and exceptions affecting the use and development of the property will be considered and evaluated. The property will be appraised as though free and clear of all liens.

When pertinent, the cost, sales comparison, and income capitalization approaches will be used. The strengths and weaknesses of each approach will be discussed in the reconciliation of value.

### **3.3.1 – Encumbered Fee**

Examine the condition of title of each subject parcel. The effects of land restrictions and existing rights of way and easements recorded and unrecorded, will be considered in the land valuation. Fee areas encumbered with extensive easements and rights of way that materially affect the use or desirability of the land will be reflected in the overall valuation of the land.

### **3.3.2 – Leasehold Interests**

#### **1. General**

The valuation of subject parcels will be made as free and clear of leasehold interests. Lease information is required, as it is extremely valuable in showing the productive income of the property. The lessee may own fixtures or equipment that is considered part of the real property and so must be identified in the report. Tenant-owned real property will be valued as part of the real property being acquired, although the tenant may have an obligation to remove the improvements at the expiration of the lease. The allocated contributory value of tenant-owned real property is shown separately in the appraisal report.

#### **2. Undivided Basis Rule**

Refer to Section 3.1.20, of this chapter for an in-depth discussion of the State of Colorado undivided basis rule.

### **3.3.3 – Easements**

#### **1. Permanent Easements**

Permanent easements of less than fee title, such as drainage easements, slope easements, utility easements, etc. will be valued by the loss of utility and desirability before and after the imposition of the easement. This loss may be expressed as a percentage of the subject parcel unencumbered fee value. An easement also may involve improvements taken and possible damages and special benefits to the residue after take. Take care that existing easements within the subject parcel fee acquisition area are properly valued and that double payment is not proposed for easement replacement.

## 2. Temporary Easements

A temporary easement has been defined as “An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner.” (Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Fifth Edition, Chicago, 2010, p. 195)

Colorado case law states that compensation due for a temporary easement is the reasonable rental value for the time the easement is used. (*State Dept. of Highways v. Woolley*, 696 P.2d 828, Colo. App. 1984.)

Temporary easements, such as a detour, will be valued by the loss of utility and desirability of the encumbered area, and other affected portions, for the time the temporary easement is needed. This rental value may be expressed as a discounted land rental for the period of the loss of the owner’s actual use of the temporary easement area. The period of the owner’s actual loss of use of the area may vary considerably. For example, actual use of a parking lot may be lost only during the actual construction period versus a loss that may occur for the full term of the temporary easement if a commercial property is precluded from development or profitable use until the temporary easement termination date. Describe the basis of valuation and term of loss of actual use.

Restoration costs (cost to cure) after termination of the temporary easement also may be necessary. The appraiser shall be provided with a Letter of Information from the Region relating whether any improvements in the temporary easement will or will not be replaced as part of the construction project.

### 3.3.4 – Access Control

A property owner’s access (ingress/egress) to an adjacent state highway is controlled by the state’s Highway Access Code (1998 as revised 2002) and might be further established or clarified by a legally-described access control line (AC-line) document and indicated on a right-of-way plan sheet. Access control by the state’s access code and by AC-line is a police power, and diminution of access due to either is generally not compensable in an eminent domain taking.

The further establishment or clarification of access control (access limitation) along a property by imposition of a legally-described access control line is not a taking of a property right. A subject property does not have inherent rights of access to an abutting state roadway, which generally was imagined, designed, built and is maintained by the people, not the property owner.

Just compensation is due the property owner for the taking of any necessary property rights to construct the project, as well as compensable damages (and/or offsetting special benefits) indicated by economic loss to the remainder property when the value of the remainder property after the taking is less than the remainder value before the taking.

However, diminution in the quality of access to a remainder property – such as greater circuitry of access – due to imposition of an AC-line or other access limitation is generally not compensable. Not all damages are compensable. See also sections 3.1.(16,19) and 3.6.2 for more explanation of damages and their compensability.

### **3.3.5 – Hazardous Waste, Environmental Conditions, Polluted Property**

Some parcels that CDOT needs to acquire for highway or related projects might be or are known to be contaminated with environmental pollutants – for example, gas stations, auto repair shops, wrecking yards, dry cleaners, a residential dwelling used as a “meth lab”.

Hazardous waste or other environmental conditions on a property can affect property value. Appraisal of these properties for right-of-way acquisition may require consideration of known or potential environmental conditions on or even off the property.

Appraisal for CDOT – whether for ROW acquisition, excess property disposal, or other purposes – typically values the property “as is, where is”. There may be exceptions to “as is” appraisal, but unless otherwise instructed, CDOT’s right-of-way and other appraisals will value property in its “as is” condition. This includes property that is contaminated.

The following information concerns aspects of project appraisal and right-of-way parcel acquisition involving property with known or suspected environmental conditions.

#### Environmental Studies

CDOT Environmental conducts different levels of hazardous materials and hazardous/solid waste studies of proposed acquisition properties as part of the ROW clearance process, and environmental studies on proposed disposal properties. Final investigative results and reports should be provided to the appraiser as soon as available. Often this might be the Initial Site Assessment (ISA) noted below. These hazardous materials and hazardous/solid waste reports are not always available at the time the appraiser is preparing the appraisal, and the appraiser should check with CDOT Environmental staff about the kinds of information that might be available, and when. Ask environmental staff whether preliminary information is available through CDOT’s GeoSearch hazmat research tool.

The appraiser also should inform CDOT Environmental about any potential environmental concerns that the appraiser might have discovered about the property as a result of his/her on-site inspection.

The following environmental studies of proposed acquisition parcels might be available to the appraiser:

1. ISA – Initial Site Assessment

CDOT Environmental will perform at minimum an ISA for each proposed acquisition parcel on a project.

The ISA is a non-invasive investigation of a parcel that is primarily document-based research combined with a limited on-site investigation. The ISA involves reviewing lists and inventories of suspected or known hazardous/solid waste sites, and historical and existing land uses are noted in the records search. This review might be supplemented

with an on-site reconnaissance of the property to determine if surface features indicate the potential for harboring hazardous or solid waste. The ISA should address the potential for asbestos-containing materials and heavy metal-based paint, provide other specific findings and conclusions, and provide an opinion of whether additional environmental assessment or investigation is advised (see below). The ISA also should describe any additional remediation or monitoring that might be needed.

## 2. Phase I ESA (Phase I Environmental Site Assessment)

The Phase I ESA is performed on those properties to be acquired by or donated to CDOT that have known or are suspected of harboring hazardous materials, as determined by ISA or other decision.

The Phase I study includes a drilling/sampling and analytical program to determine preliminary information about the types of contaminants that might be present on the site, and the magnitude and aerial extent of contamination. The Phase I should provide sufficient information for critical decisions about evidence of the contaminated property for use in considerations of alternative design. The Phase I is a tool to help CDOT determine the potential liability associated with acquiring the contaminated property and to provide useful information about health and safety issues for construction workers and the public.

The Phase I report provides a site-specific assessment of known or suspected soil and groundwater contamination, asbestos-containing materials, heavy metal-based paint, and suspected drug lab waste, in particular as these relate to future demolition of structures on the property. The report should provide opinion of whether additional assessment or investigation is warranted, and describe any environmental remediation or monitoring actions that might be needed.

## 3. Modified Environmental Site Assessment (MESA)

This study has a level of detail somewhere between the ISA and the Phase I ESA in that it is usually intended for corridor or project-wide assessment of soil and groundwater contamination, asbestos-containing materials, and heavy metal-based paint to assess the relative risk of ROW acquisition and finding unknown subsurface contamination during project construction. This kind of study performs a limited site reconnaissance (windshield survey) if site access is not available. In places where the project footprint is uncertain, the minimum search radius is extended 0.25 mile to 1 mile beyond the likely project location.

## 4. Phase II ESA or RI/FS (Remedial Investigation/Feasibility Study) and the Appraisal Report

The Phase II report is a sampling study of hazardous materials or hazardous/solid waste that may be found on or underneath the property. The RI/FS is a detailed, comprehensive investigation that further delineates the magnitude of contamination of the site.

This investigation/study is performed on contaminated property that cannot be avoided by the project, and the environmental conditions on the property pose danger to the public, to workers, or to the environment (e.g. leaking underground storage tanks). The

findings from these studies are used to develop a strategic plan called a hazardous waste management plan, which details the mitigation and cleanup strategies for the property and provides cost estimates for these actions. These studies should be completed prior to the Field Office Review (FOR). If the results are not available in time for the appraisal process, the appraisal will reference and consider any other known information about the property's environmental condition and appraise the property accordingly.

When environmental studies or test results and possibly mitigation costs are not available to the appraiser when needed, then the appraisal report might include a statement that the property is appraised "as if clean," but that the value estimate is subject to revision depending on the findings of the expected RI/FS or other environmental report. Consult with CDOT's review appraiser about using such statements in the appraisal report, which might in turn require reference of either an *Extraordinary Assumption* or *Hypothetical Condition* in the Assumptions and Limiting Conditions section of the appraisal report.

### Appraisal Considerations

When CDOT is faced with acquiring property with hazardous/solid waste, each property should be handled on a case-by-case basis.

Contaminated property appraised for right-of-way acquisition or other purposes typically should be appraised "as is" with hazardous waste or other contaminated conditions, however, it might be appraised "as if clean". Regardless of this decision, the appraisal will reflect the value of the property as such real or presumed (*Extraordinary Assumption* or *Hypothetical*) conditions reflect in the marketplace. As compared to any other similar but "clean" property, not all contaminated properties suffer value loss due to on-site contamination. Conversely, some "clean" properties may suffer value loss in the market due to proximity of other polluted properties or hazardous waste conditions nearby.

The following information will guide the appraisal processes:

1. **Cleanup Required by Law:** CDOT should determine if the property's environmental contamination must be remedied under any State or Federal law in order for the property to be sold in the marketplace or otherwise be put to its present or future highest and best use. If yes, then whether there is a project or not, the owner should be responsible for the cleanup (but see **Project Influence** below).

Estimated remediation costs should be provided to the appraiser. The cost estimate should be the probable cost the property owner would pay in the market to remediate the property's environmental conditions to required standard within the allowed time frame. The appraiser also should be provided CDOT's cost estimate if the department will clean up the property after the acquisition as part of the project.

The appraiser will use the remediation cost information in the appraisal to the degree it is relevant in the appraisal process. The cleanup cost data might be relevant, for example, as an adjustment item to the value of the property as if it were not contaminated, or this cost information might be relevant in the appraisal through other kinds of analyses. The appraiser must carefully review the cleanup cost information for completeness and

accuracy. For example, is an entrepreneurial incentive to the cleanup effort appropriate, and if so, accounted for in the cleanup cost estimate?

Even if the environmental conditions on the property and the related cleanup costs are determined not to affect the property value, the remediation cost information still might be referenced in the appraisal report.

**Project Influence:** The following should be considered – is the required remediation under the law triggered by the project? If there were no project, would the property owner be required by law to clean the property of environmental conditions? Disregarding the project, could the property owner legally sell the contaminated property on the market without having to remediate the environmental conditions prior to sale? If the law requiring the contaminated property be cleaned only takes effect due to CDOT's project or acquisition, then the required cleanup due to CDOT's action reflects Project Influence and must be ignored in the appraisal. In this circumstance the required cleanup may be referenced in the appraisal for informational purposes, but not considered for valuation purposes.

**Cleanup Not Required by Law:** The contaminated property should be appraised by comparing the subject property with similarly contaminated properties, particularly those that also are not subject to required remediation. The appraisal should reflect the subject property value "as is" contaminated. If the property does not require remediation for continued use, the cost of cleanup should be a project cost, not the responsibility of the owner.

2. Fair Market Value (FMV) and Contaminated Property Acquisition: The FMV should not be written until a cleanup plan, where required (per RI/FS Environmental Study or other), has been developed and approved.

3. Hazardous Materials/Solid Waste Discovered During Appraisal or Acquisition Phase

Any hazardous materials or hazardous/solid waste discovered on the property after the environmental studies but instead as part of the later appraisal process or acquisition phase shall be reported immediately to the Region environmental manager, who should in turn inform the appropriate regulatory agency. Any parcel discovered to have or is believed to have hazardous/solid waste that was not reported by Environmental, and which may require further study, shall be flagged by the Region ROW Manager so that CDOT does not take possession of the property before CDOT's potential risk has been determined.

4. Uneconomic Remnants

Under the Uniform Act, an offer to acquire must be made for all uneconomic remnants. In the case of a remnant parcel that would require environmental remediation, CDOT should require the property owner to clean the parcel prior to acquisition. If an uneconomic remnant parcel is acquired and the owner does not clean up the contamination, it may be appropriate for the compensation offer to take into account the cost for CDOT to clean the contaminated remnant. This could result in a zero or nominal value for the remnant.



### 3.3.6 – Definition, Criterion, and Procedure for Trade Fixtures

#### 1. Definition of Trade Fixture

“Articles placed in or attached to rented buildings by a tenant to help carry out the trade or business of the tenant are generally regarded as trade fixtures. For example, a tenant's shelves used to display merchandise are trade fixtures and retain the character of personal property, as opposed to all other fixtures that were but are no longer personal property when they are attached to and become part of the real estate. Despite the consensus on the concept of trade fixtures in general, applicable law and custom govern when a specific item is a trade fixture in a particular assignment. (USPAP, 2002 ed.) Also called chattel fixture. See also fixture.” (Appraisal Institute, The Dictionary of Real Estate Appraisal, Fifth Edition, Chicago, 2010.)

#### 2. Criterion for Trade Fixtures

Following are tests on which a decision may be made to determine if property is classified as a trade fixture.

##### a. Common Law

- (1) Annexation: Actual annexation to the real property or something appurtenant thereto.
- (2) Adaptability: Appropriation to the use of purpose of that part of the real property with which it is connected.
- (3) Intent: The intention of the party making the annexation, to make the article a permanent accession to the freehold; this intention being inferred from; the nature of the article affixed, the relation and situation of the party making the annexation, the structure and mode of annexation, and the purpose or use for which the annexation has been made.

##### b. Condemnation (Economic)

A rule of law providing that trade fixtures and equipment are deemed to be real property and when condemned they lose substantially all of their in-place value upon severance. This is consistent with the constitutional requirement of payment of just compensation. It is a test that corresponds with the economic realities of the condemnor-condemnee relationship. The underlying policy consideration in the condemnor-condemnee relationship is mainly economic.

Historically common law criterion has prevailed. The condemnor-condemnee relationship (economic) has and is being considered more by the lower courts. For this procedure, more weight should be given to “common law” than to “economic” while considering the influence of the condemnation. The criterion of a fixture may not be clear. The CDOT Appraisal Contract Administrator will exercise their best judgment and seek additional guidance from other available sources in arriving at a final determination that is supportable in court.

#### 3. Procedure to Value Trade Fixtures

Refer to Specialty Reports in Section 3.2.5 of this chapter to the ROW Manual. Valuation of trade fixtures is considered a specialty report. The appraiser will establish the contributory value of the trade fixtures either by the cost approach or a sales comparison analysis. When the cost approach is used, the following should be itemized:

- (a) Cost new.
- (b) In-place value.
- (c) Salvage value.
- (d) Cost to remove, move, and reinstall is used in some cases such as for heavy machinery.

When using the comparison approach, the specialist must show:

- (a) In-place value.
- (b) Salvage value.
- (c) Cost to remove, move, and reinstall, in some instances.

During the sale analysis process, the appraiser must find out and state what fixture items are found in both the sale property and the property being appraised. Items not common to both properties must be specifically considered, adjusted as applicable, a value assigned, and included in the overall real property valuation.

Once trade fixtures have been valued, the total value of the individual items will be included with the estimated land and improvements values for a total estimated real property value. Total estimated property value is made up of:

- (a) Land value.
- (b) Improvements (structure) value.
- (c) Trade fixtures that are considered real property.

The appraiser must specifically set out fixtures that are included in the real property value and identify ownership. It must be readily apparent in the appraisal report what fixtures are being acquired. For example: note if hoists, compressors, counters, booths, built-in coolers, etc. are included in the appraisal report. This information should be in the Certified Inventory of Real Property, CDOT Form #433, provided to the appraiser.

In appraising tenant-owned real property improvements, the appraiser must include the greater of two values, either contributory value or salvage value, not depreciated cost. The appraiser must address the question whether the improvements have contributory value under the highest and best use. In the cases where fixtures have no value under the highest and best use, then the tenant is entitled to salvage value.

### **3.3.7 – Mineral Rights**

In 2008, Senate Bill 08-041 modified §38-1-105(4), §43-1-203(1), §43-1-208(4), and §43-1-209 CRS to except oil, natural gas and other mineral resources from acquisition through eminent domain except for subsurface support of the highway. Although some minerals (vein, ledge, lode, and deposit) were already excluded from acquisition for right of way or easements acquired by condemnation (§43-1-210 (1)CRS), this Senate Bill added exceptions for oil, natural

gas, and other mineral resources when acquiring land for highway purposes (§43-1-208 (4), CRS (2010)) and also through condemnation proceedings (§43-1-209 CRS (2010)).

Property to be acquired by CDOT will be appraised at reasonable market value for the fee simple title “as if free and clear” of liens and encumbrances, subject to existing easements, covenants, deed restrictions, rights of way of record, **and excepting therefrom all rights to oil, natural gas, or other mineral resources beneath such real property.** The appraisal report shall state that these mineral rights are not included in the valuation due to an assignment condition.

CDOT is acquiring the fee simple estate in the surface of the land, but is not acquiring the mineral estate. In acquiring the fee simple estate in the surface, the owner who retains the mineral estate will not be able to develop the mineral estate from the surface of the land that CDOT is acquiring. For that reason, the appraiser must determine if there is any change in value to the mineral estate due to this loss of access. Unless the mineral estate has a significant value, the change in value to the mineral estate for loss of access to the surface land is usually either zero or a nominal value.

The appraiser must use reasonable diligence to ascertain the mineral interests involved with the property being appraised. A careful inspection of the title commitment will, in most cases, show the mineral interests previously severed. If the title commitment does not expressly address mineral interests, CDOT will not request or otherwise pay for additional title work to verify what, if any, mineral rights are owned, except in special circumstances approved in advance by the Region Right of Way Manager.

CDOT has clarification from the Colorado Attorney General's office on the following:

- Title work performed for right of way acquisitions is not conclusive as to the ownership of mineral rights.
- The property owners who sell land to CDOT may retain their mineral rights.
- These added mineral rights are interpreted to mean the “deep” mineral interests (hydrocarbons), not the surface mineral interests such as sand and gravel.
- "Mineral" does not include surface or groundwater subject to appropriation for domestic, agricultural, or industrial purposes, nor does it include geothermal resources.
- CDOT must not offer an opinion as to mineral rights ownership to property owners. Property owners may consult with their choice of legal counsel. CDOT will not pay for this advice.
- CDOT can appraise and purchase mineral interests in special pre-approved situations, but cannot condemn for them
- Whenever real property is acquired for road or highway purposes, the right to subsurface support of such real property is deemed to be acquired therewith.

The possibility of the existence of mineral rights is not sufficient to affect market value. Such a possibility should be recognized only when there is sufficient probability to affect market value and when that probability would be given weight by a prudent person in bargaining. Appraisers must notify CDOT if significant value is indicated.

When it is determined and previously approved that mineral rights need to be included in the appraisal, a specialty appraisal may be required. The results of this specialty valuation report of the mineral rights cannot simply be added to the value of the land to arrive at a value of the property as a whole. The appraiser shall state his or her final estimate of value of all of the

property under appraisal as a single amount, including the contributory value of fixtures, timber, minerals, and water rights, if any. The appraiser must avoid making a summation appraisal.

If the ownership has mineral rights and the owner wishes to include them in the sale of the land to CDOT, CDOT will pay only a nominal amount for the mineral rights.

## SECTION 3.4 – LAND/SITE VALUATION

### 3.4.1 – General

#### Land/Site Valuation Requirements

Land or site valuation usually is required in CDOT/LPA eminent domain appraisal reports.

Region appraisal project managers or their superiors may always require land or site valuation in every appraisal, but otherwise there may be exceptions allowed that are pertinent to the specific assignment. Where not determined or required at the front end of an assignment, the appraiser may determine deeper into the appraisal process that a land or site valuation is not necessary to the assignment, and may recommend accordingly to the Agency appraisal project manager.

**Partial Take Appraisal** – Land or site valuation is almost always required in a partial taking, however, there might be exception when the partial taking is entirely or includes a portion of building or other structure occupying land, and the underlying land value is analyzed as inclusive in building or structure value part taken. This is only acceptable if it is, 1) a reasonable appraisal analysis that yields credible results, and 2) is acceptable to the appraisal project manager. Both must be true, otherwise a land/site valuation is required.

**Total Take Appraisal** – Region appraisal project managers or their superiors may always require separate land/site valuation in a total take appraisal report, otherwise this is at the discretion of the appraisal project manager and only if the appraisal analysis without separate land/site valuation will yield credible results. A total take appraisal that includes a Cost Approach for any reason will include land/site valuation.

#### Land/Site Valuation Processes

When land or a site is appraised, the value estimate will be based upon the highest and best use of the land/site as though vacant. The primary approach to value land is the sales comparison approach.

At times, land may be valued based upon different amenities or utility of the larger parcel. Land values for different areas of value based upon use must be adequately supported by sale transaction data. As examples, different areas of value may occur in an ownership due to:

- Level meadowlands, steep hillsides, floodplain, and floodway.
- Commercial, industrial, and/or residential use.
- Irrigated land and non-irrigated farmland.

Occasionally, improvements such as agricultural wells, fencing, etc., may be included in the value of the land for both the subject and sales. If this is the case, a specific statement to this effect is included in the appraisal report. Also, when utilities such as water, gas, sewer, and telephone are located on or are available to the subject or sale but not to the other, the sale property should reflect proper adjustments for these services. Paid water and/or sewer taps, or other utility permits paid also should be considered in the analyses, whether as part of the land value or as separate items that might require adjustment in the appraisal analyses.

### **3.4.2 – Agricultural Land**

#### **1. General Valuation**

Adequately developed agricultural properties frequently sell on acreage values, considering the stage of development and productive capacity. The value of irrigation systems, agricultural wells, fencing, etc., may properly be included as part of the land value. The acreage unit value should reflect adjustment to the comparable data for differences in age, condition, and productive capacity when compared to the subject. If valued by this method, agricultural improvements will be briefly described under Improvements with zero value and the remark that their value is included in the land value. The description of pumps and motors, when possible, will include model and serial numbers.

#### **2. Loss of Crop or Harvesting of Crop**

When the acquisition involves agricultural land planted in crops, an effort should be made to allow the owner to harvest existing crops. The Region is to include in the Letter of Information to the appraiser if the owner will be allowed to harvest. This is also written into the Memorandum of Agreement. The Region also will state in the Letter of Information that the loss of the crop, if the owner is not allowed to harvest, should be included in the appraisal. If the construction schedule does not allow crop harvesting, the owner must be paid. Payment for the loss of crop or harvesting of crop will be calculated by one of the following two methods:

- Payment for expenses involved in planting crop.
- An amount based on the average yield per acre for similar crops on the residue parcel operated by the farmer or upon other lands in the immediate area. The price per unit for the crop shall be the gross market price at the time of harvest of the residue or similar crops in the area. The average cost for harvesting must be subtracted from this gross market price. In addition, the proportional part of payments made by any agency of the federal government under crop subsidy contracts must be deducted or added, depending upon the subsidy program for the particular crop involved. The arrangement used must be fully and clearly stated in the Memorandum of Agreement. The Region agent will follow up on crop damage at the time of harvest.

### **3.4.3 – Outdoor Advertising Sites (Billboard Sign Site)**

Sign sites acquired as part of ROW takings must be described in the appraisal, and any income from the sign site lease must be considered as to its influence on land value. The appraisal project manager or person preparing the Letter of Information for the appraiser is responsible for obtaining sign site lease data and any other available relevant information from Region sign inspectors and providing it to the appraiser on the project.

When a subject property is improved with a billboard on a sign site but sales used to value the subject property do not have a similar improvement, the appraiser will analyze the contributory value of the billboard sign site and make any appropriate adjustments for differences between the comparable sales and subject in this characteristic. The appraiser will be careful that compensation for the taking does not result in double compensation for the underlying land as compared to the sign site, unless market evidence indicates otherwise.

## **SECTION 3.5 – IMPROVEMENTS VALUATION**

Improvements are appraised at their contributory value to the land, assuming land is vacant and ready for development to its highest and best use. Appraisal by this method reflects the amount an informed buyer would pay for the total property, considering the estimated remaining useful and economic life of the improvements and probable use of the land if the improvements were removed. All improvements within the ROW acquisition or taking will be listed, accounted for, and valued in the appraisal and appraisal report.

### **3.5.1 – Certified Inventory of Real and Personal Property – CDOT Form #433**

The appraisal will contain a specific list (certified inventory) of owner and tenant or lessee-owned real property improvements. It is mandatory the inventory of real property is completed when the taking involves real property with businesses. The Region will conduct an inventory of personal property at a later date. The CDOT Appraisal Contract Administrator will identify owner and tenant-owned real property on the Certified Inventory of Real Property, CDOT Form #433. The appraiser, contract administrator, real estate specialist, owner, and tenant should agree on what is to be appraised and what is to be relocated whether the property is residential, commercial, or other use.

The appraisal report shall identify the items considered in the appraisal to be real property, as well as those identified as personal property." (see Appendix A, § 24.103(a)(1) and § 24.103 (a)(2)(i))

The CDOT Appraisal Contract Administrator will handle any question of ownership of real property during the initial inventory. If there is any question whether an item is real or personal property, a legal opinion should be obtained. The appraiser will include the inventory in the appraisal report. All items indicated on the Certified Inventory of Real and Personal Property form as "R" (realty) will be included in the valuation with the ownership identified.

#### **1) Distribution of Certified Inventory of Real Property**

The CDOT Appraisal Contract Administrator will prepare the real property inventory, secure appropriate signatures, and distribute as follows:

- a) Original to the Acquisition/Relocation Unit in the Project Development Branch, Headquarters ROW
- b) One copy to the appraiser
- c) One copy to property owner
- d) One copy to Property Management Unit
- e) One copy to Region ROW
- f) One copy to main ROW file in the Project Development Branch, Headquarters ROW.

#### **2) Recommendations for Real Property Inventories**

Following are ideas or tips for CDOT Appraisal Contract Administrators performing CDOT real property inventories:

- a) Draw a floor plan layout. It can be a simple free-hand sketch. Show the location and label the rooms on the plan so it will coincide with the Certified Inventory of Real

Property form. You may want to make notes on the plan sketch as to the location of major items, approximate measurements, etc.

- b) On the inventory form, write the address of the property and the name of the business. Next, write down the name (label) of the room (e.g., office area, warehouse area, restroom, storage room, etc.). For each room, legibly write in the items of realty.
- c) If the item of realty (e.g., furnace, hot water heater, hydraulic hoist, etc.) has a serial number, model number, BTU rating, enter in the remarks area of the inventory form.
- d) Use specific units of measure to describe items or express quantities, such as: 6-8' high x 10' wide x 2' deep metal shelves, not 6 shelves. Use cubic feet (c.f.), linear feet (l.f.), pounds (lbs.), horse power ( $\frac{1}{2}$  h.p.), etc.
- e) Note the condition of items (HVAC unit is operational or not) or special circumstances that are relevant to the realty item.
- f) Ask the property owner and tenant questions about unfamiliar items or intentions of the business. How is the item fastened? Can it be dismantled? Do you plan to leave it or do you plan to move it, etc.? Explain options that the owner and tenant have depending upon the classification of the item. In many cases this will help in the final determination if the item is realty or personal property. Try to obtain copies of the lease, which may address tenant items. The lease can be useful in the event of condemnation proceedings.
- g) Perform the inventory with and in cooperation with the property owner and/or business owner. If there is a tenant, they should also be present during the inventory.
- h) Note items that are questionable as to status as personal or real property. Resolve these questions with the owner and tenant at the time of the inventory.
- i) Have the property owner and tenant sign all sheets of the inventory form upon completion of the inventory. This is the best time when all parties are present. If the acquisition agent is present, also have them sign. Some prefer to have the inventory typed and presented to the parties at a later date. Use your own discretion.
- j) Photograph major inventory items.

### 3) Contributory Value of Tenant-Owned Real Property

The appraiser will show the separate contributory value of the improvements according to their ownership. Tenant or lessee-owned improvements will be appraised at the amount they contribute to the reasonable market value of the real property or the reasonable market value for removal (salvage value) from the real property, whichever is greater.

### 4) Lease Information

Copies of lease information, if any, will be obtained by the appraiser. The appraiser will confirm and investigate the terms and conditions of the lease. The appraiser is responsible for collecting all income and expense data from the property owner. Lease information and the inventory of tenant-owned improvements or real property must be consistent.



### **3.5.2 – Definition of Salvage Value**

Salvage value is defined in the Code of Federal Regulations, Title 49, Part 24, Section 24.2(a)(23) as follows:

The term salvage value means the probable sales price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e., not eligible for relocation assistance). This includes items for re-use as well as items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

Typically, salvage value is estimated by the Review Appraiser (CDOT Appraisal Contract Administrator). Persons preparing specialty reports may also need to estimate salvage value in certain cases.

### **3.5.3 – Definition of Owner Retention of Improvements**

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

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

Typically, the price of the improvements to be offered to the current owner is estimated by the Review Appraiser. It is calculated as above using the review appraiser's estimate of salvage value.

### **3.5.4 – Tenant or Lessee-Owned Improvements (Excluding Personal Property)**

#### **1. Real Property Versus Personal Property**

Real property is considered the physical land and other improvements that have been added or attached to the land in a permanent manner. Real property can include items such as a house, office building, garage, fencing, etc.

Personal property is considered to be movable or portable items such as furniture, machinery, equipment, business inventory, trade fixtures (if they have been determined as personalty), etc. These items are not typically attached in a permanent manner to real estate. Personal property does not typically transfer ownership when title to a property is transferred. If the only difference between real and personal property is that the item would be considered real property if owned by the property owner instead of the tenant, then the item will most likely be appraised as real property (49 CFR § 24.105(b)).

#### **2. Tenant Real Property**

In Colorado, real property is appraised while personal property is not. Personal property is handled by the Regions later, especially when relocation is involved. If questions arise concerning real property versus personal property, contact the CDOT Appraisal Contract Administrator and/or legal counsel.

When tenant-owned improvements are in the acquisition, 49 CFR § 24.105, Acquisition of tenant-owned improvements, will apply:

- a. Acquisition of Improvements. When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.
- b. Improvements considered to be real property. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.
- c. Appraisal and Establishment of Just Compensation for a Tenant-Owned Improvement. Just compensation for a tenant-owned improvement is the amount the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(a)(23).)
- d. Special conditions for tenant-owned improvements. No payment shall be made to a tenant-owner for any real property improvement unless:
  - i. The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and
  - ii. The owner of the real property on which the improvement is located disclaims all interest in the improvement; and
  - iii. The payment does not result in the duplication of any compensation otherwise authorized by law.
- e. Alternative compensation. Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law."

### **3.5.5 – Yard/Landscaping Improvements**

The value assigned to yard improvements and landscaping acquired is their estimated contributory value to the larger parcel (i.e., what the property would sell for with or without the yard improvements acquired). This can be a judgmental evaluation. The appraiser may use various data while making this judgment. Replacement costs from a nursery based upon caliper, height, or size, are not indicative of contributory value and are not applied.

### **3.5.6 – Interim Value Improvements**

Improvements may have value due to a brief period of income production until conversion of the land to a higher and better use. Such value should be identified as interim value. Interim value must be supported and explained in the appraisal report.

### **3.5.7 – Construction Items**

Occasionally, some improvements will be taken care of as an item of construction. Specified improvements taken care of as a construction item will be noted in the appraisal to avoid double payment. Mailboxes, fencing, utility poles, irrigation ditches are examples. This information will be furnished by the Region in the Letter of Information prepared for the appraiser.

### **3.5.8 – Encroaching Improvements**

No consideration or compensation will be given to improvements that encroach upon highway ROW. It is illegal to place any structure or obstruct a state highway in any manner. An exception to this is the right of public utilities to construct and maintain their facilities in public highways. Adverse possession does not run against the state. No rights can be acquired from the state by a trespasser.

### **3.5.9 – Fencing Improvements**

#### **(1) Fencing Included in Land Value**

Normal or typical fencing for agricultural, grazing, timber, or undeveloped subdivision acreage land, or fencing that has minimal value or utility, should be included in the land value unless the comparable data indicates the contrary. Fencing included in land value will be briefly described in the Property Data section of the appraisal report under Improvements Data with a comment that the value of the fencing is included in the value of the land. In the cost and sales comparison approaches, the contributory value of the fencing is shown as a zero value with a remark that the fencing value is included in the land value.

If sales transaction data indicates the market views the contributory value of fencing separate from land value, then describe the fencing in the Property Data section of the appraisal report. In the cost and sales comparison approaches, the contributory value of the fencing to the larger parcel is shown.

Specialized fencing may be valued separately at the contributory value it adds to the larger parcel. In the Property Data section of the appraisal report, include a description of the specialized fencing. In the cost and sales comparison approaches, the contributory value of the specialized fencing to the larger parcel is shown.

In some acquisitions, the state may install replacement fencing during the construction of the project. This replacement fencing will typically replace the utility of the existing

property owner fence before take. When existing fencing will be replaced as part of the project, briefly describe the existing fencing in the Property Data section of the appraisal report and that it will be replaced as part of the construction project.

State installed fence may replace the utility of an existing fence. In these cases, the fence replaced by the state installed fence will be briefly described under Improvements with a zero value, also including remarks that the fence is being replaced by state installed fence. The contributory value of the fencing should be shown as zero since the state will replace it.

## (2) Fencing Appraised as an Improvement

Any fencing not included in the value of the land is valued as an improvement. If the fencing is in a partial taking area, it should be valued. Appraisers should be careful not to make a double payment for fencing owned by two property owners.

## (3) Damage to Fencing

When existing before-take internal fencing or cross fencing must be realigned on the residue after take, or when temporary or additional fencing is necessary due to the taking, compensation is an element of damages. The damage could be considered a restoration cost (cost to cure).

### **3.5.10 – Irrigation Ditches**

#### Ditch Replacement by Owner(s) or Handled as a Project Construction Item (Common)

When a project affects or requires relocation of an irrigation ditch and/or related facilities, the Region may reach agreement with the property/ditch owner or affected ditch owner(s) to compensate the owner(s) the cost to design and construct their own replacement ditch facilities, or that CDOT will restore or relocate the ditch as part of the project.

If either the ditch owner(s) or the project will handle restoration or relocation of a ditch affected by the project, the appraiser will explain this circumstance in the appraisal and inform that the ditch and any related facilities are not included in the appraisal.

#### Appraised as an Affected Improvement (Less Common)

In some circumstances, compensation for an affected irrigation ditch and related facilities might be handled in the acquisition appraisal. This might require providing the appraiser with a ditch/facilities design and construction cost estimate developed by CDOT or provided in a consultant specialty report obtained by CDOT or by the appraiser.

The appraiser will estimate contributory value of the ditch and any related facilities as compensation for the affected improvements. The appraiser also will consider whether there is economic damage to the remainder when there is a taking of the ditch and related improvements, and whether a net cost-to-cure analysis is appropriate.

The ditch and facilities cost estimate information provided the appraiser should include RCN of the affected improvements and the cost new to construct replacement ditch facilities elsewhere

on the remainder property, as these two cost estimates might not be the same. If the latter cost estimate exceeds the RCN of the affected ditch improvements, a net cost-to-cure analysis might be indicated. The appraiser will not conclude a net cost-to-cure in excess of prospective market damages to the remainder without ditch replacement.

### **3.5.11 – Water Wells**

When the acquisition involves a well, there may be several ways to determine compensation. If the acquisition is a total take, the payment for the well will be included in the FMV. When it is anticipated that a well may be affected, the Region must obtain a quantity and quality test before disturbing the well. The Region will provide the test results to the CDOT Appraisal Contract Administrator. The tests will then be forwarded to an appraiser for inclusion in the appraisal report. If there is a residue after take parcel requiring use of the water, some means of replacing this water must be found. Several methods for replacing water are as follows:

- CDOT may pay for attaching to local/private/public water mains including tap fees and expenses of pipe extensions to the residue parcel. CDOT also may have to pay for added monthly expenses for new water services. This monthly amount would be capitalized over the expected number of years the well and equipment is anticipated to serve the residue. This should be negotiated on a parcel by parcel basis, or
- The Region must obtain at least two bids on replacing the well; one of which will be from a driller the owner selects. The bid submitted by the driller of the owner's choice should be used unless it varies widely from the other bid. Consideration also should be given to the amount needed to replace the pump. Based on these figures, a monetary amount considered compensation may be offered to replace the well, or
- The Region may hire a well driller, drill the well, and replace worn equipment. The Region must go out to bid, using approved purchasing bid processes, for the well driller. The well driller selected by the owner should be given first consideration. If the new well does not produce the quantity and quality of the old well, then, some correction needs to be made. This can be accomplished by drilling another well, or negotiating a money difference as damage for not replacing the well in kind. The method selected should be the owner's decision. Whatever method is used, it will be explained in the Memorandum of Agreement.

If a well needs replacement, the land value of the part taken cannot include the value of the well. Comparable sales that include water wells in the sales price must have the contributory value of the well subtracted from the purchase price before comparing land values to the subject property. A double payment for the well will occur if this procedure is not followed.

### **3.5.12 – Cattle Underpass**

The concept of "substitute facilities" applies to a cattle underpass. If a question arises whether to replace a cattle underpass or not, compare the cost of the underpass to the property involved. If the property will remain as an agricultural highest and best use after the taking, then the appraiser needs to show that a replacement underpass is less than buying the entire residue () property. Care should be taken in determining the highest and best use. For example, if the highest and best use of the agricultural property is for immediate development

for housing or commercial use, then a replacement underpass would not support the principal of highest and best use.

## **SECTION 3.6 – DAMAGES AND BENEFITS**

An analysis of damages and special benefits must be made in every partial taking appraisal and presented in the appraisal report. If an appraiser is having difficulty in determining if there is a compensable or non-compensable damage or if a benefit to the residue after take is specific or general, then a legal opinion should be obtained early in the appraisal process.

If an analysis shows there are no damages or benefits to the residue after take, a statement must be made in the appraisal report as to this conclusion. Occasionally, showing the reasoning and support that no damages have occurred to the residue after take may help agents during their negotiations with property owners who may have unsupported damage claims. If special benefits result, describe the reasons and provide support for the benefits, even if no damages are found.

### **3.6.1 – Uneconomic Remnant**

Care should be taken not to confuse an uneconomic remnant or remnant with damage to a residue after take. “Uneconomic remnant” is terminology specifically defined by the CFR’s and is used by the Right of Way Manager to determine that the residue after take is of little value or utility to the property owner. CDOT must offer to buy any residue after take that is determined to be an uneconomic remnant by the right of way manager. A residue after take parcel may have substantial value but may be an uneconomic remnant to the owner.

### **3.6.2 – Damages**

Under the provisions of § 38-1-114(2), CRS, the following considerations apply when damages are present. All damages may be offset by benefits. In some situations where damages are mitigated by cost to cure, the restoration costs should not be offset by benefits. The reasoning for this is if damages are not mitigated by restoration costs, then benefits to the residue after take may not be received.

#### **1. Definition and Measure of Damages**

Any damages are measured by the effect the acquisition of the property actually taken has on the reasonable market value of the residue. CJI 36:4 states the measure of damage is:

“...Any damages are to be measured by the decrease, if any, in the reasonable market value of the residue, that is, the difference between the reasonable market value of the residue, before the property actually taken is acquired and the reasonable market value of the residue after the property actually taken has been acquired. Any damages which may result to the residue from what is expected to be done on land other than the land actually taken from the respondent and any damage to the residue which are shared in common with the community at large are not to be considered.”

Nothing should be considered a factor of damages unless it is found that it decreases the reasonable market value of the residue. CJI 36:4 states residue means:

“Residue’ means that portion of any property which is not taken but which belongs to the respondent, (name), and which has been used by, or is capable of being used by, the respondent, together with the property actually taken, as one economic unit.”

## 2. Compensable Damages

Compensable damages refer to loss in value of the residue after take and the construction of the proposed project. Compensable damages are measured by comparing the value of the residue before take with the residue value after take and construction of the project (disregarding any benefits of the proposed public improvements). The residue after take and construction of the proposed project is considered damaged if it has a loss in value due to a legally compensable reason.

The residue value after take appraisal requires the same support as the larger parcel value before take appraisal. Consideration should be given to the time the damages will occur. When the study shows compensable damages are present, the appraisal must state specifically the reasons and supporting data for the compensable damages.

Grade and access changes may be compensable damages. It is important to provide the appraiser with construction plans. The appraiser will need construction plans in order to determine if a compensable damage will result from the project. The Letter of Information to the appraiser should contain information related to grade and access changes.

## 3. Non-compensable Damages

If there is any doubt that an item of damage is non-compensable, a legal opinion should be obtained. The following types of damages have been found by the courts to be non-compensable. These damages should not be included in appraisals or appraisal reports prepared for CDOT. Following are examples of non-compensable damages:

- Expenses for moving personal property.
- Temporary damage to the use and occupancy of property reasonably incident to construction requirements.
- Damages due to annoyances and inconveniences suffered by the public in general.
- Circuitry of access or travel, rerouting or diversion of traffic.
- Closure or relocation of access that does not result in the loss of reasonable access or substantial impairment of access.
- In general, all types of damages which can be considered conjectural, speculative, and remote.

### 3.6.3 – Cost to Cure

Damage to a property must first be shown or proven by market evidence before a cost to cure is used. Some types of damage may be curable either by acts of CDOT during construction or by work that may be done by or for the owner. Knowledge of the plans for the project should be used as a guide in determining the effect of potential damages that may be caused by construction of the project. Restorative measures and their costs, which may be taken by the



owner, can be included in the appraisal report. Restoration costs may be allowed if they are supported by valid, firm estimates, and the costs do not exceed the uncured damage amount. A cost to cure cannot be used to mitigate damage offsite of the residue after take.

### **3.6.4 – Benefits**

#### **1. Definition and Measure of Special Benefits**

Any benefits are measured by the effect the acquisition of the property actually taken has on the reasonable market value of the residue. CJI 36:4 states specific benefits are as follows:

“...any benefits to the residue are to be measured by the increase, if any, in the reasonable market value of the residue due to the (construction) (improvement) of the (proposed improvement). For anything to constitute a specific benefit, however, it must result directly in a benefit to the residue and be peculiar to it. Any benefits which may result to the residue but which are shared in common with the community at large are not to be considered.”

Special benefits are an increase in value of the residue due to the features of construction and which may create similar special benefits to several parcels. Special benefits are measured by the increase in value, after the taking and construction of the public improvements in the manner proposed, of the residue after take as compared to the value of the residue before take. Consideration should be given to the time that special benefits will occur. When the study indicates special benefits are present, the appraisal must specifically state reasons for the benefit along with supporting data.

#### **2. General Benefits**

General benefits are those benefits enjoyed by the public or community at large. These benefits usually arise from the construction of a public improvement and will effect, usually benefit all the land values in the general area. General benefits from a public improvement will extend to all properties in the general area, whether or not the properties have actual takings due to the public improvement. General benefits may vary in degree but do not vary in kind.

An example of a general benefit may occur when a suburban neighborhood is located five miles travel distance from the center of employment. After construction of a new highway the traveling distance may be decreased to only three miles, which in turn can increase demand and the value of houses in the neighborhood.

### **3.6.5 – Local Project Financing Through Means of Assessment**

Special assessments are a form of taxation imposed pursuant to State law upon persons benefited by public works projects and are separate and distinct from the acquisition of real property pursuant to the power of eminent domain. While there may be instances where the use of special assessments appears inequitable, the issues are between the taxing authority and the affected property owners and the appropriate remedies are governed by State law.

## **SECTION 3.7 – PLAN REVISIONS, REPORT REVISIONS, AND REVIEWS**

### **3.7.1 – General Information Concerning Revisions**

Revisions to ROW plans may occur during and after the appraisal process. If ROW plans are revised or new property data becomes available, the Region must submit the ROW plan revisions and/or new property data as soon as possible to the CDOT Appraisal Contract Administrator for updating or revision of appraisals and appraisal reports.

The CDOT Appraisal Contract Administrator will study the new plan revisions and/or property data to decide if revised parcels will need an updated or revised appraisal. When an updated or revised appraisal is not needed, the CDOT Appraisal Contract Administrator will notify the Region of this determination.

When an appraisal update or revision is determined necessary, the appraiser will be notified. A review appraiser will review the revised or updated appraisal report. After review, a revised FMV (fair market value determination) may be issued. The revised or updated appraisals can then be used to continue negotiations.

### **3.7.2 – Revisions Prior to Signed Memorandum of Agreement**

#### **1. Minor Plan Revisions Requiring Revised Appraisal Report Pages**

Sometimes, appraisal reports may be revised or updated by replacing corrected pages in the original report. This type of revision will usually involve only minor changes to the appraisal report. Revised or updated appraisal pages may be used in cases of:

- Mathematical or typographical errors found in the appraisal report.
- New sale transactions show a change in value and new sale pages can be included in the appraisal report without substantial alterations.
- A parcel is added or deleted and does not materially affect the valuation presented in the appraisal report.
- Minor improvements are found and added to plans but result in minimal change to value.
- Plan revision may involve a change in parcel groups (e.g., one owner may own several parcels and it is found they are not all a larger parcel), but reference should be made in the report as to the other ownerships involved in the project.

The appraiser will submit revised or updated appraisal report pages to the review appraiser along with a letter of transmittal briefly describing revisions to the report pages.

At times, minor revisions in land take, easement or temporary easement areas may occur. Usually the review appraiser is able to handle these slight changes and will prepare a revised FMV. In such cases, correction or revised appraisal report pages are not required.

#### **2. Major Plan changes Requiring Fully Revised Report or Addenda to Report**

When major ROW plan revisions occur, which will change the estimate of compensation, a new full appraisal report or an addenda report referencing the original appraisal report will be required. The new appraisal report reflecting the major plan revisions will be marked "Revised" on the title page, on the new letter of transmittal, and on the new summary of conclusions. The review appraiser will prepare a new revised FMV to supersede the original FMV.

If two appraisal reports prepared by different appraisers were received for one parcel, typically only the appraisal approved and FMV written on by the review appraiser will need revision or updating. If the revised parcel involves a very complex appraisal problem, the review appraiser (CDOT Appraisal Contract Administrator) will decide if both appraisal reports should be revised or updated.

### **3.7.3 – Revisions after Signed Memorandum of Agreement**

Occasionally ROW plan revisions may occur after CDOT has obtained a signed Memorandum of Agreement. If a revision is necessary after an agreement has been reached, the Region agent may submit a Waiver Valuation if the revision involves a parcel valuation of \$5,000 or less. The agent will use information and data from the original appraisal to support the value conclusion. If CDOT is negotiating for the parcel, the ROW plan revision should be submitted to the CDOT Appraisal Contract Administrator for appraisal.

Occasionally, after a signed agreement is made, the review appraiser may discover insignificant variations or minor adjustments that do not justify revised appraisal pages. In these instances the review appraiser can make minor revisions to the FMV and send a revised FMV to the Region.

## **SECTION 3.8 – OUTDOOR ADVERTISING SIGNS**

### **3.8.1 – Outdoor Advertising Definitions**

Some common terms used in the outdoor advertising industry are defined as:

1. **Advertising Device:** Any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway or a person or animal carrying a sign. The term “vehicle using the highway” does not include any vehicle parked near said highway for advertising purposes. Advertising devices is synonymous with sign.
2. **Legal Advertising Device:** Any advertising device that complies with Colorado Revised Statutes, Title 43, Article 1, Section 401.
3. **Illegal Advertising Device:** Any advertising device which was erected or maintained in violation of state law, rules and regulations, or local law or ordinance.
4. **Nonconforming Advertising Device:** Any advertising device which was lawfully erected under State law prior to January 1, 1971, and has been lawfully maintained in accordance with the provisions of this Part 4 or prior to State law, except those advertising devices allowed by Colorado Revised Statutes, Title 43, Article 1, Section 401(1).
5. **Encroaching Advertising Device:** Colorado Revised Statutes, Title 43, Article 1, Section 417(3a) states: “No person other than the Department without written approval of the Department shall erect or maintain any advertising device located either wholly or partly within the right of way of any state highway that is a part of the state highway system, including streets within cities, cities and counties, and incorporated towns. All advertising devices so located are hereby declared to be public nuisances, and any law enforcement officer or peace officer in the State of Colorado or employee of the Department is hereby authorized and directed to remove the same without notice.”
6. **Outdoor Advertising Company:** A business or individual who is licensed and bonded to fabricate and erect signs in Colorado.
7. **On-Premise Sign:** A sign identifying or advertising the business or activity conducted on the property where the sign is located.
8. **Off-Premise Sign:** All outdoor advertising signs other than on-premise signs.
9. **Poster Panel:** A structure designed to support a flat surface of generally 30 sheets (300 square feet) or 8 sheets (72 square feet) upon which printed advertising or other messages are pasted to the panel, built on one or more posts imbedded in the ground or attached to the wall of a building.
10. **Back-To-Back Poster Panel:** A structure designed to support two or more flat surfaces of 300 square feet built on one or more posts imbedded in the ground. Printed advertising or other messages are pasted to the panels.

11. Painted Bulletin: A structure designed to support one or more flat surfaces upon which at least one advertising or other message is painted in whole or substantial part, built on one or more posts imbedded into the ground or attached to the wall or roof of a building.
12. Urban Rotate: Painted bulletins which always have full illumination and the advertising facing sections are in modular form, designed and constructed to be moved from one structure to another on a periodic basis. The standard size is 14' X 48', but they are often larger and may have special embellishment features, such as cutouts, special lighting effects, freestanding letters, neon and space extensions to cover the advertisement of a specific product. The structures are usually steel and always have two back decks designed and constructed to State and local safety standards so working crews can have easy and safe access to the back of the facing sections during the rotation process. They are generally found in urban areas in the more desirable locations at points of maximum advertising exposure. Their advertising message is most often of a national product or of regional interest.

### **3.8.2 – Process**

#### **1. Sign Determination Information**

The CDOT Appraisal Contract Administrator or person preparing the Letter of Information is responsible for scheduling the Region sign inspector to prepare a determination on the following:

- Signs are legal, non-conforming, or illegal.
- Signs are on-premise or off-premise.
- In the case of a partial taking, signs can be legally relocated on the remainder property.

Any and all information relating to signs is included in the Letter of Information to the appraiser.

#### **2. Appraisal Information Requirements**

Appraisal information needed for the appraisal of outdoor advertising signs includes:

- The Region sign inspector's sign determination information is provided to the CDOT Appraisal Contract Administrator whenever the Region requests a project is appraised.
- A copy of the sign site lease for each sign is provided to the CDOT Appraisal Contract Administrator by the Region.

### **3.8.3 – Outdoor Advertising Sign Valuation**

The valuation of outdoor advertising signs is divided into two categories, on-premise and off-premise signs. Owner or tenant-owned business signs located off the subject parcel may be subject to damages and should be investigated. As an example, a total take may involve a

commercial subject property having an advertising sign and sign site agreement to advertise the subject property business on a property two blocks away. Include photographs of outdoor advertising signs in the appraisal. The three approaches to value - cost, sales comparison, and income capitalization are used in sign valuations.

## 1. On-Premise Signs

On-premise signs are located upon the premises and only advertise primary activities, goods or services conducted or available upon the premises or of the establishment. If on-premise signs are located in the taking area, CDOT must offer to purchase the signs as part of the real property. The appraiser shall include in the appraisal:

Contributory value of the sign.

Cost to remove and relocate the sign, unless the sign is located in a total acquisition.

Salvage value and/or owner retention of the on-premise sign located in the acquisition.

These items must be supported by estimates from local sign experts or other reliable sources.

## 2. Off-Premise Signs (Billboards)

Off-premise signs are owned by sign companies or private businesses which advertise businesses or services at another location. Off-premise signs are considered real property in Colorado (§ 24-56-118, CRS). If off-premise signs are located in the taking area, CDOT must offer to purchase them.

### a. Off-Premise Sign can be Relocated

If the off-premise sign is in the taking and can be legally relocated on the remaining property after the acquisition, then include the following in the appraisal report:

- Contributory value of the off-premise sign based on:
  - Cost approach, including, when possible, the following estimates:
    - Cost estimate from a national cost service.
    - Cost estimate from a sign company other than the company that owns the off premise sign.
  - Sales comparison approach.
  - Income capitalization approach.
- Cost to remove and relocate the sign, unless the sign is located in a total acquisition.
- Salvage value and/or owner retention of the off-premise sign located in the acquisition.

### b. Off-Premise Sign cannot be Relocated

If the off-premise sign cannot be legally relocated on the remaining property after the acquisition or if the sign is located in a total acquisition, then the following value estimates will be included in the appraisal report, as appropriate:

- Contributory value of the off-premise sign based on:
  - Cost approach, including, when possible, the following estimates:
    - Cost estimate from a national cost service.
    - Cost estimate from a sign company other than the company that owns the off-premise sign.
  - Sales comparison approach.
  - Income capitalization approach.
- Salvage value and/or owner retention of the off-premise sign located in the acquisition.

### 3. Encroaching and Illegal Signs

Signs within existing ROW are not entitled to payment but will be listed in the Summary of Conclusions under Tenant Improvements Off-Premise Sign Contributory Value of Part Taken at a zero value.

## **SECTION 3.9 – VALUATION OF CDOT-OWNED REAL PROPERTY**

### **3.9.1 – Appraisal or Waiver Valuation**

#### 1. Appraisal by Certified General Appraiser

An appraisal by a Colorado Certified General appraiser is required if the value of CDOT disposal property is more than \$25,000, per state statute:

§ 43-1-210(5)(a)(II), CRS

“Prior to the disposal of any property or interest in any property that the department determines has an approximate value of more than twenty-five thousand dollars, the department shall obtain an appraisal from an appraiser, who is certified as a general appraiser under section 12-10-606, to determine the fair market value of such property or interest.”

#### 2. Waiver Valuation

CDOT disposal properties with a likely value estimate of \$25,000 or less may be valued by waiver valuation prepared by an agent or an appraiser or any other person qualified to prepare a waiver valuation, per state statute:

§ 43-1-210(5)(a)(V), CRS:

“For any property or interest therein subject to disposition that the department determines has an approximate value of twenty-five thousand dollars or less, the department shall dispose of the property or interest by means of a sale or exchange at not less than its fair market value in the manner set forth in this subsection (5); except that, as specified in section 12-10-602 (9)(b)(VI), the department may employ a right-of-way acquisition agent, a real estate appraiser who is licensed or certified pursuant to part 6 of article 10 of title 12, or any other individual who has sufficient understanding of the local real estate market to be qualified to make a waiver valuation to provide an estimate of the fair market value of such property or interest and to determine to whom such property or interest is of use.”

### **3.9.2 – Leases, Maintenance Sites, Excess Parcels/Other Disposals, and Trades**

#### 1. Leases

Refer to Chapter 6 of the ROW Manual for details concerning leases.

#### 2. Maintenance Sites

For most purposes, maintenance sites are economic units and shall be appraised as such when determining market value.

#### 3. Excess ROW and Other Disposals (Economic Unit)



These parcels will be appraised at market value using comparable data from the market and accepted appraisal procedures.

#### 4. Excess ROW and Other Disposals (Non-Economic Unit)

These parcels shall be appraised at market value using comparable data from the market and accepted appraisal procedures. In the absence of market data the appraiser shall fully explain the value conclusion and data used to arrive at this conclusion. Three methods to consider for this valuation problem include valuing the property as a stand-alone unit, across-the-fence value, and value as an assemblage.

#### 5. Trades

In general, all trades will be made at market value. The above procedure is intended to apply to the majority of cases. There may be instances where CDOT may depart from the norm. These will be handled on a case by case basis.

### **3.9.3 – Procedure for Identification of “R” Parcels (Initial ROW Plan Preparation)**

Region ROW will identify obvious “R” parcels on the plans during initial plan preparation. The “R” designation indicates that the residue parcel after take may need to be purchased by CDOT if the parcel has no economic value to the owner after the take. The final determination if the residue after take is an uneconomic remnant is the decision of the Right of Way manager. Following are examples of obvious “R” parcels:

- Landlocked tracts.
- Small, triangulated or irregularly shaped tracts with limited utility in the after condition.

### **3.9.4 – Appraisals for the Disposition of Excess ROW**

The following information, ideas, and techniques for the disposition of excess ROW were originally presented by the National Highway Institute in Course 14126, Appraisal and Appraisal Review for Federal Aid Highway Programs, conducted by the FHWA.

#### 1. Federal Requirements

According to 23 CFR 710.403 (d) Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of 23 CFR 710.403 (d). Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes. The term fair market value as used for acquisition and disposal purposes is as defined by State statute and/or State court decisions.

For real property disposals and leases, fair market value may represent either:

- a. the amount of the approved appraisal or agent’s price estimate.

- b. the negotiated price, or
- c. the highest bid received at a public sale.

The term “at a minimum, fair market value” does provide for negotiations or public bidding in excess of the amount of the approved appraisal or Waiver Valuation price estimate. This does not preclude CDOT from negotiating a price or accepting a high bid that is less than the amount of the approved appraisal or price estimate Waiver Valuation.

FHWA may grant an exception to the fair market value requirement if the real property will be used for a social, environmental, or economic purpose. The purpose of this provision is to provide CDOT with the flexibility to charge less than fair market value for lands acquired with Federal assistance if such lands, once sold or leased, would be used for some purpose of public benefit. The elimination of the term “mitigation” broadens the scope of the exception provision.

## 2. Appraisal Techniques (Excess Parcel/Disposal Parcel)

The appraisal shall contain a range of value using any applicable valuation technique following concepts are examples to consider depending on the situation:

For the valuation of CDOT owned “” or “excess parcels,” CDOT requires that the appraisal contain a range of values using applicable valuation techniques that could reasonably establish the fair market value parameters. The following concepts are examples considered, depending on the situation:

- Market value of the property “stand-alone” in the marketplace.  
This value has the highest significance for a property that can be developed to its highest and best use independently, by itself, for its own sake, as such, or in its own right. A stand-alone property’s characteristics include but not limited to, sufficient access, a sufficient building envelope, and a suitable shape for development. The stand-alone value represents the lower end of the negotiating range when the highest and best use is for more than just stand alone use.
- Value to the adjoining owner using “across-the-fence” approach.  
This method involves an appraisal of the area being disposed using values similar to the value of the adjacent property.  
This value estimate is based on the subject being absorbed by the adjacent owners either for surplus or excess land. Compare with adjacent lands before the consideration of any other adjustment factors. This sets the baseline value before consideration of whether the subject property would be excess or surplus land to the adjoiner. From this across-the-fence value, the highest and best use of the subject is then explored to determine whether the subject would be surplus or excess land to the adjoiner. This value has the highest significance for a property that, when assembled with an adjoiner, would take on the same value as the property it was assembled with. However, it is also the value from which deductions are made when the subject would only be surplus land to the adjoiner.
- Enhancement or Plottage to adjoining owner.

This approach establishes an amount by which the value of a property is increased through assemblage of another property into the same ownership. An appraisal will typically mean a before and after value appraisal of that which is being disposed, which will identify any increase in value caused by the disposal of ROW.

Plottage is the increment of value created when two or more sites are combined to produce greater utility. This method is the reverse of the procedure for estimating loss in value due to a partial taking. The value of the parcel into which the subject is to be assembled is estimated before and after the assemblage, and the difference between the two values is the enhancement value. (National Highway Institute, Appraisal and Appraisal Review for Federal-Aid Highway Programs, pg. 102-103). Example: A and B are adjacent lots each worth \$10,000. By combining them under one owner, the entire tract becomes large enough for use as a restaurant site, worth \$50,000. The plottage value is \$30,000.

The appraisal explores more than just the market value of the subject. For CDOT-owned excess parcels, the market value estimate is not limited to the Colorado “reasonable market value” definition used for eminent domain appraisals. In strict adherence, only the stand alone value estimate is consistent with the definition of market value. But when the property’s highest and best use is investigated, values other than market value may be estimated. These may estimate the value a specific property has to a specific person or specific firm as opposed to the value to persons or the market in general. For instance, when the highest and best use is for surplus land to the adjoiner, the estimated value may be lower than the across the fence value. When a parcel enhances an adjoiner, plottage may represent the greatest return to CDOT. This range of value serves to inform CDOT’s negotiator who is directed (PD1300.0) to obtain the highest possible value from the sale of the subject property.

### 3. Access Control Line or other Access Control Disposal

Some real property rights disposals include removal of or changes in legally-described access control (AC) lines. Removal of an AC-line or changes to an AC-line along a property abutting a state roadway often result in improved access to the property. The accomplished changes to the AC-line might result in a higher value for the adjacent property than before any access control change is made.

Besides removal of an AC-line (rare), other changes to AC-lines are noted by example below:

- Change in number of openings (increase or decrease in openings).
- Change in access location.
- New access where no previous direct legal access existed.
- Change in use type of access allowed (farm use to residential or business use) when AC-line description is specific to land use.
- Change in access width (e.g., 17 feet increased to 35 feet).

While federal regulation (see section 3.9.4(1) above) requires appraisal/valuation (implied) of the value of any real property right for disposal that was acquired with

federal funding – including access rights or other access control – CDOT does not appraise AC-lines or changes thereto for disposal.

Reasons why CDOT does not appraise the value for disposal of an AC-line or changes thereto, or changes to any other access control include, for example:

- Not all access control along state highways is imposed by AC-lines, but rather through the state's access code. The access code is a regulatory police power and not a property right that is or was acquired, nor is it a property right that may later be sold in an excess property disposal.
- An AC-line also reflects a police power imposed as a legally-described access restriction upon a property. An AC-line is established by deed conveyance to CDOT, either through agreement with the property owner or through condemnation. AC-lines are not property rights acquired (purchased with federal funds or other) as an appraised part taken, although damages to the remainder might include an element of value loss for diminution in access caused by imposition of an AC-line. Even so, diminution of access is generally not compensable. Where there is no compensation in a non-compensable element of damage resulting from an AC-line, there is no harm to federal funding for this element of the acquisition. Thus no requirement later to charge fair market value for any change to an AC-line beneficial to an adjoining property owner.

#### Access Control Line Removal or Changes – Property Owner Request

Requests by the owner of a property adjacent to a state highway to remove or change an AC-line affecting the property are handled by CDOT's Region Access Management units. Any changes to an existing AC-line approved by these units are not appraised as a property right disposal.

#### Access Control Line Removal or Changes – CDOT Excess/Disposal Parcel

CDOT-owned real estate and other property rights approved for sale (disposal) are appraised as described above in section 3.9.4(2). Property access is an important element in any appraisal, and must be described and analyzed as appropriate in the disposal appraisal. The appraiser will appraise the excess/disposal property in its "as is" condition, including consideration of legal and physical access as well as any reasonable probability of change to such access by CDOT prior to disposal.

## **SECTION 3.10 – APPRAISAL REVIEW**

### **3.10.1 – General Information**

The reporting of the results of an appraisal review is one of the most critical efforts the professional review appraiser undertakes. The revised Code of Federal Regulations (CFR) requires a review report on every appraisal reviewed. The revised CFR also puts emphasis on the scope of work rule, both the scope of the appraisal and the scope of the review. The foremost concern of every review appraiser is to secure credible, accurate, and approvable appraisals.

Appraisal report review by a qualified review appraiser is a requirement for real property acquired by CDOT in connection with Federal-aid projects or programs, and State funded projects. In addition, it is CDOT's policy, as the approval Agency, to review all appraisals of real property to be acquired by LPAs that have received or may receive Federal participation or reimbursement for any phase of a project. A review is also required for appraisals of real property owned by CDOT for disposal purposes.

### **3.10.2 – Review Appraisers Qualifications**

Only senior CDOT staff appraisers (GP IV and V levels) with a state Certified General Appraiser license qualify as a review appraiser. Outsourcing appraisal review is outlined in Section 3.14. Reviewers must have gained knowledge of applicable eminent domain valuation laws and appraisal through appraisal assignments. The required qualifications of the review appraiser must correspond to the complexity of the appraisal problem and must be consistent with the scope of work for the assignment. Some positive personal traits of a review appraiser should include verbal and written communication skills, the ability to train, mentor, and educate.

### **3.10.3 – Review Appraiser Responsibilities**

In 49 CFR § 24.104, Review of Appraisals, the term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. Federal Agencies have long held the perspective that appraisal review is a unique skill that, while it certainly builds on appraisal skills, requires more. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the Agency's real property valuation needs and the appraiser.

CDOT review appraisers typically perform roles greater than technical appraisal review. They are often involved in early project development. Acting as the CDOT Appraisal Contract Administrator, the review appraisers are actively involved in determining scope of work statements, letters of information to the appraiser, participating in making appraisal assignments to fee staff appraisers, and obtaining specialty reports for appraisal purposes. They are also mentors and technical advisors to appraisers and other CDOT officials, both staff and fee, especially on CDOT policies and requirements. Other duties include: preparing inventories of real and personal property for acquisitions; resolving appraisal questions and issues; being a liaison for court preparation and negotiated settlements; and at times, performing appraisals.

49 CFR § 24.104(a) states: The level of review analysis depends on the complexity of the appraisal problem. Therefore, the review process begins by gathering information about the project and subject. Without this information, the required scope of the appraisal under review will not be known. ROW plans are collected, examined, and field inspected. Legal descriptions of the acquisitions and title commitments are also collected and examined. Environment documents are also examined – they hold a wealth of neighborhood, project, and study information. When available, construction plans are also very informative for the review appraiser. If the review appraiser has not been involved in the project, a session with the project engineers will add to the project knowledge.

49 CFR § 24.104(a) also states a qualified review appraiser shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal found in 49 CFR § 24.2(a)(3), appraisal requirements found in 49 CFR § 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA.

49 CFR § 24.103 sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are prepared according to these requirements, which are intended to be consistent with USPAP. CDOT has appraisal requirements which are based in Colorado Revised Statutes that supplement the Federal requirements.

CDOT review appraisers have the responsibility to assure that the appraisals are relevant to its program needs, reflect established and commonly accepted Federal and federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal in § 24.2(a)(3) and the five following requirements:

49 CFR § 24.2(a)(3) defines Appraisal as: The term appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

§ 24.103(a) and Appendix A to § 24.103(a) requires:

“(i) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(ii) All relevant and reliable approaches to value consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

(iii) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(iv) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

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

CDOT Assignment Conditions are detailed in Section 3.15 of this chapter to the ROW Manual.

Pursuant to Appendix A to 49 CFR § 24.104(a), the appraisal review is a technical review by an appropriately qualified review appraiser. The work of review appraisers can be summarized by saying they make a thorough and detailed evaluation of appraisals submitted to them for review. The scope of review requirements is to review the appraisal against § 24.103 detailed above and other applicable requirements. In essence, the scope of the review is dependent upon the scope of the appraisal. Like the appraisal, the scope of the review must be explained and communicated in the review report.

As needed, the review appraiser shall, prior to acceptance of an agency appraisal, seek necessary corrections or revisions. If the initial appraisal submitted for review is not acceptable, the review appraiser is to communicate and work with the appraiser to the greatest extent possible to facilitate the appraiser's development of an acceptable appraisal. In doing this, the review appraiser is to remain in an advisory role, not directing the appraisal, while retaining objectivity and options for the appraisal review itself.

The review appraiser is responsible for checking computations, the interest being appraised, deeds or options when provided, size, maps, legal descriptions, or construction plans when applicable. The review appraiser must evaluate the appraiser's qualifications; identify any legal matters needing resolution; and study the information, data, and analysis presented for qualitative and quantitative adequacy to determine if the report conforms to law, regulations, USPAP, and CDOT requirements.

The review appraiser must determine if the facts cited are correct, if the assumptions are valid and necessary, if the analysis and approaches are properly processed, and if the appraiser did a thorough job. Following are questions the review appraiser should ask. Are the sales really comparable or the cost estimates reasonable? Has the appraiser properly applied the proper test of highest and best use and the larger parcel concept? Is the value estimate reasonable and supported by the appraisal? Are you, as the review appraiser, competent to evaluate the valuation peculiarities in the report?

Appendix A § 24.104(c) states before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and analysis of that data, demonstrates the soundness of the appraiser's opinion of value. For the purposes of this part, an acceptable appraisal is any appraisal that, on its own, meets the requirements of § 24.103. An approved appraisal is the one acceptable appraisal that is determined to best fulfill the requirement to be the basis for the amount believed to be just compensation. Recognizing that appraisal is not an exact science, there may be more than one acceptable appraisal of a property, but for the purposes of this part, there can be only one approved appraisal.

CDOT staff review appraisers are not authorized to approve the established amount believed to be just compensation; they can only recommend an amount believed to be just compensation. The Region Transportation Director or designee is the agency representative authorized to establish the amount believed to be just compensation. The one recommended appraisal will serve as the basis for the Fair Market Value determination document known as the FMV. The

FMV represents the amount of compensation that will be offered to the property owner for the proposed acquisition. Before the FMV can be distributed, ROW plan authorization (3111, 3109) and the Acquisition Stage Relocation Plan (formerly known as the 7B study) must be completed, if relocation is applicable to the acquisition of the property. Explanation of how to distribute the FMV is discussed in this section of the Manual. The review report will be sent to CDOT Project Development Branch, Headquarters ROW for filing in the main parcel file. A copy of the review report is kept in the review appraiser's file.

Section 24.104(c) states that the review appraiser shall prepare a written report that identifies the appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal. This is analogous to the scope of the review discussed earlier. The review appraiser shall comment on the strong and weak points of the appraisal and, as necessary, provide supplemental data and analysis. Any damages or benefits to any remaining property shall be identified in the review appraiser's report.

The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the amount believed to be just compensation for the acquisition.

### **3.10.4 – Review Appraiser Decision Options for FMV**

The review appraiser shall determine each appraisal report reviewed as #1, #2 or #3 below:

#### **1. RECOMMENDED**

- Among all appraisal reports reviewed concerning the proposed acquisition or other appraisal purpose, this report meets regulatory requirements and is determined as the best overall supported appraisal that is recommended as basis for the establishment of the amount believed to be just compensation and/or FMV (Fair Market Value only is the basis in a disposal/excess parcel appraisal).

#### **2. ACCEPTED**

- The appraisal report meets all regulatory requirements for the appraisal assignment in Eminent Domain or for disposal/excess parcel appraisal purposes, but is not recommended as the basis for FMV. The minimum requirements are appraisal processes described in federal regulation 49 CFR § 24.103(a)(2)i-v and (b). Other requirements are applicable material in the Uniform Appraisal Standards for Federal Land Acquisitions and relevant portions of USPAP.

#### **3. NOT ACCEPTED**

- This describes an appraisal report that does not meet most of, or a sufficient degree of, the minimum and other appraisal requirements noted above for the appraisal assignment. It is not an acceptable appraisal report – certainly not as the basis for FMV and it is not acceptable as an appraisal developed and written to basic applicable requirements.



### Review Appraiser as Appraiser of Record

If the review appraiser is unable to recommend either an Agency or property owner's appraisal as an adequate basis for the establishment of just compensation and/or determination of Fair Market Value, the review appraiser may:

1. Recommend that the Agency obtain another appraisal, or
2. If it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with 49 CFR § 24.103 and USPAP Standards 3 and 4 (appraisal review: development and reporting) to support a recommended value. When the review appraiser uses this option, the review appraiser becomes the appraiser of record.
  - a. In developing an independent recommended value and/or compensation estimate, the review appraiser may reference any acceptable resource, including parts of any appraisal, whether that appraisal is Accepted or Not Accepted for its intended purpose.
  - b. When the review appraiser develops an independent value while retaining the appraisal review, that independent value may become the appraisal recommended to FMV. However, when the review appraiser's independent value and/or compensation conclusion is different from that in the appraisal report reviewed, such conclusion will be reported to the review appraiser's supervisor and to CDOT's Appraisal Program Manager before the conclusion may be recommended to FMV. Contract review appraisers for CDOT or LPAs will follow this same protocol where these circumstances arise (contact the Region appraisal supervisor or ROW manager and CDOT's Appraisal Program Manager). The review appraiser is encouraged to discuss this idea with either person noted above before pursuing this approach.
  - c. The review appraiser's supervisor and the statewide Appraisal Program Manager together will determine whether the review appraiser's independent appraisal work as reviewer should be reviewed in turn to determine whether the review appraiser's conclusion may be recommended to FMV.
  - d. These two persons may conclude that no further review is necessary, and the review appraiser's independent appraisal may be recommended to FMV on the review appraiser's own decision. Conversely, the review appraiser's supervisor and the Appraisal Program Manager may determine that the review appraiser's independent appraisal must itself be reviewed, and if appropriate also to include review of any or all other appraisal reports pertinent to the same assignment, before the review appraiser's independent appraisal may be recommended to FMV. If the decision is that subsequent review is necessary, the Region will be responsible to ensure the additional review work is performed.

### **3.10.5 – Review Appraiser Written Review Report**

The review appraiser shall prepare a written report that identifies all appraisal reports reviewed and documents the findings and conclusions arrived at during the review of the appraisal. Any damages or benefits to any remaining property shall be identified in the review appraiser's report. The review appraiser shall also prepare a signed certification that states the parameters of the review. The certification shall state the recommended value to be approved as the amount believed to be just compensation for the acquisition. Refer to the Exhibits section for an example copy of the Review Report.

Documentation standards for appraisal/appraisal review should be commensurate with the complexity of the appraisal problem. Review appraisers are expected to prepare an appropriate written explanation supporting the reviewer's estimate of fair market value.

When reconciling divergent appraisal reports or establishing an independent estimate of value, the review appraiser must provide a written explanation sufficient to convey the basis for the approved amount.

### **3.10.6 – Preparation of Review Appraiser Folder**

The initial step is to prepare a review folder. This folder is to serve as storage receptacle for all necessary documents pertinent to the review of a project. The folder should be of adequate size to contain all information such as authorizations, ROW plans, Letter of Information, FMV copies, quality control schedules and monitoring, correspondence between appraiser, review appraiser, and CDOT Appraisal Contract Administrator. The information contained in the review folder becomes very important in cases where there may be ROW plan changes, immediate possession (IP) hearings, valuation trials, settlement issues, or quality control concerns. The folder shall contain adequate information pertinent to the review of a project so that other personnel such as the Statewide ROW Program Manager, Region ROW Managers, CDOT Appraisal Contract Administrator, Statewide Appraisal Supervisor, or attorneys with the Office of the Attorney General can obtain necessary information when such an occasion may occur. At a minimum, the review file will contain the following items:

- Right of Way Plan Approval - Form 462
- Reduced set of ROW plans and all revisions
- Construction plans when available
- Review appraiser's worksheet
- Request for substantive corrections/revisions
- Monitoring of appraisal schedules
- Letter of Information and any other correspondence pertaining to the project
- Copies of FMVs

### **3.10.7 – Environmental Information**

Environmental research to learn about environmental conditions affecting project ROW parcels is conducted early in the project design stage by CDOT environmental staff or consultants. However, results are not always available at the time appraisal work is under way. The study for a large project often is the Modified Environmental Site Assessment (MESA), although

projects also can be covered by an ISA or Phase I/II study at the discretion of the Region environmental staff.

A MESA is a comprehensive study containing extensive information pertinent to the project and properties involved. Smaller projects involving only a few ROW parcels or less might be handled by an ISA. These studies are available to the Region ROW units, including Appraisal. The appraisal project manager and/or review appraiser should consult these studies and address their investigative results as part of developing a Scope of Work for engaging contract appraisal services or working with a staff appraiser. Information from these environmental studies also might be appropriate for inclusion in the letter of information to the appraiser. These studies also might be provided directly to the appraiser. Check with Region ROW management and/or environmental staff.

NOTE: In partial taking appraisals, environmental studies on these ROW parcels only address environmental conditions specific to the acquisition parcel and not the whole ownership.

### **3.10.8 – Scheduling Review of Appraisals**

Projects are subject to advertising dates. Completed FMVs are required by specified dates prior to the advertising dates. A properly planned schedule for completing appraisal reviews is essential. When completed appraisals for a project are received, there is certain information the review appraiser should check to aid in establishing the amount of time required to review the project, which appraisal reports should be reviewed first, which parcels may have relocation, etc. The following information is helpful when starting a review process on a project:

- How many appraisal reports are being prepared on the project?
- Have all of the appraisal reports been completed and delivered?
- A log sheet for the project should be maintained and placed in the review appraiser's file.
- When will the remaining appraisals be completed and delivered?
- Are plan revisions expected?
- Do legal descriptions in the appraisal reports match the ROW plans and tab sheets?
- Are land (parcel) areas in the appraisal the same as on the ROW plans and legal descriptions?
- Are items to be protected during construction and/or to be included in the appraisal specifically set out in the appraisal report?
- Was an inventory required and if so, was it completed?

### **3.10.9 – Quality Control**

During the review process the review appraiser is required to maintain and complete certain quality control documents. These documents consist of a review appraiser's Worksheet on Appraisal Requirements, Appraisal Revisions Request, Performance Report on Fee Appraisers, and Appraisal Tracking Report. Copies of these documents are shown as Exhibits in the Appendices.

1. The Worksheet on Appraisal Requirements contains minimum appraisal requirements.

2. The Appraisal Revisions Request tracks the revisions requested by the review appraiser. This revision request may require appraisal revisions for reasons such as plan changes, and minor and/or major valuation changes.
3. Performance Report on Fee Appraisers rates the appraiser as to factors including knowledge of CDOT needs, cooperation with CDOT, submission of work on schedule, quality, accuracy, and competence of appraisal, communication skills, etc.
4. Appraisal Tracking Log is a log for tracking information such as when appraisals are due; appraisals are received; reports returned to appraiser; corrections needed; FMV dates and FMV amounts; revised FMV and revised FMV amounts.

Due to the large number of appraisals prepared by different appraisers for CDOT, this information is critical in maintaining quality control. These documents must be completed and retained in the review appraiser's file.

### **3.10.10 – Authorization**

All federal aid project plans must be authorized prior to commencing any negotiations with property owner. This process consists of the authorization of Functions 3114, 3111 and 3109. The Region Pre-construction Engineers establish the spending authority and obligation of ROW funds by authorizing function 3114.

After the Region Pre-construction Engineers have completed the requirements for funding function 3114, the appraisal process can begin. The Region will provide an appraisal package that includes:

1. Project Number
2. Location
3. Project Code
4. Parcels
5. 1 set of R/W Plans (colored)
6. 1 set of legal descriptions
7. 1 set of memos of ownership
8. Letter of Information
9. Preliminary Construction Plans

Form #128 (environmental project certification) does not need to be completed for the commencement of appraisals. However, Form #128 must be completed and properly signed before any FMVs can be released by the review appraiser. This form includes required clearances and dates completed, and the permits/additional requirements and dates completed applicable to environmental concerns on each specific project.

When the Region has completed these conditions, the information is delivered to the Project Development Branch, Headquarters ROW for authorization of Acquisition (3111) and/or Relocation (3109) as applicable. Function 3111 and 3109 approvals will be included on CDOT Form 462a, Right of Way Plan Approval. Authorization of 3111 and 3109, when applicable, must be received before commencement of negotiations.

The review appraiser must realize that if an FMV is prepared and released without all of the proper authorizations and approvals for Federal-aid projects completed, and an offer is made to an owner, the result may be that the project will become ineligible for federal-aid. Preparing and releasing an FMV on a federal-aid project parcel prior to proper authorization is not acceptable. The review appraiser will not release the FMV unless 3111 is authorized and the Acquisition Stage Relocation Plan completed, when applicable.

After checking Form 462a for the authorization to acquire (3111), the review appraiser should determine if there has recently been a similar project in the immediate area. This may provide an indication of previously established values. There could be similar properties or sale transaction data that may be pertinent to the current project being reviewed. A thorough review is made of construction plans for items that could affect property values. The review is to include considerations for access control, frontage road, structures, grade alignment, interchanges, etc.

Memorandums of Ownership or Title Commitments must be checked to ascertain if there are restrictions for easements, agreements, and/or any other encumbrance on the ownership that might affect value.

The appraisal itself is checked for area of ownership taken and the remainders, right and left. If any discrepancy is found to exist between the area of the taking shown in the appraisal and the area shown on the approved ROW plans, the ROW Plans, Surveys, Legal Documents Unit, and the Region ROW Manager will be notified immediately. A check is made as to the highest and best use. The review appraiser must ensure that all sales of the subject are reported for the preceding five years. If sale of the subject is not used as a comparable, this must be explained. Sales must be correlated sufficiently to support reasons for the value conclusions.

The review appraiser shall check for the Letter of Information prepared by the Region for the appraiser and make sure that the pertinent information applicable to the property under appraisal is included in the appraisal report.

### **3.10.11 – Available Information**

Before appraisals are initiated on any project, it is well understood that a significant amount of resources have been devoted to that project. The Region's Design and ROW Units have compiled a considerable amount of information pertinent to each project. The majority of this information may be obtained from the design, construction, and ROW units. The following information must be available and accessed or the review appraiser cannot complete the review.

1. ROW Plans containing information on: number of parcels, remainders left and/or right, access control, frontage road, structures, signs, grade alignment, interchanges, number of acquisitions, number and type of easements (permanent, slope, temporary, utility, railroads, and aviation).
2. Revised ROW Plans.
3. Region determined "R" parcels.
4. Parcel areas or sizes.

5. Construction Information pertaining to: access control, frontage road, structures (proposed), grade alignment, interchanges, existing access points, toe of slope, top of bank, and acceleration and deceleration lanes.
6. Property Information pertaining to: memorandum of ownership, easements, deed restrictions, tax liens, and deed transfers.

A review of this available information will benefit a review appraiser by becoming familiar with a project and identifying areas where there may be valuation concerns or issues. This information may also be very helpful in maintaining CDOT policies and procedures when special issues may be involved. The review appraiser must know when issues like relocation, R-parcels, etc. may cause concerns. Prior to hiring a fee appraiser, the CDOT Appraisal Contract Administrator shall know these concerns. The CDOT Appraisal Contract Administrator will convey this information to the appraiser and review appraiser.

### **3.10.12 – Appraisal Services Document**

In most cases the project review appraiser will also be the CDOT Appraisal Contract Administrator, however, if this is not the case, the assigned review appraiser shall obtain and read a copy of the Purchase Order, Contract or Task Order authorizing the appraisal work. Attached to these appraisal services documents is a Scope of Work. The Scope of Work sets forth the conditions and requirements the appraiser has agreed to perform. In addition to knowing the delivery dates, parcel priority delivery dates, and when two appraisals have been ordered on the same parcel, the review appraiser should also know all essential information and requirements contained in the appraisal service document's Scope of Work to be performed by the appraiser.

Typically when any additional information such as a specialty report is required for the completion of an appraisal, the contract appraiser is responsible for obtaining the information. An allowance for this additional cost will or should be identified and included in the appraiser's original scope of work. However, during the course of a review, if it is discovered that additional information such as a specialty report is needed that was not included in the appraiser's original contract, the CDOT Appraisal Contract Administrator should make arrangements so this information may be obtained. This will be handled on a case-by-case basis. Generally the most efficient way is to have the contract appraiser obtain the additional information. This will require a new purchase order. The review appraiser will examine the specialty report for completeness and for its determination of contributory value of the item.

The review appraiser must view each parcel in the project and walk the project, if necessary. The review appraiser must compare land, topography, and construction plans to the ROW map to become thoroughly familiar with the takings and the ownerships affected by the takings. Should there be any doubt about items in the construction plans, the engineer in charge should be consulted for clarification.

The review appraiser will inspect comparable sale transactions. The review appraiser should prepare notes on grading of the land, buildings, etc., whether irrigated, or dry land, or anything of a relevant nature in comparison to the subject. Comparable sale transactions are probably the most important part of the review. These sales and their comparability to the subject are generally the best indication of market value. Should there be a doubt as to the validity of a sale

used by the appraiser, the review appraiser should reconfirm the sale. The comparable sale transactions used, the appraiser's analyses, and reasoning are studied carefully. Real estate listings and conversations with local brokers, bankers, etc., is very often a source of additional information for the review appraiser. Project enhancement and cash equivalency must be specifically addressed in the sales analysis.

### **3.10.13 – Review Appraiser's Worksheet on Appraisal Requirements**

Since an appraisal is an estimate of value based on certain value-related information and conclusions, it is the review appraiser's responsibility to determine if a report (or reports) contains factual information, proper documentation, and appropriately supported conclusions. The review appraiser must also assure that the report conforms to applicable laws and regulations. In order for CDOT to receive an acceptable appraisal using recognized appraisal standards, methods, and techniques, a review appraiser's checklist for minimum appraisal requirements has been established.

The following checklist showing minimum appraisal review requirements only denotes the requirements included in the appraisal report as applicable. It is, however, the review appraiser's responsibility to have a thorough knowledge and comprehension of the underlying importance of each requirement and why it has been included in the checklist. Following are minimum appraisal requirements review appraisers need to know:

- Is Federal-aid project number and parcel identification included?
- Does the project have 3111 authorization? CDOT Form #462.
- Was a Letter of Information provided to the appraiser?
- Was an "Owner Contract Sheet" completed and included? (This is a CDOT requirement.)
- Has the appraiser given the property owner or owner's representative an opportunity to go over the taking and be present during the inspection of the property? 49 CFR § 24 Sec. 301(1).
- Is there an appraiser certification?
- Is there a statement of assumptions and limiting conditions?
- Did the appraiser include photographs of subject property including all principal above ground improvements taken or affected?
- Is there a description of the subject property, total ownership, property interest being acquired (include easements) and description of the remainders? 49 CFR § 24.103 (a).
- Did the appraiser include all sales of the subject ownership during the last 5 years?
- Is reasonable market value defined? 49 CFR § 24.103 (a).
- Is purpose of appraisal in the report? It should include a statement of value to be estimated, and the rights of interest being appraised.
- Is the total estimate of compensation, value date, and appraiser's signature specifically set out?
- Is there a description of the neighborhood?
- Is highest and best use clearly set out?
- Is the appraisal consistent with highest and best use?
- Are the subject, sale transactions used, and zoning consistent and clearly described?
- Are sale transactions confirmed as necessary to the assignment (litigation appraisal requires principal appraiser must confirm with buyer and/or seller or both)?
- Is project enhancement considered?

- Is cash equivalency considered?
- Reconciliation: does it include sufficient explanation as to how sales support the value? 49 CFR § 24.104.
- Did the appraiser apply required dollar or percentage adjustments to items affecting the comparability of sales to the subject property when applicable?
- Did the appraiser include and present an adequate relative comparison analysis of the comparable sales when applying qualitative adjustments?
- Is there an adequate sales map?
- Are the plats properly marked?
- Are affected signs (on-premise and off-premise) and sign sites valued?
- A certified inventory of real and personal property may be required. This inventory must delineate whether the real property is owned by the fee ownership or by the tenant. Is this included in the report? Tenant owned real estate must be adequately described and valued
- Do specialty reports support contributory value? USPAP Standard Rule 1-4(g).
- Did the appraiser properly analyze and take responsibility for the specialty reports? CDOT Manual, USPAP Standard Rule 1-4(g).
- Is there support and documentation for damages or benefits to the residue after take?
- When determining the amount of compensation paid for a partial taking, the compensation for the property taken and damage to the residue of said property shall be reduced by the amount of any special benefits which result from the improvement or project, but not to exceed 50 percent of the total amount of compensation to be paid for the property actually taken. Was this accomplished?
- Appraisers must always be alert to the possibility of soil contamination and toxic waste. They must be addressed in the appraisal when applicable. Does this apply?
- Are other descriptive materials such as maps, charts, plans, and photographs, included in the report?
- Did the appraiser perform according to the Scope of Work?

All pertinent items checked “no” must be corrected. If not corrected, an explanation listing the reason why it was not corrected will be prepared. Explanations can be inserted at the bottom of the Review Appraiser’s Worksheet on Appraisal Requirements or written on a separate attached sheet. The worksheet will be placed in the review appraiser’s folder.

### **3.10.14 – Review Appraiser’s Fair Market Value (CDOT Form #930)**

When the appraisal reports are found satisfactory, the reviewing appraiser is required to document the determination of Fair Market Value. The review appraiser will prepare a Fair Market Value determination commonly referred to as a “FMV”.

The review appraiser’s FMV certificate shall be the recommended compensation for the real property rights being acquired and any damages or benefits. It is the responsibility of the review appraiser to ensure that appraisals have been made in conformity with Federal and State laws, rules, policies, and procedures applicable to the appraisal of ROW for transportation purposes, and no portion of the market value consists of items which are non-compensable under the established law.



The review appraiser shall report each allocation of the recommended compensation to land, improvements, damages, and benefits, if any. The value of any tenant owned improvements to be acquired shall be listed separately.

Damages are limited to the loss in value attributable to remainder property due to severance or consequential damages that arise when only part of an owner's property is acquired. Damages in this instance do not include contractor claims. These damage issues should be handled as part of the construction contract.

The Project Development Branch, Headquarters ROW tracks and reports the acquisition costs to the Internal Revenue Service (IRS) as gross proceeds. The gross proceeds reported to the IRS should only include land, improvements, and damages from an adequately supported appraisal.

### **3.10.15 – More than One Appraisal**

On certain projects, some parcels to be acquired may require more than one appraisal. This will typically occur when the appraisal problem is difficult and contains complicated or complex issues. Complicated or complex appraisal problems are not necessarily limited to those parcels with high values. Some parcels with much lower values may also fall into this category. When this situation occurs, the CDOT Appraisal Contract Administrator may elect to obtain two appraisals from different appraisers.

When two appraisals by different appraisers are received for one parcel, the review appraiser is required to review each appraisal report. After reviewing each appraisal report, it is the review appraiser's responsibility to select the appraisal that best supports and represents the most applicable just compensation offer to the owner while employing recognized appraisal standards and maintaining CDOT policies.

After each appraisal has been reviewed and the review appraiser finds one or both appraisals are deficient as to the minimum appraisal requirements, the review appraiser should take the necessary steps to have the deficiencies corrected. If one appraisal is considered acceptable and will be recommended for the basis to prepare an FMV on that parcel, it does not excuse or grant an exemption to the other appraiser for submitting an unacceptable report.

### **3.10.16 – Plan Revisions**

Changes to ROW plans may occur. All plan changes or revisions require authorization. A major change affecting the estimate of compensation, a new and/or full appraisal report or an addenda report referencing the original report will be necessary. If two appraisals were prepared originally on the parcel, typically only the appraisal used as a basis to prepare the FMV needs to be updated. However, if the revised parcel involves a complex appraisal problem, the CDOT Appraisal Contract Administrator and/or review appraiser, if different, should decide if one or both appraisal reports need to be updated. Again, for quality control purposes, the CDOT Appraisal Contract Administrator should prepare a new appraisal services document and scope of work. The review appraiser, after receiving the updated appraisal, will prepare a new Revised FMV to supersede the original FMV.

Section 3.9 of this chapter contains general information concerning revisions. The policies and procedures in this section should be followed when revisions occur.

The review appraiser will contact the CDOT Appraisal Contract Administrator, if applicable, and determine if a new appraisal or updated appraisal from the CDOT fee appraiser is warranted. After considering the recommendation from the review appraiser, the CDOT Appraisal Contract Administrator will assume responsibility for the final decision.

Minor changes may occur where an updated appraisal is not required. The review appraiser determines if the change is minor or not. In cases where the revision will have little or no effect on the estimate of compensation, the review appraiser can prepare a new FMV noting these changes in the remarks section of the FMV. The review appraiser may amend minor changes such as a small increase or decrease in the area of the part taken that may have a minor effect on the amount of compensation.

The review appraiser may also amend the estimate of value for small revisions for permanent easements if the original appraisal includes a unit value and a total value estimate for the easement. When a permanent easement is added and there is no information contained in the appraisal report pertaining to a permanent easement value, then the original appraiser should submit information pertinent to that value.

### **3.10.17 – Property Owner’s Appraisal Report**

Commonly, but not always, CDOT or the LPA will receive an independent appraisal report on the proposed acquisition prepared on behalf of the property owner.

If the value of the property to be acquired (total compensation) is estimated to be \$5,000 or more, Colorado law (§ CRS 38-1-121) requires the Agency (CDOT or LPA) to reimburse the property owner the “reasonable costs of an appraisal” engaged by the property owner to estimate compensation for the proposed acquisition. This statute concerns a reimbursement “right” established in law, and does not describe an appraisal “right.” A property owner always has the right to engage an independent appraiser to appraise the value of the Agency’s proposed acquisition and submit that appraisal to the Agency for consideration in the acquisition negotiations. The reimbursement statute governs when the compensation estimate for the property rights to be acquired are estimated to be \$5,000 or more (implied inclusive of compensable damages and/or offsetting special benefits).

#### Owner Appraisal Fee

When there is an owner-appraisal report for review, ask the acquisition agent to provide you the appraisal fee charged for the owner’s appraisal and provide this information to CDOT’s HQ Appraisal Program unit. This information is helpful for cost data analyses and right-of-way budgetary planning.

#### Appraisal Fee Reimbursement

Upon request of the acquisition agent or higher-level Agency staff, the review appraiser will advise on whether the property owner’s appraisal fee is appropriate to reimburse. The review appraiser is not otherwise responsible for the Agency’s decision whether to reimburse the owner’s appraisal fee, which decision may rest solely with the acquisition agent or their superior.

When the reviewer's advice on fee reimbursement is requested, the reviewer should focus on two aspects of the appraisal fee reimbursement statute (the reviewer may conclude it isn't necessary to formally review the appraisal report in order to advise on fee reimbursement):

- 1) The statute requires that the fee be "reasonable." Consider the appraisal fee in relation to the complexity of the appraisal problem addressed in the property owner's appraisal report. Is the fee appropriate to the appraisal process and reporting present in the owner's appraisal report?
- 2) The statute requires that the appraisal reflect "sound, fair and recognized appraisal practices which are consistent with law." Does the appraisal process and reporting present in the owner's appraisal report meet this standard?

Property-owner appraisals should come to the Agency review appraiser through the acquisition agent. If not, be sure that the agent is aware that the owner-appraisal has been received and can confirm that the property owner has approved delivery of the report to the Agency.

Colorado's owner-appraisal reimbursement statute describes the exchange of two completed appraisal reports between the Agency and the property owner at the time the owner delivers their appraisal to the Agency concerning the proposed acquisition.

However, CDOT and LPAs often receive property-owner appraisal reports across a broad appraisal/acquisition time-frame that includes receipt of the owner's report:

- before the Agency report has been received in draft
- after the Agency report has been received in draft but before the review is completed
- after the Agency report has been reviewed but not received in signed final print
- after the Agency report has been received in signed final print but before an FMV has been signed and/or an acquisition offer has been made
- after the Agency has made an acquisition offer based on FMV on the Agency appraisal

More important than the property-owner's appraisal in the extended appraisal/acquisition time line is to get the Agency appraisal to the point where the reviewer can determine that the report is "Accepted," per Uniform Act regulations (see also p. 79), or can recommend the Agency appraisal to FMV. This all without presumption that an owner report will be provided.

CDOT's Appraisal Program serves the timing needs of the Agency's Acquisition/Relocation units. Unless otherwise instructed by their supervisor, the review appraiser will not postpone review of the Agency report (including review, final report acceptance, writing the FMV) on the proposed acquisition in expectation of receiving a property-owner appraisal for review.

Further, the review appraiser will check with their supervisor before reviewing a property-owner's appraisal report. The ROW Manager or Acquisition/Relocation unit must be kept informed on the status of appraisal and appraisal review work in support of Acquisition/Relocation efforts to acquire property for transportation-related projects. In some circumstances

it might not be efficient or cost effective to review a property owner's appraisal report for a right-of-way acquisition. This might be the case, for example, when a property owner has already agreed to compensation based on an acquisition offer made upon a previously approved FMV written on the basis of an appraisal report received earlier in the appraisal/acquisition process.

There is no federal or state law or regulation that requires formal review of a property owner's appraisal report, except the owner's report cannot serve as basis for the FMV unless it has been formally reviewed.

### Reviewing the Property-Owner's Appraisal

The review appraiser will review the owner's appraisal to the same eminent domain appraisal standards that govern Agency appraisals, applying the same processes and protocols as in review of an Agency appraisal.

However, one major difference is the owner's appraisal report is reviewed as a final signed report. It is not a draft appraisal report. The owner's appraisal is not reviewed for opportunity to raise questions or discuss appraisal process or reporting concerns with the owner's appraiser. It is an independent final appraisal of the proposed acquisition engaged by the client property owner.

This does not mean that a review appraiser can never communicate with an owner-appraiser. But it is important to be mindful of the appraiser-client relationship and confidentiality requirements stated in USPAP. CDOT nor the LPA are the client of a property owner's appraiser.

The review appraiser may provide relevant documents and material to the owner's appraiser and otherwise communicate with the owner's appraiser so long as the review appraiser has permission from the owner to do so, preferably in writing. Sometimes an owner's appraiser will contact the review appraiser directly and ask for information related to the appraisal he or she is preparing. The review appraiser will ensure that the owner-appraiser understands that the Agency is not the client for the property owner's appraisal, and explain that the reviewer might be able to help the appraiser only with their client's permission.

Permission to communicate with the property owner's appraiser for any purpose will be requested through the acquisition agent assigned to negotiate the proposed acquisition with the owner. However, this isn't necessary if the property owner has previously given the review appraiser permission (preferably in writing) to communicate with their appraiser for appraisal development or review purposes or any other aspect of the appraisal.

### Owner-Appraisal Review Requirements and Considerations

- In reviewing the owner's appraisal, understand that the owner's appraiser for various reasons might not have received all of the same information that was provided to the Agency appraiser, which might in turn have influenced the analyses and conclusions in the appraisal. Check whether the owner-appraisal is based on the most current ROW plans for the project.

- Know that the owner’s appraiser might not have been given CDOT’s eminent domain appraisal requirements that are provided to property owners in the Notice-of-Intent to acquire letters that CDOT sends to affected property owners on a project.
- The reviewer will write a Review Report on the property-owner’s appraisal.
- The Review Report will conclude whether the appraisal is “recommended” to FMV, or is “accepted” or is “not accepted” – same as required in review of an Agency appraisal.
- An owner appraisal can serve as basis for “recommended” FMV, whether for an original FMV or a revised FMV that supercedes an earlier FMV written on the Agency or other previous appraisal report. However, an owner appraisal report cannot be recommended to FMV without first completing a review of the Agency appraisal report.
- Whether the owner’s appraisal is “recommended” to FMV or is “accepted” or “not accepted” – as compared against the Agency appraisal report – explain the decision in the Review Report.
- Do not send your Review Report or otherwise communicate information about your appraisal review to the property owner or their appraiser.
- The owner’s appraisal report, the Review Report and any FMV or revised FMV written on the owner’s appraisal report will be provided to the agent for the Agency parcel file.

### 3.10.18 – Specialty Reports

As mentioned in Section 3.2.5, a specialty report is sometimes needed to help the appraiser estimate the compensation due the owner. Specialty reports are typically prepared for items that require special attention, which the appraiser does not encounter in their everyday practice. Items that normally require a specialty report fall into the categories of trade fixtures, tenant-owned items, signs, billboards, irrigation equipment, fencing, landscaping, etc. In addition, a specialty report may be needed for other valuation concerns or issues that may arise. These concerns or issues may be associated with a restoration cost (cost to cure) due to a taking and may include items such as; the cost to re-establish landscaping, re-establish or construct irrigation wells and ditches, driveway construction, septic system installation, site fill and grading, building rehabilitation, utility reconnection, parking lot design or redesign, etc. In some cases when the appraisal will be concerned with commercial, industrial, or special use properties, a need for a specialty report is recognized well in advance of contract negotiation. When this is the case, the need for a specialty report should be addressed in the Letter of Information and the appraisal services Scope of Work.

Although it is well recognized that specialty reports may be very important in estimating the compensation due the owner, it is just as important that the appraiser properly analyzes the specialty report and takes full responsibility for its contents and conclusions. The review appraiser also must take care in the review process to ensure that the value reported is **contributory value** and not what the specialist has estimated as cost. The underlying discernment the review appraiser must consider is that although a specialist has expertise as to the cost new, cost to install, and salvage value, in the majority of cases they may not possess the necessary expertise to estimate **contributory value**. It is the responsibility of the appraiser

to estimate and report **contributory value** based on market data, sound judgment, and logical reasoning. The review appraiser is charged with the accountability to make sure that a value estimate based on a specialty report reflects the requirements and policies of the agency. Copies of all specialty reports that were relied upon in estimating the compensation due the owner shall be included in the appraisal report or as an attachment or exhibit to ensure a quality review.

If a specialty report is obtained on fixtures, the review appraiser should make certain that fixture articles are not duplicated in the fixture valuation and real estate valuation. A careful analysis is required by the review appraiser to assure that duplication does not occur. Where comparable sales or rentals are used on properties containing fixtures, the review appraiser must be able to determine whether the comparable sales or rentals include fixtures and personal property in the sale or rental prices. If they do, duplication may develop by utilization of the comparable sales or rentals, thus duplicating the contributory value of the fixture located on the real estate. Double payment must be avoided. A good practice to assure adequate analysis and recognition of this factor is to require, where necessary, a positive statement on each comparable sale and rental submitted by the appraiser as to the inclusion or exclusion of fixture items and personal property contained in the sale or rental price. If the documentation is such that the review appraiser is unable to confirm the absence of duplication as outlined, the deficient documentary material should be referred back to the appraiser for clarification. Further, if the estimates of cost, physical loss, obsolescence, and depreciated amounts are not identified and suitably explained, the report is most likely deficient. It may be necessary to return the report to the appraiser for the indicated corrective supplements.

The review appraiser should make certain that the property is clearly distinguished as real or personal to ensure if the State pays moving expenses for personal property under relocation, no duplication of payment is made. Without a clear determination in the appraisal review, relocation personnel may permit moving costs for an item included in the appraisal as a part of the real property. A proper inventory becomes significant when fixtures and personal property are involved. Consultation with the Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW will usually avoid any problems when some items are in question.

Caution about duplication of payment is not only limited to fixtures and/or personal property. A duplication of payment may also exist in the compensation of the land taken. This typically occurs when there is some type of additional income being generated by the land over and above its normal rental rate or rate of return. The review appraiser must be attentive not to allow the appraiser to include any duplication of payment for land. For example, a review appraiser must make certain when a sign site is located in the part to be taken a double payment is avoided. Another example is where a mobile home is located on the part to be taken. Compensation for the land at its fair market value plus adding a value for the mobile home pad based on the rental received constitutes double payment. This is unacceptable and must be avoided.

### **3.10.19 – Highest and Best Use**

Highest and best use is the fundamental concept to real property valuation. Recognition of a property's highest and best use has been universally accepted by the courts as the proper valuation concept employed under the power of eminent domain. Highest and best use is the most important and necessary analysis performed when estimating value of real property. The

importance does not cease with just estimating highest and best use of the total property or in the before condition, it is just as important to accurately estimate the value of the residue after the taking. A highest and best use analysis of the after situation is a totally independent study of the residue, not just a modification of the study of the property's highest and best use in the before situation. If the appraiser does not estimate the property's highest and best correctly in the before and after situations, it will be impossible to estimate reasonable market value correctly.

Highest and best use will affect each of the three major methods to valuation; cost approach, sales comparison approach and income approach. A review appraiser must know how highest and best use affects land value, building value, depreciation, rental rates, vacancy rates, land to building ratios, contributory value of improvements, capitalization rates, expense ratios, etc. and be aware of any circumstances where the appraiser has misapplied the valuation method with the estimated highest and best use determination. The consistent use theory must not be violated. Land cannot be valued under one highest and best use and the improvements valued under a different highest and best use. Likewise, damages cannot be estimated based on a different highest and best use than the highest and best use determined for the land.

### 3.10.20 – Damages

When an appraisal involves a partial taking, the review appraiser must pay careful attention to any damages reported. Due to the many elements of damage that may occur, the possibility of discussing an all-inclusive potential damage issue list is impossible in a partial taking acquisition. For this reason, only some of the basic concepts and regularly occurring issues are outlined below. The review appraiser must have complete knowledge as to what constitutes damages and know how they should be treated in an appraisal. The definition of damages is found in earlier sections of this Manual. The definition states that damage is measured by the decrease, if any, in the reasonable market value of the residue. The key discernment in this sentence is the word “measured.” When damages are included in an appraisal, that damage must be supported and measured from the market. A statement such as “based on the appraiser’s experience or opinion” or “based on realtors surveyed in the area” is **insufficient and not acceptable**. This is a deficiency in the appraisal and must be returned to the appraiser for correction. The crucial question the review appraiser must ask; “is the market or the appraiser determining damages?”

Damages may occur from two different causes. A partial taking in itself may decrease the value and create damage to the residue. The expected uses on the part taken (i.e. construction of project improvements, change of grade, etc.) may create a damage to the residue. It is the review appraiser’s responsibility to know and understand how each of these causes may constitute damage and how it should be treated, measured, and reported. Damage may be present from both causes. This is discussed in Section 3.4.10 and 3.8 of this chapter.

Damages may be incurable, curable or both. Incurable damages are the result of certain actions or events that have taken place and diminished the economic value of the residue. By definition, this type of damage cannot be economically cured. A curable damage is a diminished value to the residue that can be economically cured. A cost to cure is typically the means to mitigate the damage.

When damages are found to exist by a measure of the market, the review appraiser must be alert to ensure the appraiser has also considered the proper costs to cure when applicable.

Costs to cure are typically associated with damages to improvements. A cost to cure is the dollar amount required to cure any damage that may occur to the residue after the taking. A cost to cure is only applicable when a foundation has been laid to show a decrease in the value of the residue. The cost to cure estimate may contain an allowance for entrepreneur's profit. An entrepreneurial profit is compensable when estimated as part of a cost to cure. The review appraiser must be attentive to ensure a cost to cure has not been applied when no damage has been supported and measured. To estimate the cost to cure, a specialty report may be needed when improvements are severed or damaged. If a specialty report is contracted, it must be included in or referenced in the appraisal report. If the report is not included in the appraisal it should be made available to the review appraiser upon request. The appraiser is required to take full responsibility for the reliability, accuracy, and proper application of any specialty report relied upon.

The cost to cure must be compared to the amount of damage. When the cost to cure is less than the damage, then the property owner is entitled to the cost to cure. The review appraiser must also analyze the cost to cure with the remaining value of the improvements. Sometimes the remaining value of the improvements is less than a cost to cure. At this point the review appraiser will be required to make a decision as to paying the cost to cure or purchasing the remaining improvements. Compensable incurable damages may remain after curable damages have been resolved.

It is essential that a review appraiser possess a comprehensive knowledge and understanding of damages which are compensable and which are non-compensable.

Sometimes, a residue may suffer a loss in value after the taking. Even though this loss may be classified as damage, it may be non-compensable. CJI 36:5 states:

“Infringement of the owner’s personal pleasure or enjoyment in the use of the residue or even the owner’s annoyance or discomfort do not constitute compensable damages. Neither does the fact that the residue may be less desirable for certain purposes. Such matters are not compensable except as they are a natural, necessary and reasonable result of the residue being severed from the land actually taken or the uses expected to be made of the land actually taken, and are measurable by a reduction in the market value of the residue. (Damages may not be allowed which result from [describe any non-compensable damages] even though a decrease in the reasonable market value of the residue may result)”.

Non-compensable damages may include issues such as, but not limited to, access, loss of business income, diversion of traffic, fire, smoke, noise, etc., loss of rent, loss of view, frustration of plans, and speculation. A brief explanation of these issues follows:

1. Access: Total deprivation of access constitutes a taking for which compensation must be paid. (Department of Highways v. Davis, 626, P.2d 661 (1981); State Department of Highways v. Interstate-Denver West, 791 P. 2d 119 (Colo. 1990), Department of Highways v. Davis, supra.)

So long as a landowner retains a reasonable means of access to the general street system, partial loss of access is non-compensable. (Gayton v. Department of Highways, 149 Colo. 72, 367 P2d 899 (1962); Troiano v. Department of Highways, 170 Colo. 484, 463 P. 2d 448 (1969))



2. Loss of Access with No Physical Taking: Colo. Const. Art. II, sec. 15 prohibits the taking or damaging of private property for public use without just compensation.
3. Non-compensable Restriction of Access Rights: Damage resulting to property through the exercise of the state's police power is not compensable. (*Swisher v. Brown*, 157 Colo. 278, 402 P.2d 621 (1965); *City of Boulder v. Kahn's Inc.*, 190 Colo. 90, 543 P.2d 711 (1975))
4. Damage to Business: Loss of business income or profits is non-compensable. (*Denver v. Tondall*, 86 Colo. 372, 282 P. 191 (1929); *Auraria Business v. DURA*, 183 Colo. 178, 493 P. 2d 248 (1972); *DURA v. Cook*, 196 Colo. 182, 526 P. 2d 625 (1974))
5. Diversion of Traffic: No person has a vested interest in the maintenance of a public highway in any particular place. (*Troiano v. Colorado Department of Highways*, 170 Colo. 484, 463 P.2d 338 (1969), *Troiano*, supra)
6. Fire, Smoke, and Noise: Early Colorado cases held that damages resulting from smoke, noise, etc. was not compensable. The rationale was that the general public suffers such inconveniences and a landowner could recover only if his damages were to some right or interest not shared by the public generally. *La Plata Elec. Assoc. v. Cummins*, 728 P.2d 696 (Colo. 1986) expressly overruled *Lavelle v. Julesburg*, 49 Colo. 290, 112 P. 774 (1911) and did away with the "general" v. "special" damage concept, at least in the partial taking context. Under *La Plata*, supra, it appears that damages resulting from such factors can be recovered if they result from activities on the land taken from respondent, but not to other land.

In the preceding text it is implied that while one or more than one of the issues, independently, may be non-compensable it does not remove the possibility of a damage to the residue improvements due to proximity. Proximity of improvements after a project is constructed may subject these improvements to excessive noise, dust, smoke, etc. If after researching and analyzing the market, it is found that a loss in value may be measured by actions of the buying and selling public, damage may exist. This measured and supported damage is considered compensable.

7. Loss of Rent: Loss of rent is not an additional compensable item in an eminent domain case. (*Felon v. Western Light & Power Co.*, 74 Colo. 521, 223 P. 48 (1924), *Board of County Commissioners v. Hodge*, 534 P. 2d 638 (1975)). The amount of rental income may be admissible to show highest and best use and as a factor in valuing the land.
8. Frustration of Plans: the Colorado appellate courts have not addressed this issue. However, the Fifth Amendment requires that the condemning agency pay for what it takes, not lost opportunities. (*United States, ex rel. Tennessee Valley Authority v. Powelson*, 319 U. S. 266, 63, S Ct. 1047, 1057, 87 L. Ed. 1390 (1943)). Implied in the ruling and closely associated with "lost opportunities" is speculation. A damage that is based upon a conjecture and/or an assumption is typically non-compensable. An agency is not required to pay for any speculative use that may or may not come to pass.
9. Mitigation: In some cases, damage to a parcel may be mitigated. However, care must be exercised when considering any mitigation or circumstance where the appraiser proposes to cure the damage off-site or partially or wholly outside the residue of the ownership defined as the larger parcel in the before take condition. This also applies to

an affected area. Even though mitigating damage with an off-site cure appears reasonable and logical, the owner must agree to it. Without the owner's approval, an agency cannot force a settlement with an off-site remedy.

### **3.10.21 – Affected Area**

As noted in Section 3.1.13, it is possible for a larger parcel to contain more than one economic use. At times it may be proper to only appraise an affected area if that area is independently economic. To be independently economic, an affected area must possess a characteristic that sets it apart from the total ownership or larger parcel. This characteristic may be in the form of a natural barrier such as a creek, river, etc., or the characteristic may be manmade such as a road, railroad, irrigation canal, or a zoning/land use classification. When an affected area has been identified, a plat, drawing, or sketch of the affected area must be included in the appraisal report.

An affected area of the subject larger parcel is typically a hypothetical parcel created and defined by the appraiser. When an appraiser creates and defines an affected area for a partial taking of property, the appraiser must exercise care not to damage or have special benefits to the residue of the affected area. Refer to Section 3.1.14 for more discussion on affected areas. When reviewing an appraisal where an affected area has been identified, it is very important for the review appraiser to examine and reconcile the appraiser's rationale and support of a readily achievable economic unit. The review appraiser must consider and make a determination as to whether or not the larger parcel is being artificially subdivided. If necessary, the review appraiser shall consult Colorado case law (e. g., Dept. of Highways v. Schulhoff, 167 Colo. 72 445 P.2d 402 (1968)).

When an affected area lacks unity of use with the larger parcel and is also designated as the part to be taken, this possibly could become or be identified as a separate economic parcel. If this occurs, then the taking may be classified as a total taking. No damage can occur to a total taking.

### **3.10.22 – Water Wells**

Occasionally, water wells are located in the part taken. Also, a water well may be located proximate to the part taken. In both cases a quantity and quality test is required. The Region will provide quantity and quality tests.

It is not difficult to understand that if a well is disturbed or destroyed and no quantity or quality tests have been obtained by the agency and the case goes to litigation, then the agency will have no sound basis to establish a settlement criteria or a defense if the case proceeds to trial.

### **3.10.23 – Uneconomic Remnant (“R” Parcel)**

An uneconomic remnant is defined as:

“...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 Agency has determined has little or no value or utility to the owner.” (49 CFR § 24.2(a)(27))

During the review process, consideration will be given to the addition or deletion of “R” parcels. The review appraiser will recommend the addition or deletion of “R” parcels to the Region ROW Manager. When it is determined that a change should be considered, the review appraiser will notify, by written memorandum, the Region ROW Manager, who will notify, by copy, the appropriate squad leader in the Region ROW Design unit. The Project Development Branch, Headquarters ROW will be provided with revised plan sheets showing the “R” parcel changes for distribution. In all instances the appraiser is to appraise the “R” parcel as a residue after take and the damage thereto. The appraiser may determine that the residue has little or no value to the market. However, the appraiser should not develop an opinion that the residue is an “uneconomic remnant”. If the Right of Way Manager determines the residue is an uneconomic remnant, the review appraiser will note this information on the FMV and list the additional amount which must be offered to the property owner to purchase the entire severed portion.

“If the acquisition of only a portion of property would leave the owner with an uneconomic remnant, the acquiring agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project” (49 CFR § 24.102(k)). See also 49 CFR § 24.2(a)(27).

In certain cases, highway alignments sever a portion of an ownership. The review appraiser must be alert to the economics of the severed portion in the after condition. If it is believed the residue is uneconomic, the right of way manager will make the determination of whether or not the residue is uneconomic which CDOT, by law (§ 43-1-210(1), CRS) may offer to purchase the whole parcel. If the residue is determined an uneconomic remnant, the review appraiser will note this information on the FMV and list the additional amount that must be offered to the owner to purchase the entire residue. This option must be considered and analyzed by the review appraiser prior to preparing the FMV.

When an uneconomic remnant may “...give rise to claims or litigation concerning severance or other damage, the department of transportation may acquire by purchase or condemnation the whole parcel; except that the owner of said parcel may, at his option, retain the mineral or gravel interest therein, subject to the right to subsurface support retained by the department of transportation...” (§ 43-1-210(1), CRS)

On properties that are developed with single-family dwellings and relocation is required, the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW shall be consulted prior to completion of an FMV. This will allow for better coordination of the acquisition and relocation policies and procedures.

### **3.10.24 – Residential Improvements Involving Relocation (Dwelling Breakout Value)**

When improvements are acquired and relocation is indicated, the review appraiser will have an additional responsibility. The Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW will need some additional information in order to complete the relocation of a displaced person as prescribed under the Uniform Act. First, the review appraiser will prepare an FMV (CDOT Form #930) based on the highest and best use of the real property to be acquired. A copy of the FMV shall be given to the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW. However, in some cases the underlying land may have a different highest and best use than

residential or the residential improvements are located on a larger land parcel, thus indicating a lower rate of contributory value to the total property. When this situation occurs, the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW will need a dwelling breakout value report for relocation purposes.

The dwelling breakout value report, for relocation purposes, is based upon the hypothetical premise there is a highest and best use as residential with a typical site size, with the improvements and the typical site contributing full residential market value. An example of this situation is when a residential unit is located on a larger land parcel. The part to be acquired includes the residential unit and a small portion of the land. Although the appraiser is charged with the responsibility of estimating the total value of the property and the value of the part to be taken, the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW will need a dwelling breakout value based on the hypothetical premise. The review appraiser will prepare this dwelling breakout value report.

Another example is when a residential unit is located on a property in conjunction with other uses such as commercial or industrial. The appraiser will prepare a value estimate based on the total property, the part taken and the value of the residential unit as it exists. Again, the Statewide Acquisition/Relocation Supervisor will need a dwelling breakout value prepared by the review appraiser, based on the hypothetical condition.

These examples do not address all of the possibilities that can occur, but are only included as guidelines. Each dwelling breakout value report should be considered on a case by case basis. In certain instances or situations a whole new appraisal may be needed. The underlying reason this dwelling breakout value report is needed by the Statewide Acquisition /Relocation Supervisor in the Project Development Branch, Headquarters ROW is to provide information necessary to make proper comparisons between the residential unit taken and the replacement residential unit being considered.

When a residential use exists in only a portion of the improvements, the appraiser shall provide an estimate of value of that portion of the improvements devoted to residential use. After review of the report, the review appraiser will provide the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW with the dwelling breakout value report. Since the breakout of the residential value is unique to the relocation program, it is CDOT policy that the review appraiser will be responsible for the dwelling breakout value reports. This breakout allows efficient and direct contact between the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW and the review appraiser. Decisions may be made in a timely and consistent manner.

It is important the CDOT Appraisal Contract Administrator be informed when an appraiser will be required to provide a value of that portion of improvements devoted to residential use. The CDOT Appraisal Contract Administrator will be alerted to this type of situation in the "Letter of Information." The CDOT Appraisal Contract Administrator will include in the service contract Scope of Work that the appraiser is responsible for providing an estimate of value of that portion of the improvements devoted to residential use. However, the review appraiser is responsible for providing an acceptable dwelling breakout value report to the Statewide Acquisition/Relocation Supervisor in the Project Development Branch, Headquarters ROW, as applicable.

### **3.10.25 – Salvage Value**

It is the responsibility of the review appraiser to establish salvage value for real property acquired. Typically, salvage value is estimated by the Review Appraiser (CDOT Appraisal Contract Administrator). Persons preparing specialty reports may also need to estimate salvage value. Refer to Section 3.7.2 for the definition of salvage value.

When real property is involved and it is deemed appropriate, an entry of the salvage value will be included at the bottom of the FMV (CDOT Form #930) with the items, amounts, and documentation of the source from which the values were determined. A salvage value should be included on the initial FMV. This will facilitate the negotiator in knowing what items are subject to salvage, avoiding additional work, plus saving time. If there is no salvage, this fact will be inserted. The review appraiser, in compliance with the Certification on Form # 930, must inspect the items on which salvage value is being estimated.

When estimating a salvage value for an item, the review appraiser must ensure that a salvage value is estimated in the same valuation context in which it was purchased. The principle of consistent use must not be violated. When the principle of consistent use is violated and the salvage value for an item is incorrectly estimated, the owner may receive a windfall. The review appraiser must be very careful when estimating a salvage value for an item if a specialty report has been contracted and relied upon by the appraiser. As noted in the Specialty Reports section (3.12.18) of this review process, the review appraiser also must take care in the review process to ensure that the value reported is contributory value and not what the specialist has estimated, which is generally a value in use.

### **3.10.26 – Owner Retention of Improvements**

In addition to a salvage value, the review appraiser must be aware and understand when there may be an owner or tenant-owner retention of improvements. Refer to Section 3.7.3 for the definition of owner retention of improvements. Where the agency determines that improvements can be offered for retention, it is the agency's responsibility to determine a retention value. Retention value should normally be established by CDOT through a comparative analysis of improvements sold at public sale.

### **3.10.27 – Personal Property**

It is not the policy of the state to purchase personal property. CDOT may elect to purchase personal property in certain instances where it would impose a hardship on the property owner not to do so. The Region ROW Manager decides which situations warrant acquisition of personal property even though FHWA may not participate.

A real property appraiser can estimate the value of the tenant-owned items (trade fixtures) and the real property; however, a specialist familiar with specific types of personal property valuation should be contracted and utilized. The CDOT Appraisal Contract Administrator is responsible for including any specific instructions in the Scope of Work in regards to the treatment of personal property valuation and services. The appraiser will identify tenant-owned real property and assign a value to the tenant's interest based on contributory value.

### 3.10.28 – Distribution Procedure for FMV (CDOT Form #930)

The following procedure applies to the distribution of the FMV (Fair Market Value determination), CDOT Form #930:

#### 1. ROW Parcels

1. Original to the Project Development Branch, Headquarters ROW for file, including an original of the appraisal report.
2. One copy to the Region ROW file.
3. One copy to Acquisition/Relocation Unit in the Project Development Branch, Headquarters ROW when relocation is involved.
4. One copy to Property Management Unit when improvements are included.
5. One copy to the Office of the Attorney General, Transportation Unit, when involved in litigation.
6. One copy to Acquisition/Relocation Unit in the Project Development Branch, Headquarters ROW for encumbrance.

The distributions may be done electronically. If the original FMV or Appraisal is created electronically, it may be saved in CDOT's Electronic Data Management System (EDMS) with a notification of the file location sent to Project Development Branch, Headquarters ROW.

#### 2. Local Agencies

##### a. Federal participation in ROW

1. Original to the Project Development Branch, Headquarters ROW for file, including an original of the appraisal report.
2. One copy to Region.
3. One copy to Acquisition/Relocation in the Project Development Branch, Headquarters ROW when relocation is involved.
4. One copy to Acquisition/Relocation in the Project Development Branch, Headquarters ROW for encumbrance.

##### b. Projects Without Federal Participation in ROW

1. Original to Region office of origination.
2. Second copy to the Project Development Branch, Headquarters ROW for file.

When an FMV is prepared for a local agency, the FMV preparer will include a notation on Form #930 that this is an FMV for a LPA Project. This notation will be inserted in either the project number or project code number boxes at the top of the form.

The distributions may be done electronically. If the original FMV or Appraisal is created electronically, it may be saved in CDOT's Electronic Data Management System (EDMS) with a notification of the file location sent to Project Development Branch, Headquarters ROW.

### **3.10.29 – Distribution Procedure of FMV for Excess ROW Disposal**

All FMVs prepared for the sale of excess ROW property will be forwarded to the Property Management Unit for signature. The CDOT Property Management Unit will distribute the FMVs as follows:

- Original to the Project Development Branch, Headquarters ROW for file.
- One copy to the Region.
- One copy to Property Management Unit.

According to § 43-1-210 (5)(a)(II), CRS, properties disposed of by CDOT that have a value estimate of \$5,000 or greater shall be appraised by a certified general appraiser under § 12-61-706, CRS. Properties having an estimated value of less than \$5,000, a Waiver Valuation by an agent may be used.

If the value is less than \$5,000 and an agent Waiver Valuation was used, the Region ROW Manager may perform the valuation review and sign off as reviewer. Appraisals over \$5,000 prepared on property for sale by CDOT require an appraisal review by a CDOT review appraiser.

Unlike appraisals for acquisition, the methods and techniques for valuing an excess parcel owned by CDOT may require some deviation from the normal appraisal process. Acceptable methods for valuing an excess parcel are found in Section 3.11.4 of this chapter. The key objective for the review appraiser is to prepare an FMV that denotes a range of value. The range of value may be established by use of one method or may be established by considering more than one or all three methods as applicable. The Property Management Manager should be consulted concerning questions pertaining to requirements, directions, service contract Scope of Work, and/or policies for excess parcel appraisals.

### **3.10.30 – Appraisal Review for CDOT NPS Acquisitions**

CDOT, from time to time, acquires property that is non-project specific. For example, CDOT may wish to purchase a parcel for a maintenance site or some acreage for future wetlands mitigation. When this type of property is purchased, an appraisal is typically requested. Although the basic underlying valuation methods are not different from appraisal methods generally employed for the larger parcel under acquisition, a review is required. The review appraiser should consider all applicable requirements contained in this chapter of the ROW Manual.

## SECTION 3.11 – CONDEMNATION TRIAL GUIDELINES

An appraiser may be requested to prepare for and testify in legal proceedings or in a valuation trial. CDOT has developed condemnation trial preparation guidelines for updating appraisal reports and pre-trial preparation.

Appraisal work file – Appraisers should expect that everything that is used to base an opinion on is discoverable when it gets into court. The appraiser needs to plan on having to produce every single piece of supporting information and provide it to the attorneys. A complete work file is critical in the condemnation process.

### 3.11.1 – Appraisal Report Updating

After filing condemnation to acquire a parcel, the original appraisal and appraisal report in most cases will need updating. The typical date of valuation and effective date of value will be as of the date immediate possession was granted to CDOT by a court of law in an immediate possession hearing or by stipulation between the property owner and CDOT.

The attorney in the case should notify the appropriate parties as soon as possible of the need for an updated appraisal and appraisal report. Notification must be sent on a Condemnation Facts Sheet (“Yellow Sheet”). Once the Condemnation Facts sheet is received, the request will be processed. The Condemnation Facts sheet is used to:

- Notify the appraiser and the CDOT Region ROW Manager of the status of a condemnation action.
- Alert the CDOT Appraisal Contract Administrator to prepare a new services contract document and/or cross-check for an existing appraisal services document for trial purposes. Checking for an existing services document will determine if sufficient funds are available to pay the appraiser for updating an appraisal and appraisal report and for trial testimony.
- Alert the CDOT Appraisal Contract Administrator to notify the appraiser to update the appraisal.
- Eliminate confusion whether or not a request to update an appraisal was made.

As mentioned previously in section 3.1.28 and restated here, **Litigation appraisal requires buyer/seller sale confirmation (see also CRS 38.1.118)**: In litigation appraisal, the principal appraiser signing the appraisal report must confirm all comparable sales that have been relied upon for the value opinion conclusion with the buyer and/or seller, and preferably with both. Sales that cannot be confirmed, cannot be relied upon. Prior to the updated appraisal report being submitted to the Attorney General’s office in a condemnation matter, comparable sales that cannot be confirmed with the buyer and/or seller should be removed from the appraisal report or clearly noted in the appraisal report that the sale is informational and not given any weight in the final conclusion.

### 3.11.2 – Pre-Trial Preparation

1. Initial Pre-trial Conference.



2. Initial pre-trial conference is held no later than 120 days prior to the trial date. The attorney for the case should recommend the pre-trial date. This initial conference will include the attorney, Trial Advisor, ROW Plans, Surveys, and Legal Documents personnel, appraiser, and review appraiser. The purpose of this conference will be to plan trial strategy. The following procedures are recommended:
  - a. The appraiser who will testify at the trial should begin updating the appraisal report or have the update report completed by this time. The attorney will notify the Project Development Branch, Headquarters ROW, or the Region of the need to update the appraisal by sending a Condemnation Facts sheet.
  - b. Exhibits for use at trial should be identified.
  - c. Witnesses who are to testify at trial should be identified.
  - d. The need for additional witnesses, experts, or exhibits should be determined.
  - e. A person from the Project Development Branch, Headquarters ROW, or the Region should be assigned to monitor the case when notice of trial setting is received. The selected person is responsible for scheduling the next pre-trial conference.
  - f. The reviewing appraiser should be present at the pre-trial conference to discuss differences between property owner and CDOT appraisals.
3. The next pre-trial conference is held 30 days prior to trial when the attorney and Trial Advisor will discuss particulars of the case with all witnesses. The Region ROW Manager should plan to attend all trials in their Region.
4. Witness preparation should commence two weeks before trial.
5. If the need for further pre-trial preparation is required before the trial, the attorney will make appropriate arrangements.

## **SECTION 3.12 – OUTSOURCING APPRAISALS and APPRAISAL REVIEW**

CDOT may contract with outside (fee) appraisers for appraisal services, including appraisal review. Outside appraisers are used when appraisal/review demand exceeds CDOT staff appraiser capacity statewide, or when specialty properties are to be appraised and/or reviewed.

Before outsourcing any appraisal services, Appraisal Program staff statewide should check with other Region or HQ appraisal staff as appropriate to learn if appraisal services might be provided by other statewide staff for particular assignments (temporary appraisal support).

Except in special circumstances, contract appraisal services for CDOT or for Local Public Agencies on their federal-aid projects will be sourced from CDOT's Qualified Appraiser List (QAL) and appraisal review services will be contracted from CDOT's Qualified Review Appraiser List (QRAL).

### **3.12.1 – Procurement of outside appraisal services**

CDOT follows customary State of Colorado procurement rules when contracting for appraisal services. Appraisal and agent service are “personal services” according to Department of Personnel Administration's definitions. CDOT can use multiple procurement processes to hire outside contract appraisers and review appraisers.

### **3.12.2 – CDOT Qualified Appraisers List (QAL) and Qualified Review Appraisers List (QRAL)**

#### QAL (Appraisers)

CDOT maintains a qualified list of fee appraisers. Except in special circumstances, CDOT must use appraisers on this list when outsourcing appraisals at all procurement levels. Appraisers on this list must be used by the Local Public Agencies on federal participating projects.

Appraisers on this list have been qualified by submissions and grading by a panel of CDOT senior appraisers. Required submittals include a sample partial-take appraisal, appraisal experience, litigation experience, education appraisal specialties and license certification. These submittals are evaluated by a panel of CDOT senior appraisers and must attain a passing score. New applications are accepted and aspiring appraisers should contact CDOT's Appraisal Program Manager for information.

#### Performance Evaluation Requirement

Upon completion of all services provided for in each engagement, purchase order or contract, the work will be evaluated in writing by the appropriate CDOT personnel on the Consultant Evaluation form.

Upon completion of all work under each engagement, purchase order, task order, or contract, the appraiser will receive a signed copy of the written consultant evaluation form completed by the CDOT staff member who engaged the contractor for the appraisal services.

If the contractor objects to the final rating, they may send a written objection to the CDOT. For the objection to be considered, it must be received by the CDOT staff member who wrote the evaluation within 14 calendar days from the date that CDOT sends the completed form. If CDOT's evaluator concludes there is merit to the objection, a revised consultant evaluation form will be sent.

In the absence of a revised consultant form completed by CDOT, with the exception of the procedure noted in paragraph #3 below, the original rating will stand. CDOT will maintain a record of the consultant evaluation forms. Under the Colorado Open Records Act, CDOT can provide copies of such forms to parties making an appropriate request.

CDOT's evaluation program with respect to its Qualified Appraiser List is essentially a "three strikes you're out" policy, as described below:

- 1) A "**Below Standard**" rating shall serve as formal notice to the appraiser that any subsequent "below standard" rating will impact his/her status to remain on CDOT's Qualified Appraiser List. A first rating of "Below Standard" received by an appraiser can be eliminated from that appraiser's consultant review record when, and if, the appraiser receives a rating of "Standard" or higher on a subsequent contract or contracts that include a cumulative total of at least three consecutive individual appraisal reports.
- 2) Upon receipt of a second "**Below Standard**" rating, such appraiser will be temporarily suspended from CDOT's Qualified Appraiser List and will not be allowed to perform services for CDOT or local public agencies doing federal aid projects for a period of six months after issuance of the second "Below Standard" rating. At the end of the six month suspension, the name of such appraiser will be added back on to the CDOT Qualified Appraiser List and the appraiser can perform appraisal-related services for CDOT and local agencies again.
- 3) If a third final rating of "**Below Standard**" is determined, such appraiser's name will be permanently withdrawn from CDOT's Qualified Appraiser list. The appraiser will no longer be able to bid on or provide any appraisal-related services for CDOT and local agency projects with federal aid.

While a formal evaluation process does not exist for appraisal services performed for Local Public Agencies or property owners, acceptable work product is a contingency for remaining on CDOT's Qualified Appraiser List. As a CDOT qualified appraiser, any eminent domain appraisal-related services, reports, or materials that come before CDOT for review are subject to consideration for remaining on the CDOT qualified appraiser list. This means that appraisal reports prepared for LPAs or property owners on projects with CDOT oversight must be determined as at least "acceptable" reports in order to remain listed as a CDOT qualified appraiser. If an agency review appraiser deems an appraisal report as "not accepted" during the appraisal review process, CDOT will designate that circumstance as a "Below Standard" rating according to the evaluation program outlined above.

CDOT reserves the right to remove anyone from the Qualified Appraiser List at any time even if the appraiser has not received the three below standard ratings. These extreme circumstances may include but are not limited to:

- Disciplinary actions imposed on an appraiser by the Board of Real Estate Appraisers

- Appraisal license goes into an inactive status
- Misrepresentation of the agency and/or its policies or practices
- Refusal or unwillingness to work with Agency reviewers and staff

Any QAL listed appraiser may request to be removed from the list at any time.

### QRAL (Review Appraisers)

CDOT also maintains a list of qualified independent review appraisers. Only appraisers who are named on CDOT's main QAL are eligible to apply to the Qualified Review Appraiser List. Review appraisers on this list have been qualified by submissions and grading to a panel of CDOT senior appraisers. Applications are accepted to this list only by members of CDOT's QAL.

CDOT is responsible for review of appraisal for its own projects and LPA projects. Appraisal Review should be retained within CDOT as much as possible to aid quality control and consistency, among other benefits of staff review.

### **Implementation**

- The Region ROW manager will choose the review appraiser from the Qualified Review Appraiser List and oversee the services contract (must guard against conflict of interest, real or perceived).
- The review appraiser must not have done appraisals on the same project and must not be from the same office as the appraiser doing appraisals on the same project.
- Typical procurement procedures apply.
- The ROW manager is responsible for familiarizing the review appraiser with CDOT policies and with the project.
- The review appraiser will be provided with documents (plans, letters of information, environmental study, other project appraisals, etc.) and shall be shown the project.
- Involve the review appraiser with project meetings (FOR, ROWPR, etc.) prior to beginning the appraisal review process, when possible.

### **CDOT Oversight**

- A staff reviewer should be involved in the process to answer appraisal-specific questions.
- The ROW manager must sign the FMV as the CDOT Contract manager.
- At the ROW manager's discretion, highly complex and high-value appraisals will have a technical desk review or a technical field review by CDOT staff review appraiser.

### **Fee Reviewer Scope of Work**

- The review appraiser must remain current with CDOT policies and procedures.
- Must field-review subject and comparable sales/rentals used in the appraisal (unless CDOT permits otherwise).
- Must become familiar with the project.
- Must conduct the review in compliance with the review section of Chapter 3 of the CDOT Right of Way Manual.

- The review must be a technical field review. The minimum review process is prescribed in 49 CFR 24.104 and in Chapter 8 “Appraisal Review” of the FHWA Project Development Guide. Other guiding principles for technical field reviews are found at the Department of Justice and Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP).
- The review appraiser must assure the appraisals developed for the agency meet applicable requirements and shall, prior to acceptance, seek necessary correction or revisions to facilitate the appraiser’s development of an acceptable appraisal.
- The appraisal must meet the criteria for appraisals detailed in 49CFR§24.103

### **Fee Reviewer submittal requirements**

- Review folder
- Signed FMV – CDOT format
- Signed Review Report – CDOT format
- Signed Certification – CDOT format
- Signed attestation to no conflict of interest

### **Local Public Agencies (LPA) Projects**

The ROW manager must approve the review appraiser from the Qualified Review Appraiser list for LPA projects.

### **Review Appraiser Evaluation**

The ROW manager is responsible for completing an evaluation of the outsourced review appraiser’s work, performance, and communication after the work has been performed. Headquarters Appraisal Program is responsible for keeping the review appraiser evaluations and for maintaining the Qualified Review Appraisers List.

### **3.12.3 – Invoices and Progress Reports for Appraisal Services**

Invoices for appraisal services are titled as an invoice. To avoid delay in processing of the invoice, the following information is shown on the invoice:

1. Project Code.
2. Project Number.
3. Purchase Order Number.
4. Function (3114, 3116).
5. Participating (P) or Non-Participating (N).
6. State current invoicing period, e.g., from: (date) to: (date).
7. Summary of invoice (billing) status and payment request as follows:
  - a. Total fee for project purchase order.
  - b. Previously invoiced (billed) amounts and payments received.
  - c. Partial fee invoiced for current work completed.
  - d. Less required withholding as per master contract (unless final report is submitted and full payment is requested).
  - e. Current amount due and payable.

8. Summary of parcels submitted with the invoice and/or work completed to date if no reports are submitted.
9. Attach a statement to the invoice about the status of the project and if the due date will be met. Key items to state in the attachment are:
10. Progress of the project and/or percentage of project completed.
  - a. Project log indicating status of appraisals for each parcel.
  - b. Explanation of delays in progress or expected delays.
  - c. Any other pertinent progress factors that should be brought to the attention of CDOT.

## **SECTION 3.13 – CDOT ASSIGNMENT CONDITIONS**

CDOT has Assignment Conditions to 49 CFR, Part 24, Subpart B for the appraisal process and appraisal reporting. Examples of CDOT Assignment Conditions (including but not limited to) are:

### **3.13.1 – General Assignment Conditions for Eminent Domain Appraisals**

The following requirements apply to each appraisal assignment and/or appraisal report:

1. Adhere to services contract document Scope of Work requirements.
2. All CDOT staff and fee (contract) appraisers utilize appropriate CDOT appraisal formats for all assignments. Appraisal reporting options: The level of appraisal (e.g., Total Take, Standard Partial Take, complex report format, or excess parcel format), will be determined by the CDOT Appraisal Contract Administrator.
3. Appraiser to provide the property owner a copy of the CDOT “Right of Way Information” booklet unless specifically excused.
4. In some cases CDOT may require the use of a hypothetical condition, such as, a specified legal assumption, valuation of a contaminated property as if clean, etc.
5. An Executive Summary will be included in each total and partial taking appraisal report.
6. Appraiser will include the quantity and quality test on water wells that are in or near the area to be acquired. The Region will provide the test results to the appraiser for inclusion in the appraisal report.
7. Include certified inventory (CDOT Form #433) of owner, tenant and/or lessee-owned real property improvements and/or trade fixtures.
8. Rounding of calculations and compensation estimate.
9. Report the historical rental or lease history of the property for at least the past three years, if this information can be ascertained. All current leases should be reported.
10. Photos for appraisals and updates of all affected improvements in or near the area of taking.
11. Include sale transaction data on a sales sheet in the appraisal report.
12. Inspect and confirm rental properties and rental data as the assignment may require (litigation appraiser requires personal inspection and confirmation by the signing appraiser).
13. When required, show sale transaction adjustments in either dollar or percentage form.
14. Allocate contributory value of tenant-owned real estate.

15. Include and utilize ROW plans, parcel legal descriptions, and parcel numbering provided by CDOT.
16. Provide floor plan sketches of each improvement to be acquired and improvements which may be adversely affected by the acquisition.
17. Personally inspect and measure dimensions of the interior and exterior of any buildings located on the subject property and/or any improvements that are, or may be, affected by the acquisitions.
18. Appraiser is to appraise the property (ies) “as if clean” if there is no reason to believe that no environmental hazards exist. If information is subsequently made available that would invalidate the “as if clean” assumption, then the value estimate concluded is subject to change.
19. Personally inspect each property under appraisal, acquisition area, and temporary easements and take photographs of acquisition areas and affected improvements.
20. Personally photograph and personally inspect properties used for comparison.
21. The appraisal report must contain a neighborhood data summary.
22. Include qualifications of all appraisers and technicians who contribute to the report.
23. Any or all specialty reports shall be included in the appraisal report. Improvements included in the specialty must be appraised according to their contributory value of the larger parcel or for their salvage value (value for removal), whichever is greater. The principal appraiser should perform their own research and analysis to agree with or reject the conclusions contained in the specialty report.
24. Include value in place, salvage value, and cost-to-move for off-premise signs (billboards) which can be legally relocated after the acquisition.
25. Include the contributory value of on-premise sign. Cost to remove and relocate the sign, unless the sign is located in a total acquisition.
26. The appraiser will establish the contributory value of the trade fixtures.
27. Oil, natural gas, and other mineral resources will not be condemned nor will these mineral rights be included in the appraised value unless previously approved by the Region Right of Way Manager. The exception of oil, natural gas, and other mineral resources from the estimated compensation is an assignment condition
28. A realty/personalty report is required per 49 CFR 24.103(a)(2)(i),

### **3.13.2 – General Assignment Conditions for Partial Takes**

1. Adhere to Assignment Conditions listed in Section 3.13.1 along with additional Assignment Conditions listed in this Section 3.13.2.



2. The appraiser discuss, in the appraisal report, payment or replacement of the irrigation ditch and facilities located in the area of acquisition.
3. The appraiser must show that replacement stock-pass is less than buying out the entire residue () property. Determination of highest and best use of the subject property in the before and after condition must support the replacement of the stock-pass.
4. Affected areas are hypothetically created and defined by the appraiser. A description providing information and rationale behind establishing the affected area as an economic unit is required. An affected area should be supportable as a readily achievable economic unit and is not be confused with the acquisition area of a partial taking.
5. Analyze damages and special benefits when applicable in every partial taking appraisal report.
6. Minimum payment for fee takings, permanent and temporary easements.

### **3.13.3 – Assignment Conditions for CDOT Owned Real Property**

1. Appraisals for Disposal of Excess CDOT ROW must contain a range of value.
2. Appraise Access Opening using a full before and after appraisal.

### **3.13.4 – CDOT Assignment Conditions for Appraisal Review**

1. The value of any tenant owned improvements shall be listed separately on the FMV in the remarks section.
2. When requested, the review appraiser will establish owner retention value and/or salvage value for real property acquired.
3. The review appraiser will prepare a review folder for each project reviewed.

## **SECTION 3.14 – JURISDICTIONAL EXCEPTIONS TO USPAP**

### **3.14.1 – General Information**

Projects with Federal participation or reimbursement must adhere to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, which is the primary public law. Implementing federal regulations for the Uniform Act are 49 CFR Part 24 and 23 CFR Part 710. Colorado law to establish a uniform policy and comply with the Uniform Act is § 24-56-101, et. seq., CRS Colorado law for eminent domain is § 38-1-101, et. seq., CRS Colorado case law is also applicable. The Uniform Standards for Federal Land Acquisitions provides appraisal guidelines. The CDOT ROW Manual establishes public policies and procedures. Chapter 3, Appraisal and Appraisal Review, CDOT Right of Way Manual includes these authorities by reference. 49 CFR § 24.103 appraisal requirements are designed to comply with the Uniform Act and other Federal eminent domain based appraisal requirements. They are also considered to be consistent with USPAP Standards Rule 1, 2 and 3.

### **3.14.2 – Jurisdictional Exception and/or Assignment Condition Examples**

1. Undivided basis rule (§ 38-1-105(3), CRS) and Colorado case law
  - a. An encumbrance cannot be ignored if it adds to or subtracts from fair market value of a property.
  - b. Contract rental adding to value is relevant.
  - c. Contract rental less than fair rent is relevant.
2. Disregard any increase or decrease in value of the subject caused by the proposed public improvement before the take. (49 CFR § 24.103(a)(3).
3. Five year sales history of the property being appraised (49 CFR § 24.103(a)(2)).
4. Market value for federal land acquisition purposes will not be linked to a specific exposure time. (UASFLA, Interagency Land Acquisition Conference, Washington, D. C., 2000, pp.13, 31, 78)
5. Appraisal may only require the sales comparison approach. (49 CFR § 24.103(a)(3)
6. Appraisal may only require the underlying site/land value and the contributory value of the impacted improvements in the take area. (CDOT ROW Manual Chapter 3, Appraisal and Appraisal Review - Policies, Procedures and General Information)
7. Definition of larger parcel (UASFLA, Interagency Land Acquisition Conference, Washington, D. C., 2000, p.17)
8. Affected area of larger parcel. (Colorado case law, e. g., Dept. of Highways v. Schulhoff, 167 Colo. 72, 445 P. 2d 402 (1968))

9. It is technically a hypothetical condition to appraise the remainder as if the taken had already occurred. It is unnecessary to add this as a hypothetical condition since it the purpose of the appraisal and is in the standard Assumptions and Limiting Conditions.

## SECTION 3.15 – APPRAISAL REPORT FORMATS

CDOT provides four Appraisal Report formats required to be used when appraising for Federal participating transportation projects in Colorado. The formats provide comprehensive working outlines for the adopted scope of work. All four formats are working guides intended to model professional appraisal practice and clear and complete report presentation while addressing USPAP, federal law and Uniform Act, and Colorado law. Using these formats will aid the appraisal review process and benefit those involved in the eminent domain process.

These appraisal formats do not substitute for or supplant the judgment of the appraiser who ultimately bears the responsibility for the quality and compliance of the final appraisal report. Therefore, it is always the responsibility of the appraiser to exercise professional judgment and add to, delete or modify elements of this format to appropriately conform to the appraiser's scope of work.

The four Appraisal Report formats are titled as below and are exhibits to this chapter of the Right of Way Manual.

- **Total Take**  
This Total Take appraisal format is recommended for use by all appraisers for Total Take appraisal assignments in Colorado. It is designed for both self-contained and summary appraisal reports. Do not use this Total Take appraisal format for partial take appraisal assignments where there is a residue parcel.
- **Standard Partial Take**  
The Standard Partial Take appraisal format is recommended for use by all appraisers for all non-complex eminent domain partial take appraisal assignments in Colorado that involve vacant land or land plus minor affected improvements where damages might be indicated in the remainder valuation, but which are readily curable at modest cost. Non-complex assignments involving improved properties would include appraisals of partial takings where the taking does not affect the primary buildings or other significant structures on the subject property, although minor site improvements and similar might be affected. This partial take appraisal format excludes the Improved Sales and Income approaches, which if necessary may require the appraiser to use CDOT's Complex Partial take appraisal format. Do not use this Standard Partial take appraisal format for partial take appraisal assignments where the proposed acquisition will result in any incurable damages, significant curable damages, or any special benefits deriving either from the project or from a cost to cure. In such instances the appraiser will use CDOT's Complex Partial take appraisal format.
- **Complex Partial Take**  
The Complex Partial Take appraisal format is recommended for use by all appraisers for all eminent domain partial take appraisals in Colorado when the appraisal issues are more complex, particularly with respect to changes in highest and best use of the property after the take; damages, cost-to-cure damages, and benefits.
- **Excess Parcel**  
CDOT appraiser staff and contract appraisers must use this format when appraising CDOT-owned excess or disposal real property. Do not use this Excess Parcel appraisal format for partial take appraisal assignments where there is a residue parcel.

### 3.15.1 – Partial Take Format Comments

The use of either CDOT partial take report formats is required when the acquisition involves a partial take; one for uncomplicated (Standard) partial takes and the second for multifaceted (Complex) partial takings. The formats are designed for implementation of the modified state before-and-after rule. This section provides additional guidance to Section 3.2.4 – Partial Take Appraisal Information on the selection of the appropriate partial take report format for the appraisal assignment.

When the appraisal involves a partial take, the purpose of the appraisal is to estimate the reasonable market value of the property actually taken; compensable damages, if any, to the residue after possession; and special benefits, if any, to the residue after take. Use the procedural steps of the modified state before-and-after rule.

- Larger Parcel Value Before Take
- Value of Part Take (including easements acquired)
- Residue Value Before Take (= Value of Larger Parcel Before Take <Less> Value of Part Taken)
- Residue Value After Take (including encumbered easement areas acquired)
- Analysis of Damages and/or Benefits
- Rental Value of Temporary Easements
- Compensation Estimate Summary

Use the Standard Partial Take report format when principal improvements on the larger parcel are not affected by the partial take. With prior approval from the CDOT Appraisal Contract Administrator and inclusion in the Scope of Work, the underlying larger parcel land value and the contributory value of minor improvements (e.g., fencing, mailbox, sprinkler heads, etc.) impacted in the taking area are the only improvements that require valuation.

Use the Complex Partial Take report format for all eminent domain partial take appraisals in Colorado when the appraisal issues are more complex, particularly with respect to changes in highest and best use of the property after the take; damages, cost-to-cure damages, and benefits.

Both partial take appraisal report formats follow the same steps as the Total Take Report Format through Part 3 – Analysis and Valuation, developing an estimate of value for the subject's larger parcel.

### 3.15.2 – Report Format Explanation

The following sections include explanation, recommended inclusions, required content, and examples for each section of the formats included in the Exhibits. The Complex Partial Take is the most comprehensive report format including all elements of the other formats and therefore, its outline is explained here. The Total Take format includes all of the sections described below up to and including the Larger Parcel Value Before Take. The Standard Partial Take format allows a more brief or abbreviated analysis on some of the procedural steps and is discussed as appropriate. Thus, the explanations of appropriate sections apply to all of the formats.

### **3.15.2.1 – Introduction**

#### **1. Title Page**

The name and address of CDOT, appraiser/company name and address of the principal appraiser signing the report, project code, project number, location of the project, parcel number, owner's name, principal appraiser's name, date of valuation, and date of report are required on the title page.

#### **2. Letter of Transmittal**

The subject or reference notation before the opening or inside address and salutation should contain the project code, project number, parcel number, location of the project, and the property owner's name. The effective date of appraisal, date of value, and estimate of compensation is to be included in the letter.

Signature of the principal appraiser is required on the letter of transmittal. Show the principal appraiser's state certification number.

Statements in the letter of transmittal must contain those shown in the report format. Additional statements may be included if applicable to the appraisal problem or if required by a professional organization. If questions arise concerning statements in the letter of transmittal, contact the CDOT Appraisal Contract Administrator for clarification.

#### **3. Table of Contents**

For ease in locating data pertinent to the appraisal, a table of contents with page numbering must be included in each appraisal report.

#### **4. Executive Summary**

The executive summary is a digest of the appraisal report. The applicable parts of this summary must be completed. Refer to the report format for a copy of the executive summary. The executive summary describes subject property data, and includes a value and compensation conclusions table allocating subject parcel value.

#### **5. Subject Property**

Provide a photo or other exhibit of the whole subject property (larger parcel) appraised. This is recommended as the place to insert only an introductory general overview photo-or-two of the property, however, there is no restriction. More photos of the subject larger parcel, including street scenes, might be placed in the Property Description section later in the report. The appraiser must note the view, date, and name of the person who took the photo.

### **3.15.2.2 – Part 1 – Scope of Work**

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research

and analyses necessary to produce credible assignment results. A scope of work is acceptable when it meets or exceeds the expectations of parties who are regularly intended users for similar assignments; and what an appraiser's peers' actions would be in performing the same or a similar assignment.

CDOT has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal depends on the complexity of the appraisal problem.

## 1. Assumptions and Limiting Conditions

A real property appraisal report must clearly, conspicuously, and accurately disclose any extraordinary assumptions, hypothetical conditions, and general assumptions and limiting conditions that directly affect the appraisal and have an impact on value.

Each report format contains suggested General Assumptions and Limiting Conditions that encompass all required essentials. The formats contain notes and suggestions.

Do not include broad assumptions and limiting conditions if they are not valid. For example, a typical boiler plate assumption and limiting condition stating that "fencing will be cared for by the Region during construction, unless otherwise stated in this appraisal report" should not be used if the Region will not replace the fencing. State that the Region will not replace the fencing and this fact has been considered in the valuation. Non-applicable assumptions such as the subject improvements comply with the Americans with Disabilities Act (ADA) should not be included if the property does not have improvements subject to ADA requirements. If an assumption or limiting condition is not applicable to the appraisal problem, delete or exclude it from the report format.

## 2. Purpose of the Appraisal

The purpose of the appraisal is to develop a compensation estimate for the reasonable market value of the property actually taken. Eminent domain appraisal is subject to the Code of Federal Regulations (CFR) and the federal Uniform Act appraisal requirements, Colorado Revised Statutes (CRS), and Colorado Jury Instructions (CJI). Real property appraisal development and reporting is subject to the Uniform Standards of Professional Appraisal Practice (USPAP).

When the appraisal involves a total take, the purpose of the appraisal is to estimate the reasonable market value of the subject parcel. The reasonable market value of the parcel is the estimate of compensation due the owner for the property actually taken.

When the appraisal involves a partial take, the purpose of the appraisal is to estimate the reasonable market value of the property actually taken; compensable damages, if any, to the residue after take; and specific benefits, if any, to the residue after take. Use the procedural steps of the modified state before-and-after rule:

- Larger Parcel Value Before Take
- Value of Part Taken
- Residue Value Before Take
- Residue Value After Take

- Analysis of Damages and/or Benefits
- Rental Value of Temporary Easements
- Compensation Estimate Summary

### 3. Identity of the Client and Intended Users

This section addresses that CDOT is the client and identifies other persons and/or entities that may rely on the appraisal report for its intended use. Intended users of CDOT eminent domain appraisal reports are CDOT, FHWA and the Colorado Attorney General's Office. Property owners are not intended users as defined by USPAP, but it is understood that property owners and their representatives and agents may be provided a copy of the appraisal report as part of the right-of-way acquisition process.

### 4. Intended Use of the Appraisal

The intended use of eminent domain appraisals prepared for CDOT is for the acquisition of ROW for projects to be constructed by CDOT with the assistance of Federal-aid transportation funding. If necessary, this appraisal report with supporting data, analyses, conclusions, and opinions will serve as a basis for court testimony in eminent domain proceedings. The appraisal report will become a public record after settlement with the property owner or at the conclusion of legal proceedings.

### 5. Real Property Interest Appraised

The real property interest of the subject larger parcel before take, the part taken, and residue after take are valued as fee simple estate (title). The property is appraised "as if free and clear" of all liens, bond assessments, and indebtedness, but subject to existing easements, covenants, deed restrictions, rights of way of record, and excepting therefrom all rights to oil, natural gas, or other mineral resources beneath such real property. Any exceptions to the interest appraised must be stated and explained. Also, because mineral interests are excluded and not acquired, any damages to the remaining mineral estate must be considered.

### 6. Definition of Reasonable Market Value

CJI 36:3 contains the jurisdictional definition of reasonable market value used in Colorado for eminent domain proceedings. The required definition of reasonable market value is:

*The value you are to determine for the property actually taken is the reasonable market value for such property on (insert valuation date). 'Reasonable market value' means the fair, actual, cash market value of the property. It is the price the property could have been sold for on the open market under the usual and ordinary circumstances, that is, under those circumstances where the owner was willing to sell and the purchaser was willing to buy, but neither was under an obligation to do so.*

*In determining the market value of the property actually taken, you are not to take into account any increase or decrease in value caused by the proposed public improvement.*



Colorado Revised Statutes also address Project Influence:

*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, shall be disregarded in determining the compensation for the property. (§ 24-56-117(1)(c) CRS)*

The appraiser shall not link an estimate of market value for CDOT land acquisition purposes to a specific exposure time. The definition of reasonable market value does not call for the value estimate to be linked to a specific exposure time. The value estimate is based on a specific date when the property is actually taken by agreement, stipulation, court order to take possession, or the date of the trial or hearing to assess compensation, whichever is earlier (§ 38-1-114(2), CRS). Compensation includes damages and benefits as of the specific date and is not linked to a specific exposure time. This is a jurisdictional exception to USPAP Standards Rule 1-2 and Standards Rule 2-2 (UASFLA, Interagency Land Acquisition Conference, Washington, D.C., 2000, p. 78).

7. Effective Date of Appraisal

State the effective date of appraisal which is the date of the value estimate.

8. Date of Appraisal Report

State the date of the appraisal report.

9. Date of Property Inspection and Owner Accompaniment

Under state and federal regulations, the owner or owner's representative must be given the opportunity to accompany the appraiser during the property inspection. The appraiser must state whether the owner of the subject property or representative of the owner was contacted, the parties that were present during the inspection, and the date the property was inspected. If unable to directly contact the owner, document efforts made to contact the owner.

10. Project Identification and Description

The Region will provide the appraiser with project information. A brief summary of the project is included in this section. Enhancement or diminution in value in the area or neighborhood caused by the project may need discussion. Environmental reports and construction plans are valuable for understanding the project and project data.

11. Right of Way Plans Relied on for Valuation Purposes

This section is used to document the CDOT right of way plans used by the appraiser for valuation purposes. CDOT right of way plans may be revised during or after the appraisal assignment. The review appraiser will check this section to determine that the appraisal is based on the proper set of plans. If revisions have occurred, this section reserves the appraiser's right to revise the appraisal to reflect any plan changes.

## 12. Scope of Research and Analysis

Describe or summarize the degree to which the property is inspected; the extent of research into physical or economic factors; extent of data research (e.g., sales information collection, viewing and examining recorded transfer deeds of sales, personal inspection of sales, confirmation of sales with either the buyer or seller, etc.); construction costs of improvements obtained from either local contractors or other cost publication sources, type and extent of analysis; and other information deemed appropriate for estimating the value of land and/or improvements according to the circumstances of the individual appraisal assignment.

In very rare or limited cases, CDOT may specifically require that only the sales comparison approach is used for valuation. Appendix A, 49 CFR § 24.103(a)(2) states “All relevant and reliable approaches to value are to be used. However, where an Agency determines that the sales comparison approach will be adequate by itself and yield credible appraisal results because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the sales comparison approach.”

### Summary of Appraisal Problems

In this section of the appraisal, summarize the principal problems considered in the appraisal process. Describe some of the key challenges – i.e. questions not easily answered – in the appraisal process. What appraisal problems are present in this assignment that is unique from other assignments? These might be challenges related to larger parcel complexities, or issues raised by unique or odd land or building characteristics, access uncertainties, irrigation problems, highest and best use complexities and similar. These might be issues raised by unique or odd land or building characteristics, access uncertainties, and highest and best use complexities. Writing that there are “few available sales” and similar statements does not necessarily describe principal appraisal problems. Descriptions of the problems are contained later in appropriate sections. Examples of problems may entail:

- Non-conforming use.
- Interim use improvements.
- Estimate of depreciation.
- Lack of market transaction sales and/or rental data.
- Project enhancement or diminution in price of market transactions.

### 3.15.2.3 – Part 2 – Factual Data – Larger Parcel Before Take

#### 1. Subject Property Location and Use

If brief, include a legal description and/or address, assessor parcel ID, schedule number, or tax ID number of the subject property. A copy of the subject property deed, memorandum of ownership, legal description can be included as an exhibit in the addenda to the appraisal report.

## 2. Identification of Larger Parcel

Appraisal for eminent domain is unique in that it requires consideration of damages and/or benefits to the residue property after take when a partial taking occurs, thus the larger parcel from which a taking will be made must be determined.

Three conditions establish the larger parcel for the consideration of compensable damages and/or special benefits. The three conditions include the portion of a property that has:

- unity of ownership
- contiguity
- unity of use

When the appropriate larger parcel is easily determined, the appraiser can briefly note here the support for their conclusion. Otherwise simply state or describe what is the larger parcel and direct the reader to Highest and Best Use and/or other sections where further explanation is provided. In some instances a larger parcel might be properly defined that does not meet or clearly meet all three conditions noted above. The conclusion of the defined larger parcel appraised must be well supported in appropriate sections of the appraisal report.

## 3. External Market and Location Influences

This section is for state, regional/metro, and neighborhood data. If an appraiser has been assigned multiple parcels to appraise in a project, a separate state and regional/metro data report can be prepared for the CDOT main project file. When this is done, make reference here that the state and regional/metro data is on file with CDOT in the main project file. Discuss inclusion of this section with the CDOT Appraisal Contract Administrator.

Each appraisal report must contain a neighborhood data summary even if the appraisal assignment involves multiple parcels and appraisals in a project. The appraiser should provide a well-written and conclusive overview of the subject's neighborhood and/or market area and market conditions that define the competitive environment the subject property is in, and indicate whether the neighborhood and/or market area is economically stable, improving or declining. This discussion ultimately supports the highest and best use analysis in the report, and the conclusions presented here should prepare the reader for and be consistent with information, adjustments, and other analyses that appear later in the report.

## 4. Property Description

Main property headings include land/site, owner improvements and tenant improvements data, use history, sales history listing/contract data, rental history, assessed value and real estate taxes (include schedule/parcel number), zoning and other land use regulations. Refer to the report format for property item examples. Add or delete items in the format as needed.

a. Land/Site Data

Description of the land/site data for the total subject parcel is presented in this section. Any pertinent items should be discussed.

- Location
- County Assessor Parcel Number
- Legal Description
- Present use
- Land size, shape, Dimensions, Frontage and Depth
- Access
- Visibility and/or View
- Topography
- Flood plain and drainage
- Soil, subsoil, and water conditions
- Easements, encroachments, and restrictive covenants
- Utilities
- Land/site improvements
- Functional adequacy of the land/site
- Adjacent and Surrounding Land Uses and Development
- Anticipated Public or Private Improvements
- Nuisances and Hazards
- Potential Environmental Hazards
- Owner off-premise sign site

b. Owner Improvements Data

All owner improvements considered real property should be described including the building style, year of construction, quality of construction, building area, actual age, effective age, remaining economic life, and overall condition. If a certified inventory of real and personal property (CDOT Form#433) is required, CDOT will perform the inventory and provide it to the appraiser. Refer to Section 3.5.1 for certified inventory information. The inventory designates items included in the valuation. Significant or uncertain personal property will be indicated as either included or not included in the valuation. The CDOT Region will address personal property items later. Typically, the following should be described:

- Owner buildings/structures
- Owner fixtures
- Owner trade fixtures
- Owner site improvements
- Owner on-premise sign

A fixture is an article that was once personal property, has since been installed or attached to the land or building in a rather permanent manner, and is now regarded as part of the real estate. A description should be provided for any fixtures, including method of attachment.

If there is a question whether an item is real property or personal property, contact the CDOT Appraisal Contract Administrator for clarification. Legal counsel input may be needed for a final determination. A specialty report prepared by another expert may be needed for items such as machinery, restaurant equipment, signs, specialized construction features, timber, minerals, and unique or specialized equipment.

On-premise signs advertise the primary activity or service conducted on the subject property. Include complete descriptions of any on-premise signs.

Even when the “main” improvements are not obviously damaged by the take and are not valued in the appraisal (as in the Standard Partial Take report), a brief description is required. All affected improvements will be described in detail.

#### c. Tenant Improvements Data

All tenant-owned improvements considered real property shall be described. The CDOT Region will address personal property items later.

- Tenant buildings/structures
- Tenant fixtures
- Tenant trade fixtures
- Tenant on-premise sign
- Tenant off-premise sign

Typically, off-premise signs are owned by sign companies or off-site private businesses and advertise off-premise messages. Complete descriptions of off-premise signs are to be included in the Letter of Information for the appraiser. Sign permit numbers and other additional permit information is to be included. The Region will provide this information

#### d. Zoning and Other Land Use Regulations

Identify the current zoning of the subject property before take in this section. Report any other requirements that may impact the highest and best use and value of the property. Zoning description should include but not be limited to items such as:

- Intent, Permitted Uses, Conditional Uses, Uses by Review
- Area Requirement
- Building Height and Maximum Building Coverage
- Parking
- Setbacks
- Open Space
- Enclosure of Activities
- Fences

Analyze any current rezoning of the property or reasonable probability of rezoning. Any zoning reflecting enhancement or diminution in value due to the project must be discussed. If a reasonable probability of rezoning exists, discuss in detail and present supporting analysis.

e. Use History

Present a brief description of the past and present use of the property.

f. Sales History

49 CFR § 24.103(a)(2)(i) requires at least a five-year sales history of the subject property. This requirement is a supplemental standard to USPAP Standards Rule 1-5(b). The 5-year requirement is a minimum. For example, an 8-year-old sale of the subject may be relevant or provide insight to current value. If a sale of the subject property in the last five years is not used for valuation purposes, explain why.

The appraiser is required to complete a Sale Transaction Data sheet on the subject if the property has transferred within the previous five years. If the sale data is not used as evidence of value in the appraisal, reasons for its exclusion must be set out in the appraisal report.

g. Listing/Contract Data

Discuss, analyze, and interpret any current listing or contract for the subject property. A listing or contract for sale does not meet statutory requirements and is not admissible as evidence of value. A listing or contract may be used for informational purposes but not for valuation. Any prior listing, if information is available, shall be stated and explained.

h. Rental History

A brief description of the rental history of the subject in this section is acceptable. A detailed presentation of current leases should be made in the income capitalization approach to value. A statement should be made as to the existing contract rent being at market or economic rent. If possible, a copy of current leases should be included as an exhibit in the addenda.

i. Assessed Value - Real Estate Taxes – Special Taxing Districts

Show current assessed valuation information, assessor schedule number or parcel ID, and real estate tax information in this part of the appraisal report.

j. Legal Entitlements and Stage of Development

Zoning is an entitlement. Describe other entitlements such as approved concept and development plans or legal non-conforming uses. Describe the property's stage of development: raw land, platted site, finished site ready for development, or a site improved with new construction.

k. Subject Photographs

Photographs of the subject property and all improvements will be included in the appraisal report. Interior photographs should be taken when appropriate. Photographs are to have identification, date the photograph is taken, view, and

initials or name of the principal appraiser taking the photograph. Photographs are valuable if eminent domain proceedings and trial occur. Often, before the date of trial, the construction project has been completed and improvements removed. If an update is required for a valuation trial, photographs of the subject should be taken as close to the possession date as possible.

#### **3.15.2.4 – Part 3 – Analysis and Valuation – Larger Parcel before Take**

The highest and best use of the subject larger parcel needs determination. First the highest and best use of the land as if vacant is determined. A premise allowing use of the Standard Partial Take report format is that the highest and best use is uncomplicated and easily determined. Use the Complex Partial Take report format if the highest and best use is based upon a reasonable probability of rezoning, a controversial highest and best use, or the present use is not the highest and best use. If there is an inconsistency or substantial improvements are not compatible with highest and best use, select the Complex Partial Take report format.

##### Highest and Best Use

##### Highest and Best Use as Though Vacant

First, the highest and best use of the land as if vacant is determined. If the highest and best use is based upon a reasonable probability of rezoning, an analysis and full discussion must be included.

##### Highest and Best Use as Improved

If the subject property is improved, the highest and best use of the subject parcel as improved is determined. The highest and best use needs to be consistent. If there is an inconsistency, then the improvements may only have an interim contributory value.

##### Conclusion of Highest and Best Use

In this section of the report, describe the final conclusion of highest and best use.

##### Appraisal Valuation Methodology

The appraisal of all properties will consider the three approaches to value, cost, sales comparison, and income capitalization, as appropriate. This section is intended to present a brief summary of the approaches to value and an explanation if an approach is not used. According to USPAP Standards Rule 2-2, if an approach to value is not used, an explanation for excluding the approach must be made.

If a separate valuation for specialty items such as machinery, bulk plant equipment, restaurant equipment or other items is necessary, the specialty report shall be included in the appraisal report. Improvements included in the specialty report must be appraised according to their contributory value to the reasonable market value of the larger parcel or for their salvage value (value for removal), whichever is greater. The principal appraiser is responsible for incorporating the specialty report into the appraisal report. The principal appraiser will perform their own research and analysis to support acceptance or rejection of the conclusions contained in the specialty report.

## Land/Site Valuation

In this section, the land value of the subject parcel, as if vacant and available to be put to its highest and best use. The land/site value is estimated even when the assignment is a total take, unless approved by the CDOT contract administrator. Support the estimated value by confirmed market transactions of significant land sales. When required, show dollar and/or percentage adjustments based on market data in this section of the appraisal report.

## Land Sale Summary Table

If a summary table of land sales is pertinent and would aid in understanding the sales used, include it in this section or as an exhibit in the addenda of the appraisal report. A land sale summary table is not a substitute for required land sale transaction data sheets.

## Land Sale Location Map

CDOT requires a land sale transaction map in this section of the report or as an exhibit in the addenda. The map must be detailed enough to actually locate sales, or if not, then plat/other detail maps will be required with the sale photos or somewhere in this section (i.e. there must be sufficient detail map or directions etc. for review appraiser/others to locate sales).

## Land Sale Detail Sheets

CDOT requires land sale transaction data sheets in this section of the report or as an exhibit in the addenda. An example of the land sale transaction data sheet is included in all report formats. A land sale summary table is not a substitute for required land sale transactions data sheets.

The adjusted land sale transaction price reported must be based upon a cash transaction and not on sales enhanced or diminished in value by the proposed project. Any sale affected by project influence should be adjusted accordingly. Disregard any enhancement to the subject property which is the result of the proposed project as well as any diminution in value caused by the proposed project.

## Land Sale Adjustment Table

If a land sales adjustment table is pertinent and would aid in understanding the sale adjustments, include it in this section or as an exhibit in the addenda of the appraisal report. An adjustment table may be used in place of or in combination with a narrative description of the land sale transaction adjustments

## Land Sales Discussion and Value Conclusion

A land sales discussion and conclusion is required.

## Off-Premise (billboard) Sign Site Value

Include if appropriate. Avoid double payment.

## Cost Approach



## Cost New of Improvements

Explain if reproduction or replacement cost new is used for the subject improvements. The basis for the cost new estimates must be supported in the appraisal report by acceptable cost sources. Cost references must be identified or referenced. Following are examples of acceptable cost new sources:

- Recent actual construction costs of similar improvements.
- Cost data services (e.g., Marshall Valuation Service).
- Architects, engineers, contractors, builders, and supplier estimates.
- Actual written bids from contractors, engineers, supplier, etc.
- Manufacturers' catalogs.

## Depreciation

Depreciation is a loss in value caused by physical deterioration and obsolescence. Explain depreciation estimates which must be based on market data or other recognized valuation sources.

## Cost Approach Summary and Value Conclusion

This section is designed to summarize the reproduction or replacement cost new estimates of the improvements, depreciation, and land value of the subject property. Identify tenant-owned real property separately.

## Sales Comparison Approach

In this section, the improved property value of the subject parcel is estimated. Support the estimated improved property value with market transactions of similar improved sales. This section may include paired sales analysis, improved property value conclusion, etc. Explain differences between the subject parcel and the improved sale transactions. When required, show dollar and/or percentage adjustments.

## Improved Sale Summary Table

If a summary table of improved sale transactions is pertinent and would aid in understanding the improved sales used, include it in this portion of the appraisal report or as an exhibit in the addenda. An improved sale summary table is not a substitute for required improved sale transaction data sheets.

## Improved Sale Location Map

CDOT requires an improved sale transaction map in this section of the report or as exhibits in the addenda. The map must be detailed enough to actually locate sales, or if not, then plat/other detail maps will be required with the sale photos or somewhere in this section (i.e. there must be sufficient detail map or directions etc. for review appraiser/others to locate sales).

## Improved Sale Detail Sheets

CDOT requires improved sale transaction data sheets in this section of the report or as exhibits in the addenda. Include improved sales used in valuing the subject parcel in the appraisal report. A improved sale data sheet in included in the report formats. An improved sale summary table is not a substitute for required improved sale transaction data sheets.

The adjusted improved sale transaction price reported must be based upon a cash transaction. Any sale affected by project influence should be adjusted accordingly. When valuing the subject property, disregard any enhancement or diminution in value caused by the proposed project, except physical deterioration within the control of the owner.

#### Improved Sale Adjustment Table

If a summary table of improved sale transactions is pertinent and would aid in understanding the improved sales used, include it in this portion of the appraisal report or as an exhibit in the addenda. An improved sale summary table is not a substitute for required improved sale transaction data sheets.

#### Improved Sales Discussion and Value Conclusion

A discussion of the improved sales is required as is reconciliation to a value conclusion.

#### Income Capitalization Approach

Documentation and support of income and expenses is required. Also, document and support capitalization methods, techniques, and rates used in the appraisal report. If possible, improved sale transactions in the sales comparison approach should be analyzed to reflect these elements.

The capitalized income is income derived from the real property, not from the business conducted on the property. Give particular attention to the selection of the capitalization rate. The selected rate must be based upon market data of similar properties. Previous comments concerning project enhancement, cash equivalency, etc. are required while developing this approach to value.

#### Abstract of Subject Lease

Include a statement if the subject property contract rent is at, above, or below market rates. The abstract of lease should include available lease data such as, but not limited to:

- Date of lease
- Lessor
- Lessee
- Premises
- Length of lease
- Purpose
- Rent
- Improvements
- Performance bonds
- Renewal term, option, and rent
- Repairs and maintenance
- Use

Taxes  
Utilities  
Insurance

### Rental Summary Table

If a summary table of rental transactions is pertinent and would aid in understanding the rentals used, include it in this portion of the appraisal report or as an exhibit in the addenda.

### Rental Location Map

CDOT requires a rental comparables location map in this section of the report or as an exhibit in the addenda. The map must be detailed enough to actually locate rentals, or if not, then plat/other detail maps will be required with the rental photos or somewhere in this section (i.e. there must be sufficient detail map or directions etc. for review appraiser/others to locate rentals).

### Rental Comparable Detail Sheets

CDOT requires rental transaction data sheets in this section or as an exhibit in the addenda to the appraisal report. A data sheet similar to the land sale transaction data sheet is acceptable.

### Rental Adjustment Table

If a rental transaction adjustment table is pertinent and would aid in understanding rental adjustments, include it in this portion of the appraisal report or as an exhibit in the addenda. An adjustment table may be used in place of or in combination with a narrative description of the rental transaction adjustments.

### Rental Comparables Discussion

#### Income and Expenses

Obtain actual income and expenses when possible. Only consider income the subject property will produce and not income produced from a business conducted on the property.

#### Capitalization

Include an appropriate capitalization rate for the subject parcel in this section of the appraisal report. The selection of the capitalization rate must be fully explained and documented.

#### Income Capitalization Approach Summary and Value Conclusion

Summarize the net income attributable to the subject parcel, applicable capitalization methods and rate, and estimate of value of the subject parcel.

#### Reconciliation

The estimate of compensation must show an allocation of owner and tenant-owned improvements, if applicable.

## Value Indications

Summarize the value indications for the subject parcel by the approaches to value. Value indications include the land/site value, cost approach, sales comparison approach, and the income capitalization approach.

## Reconciliation

The final reconciliation of value considers the validity and reliability of each approach. Correlation of the approaches to value must include sufficient detail to support the final estimate of value.

## Subject Parcel Value

Refer to the report format for the value table or grid. Enter the land/site value and improvements contributory value.

In the Total Take report format, this is the estimate of compensation. In the partial take report formats, this is the Larger Parcel Value Before Take.

This completes the Total Take explanation. The partial take reports explanation continues below:

### **3.15.2.5 – Part 4 – Factual Data - Part Taken**

Up to this point, valuation of the larger parcel for partial acquisitions is basically the same as valuation for a total take. After the larger parcel value before take is estimated, the value of the part actually taken is estimated. Describe the proposed acquisitions. The part actually taken may include land, sign sites, easements, owner improvements, tenant improvements, fixtures, on-premise signs, and off-premise signs, etc.

#### 1. Identification of the Part Taken

This section is intended for a general identification of parts to be taken from the subject larger parcel. Include the CDOT R.O.W. Plan Sheet in this section or as an exhibit in the addenda. Specific data is presented in the following data sections.

#### 2. Property Data – Part Taken

##### a. Land/Site Data

The physical aspects of land parcels being taken are described in this section. The description includes different land classes (e.g., residential, commercial, industrial, and agricultural) which may affect the value of the larger parcel before take. Include the CDOT legal description for the parcels to be taken in the addenda.

Describe any off-premise (billboard) sites located in the land parcel taken.

Access control is not a taking of a property right. Access control, typically referred to as an “A” line on the ROW plan sheet, is located on ROW border after the taking and is not a taking of a larger parcel property right. Access control is an exercise of police power. An access control line is usually denoted with a parcel number such as “AC-110.” Access control may result in and be measured as damage, e.g., access control results in a landlocked parcel or “substantial impairment” of access to the residue after the take.

If an access control line will be imposed after the taking, briefly describe where the access control will be located. Include the CDOT legal description for the access control line in the addenda.

b. Easement Data

Describe easements taken including their purpose in this section of the report. There are many different types of easements acquired (e.g., permanent easements, railroad easements, wetland easements, utility easements, slope easements, etc.). Include the CDOT legal description for easements in the addenda.

Temporary easement factual data and valuation is addressed in Part 10 – Temporary Easement Rental Value of the appraisal report format. Temporary easements are treated differently than other physical takings because property interests revert to the owner at the end of the rental term.

c. Owner Improvements Data

Describe owner real property improvements taken in the acquisition or in the easement. The description includes any and all improvements that are actually in the area taken. As an example, assume one-fourth of an industrial warehouse is in the area taken. The description should indicate what portions of the building (e.g., storage area, office area, and docks) are affected. If other ancillary use buildings, landscaping, sprinkler system, asphalt paving, parking spaces, etc. are to be taken, describe them. Real property shown on the Certified Inventory of Real and Personal Property (CDOT Form #433) must be included in the valuation. Owner real property improvements may involve:

- Description of Owner Buildings/Structures/Site Improvements
- Owner Fixtures
- Owner Trade Fixtures (Real Property)
- Owner On-Premise Sign

d. Tenant Improvements Data

Describe tenant owned real property improvements in this section. Include tenant owned real property improvements that are actually in the take area. Tenant real property shown on the Certified Inventory of Real and Personal Property (CDOT Form #433) must be included in the valuation. Tenant owned real property improvements in the take may involve:

- Description of Tenant Buildings/Structures/Site Improvements

- Tenant Fixtures
- Tenant Trade Fixtures (considered real property)
- Tenant On-Premise Sign
- Tenant Off-Premise Sign

e. Partial Takings Photographs

Include individual photographs of each fee taking and easement parcel as well as temporary easement parcels. Photos should show affected improvements in the acquisition areas.

### 3.15.2.6 – Part 5 – Analysis and Valuation – Part Taken

1. Value of Part Taken as Part of Larger Parcel

a. Land/Site Value of Part Taken

In this section, generally the fee value of land parcels taken is valued. Include a discussion and explanation of valuation reasoning. The value of the land/site taken is based upon its value as a part of the larger parcel before the take. Typically, the unit value per square foot, per acre, etc. as developed for the larger parcel value before take can be applied to the part taken. Avoid double payment for existing easements in take areas when the easement will be replaced.

Include the site value of the owner off-premise sign (billboard) avoiding double payment. If an access control (“A” line) will be imposed after the take, show “zero” as the value for the control.

b. Easement Value of Part Taken

The values of easements (e.g., permanent, utility, slope, etc.) acquired are shown in this section. The value of an easement is the difference between the full fee simple interest of the land and the remaining encumbered fee interest of the land. Often the value of an easement is based upon a percentage of the full fee value. Include an explanation supporting the use of a percentage of full fee value or other valuation technique.

Existing easements acquired in fee acquisition areas can result in double payment. Use caution when an existing easement in the taking area will be replaced.

Temporary easement factual data and valuation is addressed in Part 10 – Temporary Easement Rental Value of the appraisal report format. Temporary easements are treated differently than other physical takings because the property interest reverts to the owner at the end of the rental term.

c. Owner Improvements Contributory Value of Part Taken

Owner real property improvements actually in the take area are valued based on their contributory value to the larger parcel. If only a portion of an improvement is

taken, do not automatically assume that the taking of the improvement is in essence a total take. This is not acceptable for a partial take. As a simplified example, assume 25% of a residential home is actually in the take area. If the contributory value of the home is \$100,000, the value of the part taken is \$25,000. Show this value of the part taken in this section. If the residue of the home cannot be made useful after the take, the remaining contributory value of the home is measured as a damage consideration. If the home can be made useful, cost to cure may be the measure of damage. This is addressed in Part 9 – Acquisition Analysis of Damages and/or Benefits.

One technical reason for handling the part of the house actually taken in this manner is due to jury instructions and state statute, compensation is for the part actually taken. A second reason is tax laws. Compensation for an actual taking is considered an involuntary conversion and is subject to capital gains tax. For income tax purposes, damage element of the taking is treated differently and may vary from case to case. Contact a tax attorney, certified public accountant, or the Internal Revenue Service for additional information. Value of part taken may include:

- Owner Buildings/Structures
- Owner Fixtures
- Owner Trade Fixtures (Real Property)
- Owner Site Improvements
- Owner On-Premise Sign

Present the contributory value of owner fixtures with supporting explanations in this section. If a specialty report is performed for equipment, on-premise signs, etc., reference the specialty report and include a copy in this section or as an exhibit in the addenda to the appraisal.

Owner on-premise signs located on the larger parcel advertise activities, goods, and/or services conducted on the site. Explain and show the contributory value of the on-premise signs taken in this section. All sign's values must be separately allocated in the final conclusion of value and estimated compensation. Specialty reports should be included in this section or as an exhibit in the addenda of the report.

#### d. Tenant Improvements Contributory Value of Part Taken

Any tenant owned real property improvements are valued based on their contributory value to the larger parcel. Include an explanation concerning the contributory value of tenant improvements. Value of tenant owned real property in the part taken may include:

- Tenant Buildings/Structures
- Tenant Fixtures
- Tenant Trade Fixtures (Real Property)
- Tenant On-Premise Sign
- Tenant Off-Premise Sign (billboard)

Refer to Owner Improvements Contributory Value of Part Taken section, which also applies to tenant owned fixtures and on-premise signs. If a specialty report is performed for equipment, on-premise signs, etc., reference the specialty report and include a copy in this section or as an exhibit in the addenda of the report.

Outdoor advertising companies or private businesses own off-premise signs (e.g., billboards). The contributory value of these off-premise signs must be explained and supported. Specialty reports should be included in this section or as an exhibit in the addenda of the report.

2. Summary of Value of Part Taken
3. Refer to the report format for a copy of the summary table or grid for the value of the part taken.

### **3.15.2.7 – Part 6 – Residue Value before Take**

Use the summary table or grid included in the report format to show the residue value before take in this section of the appraisal. The residue value before take is the mathematical difference of the larger parcel value before take less the value of part taken. Stated differently, the residue value before take is a mathematical step that is simply the value of the larger parcel minus the value of the part taken, including fee takings, easements and improvements, but excluding any temporary easements.

### **3.15.2.8 – Part 7 – Factual Data – Residue After Take**

The valuation of the residue after take is a second appraisal of a new and distinct property. When the residue valuation after take is complete, the difference between the residue value before take and the residue value after take is the measure of damages and/or benefits.

Any influence by the project on the neighborhood and/or the subject property itself must be considered in the residue analysis and valuation. The Project Influence rule (ignore Project Influence) does not apply in the After Valuation. Any influence of the Project on the residue property must be addressed.

Standard Partial Take report format. The Standard Partial Take report format is designed for appraisal problems that do not involve substantial changes between the larger parcel before take and the residue after take.

If there is minimal physical change to the residue as compared to the larger parcel before take, only report those items that have changed and delete all headings that do not apply. In-depth details of the land/site, owner and tenant improvements, zoning, etc. are not necessary.

Complex Partial Take report format. The Complex Partial Take report format is designed for appraisal problems that involve substantial changes between the larger parcel before take and the residue after take.

When the residue after take varies significantly from the larger parcel before take, an in-depth discussion of the residue property is required. This will entail addressing all pertinent property



data items that affect the residue after take. In each property data section, first describe the residue as uncured before any consideration for a cost to cure. Then explain the property item as if the problem has been mitigated by a completed cost to cure.

#### 1. Neighborhood Description – Project Influences

After construction of the proposed public improvements, neighborhood factors may change. Analyze expected neighborhood changes caused by the project. These changes could possibly enhance or diminish property values in the general neighborhood area. Deciding how the project affects a neighborhood will help lay a foundation for analyses of damage and benefits to the residue after take.

Changes in the neighborhood due to the project can help establish whether there are any non-compensable damages and/or general benefits (vs. offsetting special benefits) to the subject remainder. Describe the affect the project has on market dynamics and property values in the neighborhood after the take and the assumed construction of the transportation or other project. If the project has no clear or measurable influence on the neighborhood, note this conclusion and the reasoning behind it.

#### 2. Property Description – Residue After Take

Standard Partial Take report format. When using the Standard Partial Take report format, if the residue experiences minimal changes after the take, a brief description highlighting those changes is acceptable. Detailed discussion of land, improvements, fixtures, etc., data may not be necessary.

Complex Partial Take report format. When using the Complex Partial Take report format, include a detailed description and discussion of all differences of the residue uncured and as if cured.

Describe the residue parcel: the subject residue property after the take in its “as is” condition. Describe changes to the residue property as a result of the take. If nothing has changed under certain categories below, report so for those categories. For example, there might be no change with respect to Zoning. Inform the reader the zoning is unchanged and, if true, no change to the residue parcel’s zoning conformity after the take. This “residue after take” section provides foundation for the “highest and best use” after take, and whether there is any indication of compensable damages or special benefits to the residue parcel.

##### a. Land/Site Data

If the residue experiences minimal changes after the take, a brief description highlighting those changes is acceptable. For example, the taking may only alter the shape and some topographical features. A statement to the effect that the residue after take is similar to the larger parcel before take except for these two factors is acceptable. One alternative is to leave the report format in place and insert a comment to the effect that the residue after take is similar to the before condition or state it is not applicable. A second alternative is to delete items from the format and only address pertinent items and issues.

In cases where the take significantly alters the residue, especially when damages and/or special benefits are involved, a detailed discussion of each item of land/site data is required.

b. Owner Improvements Data

Describe owner improvements remaining on the residue after take. Comments made above for land/site data apply to this section. Discuss residue improvements as uncured and cured. To continue the example of 25% of a house being taken, a description of the residue improvement is needed to establish curable compensable damage or cost to cure and/or incurable compensable damage. Residue after take improvements may include:

- Owner Buildings/Structures
- Owner Fixtures
- Owner Trade Fixtures
- Owner Site Improvements
- Owner On-Premise Sign

On-premise sign data on the residue after take is important. Discuss if any on-premise sign in the taking area can be relocated on the residue property.

c. Tenant Improvements Data

Describe tenant improvements remaining on the residue after take. The above comments for land/site data and owner improvements data also apply to tenant improvements. Remaining improvements may include:

- Tenant Buildings/Structures
- Tenant Fixtures
- Tenant Trade Fixtures
- Tenant Owned On-Premise Sign
- Tenant Owned Off-Premise Sign

Off-premise sign data after take is important. Discuss if there is potential to relocate any off-premise sign on the residue after take. The Region will furnish data as to the legality of relocating an off-premise sign. Information from cities or counties concerning the relocation of the off-premise sign must be included.

d. Rental Analysis

A rental analysis of the residue after take is important, especially when the income capitalization approach is the primary basis for the value of the larger parcel before take and the residue after take. This analysis will establish if there is no change, an increase, or a decrease in the income potential of the residue. Discuss rental in light of uncured and cured conditions. In turn, the conclusion of the analysis will provide evidence for damages and/or benefits to the residue.

e. Assessed Value - Real Estate Taxes – Special Taxing Districts

An estimate of real estate taxes based upon projected assessed value of the uncured and cured residue is necessary, especially when the income capitalization approach to value is the most significant indicator of value in the before and after conditions.

f. Zoning and Other Land Use Regulations

Zoning requirements and land use regulations are significant to the residue after take. Many LPAs (e.g., cities, towns, and counties) will allow variances to a residue after take due to the non-conformity being created by eminent domain takings. At times, some agencies will require conformance to existing regulations. Analyze the full effect of zoning requirements on the residue after take in the uncured and cured condition.

There are instances when a taking will create two or more residue parcels. These parcels may be subject to new regulations (e.g., a rural property is now a major intersection location with a reasonable probability of rezoning to commercial use) that result in damages and/or benefits. The effects of potential rezoning must be analyzed for damage and/or benefit considerations.

### **3.15.2.9 – Part 8 – Analysis and Valuation – Residue after Take**

A consultant or specialty report may be necessary to aid the appraiser in highest and best use determination of the residue after take. For example, a land planner can provide insight to potential uses of the residue, an architect or engineer for structural analysis when an improvement can be refaced after being cut-off, hotel specialist can provide market competition analysis of the residue, etc.

After a partial taking from a larger parcel, damages and/or benefits to the residue must be addressed. An appraisal of the residue after the take and construction of proposed improvements usually requires the use of additional sales. If additional sales are needed, include them in the appraisal report. If benefits are present, they must be developed even if damages are not evident. Compensable damages and special benefits may need to meet other legal tests. If a fee appraiser working for CDOT believes they need an opinion concerning legal aspects affecting the residue, the appraiser should contact the CDOT Appraisal Contract Administrator. The Office of the Attorney General will not provide legal opinions to independent fee appraisers.

A condition of using the Standard Partial Take report format is no incurable damage to the residue. As such, the residue value after take will be the same as the residue value before take, except for curable damages (see Compensable Damages – Curable). A statement that no incurable damages are caused by the take is required.

Complex Partial Take report format. When substantial damages and costs to cure are found, a complete before and after appraisal is required. If no damage is found, but special benefits are found, this will be included in the report because up to 50% of the compensation for the part actually taken can be offset by special benefits.

#### 1. Highest and Best Use – Residue after Take

Depending on the level of change in the residue parcel as compared to the larger parcel before the take, the HBU discussion below may be fairly summarized and not require separate discussion under each category below, however, these are provided here as some or all might require discussion.

Standard Partial Take report format. An analysis of highest and best use for the residue after take includes the use as though vacant and as improved, as appropriate. If highest and best use does not change from before the taking, a brief summary of this fact is acceptable.

Complex Partial Take report format. If the highest and best use of the residue changes after the take, a detailed analysis enables the intended users of the appraisal report to understand damages and/or benefits to the residue after take.

When using the Complex Partial Take report format, include a detailed description and discussion of highest and best use of the residue as uncured and as if cured. Include a conclusion the highest and best use as though vacant and as improved for the residue after take.

- Highest and Best Use as Though Vacant
- Highest and Best Use as Though Improved
- Conclusion of Highest and Best Use – Residue After Take

## 2. Land/Site Valuation – Residue after Take

Any influence by the project on the value of the subject remainder property must be considered in the residue analysis and valuation. The Project Influence rule (ignore Project Influence) does not apply in the After Valuation. Any influence of the Project on the residue property, and thus the appropriate sales and/or sales adjustments to apply in the residue valuation, must be considered.

Some partial take appraisal assignments will not require a new land sales search and analysis etc. in order to value the residue after the take. Sometimes the residue land valuation can rely on the same land sales used in the valuation of the larger parcel before the take, although possibly requiring revised adjustments, and can result in similar or the same unit value conclusion as before. Where the land unit value of the residue parcel is unchanged, the appraiser might summarize to that effect and simply show the residue land value conclusion, and it will not be necessary to employ all the elements shown below. However, these are provided here again as some or all of these elements might require discussion. Appraise the residue parcel as is appropriate.

Standard Partial Take report format. When there is no substantial change in the highest and best use of the residue land as vacant after take, the land sale transaction data used to value the larger parcel before take can be applied to the valuation of the residue. There is no need to insert the same sales sheets in this section of the appraisal report.

Complex Partial Take report format. If the highest and best use of residue land after take changes, a new set of land sale transaction data is required. New sale sheets are required in this section or in the addenda to the report. If necessary, include a new land sale summary table, land sale adjustment table, and other supporting narrative descriptions. Discuss highest and best use of the residue as uncured and as cured.

If new land sales are used, include the following

- Land Sale Summary Table – Reside After Take
- Land Sales Location Map - Reside After Take
- Land Sale Detail Sheets - Reside After Take
- Land Sale Adjustment Table – Residue After Take
- Land Sales Discussion and Value Conclusion – Residue After Take
- Off-Premise Sign ( billboard) Site Value – Residue After Take

### 3. Cost Approach – Residue after Take

If necessary, include a cost approach to estimate the value of remaining improvements on the residue after take. Describe the application of the Cost Approach in the valuation of the residue after the take in its “as is” condition (uncured).

Often this information will be the same or similar as presented in earlier (before/part take valuation) sections of the appraisal report, and a new narrative will not be necessary here or below. Otherwise, explain if reproduction or replacement cost new is used. Identify cost service, local contractor or other source used to develop the cost new. Elements typically include direct and indirect (hard/soft) costs and entrepreneurial profit.

Discuss depreciation and whether it has changed (and show any change) as compared to the Cost Approach analysis of the larger parcel before the take. Depreciation might be allocated among physical, functional and external depreciation.

If a new cost approach is used, a Cost Approach summary and Value conclusion is required for the Residue After Take.

### 4. Sales Comparison Approach – Residue after Take

Describe the application of the Improved Sales Approach in the residue valuation. Discuss the appropriate unit of value and whether this is changed from the before valuation.

Some partial take appraisal assignments will not require a new improved sales search and analysis etc. in order to value the residue after the take. Sometimes the residue as improved valuation can rely on the same improved sales used in the valuation of the larger parcel before the take, although possibly requiring revised adjustments, and can result in similar or the same unit value conclusion as before. Where the improved unit value of the residue parcel is unchanged, the appraiser might summarize to that effect and simply show the residue value conclusion as improved, and it will not be necessary to employ all the elements shown below. However, these are provided here again as some or all of these elements might require discussion. Appraise the residue parcel as is appropriate

Standard Partial Take report format. As in the land/site valuation section, when there is no substantial change in the highest and best use as improved of the residue after take, the improved sale transaction data used to value the larger parcel before take can be applied to the valuation of the residue. There is no need to insert the same improved

sales sheets, improved sale summary table, and improved sale adjustment table in this section of the appraisal report.

Complex Partial Take report format. If the improved property highest and best use of residue after take changes, a new set of improved sale transaction sheets is required. Include the new sales sheets in this section or in the addenda to the appraisal report. When needed, include a new improved sale summary table, improved sale adjustment table, and other supporting narrative descriptions.

If new improved sales are used, include the following

- Improved Sales Summary Table – Reside After Take
- Improved Sales Location Map - Reside After Take
- Improved Sales Detail Sheets - Reside After Take
- Improved Sales Adjustment Table – Residue After Take
- Improved Sales Discussion and Value Conclusion – Residue After Take

#### 5. Income Capitalization Approach – Residue after Take

Describe the application of the Income Approach in the valuation of the residue after the take

Standard Partial Take report format. When there is no substantial change in the income potential of the residue after take, reference the fact that the existing lease, rental transaction data, income and expenses, and capitalization rate applied to value the larger parcel before take can be applied to the valuation of the residue after take. There is no need to insert the same rental transaction data sheets in this section of the appraisal report.

Complex Partial Take report format. If the income potential of the residue after take increases or decreases, an in-depth analysis of changes in the lease, new rental transaction data, new income and expenses, and capitalization rate will be required. A new set of rental transactions may be required. The new rental transaction data sheets are included in this section as well as a new rental summary table, rental adjustment table, and other supporting narrative descriptions.

If new improved rental information is used, include the following

- Abstract of Subject Lease – Residue After Take
- Rental Summary Table – Reside After Take
- Rental Location Map - Reside After Take
- Rental Comparable Detail Sheets - Reside After Take
- Rental Adjustment Table – Residue After Take
- Rental Comparable Discussion – Residue After Take
- Capitalization – Residue After Take
- Income Capitalization Approach Summary and Value Conclusion - Residue After Take

#### 6. Reconciliation – Residue Value after Take

For both partial take report formats, present a reconciliation of the approaches to value for the residue after take. Refer to the Standard Partial Take or Complex Partial Take report format for a copy of the summary table or grid for the residue value after take. The land/site value must include the value for any easement areas acquired. Do not include rental value of temporary easements. Temporary easements are addressed in Part 10 of the report format.

### **3.15.2.10 – Part 9 – Analysis of Damages and/or Benefits**

Damages and/or benefits are not appraised; they are measured by the difference between the residue value before take and the residue value after take. The difference will indicate an overall damage and/or benefit to the residue. Damage analysis requires a determination if the damage is a compensable damage (see Section 3.6.2). Compensable damage may be curable, incurable or both. Benefit analysis requires a determination if the benefit is general (not setting) or special (offsetting). Special benefits can offset damage and cannot offset more than fifty percent of the part actually taken.

Complex Partial Take Report Format. The acquisition analysis of damages and/or benefits examines elements of damage that may be cured. If damages are major, another valuation of the residue as if cured will be required. The CDOT Appraisal Contract Administrator will discuss this aspect with the appraiser and address this factor in the appraisal services Scope of Work. Valuation of the residue as cured will follow the same appraisal process in Part 8 – Analysis and Valuation – Residue after Take. The value after as cured will be used to justify feasibility of the cost to cure.

Note: Do not confuse the terms residue or remainder with the term “uneconomic remnant”. The loss in reasonable market value of a residue after take is damage. Damage to the residue after take is measured by the appraiser. Staff or contract appraisers are not to determine whether a residue after take is an uneconomic remnant. This is determined by the Right of Way manager when the residue after take has little or no value or utility to the owner of the residue parcel.

#### **1. Indicated Damages or Benefits – Residue After Take**

The measure of compensable damages is the decrease in reasonable market value of the residue after take as compared to the reasonable market value of the residue before take. Damages may result from the property actually taken, the use placed on the property actually taken, or activities on the land actually taken.

Standard Partial Take report format. The heading for this section in the Standard Partial Take report format is Indicated Damages. Use this format when there is no measurable damage or benefit, minor damage is curable with a cost to cure that is minor, or any benefit is minor. A statement that no measurable damage or benefit is required.

Refer to the report format for a copy of the table or grid for indicated damages to residue after take – uncured.

Complex Partial Take report format. The purpose of this section shows the measure of total indicated damage (or in some cases, benefits) to the residue after take from all causes.

Refer to the report format for a copy of the table or grid for indicated damages to residue after take – uncured.

## 2. Compensable Damages or Offsetting Special Benefits

In this section of both partial take report formats, the appraiser must analyze and determine if the indicated damage to the residue is compensable or noncompensable. Even though a loss in value may be indicated as damage, it may be non-compensable.

“Infringement of the owner’s personal pleasure or enjoyment in the use of the residue or even the owner’s annoyance or discomfort do not constitute compensable damages. Neither does the fact that the residue may be less desirable for certain purposes. Such matters are not compensable except as they are a natural, necessary and reasonable result of the residue being severed from the land actually taken or the uses expected to be made of the land actually taken, and are measurable by a reduction in the market value of the residue. (Damages may not be allowed which result from [describe any non-compensable damages] even though a decrease in the reasonable market value of the residue may result)”. CJI 36:5

Following are examples (but not limited to) of noncompensable damages:

- Expenses for moving personal property.
- Temporary damage to the use and occupancy of property reasonably incident to construction requirements.
- Damage due to annoyance and inconvenience suffered by the public in general.
- Circuitry of access or travel, rerouting or diversion of traffic.
- Closure or relocation of access that does not result in the loss of reasonable access or substantial impairment of access.
- Loss of business income or profits.
- Infringement of the owner’s personal pleasure or enjoyment in the use of the residue or even annoyance or discomfort.
- Frustration of a landowner’s plans to use or develop the property.
- In general, all types of damage which can be considered conjectural, speculative, and remote.

## 3. Compensable Damages – Curable (Net Cost to Cure)

A cost to cure cannot be used to mitigate damage offsite of the residue after take. Cost to cure is defined or explained as:

“In certain circumstances, damage to the remainder may be cured by remedial action taken by the owner. The cost to cure, however, is a proper measure of damage only when it is no greater in amount than the decrease in the market value of the remainder if left as it stood. When the cost to cure is less than the severance damages if the cure were not undertaken, the cost to cure is the proper measure of damage, and the government is not obligated to pay in excess of that amount.” (Interagency Land Acquisition Conference, Uniform Appraisal Standards for Federal Land Acquisitions, Washington, D.C., 2000, p. 51)



Standard Partial Take report format. Explain minor compensable damage elements that have a minor cost to cure. A feasibility analysis of the cost to cure is not required if the cost to cure is minor. Typical costs to cure that are minor include replacement fencing, residential well, septic tank, leech field, sod, landscaping, sprinkler system, on-premise sign relocation to the residue, etc.

Complex Partial Take report format. Explain major or substantial compensable damage that can be mitigated by a cost to cure. A portion of or all compensable damage may be mitigated. Cost to cure is only used when damage to the residue has been proven through market evidence.

a. Cost to Cure

Present costs to cure compensable damages in this section. The costs may need support with bid estimates from consultants or companies that have expertise with restoration. The appraiser must determine if the cost bids or estimates appear reasonable. If not included in the cost estimate, the appraiser will include an estimate of indirect costs and entrepreneurial profit.

Standard Partial Take report format. If used, include consultant or specialty bid estimates as an exhibit in the addenda to the report. In some cases, costs may be developed with cost manuals.

Complex Partial Take report format. Damages may be curable (cost to cure), incurable or both. Cost to cure is a mitigation process. The mitigation cannot occur off of or outside of the residue. Compensable incurable damage may remain after a residue has been “restored” or “cured.” Include consultant or specialty bid estimates as an exhibit in the addenda. If some minor costs are also involved, they may be developed and support with cost manual estimates.

b. Cost to Cure - Feasibility

Standard Partial Take report format. If the cost to cure is minor, a feasibility analysis of the cost to cure is not required.

Complex Partial Take report format. Substantial cost to cure for complex damage issues will require a feasibility analysis. The analysis will involve a third appraisal, value of the residue after take – cured.

The CDOT Appraisal Contract Administrator will discuss this aspect with the appraiser and address this factor in the appraisal services Scope of Work. Valuation of the residue as cured will follow the same appraisal process in Part 8 – Analysis and Valuation – Residue after Take. The value after as cured will be used to justify feasibility of the cost to cure.

The cure is feasible if the value of the cure is equal to or greater than the cost of the cure. Refer to the Value of Cost to Cure table or grid in this section. The value of the cure is the difference between the residue value after take as cured and the residue value after take as uncured. When the cure is feasible, the cost to cure is used as a measure of compensation for damage.

c. Net Cost to Cure

Both the Standard Partial Take and Complex Partial Take report formats require a final analysis to determine the net cost to cure. The net cost to cure analysis is to ensure that double payment and/or compensation is not paid for items previously paid for in the part taken and paid for again if the item is part of the cure to the residue after take. Net cost to cure is based on *United States v. 2.33 Acres of Land*, 704 F.2d 728, 730 (4th Cir. 1983).

Refer to the report format for a copy of the table or grid for Total Compensable Damages – Curable (Net Cost to Cure).

4. Compensable Damages – Incurable

The final damage analysis is determination of compensable incurable damage. If the cost to cure does not mitigate all compensable damage, provide a description and explanation of compensable incurable damage. Incurable damage is measured by the difference between compensable damage to the residue after take less compensable curable damages.

Refer to the appropriate partial take report format for a copy of the table or grid for Total Compensable Damages – Incurable.

5. Indicated Special Benefits

An analysis of special benefits must be made even if no damage is indicated. This is required because special benefits can offset up to 50% of the total compensation paid for the part actually taken. In both standard partial and Complex Partial Take report formats, provide a description and explanation of special benefits.

A determination must be made whether or not the benefits are general or special. Any benefits which may result to the residue but which are shared in common with the community at large are not to be considered. These are general benefits and are not applied to offset damages.

For anything to constitute a special benefit, it must result directly in a benefit to the residue and be peculiar to it. Special benefits are measured by the increase in reasonable market value of the residue due to the construction and/or improvements of the project. Similar special benefits can affect other parcels in the project. Special benefits are measured by the increase in reasonable market value, after the taking and construction of the public improvements in the manner proposed, as compared to the value of the residue before take. Special benefits can offset damage and up to 50% of the compensation of the part actually taken.

Other analysis of special benefits may be needed. For example, after a cost to cure the residue may realize an increase in value or a special benefit. Contact the CDOT Appraisal Contract Administrator or CDOT Statewide Appraisal Supervisor if questions arise concerning the treatment of complex special benefit issues.

Refer to the appropriate partial take report format for a copy of the table or grid for Total Indicated Special Benefits to Residue after Take – Uncured.

### **3.15.2.11 – Part 10 – Temporary Easement Rental Value**

Temporary easement rental value is reserved until the end of the appraisal process. Typically, a temporary easement is a rental of a portion of the property for a short period of time. At the end of the rental period, the property reverts to the owner. Temporary easements are generally required for construction purposes (e.g., replacement of an existing access drive).

#### **1. Temporary Easement Data**

Provide a description and purpose for temporary easements, including the time period required (e.g., six months, one year, etc.) for use of the temporary easement. If there are existing improvements in the temporary easement, describe them and include their contributory value or include a statement that they will be protected or replaced-in-kind as part of the construction project. Temporary easement information is in the required Letter of Information for the Appraiser.

#### **2. Temporary Easement Rental Value**

Explain the reasonable rental rate for the time period the easement is used. The rental rate should be based on other land leases or reasonable rates of return.

#### **3. Temporary Easement Rental Value**

In the summary, list each temporary easement, land area, unit value, rate (%), term or time period, and rental value of the temporary easements. Refer to the report format for a copy of the table or grid for Total Rental Value of Temporary Easements.

### **3.15.2.12 – Part 11 – Compensation Summary**

Explain here the elements of compensation concluded in the appraisal report: land, easements, improvements, compensable damages, whether there is a net cost to cure, and temporary easements. Discuss whether any special benefits offset damages and/or the value of the part taken, and show the offset amount.

#### **1. Explanation of Compensation**

Explanation of compensation factors is required. Discuss if any special benefits will offset the value of the part taken. If this is the case, explain and show the amount of the offset.

#### **2. Compensation Estimate Summary**

This section of the appraisal report summarizes the final estimate of compensation due the owner. Both partial take report formats have a summary table for the presentation of appraisal conclusions.

#### **3. Certification of Appraiser**

The certification of the appraiser is required (49 CFR § 24.103 (a)(2)(v)) in all appraisal reports and must contain the content and wording shown in the report format. Required statements in the certification of appraiser are shown in the Total Take report format. Appraisers with membership or candidacy in professional appraisal organizations should check for the organization's required certification statements. These required statements may be added to the certification. The competency provision of USPAP must be addressed in the certification when necessary.

### **3.15.2.13 – Part 12 – Exhibits and Addenda**

Exhibits and addenda content will vary with each appraisal assignment. As stated earlier, some appraisers may choose to place certain exhibits in the body of the report while others may select the addenda. Refer to the partial take report formats for sample list of exhibits. Some recommended exhibits are:

1. ROW Ownership, Plan Map, and Tabulation of Properties Sheets

Include an ownership map, ROW plan map, and tabulation of properties sheet in each appraisal report. Additional maps created by the appraiser may be used if they adequately serve and enhance the visual presentation of appraisal data. The map or maps should delineate the ownership, land classifications, improvement locations, and other pertinent features affecting the property.

2. Legal Description of Takings

Include legal descriptions of takings provided by the CDOT Region.

3. Sale Transaction Data Maps

This map aids intended users of the appraisal to locate sale transactions used in valuing the subject property.

4. Sale Transaction Data

Required sale transaction data sheets may be included in the addenda or in the body of the appraisal report.

5. Plot Plan

A plot plan of the subject property can be useful in supplementing narrative descriptions of the property.

6. Floor Plan

Include floor plans of improvements impacted by the taking. Floor plans must include exterior dimensions. Include interior dimensions if they are pertinent to the appraisal problem.

7. Title Information

At a minimum, include the last recorded transfer deed of the property. Also include any pertinent covenants and restrictions.

#### 8. Other Pertinent Exhibits

Any other exhibits that may be helpful or provide an aid in understanding the appraisal problem should be included.

#### 9. Acronyms and Definitions

Definitions of significant terms should be included in the appraisal report. Definitions for a total take may include terms such as compensation, easement, etc. When a definition is applicable to the appraisal problem, use the required definition contained in the Total Take report format.

#### 10. Certified Inventory of Real and Personal Property

See Section 3.5.1

#### 11. Qualifications of Appraiser

Include qualifications of the principal appraiser signing the appraisal report. The qualification sheet may be placed in the body of the report or in the addenda. The qualifications should include a past five-year history of hearings, depositions, and valuation trials where the appraiser gave testimony.

### **3.15.3 – Excess Parcel Report Format**

CDOT appraiser staff and contract appraisers must use this format when appraising CDOT-owned excess or disposal real property. Do not use this Excess Parcel appraisal format for partial take appraisal assignments where there is a residue parcel.

Specific explanation for appraising excess parcels is in SECTION 3.9 – VALUATION OF CDOT OWNED REAL PROPERTY. The appraiser is expected to use the Manual as a primary guide and reference. Contact CDOT appraisal staff for a copy of the Manual or instructions to access it online.

For the valuation of CDOT owned “” or “excess parcels,” CDOT requires that the appraisal contain a range of values using applicable valuation techniques that establish the value ranges. The purpose of the appraisal is to estimate the fair market value range of the CDOT-owned excess/ parcel based upon one or all the following, depending upon the appraisal problem:

- as a “stand-alone unit” if the parcel is a viable and functional economic entity;
- as additional land to an adjoining property owner based on the “across-the-fence” method;
- and/or “enhancement to the adjoining owner.”

Please refer to the Format for specific information.

## **SECTION 3.16 – Exhibits**

Total Take Appraisal Report Format  
Standard Partial Take Appraisal Report Format  
Complex Partial Take Appraisal Report Format  
Excess Parcel Appraisal Report Format  
Appraiser Application Requirements and Submittals  
FMV Form #930  
Appraisal Review Report  
Owner Appraiser Contact Sheet  
Reviewer Appraiser Worksheet Form #1145  
Chapter 3 Revisions