

# **Right of Way Manual**

## **Chapter 8: Local Public Agencies**

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

**Colorado Department of Transportation**

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## Section 8.1 – General Information

### 8.1.1 – 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-Civ. 4th	Colorado Jury Instructions, Civil 4th
CPA	Certified Public Accountant
CPW	Colorado Division of Parks and Wildlife (Colorado Department of Natural Resources)
CRS	Colorado Revised Statutes
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 94th Congress	Federal Land Policy and Management Act of 1976 (Public Law 94-579)
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)
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
State Land Board	State Board of Land Commissioners (Department of Natural Resources)
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

### 8.1.2 – Definitions

Terms defined were copied from 49 CFR Subpart A §24.2 and 23 CFR Subpart A §710.105.

**Agency** (§24.2(a)(1)): The Federal agency, State, State agency, or person that acquires real property or displaces a person.

**Acquiring agency** (§24.2(a)(1)(i)): A State Agency, which has the authority to acquire property by eminent domain under State law, and a State Agency or person which does not have such authority. For purposes of this Manual, this includes CDOT or a local agency conducting business in a Right of Way (ROW) project.

**Displacing agency** (§24.2(a)(1)(ii)): means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

**Federal agency** (§24.2(a)(1)(iii)): Any department, Agency, or instrumentality in the executive branch of the government, any wholly owned government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

**State agency** (§24.2(a)(1)(iv)): means any department, agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

**Appraisal** (§24.2(a)(3)): 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 of a specific date, supported by the presentation and analysis of relevant market information.

**Business** (§25.2(a)(4)): Any lawful activity, except a farm operation, that is conducted:

- i. Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or any other personal property;
- ii. Primarily for the sale of services to the public;
- iii. Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or
- iv. By a nonprofit organization that has established its non-profit status under applicable

Federal or State law.

For CDOT, the term business also means any lawful activity, except a farm operation, that is conducted:

- i. As an entity licensed to conduct business by the Secretary of the State of Colorado, and which is currently held in good standing by the same;
- ii. As an entity who has filed State and Federal taxes as a business in the State of Colorado within the last calendar year;

**Decent, safe, and sanitary dwelling (§24.2(a)(8)):** A dwelling which meets local housing and occupancy codes. However, any of the following standards which are not met by the local code shall apply unless waived for good cause by the Federal Agency funding the project. The dwelling shall:

1. Be structurally sound, weather tight, and in good repair.
2. Contain a safe electrical wiring system adequate for lighting and other devices.
3. Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.
4. Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or, in the absence of local codes, the policies of the displacing Agency, in addition, the displacing Agency shall follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes or in the absence of local codes, the policies of such Agencies.
5. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.
6. Contains unobstructed egress to safe, open space at ground level.
7. For a displaced person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. (See appendix A, §24.2(a)(8)(vii).)

**Displaced person (§24.2(a)(9)(i)):** Any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Uniform Act as described at § 24.401(a) and § 24.402(a):



1. As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project; or
2. As a direct result of rehabilitation or demolition for a project; or
3. As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

See Chapter 5 definitions or §24.2(a)(8)(ii) for a nonexclusive listing of persons who do not qualify as displaced persons.

**Early acquisition** (§710.105(b)): Early acquisition means the acquisition of real property interests by an acquiring agency prior to the completion of the environmental review process for a proposed transportation project, as provided under 23 CFR 710.501 and 23 U.S.C. 108.

**Federally Assisted** (§710.105(b)): Federally assisted means a project or program that receives grant funds under title 23, United States Code.

**Initiation of negotiations** (§24.2(a)(15)):

1. Whenever the displacement results from the acquisition of the real property by a Federal agency or State agency, the initiation of negotiations means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal Agency or State Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the initiation of negotiations means the actual move of the person from the property.
2. Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal Agency or a State Agency), the initiation of negotiations means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.
3. In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or Superfund) (CERCLA) the initiation of negotiations means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.
4. In the case of permanent relocation of a tenant as a result of an acquisition of real property described in § 24.101(b)(1) through (5), the initiation of negotiations means the actions described in § 24.2(a)(15)(i) and (ii), except that such initiation of negotiations does not become effective, for purposes of establishing eligibility for relocation assistance for such tenants under this part, until there is a written agreement between the Agency and the owner to purchase the real property. (See appendix A, § 24.2(a)(15)(iv)).

**Owner of a dwelling** (§24.2(a)(20)): A person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property;

1. Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
2. An interest in a cooperative housing project which includes the right to occupy a dwelling; or
3. A contract to purchase any of the interests or estates described in § 24.2(a)(1)(i) or (ii); or
4. Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

**Person** (§710.105(b)): Any individual, family partnership, corporation, or association.

**Program or project** (§24.2(a)(22)): Any activity or series of activities undertaken by a Federal agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.

**Right of Way (ROW)** (§710.105(b)): Right of Way means real property and rights therein used for the construction, operation, maintenance, or mitigation of a transportation or related facility funded under title 23 of the United States Code.

**Salvage Value** (§24.2(a)(23)): The probable sale price of an item offered for sale to knowledgeable buyers with the requirement that it be removed from the property at a buyer's expense (i.e. not eligible for relocation assistance). This includes items with components that can be reused or recycled when there is no reasonable prospect for sale except on this basis.

**State** (24.2(a)(25)): Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

**Uniform Act** (24.2(a)(28)): The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894; 42 U.S.C. 4601 et seq.), and amendments thereto.

Additional definitions for CDOT purposes include the following:

**Local Agency:** – For purposes of this manual, a local agency is a political jurisdiction or quasi-governmental entity utilizing any Federal Aid Highway Program or CDOT funds for any part of the acquisition project.

**Relocation Assistance:** Advisory and/or financial aid to persons and businesses displaced by a public program to assist them in becoming reestablished in areas not less desirable, at rents or prices within their financial means, and in dwellings that are decent, safe, and sanitary.

### 8.1.3 – Authorities

References to authorities, public law, Code of Federal Regulations (CFR), and Colorado

Revised Statutes (CRS) are:

- 23 CFR Part 710
- 49 CFR Part 24
- Colorado Constitution, Article II, Section 15
- CRS 12-61-702
- CRS 24-56-101, et seq.
- CRS 38-1-101, et seq.
- National Environmental Policy Act (NEPA)
- Title VI of the 1964 Civil Rights Act
- U.S. Constitution, Fifth and Fourteenth Amendments
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601 et seq.), also known as the Uniform Act

See Exhibit A – References for Website Addresses.

LPAs actively involved in right of way acquisition and relocation must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, also known as the Uniform Act. The federal regulation that sets forth government wide regulations implementing the Uniform Act is found in the Code of Federal Regulations (CFR) under 49 CFR Part 24. References to the Uniform Act and 49 CFR Part 24 are found in the Colorado Department of Transportation (CDOT) Right of Way Manual, Colorado law and the Federal Highway Administration (FHWA) Project Development Guide.

#### **8.1.4 – Purpose**

The purpose of this chapter is to provide Local Public Agencies (LPAs) with the basic understanding of Right of Way (ROW) procedures for locally sponsored Federal-aid transportation projects.

The term “LPA Project” as used in this document shall include all locally sponsored Federal-aid transportation projects and all locally sponsored projects or programs that modify or improve a transportation facility on any state highway regardless of the funding source.

**Note: The Uniform Act must be followed on all LPA Projects when Federal funds are used in any phase of a project. The Uniform Act must be followed for any LPA Project affecting, improving, or modifying any federal or State transportation facility.**

The Uniform Act applies in all LPA Projects. [Note: the term “LPA Projects” is defined above.] The basic regulation governing such projects is 49 CFR Part 24, the government wide Uniform Act regulation. In addition to the government wide regulation, LPAs receiving funds from FHWA are subject to their regulations found in Title 23 CFR. These regulations are found at various locations in 23 CFR, mostly in Part 710. 23 CFR addresses transportation related issues not covered in the Uniform Act. CDOT also maintains a Project Development Manual describing the ROW organization, policies, and procedures for all disciplines of the real estate program.

CRS 24-56-101 through 24-56-121 apply for programs or projects funded with state highway funds. The legislative purpose as set forth in CRS 24-56-101, is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by state agencies and political subdivisions of the state for federally assisted programs and projects and to comply with the federal “Uniform Relocation Assistance and Real Property Acquisitions

Policies Act of 1970,” as amended to promote the efficient operation of the highway right of way acquisition program, and to define the authority and responsibility of departments of transportation and of municipalities and counties for all acquisitions and relocation for federally assisted highway programs and projects within their respective jurisdictions.

CRS 24-56-108(4) states that the Department of Transportation may use the provisions of this state statute for programs or projects on the state highway system funded by state highway funds. This statute indicates a legislative preference for CDOT to follow the Uniform Act when state highway funds are used. This statute, as well as the legislative purpose stated in CRS 24-56-101, has been interpreted by CDOT as a strong legislative suggestion for CDOT to follow the Uniform Act in all acquisition/relocation activities for **ALL** of its projects, regardless of the source of funding, for program consistency and to ensure that all persons and entities affected by such programs are treated fairly and equitably. **Accordingly, Title 24, Article 56 of the Colorado Revised Statutes, which specifically incorporates the Uniform Act by reference, is applicable to all LPA programs and projects that improve or modify a portion of a federal or state highway regardless of the source of funding.**

Consistent use and application of the Uniform Act on all federal-aid transportation programs or projects and all programs and projects that improve or modify a portion of a federal or state highway regardless of the source of funding, is good business practice, minimizes the opportunity for inconsistent treatment of property owners and is efficient and effective in administering the program. As a policy matter for statewide consistency and effective program oversight and monitoring, CDOT shall require all LPA programs or projects to be administered under the Uniform Act. LPAs must follow the same FHWA approved acquisition/relocation procedures that CDOT follows. Federal assistance may be involved in future transportation projects affecting federal or state highways, so following the Uniform Act requirements on any project that modifies or improves a transportation facility on any state highway, regardless of the funding source, will ensure that such state highway is eligible for future federal assistance.

## **Section 8.2 – Federal/State/Local Public Agency (LPA) Relationship**

### **8.2.1 – FHWA Role**

FHWA is ultimately accountable for ensuring that the Federal highway program is administered consistent with established requirements (See 23 U.S.C. 101 et seq.).

For all LPA Projects, FHWA is responsible for the following activities:

- Obligation of Federal funds, when federal funds are used.
- Approval of the National Environmental Policy Act (NEPA) and other federally required environmental documents except for projects that qualify for Programmatic Categorical Exclusion.
- Execution of Project Agreements when federal funds are used.
- Approval of other federal actions such as interstate access and air space leases.

### **8.2.2 – CDOT Role**

Where Federal funding is used on any phase of a LPA Project, FHWA places overall responsibility with CDOT for the acquisition of right of way and relocations of individuals and businesses. CDOT has retained the same responsibility for acquisition of right of way and relocation of individuals and businesses for non-federally funded LPA Projects. All right of way activities must be conducted in accordance with the CDOT Right of Way Manual for all LPA Projects. LPA's will find that those activities are guided more explicitly in other Chapters of the ROW Manual and not specifically in this Chapter.

### **8.2.3 – CDOT Region**

CDOT is responsible for fully informing LPAs of their responsibilities for LPA Projects by ensuring that every LPA receives all current regulations and procedural instructions affecting right of way activity and, on request, will provide guidance and advice on right of way matters. CDOT provides this information in its Right of Way Manual. This Manual; FHWA's Right of Way Project Development Guide; FHWA's Real Estate Acquisition Guide for Local Public Agencies; 23 CFR; 49 CFR Part 24, and CDOT's Local Agency Manual are available to each LPA.

When questions arise in the development stage of a LPA Project or if it is determined that acquisition of property rights will be required for a LPA Project, the CDOT Project Manager should be promptly notified. The CDOT Project Manager has overall responsibility for liaison with each LPA in that Region. In addition, each Region has a ROW Manager who is responsible for acquisition/relocation oversight on LPA Projects and liaison with each LPA on LPA Projects.

As part of the overall responsibility assigned to CDOT by FHWA, CDOT Region ROW staff are required to monitor LPA right of way acquisition functions on all LPA Projects for compliance with applicable laws and regulations.

CDOT Region ROW and LPA staff are encouraged to have proactive and ongoing relationships on projects with the LPA's prior to any movement in the process. Increasing and ongoing communications are especially important during the acquisition process.

## **8.2.4 – The Monitoring Process**

The CDOT Region ROW staff will monitor right of way activities throughout the project. A general discussion of CDOT ROW requirements and procedures as well as a discussion of unique project complexities usually occurs at the project-scoping meeting. If an LPA intends to start right of way activities prior to the project scoping meeting, the LPA must first contact the Region ROW Manager or her/his delegated representative (Region Representative) to discuss such activities prior to commencing the same and obtain prior written approval prior to commencing such activities. In no event, shall the LPA begin discussing monetary issues with the property owner prior to official commencement of activities and/or approval of the Region ROW Manager. The LPA will advise CDOT of the progress of right of way activities at the CDOT field inspection review (FIR), field office review (FOR), and progress status meetings.

CDOT Region ROW staff will, on an ongoing basis, perform quality assurance/quality control monitoring. This will occur on an on-going basis, during the process, and include supporting documentation, as well as on a post-audit, spot-check basis to ensure that all LPA right of way activities are performed in compliance with federal and state laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, FHWA/CDOT Stewardship Agreement, the FHWA Project Development Manual, Local Public Agency Guide, and the CDOT Right of Way Manual. All right of way functional areas are subject to review. Spot-check monitoring will normally be limited to no more than 25% of the total work performed. Additional reviews shall be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences.

If violations are discovered, the reviewer will notify the LPA of the violations and the LPA shall be responsible for timely correcting the violations. The selection of projects to monitor shall be at the discretion of the Region, based upon staff availability, familiarity with the LPA, the project and any retained consultants, as well as the complexity of the right of way issues. Acquisition and/or relocation will be monitored by the Region ROW Office using the checklists to guide the review (see Exhibits G, H & I). Both entry and exit conferences will be conducted to advise LPA staff of the scope and findings of the monitoring visit. Appraisal services will be monitored by the appraisal review process. A written report will usually be provided to the LPA, though not necessarily at the time of the exit conference.

### **Violations of What CDOT Considers to be Good Business Practice**

These are practices that shall be improved to effectuate a more efficient or effective operation. The implementation of suggested changes is intended to reduce the possibility of other more serious violations. LPAs will be advised of these observations. LPAs may adopt these suggested changes, but their adoption is not mandatory. However, all documentation shall be sent to the Project Development, Headquarters ROW, and will be maintained in the event that Federal funds become at-risk.

### **Violations of Practices Where Correction is Considered Mandatory**

LPAs will be expected to change their practices to conform to CDOT's procedures and requirements. For qualified LPAs, failure to do so may jeopardize their qualification status for future LPA Projects. Serious violations of this nature must be corrected. LPAs will be advised in writing of such violations and of the corrective actions to be taken. Failure to timely complete the corrective actions may result in withdrawal of Federal funding for the project or the LPA program.

### **8.2.5 – Qualifying Local Public Agencies (LPAs)**

CDOT may allow qualified LPAs to perform their own right of way functions (see Qualifying Local Public Agency Staff in this chapter).

CDOT also provides training and guidance to LPAs seeking assistance on LPA Projects.

## **Section 8.3 – Local Public Agency Role**

### **8.3.1 – Certification of Projects**

The LPA must certify that all Uniform Act requirements and other state and federal requirements have been met on all LPA Projects. For additional details see Right of Way Certification in this chapter.

### **8.3.2 – Qualifying Local Public Agency Staff**

CDOT has an agreement with FHWA that allows LPA staff to be qualified to perform all or some right of way activities, if such LPA staff members satisfy CDOT's criteria for qualification.

To become qualified, the LPA must first contact the Region ROW Manager, who then meets with the LPA right of way/real property department to explain state and federal requirements. The Region ROW Manager will request the LPA staff seeking qualification to complete the appropriate application for qualification.

CDOT will evaluate all applications for qualification received in accordance with the evaluation criteria described in the application. Only those individuals who submit applications and supporting documentation proving that they comply with such criteria, as determined by CDOT in its discretion, will be qualified. It is the sole responsibility of all applicants to provide all required information and documentation in sufficient detail for CDOT's evaluation.

At least one permanent, fulltime LPA staff member must be deemed qualified to perform acquisition agent tasks for an LPA to become "qualified" to perform its own ROW acquisition work. An additional LPA staff member must be qualified to perform relocation agent work if the LPA project requires relocation. An LPA may have their own qualified staff member perform the acquisition tasks, and hire a fee agent or coordinate with CDOT ROW staff (if available) to perform relocation work.

### **8.3.3 – Revocation of Qualification of Local Public Agency Staff**

CDOT will monitor and evaluate the performance of qualified LPA staff in the right of way functions for which such staff members are qualified. Such monitoring and evaluation will be conducted on a project basis consistent with the criteria set forth under "The Monitoring Process" in this chapter. CDOT may revoke any qualification allowing LPA staff to perform certain right of way functions for any violations of practices where correction is considered mandatory. Such revocation shall be at the discretion of CDOT.

### **8.3.4 – Non-Qualified Local Public Agencies — Options**

LPAs that do not have staff qualified to perform right of way functions necessary for a project can either utilize CDOT staff, if available, to perform those functions, or retain a consultant(s) (fee agent) who meets the consultant selection criteria below.

In summary, non-qualified LPAs have the following choices to contract right of way services:

- Contract with CDOT to use CDOT staff, if available.
- Contract with private consultants (fee agents) listed on CDOT's approved fee agent list.



1. To become qualified to be added to CDOT list of approved acquisition and relocation agents, an individual must submit an application for qualification (Exhibit B and/or Exhibit C) to the LPA or CDOT. The LPA will forward the application for qualification to the Region ROW Manager or CDOT Headquarters. Project Development Branch (ROW Services) maintains the qualified agent list.
2. CDOT will evaluate all applications for qualification received in accordance with the evaluation criteria described in the application. Only those individuals who submit applications and supporting documentation proving that they comply with such criteria, as determined by CDOT in its discretion, will be qualified. It is the sole responsibility of all applicants to provide all required information and documentation in sufficient detail for CDOT's evaluation.
3. CDOT will monitor and evaluate the performance of qualified private consultant staff in the right of way functions for which such staff is qualified. Such monitoring and evaluation will be conducted on a project basis consistent with the criteria set forth under "The Monitoring Process" in this chapter. CDOT may revoke any qualification allowing private consultant staff to perform certain right of way functions for any violations of practices where correction is considered mandatory. Such revocation shall be at the discretion of CDOT.
4. All qualified individuals shall be permitted to perform the right of way acquisition and/or relocation functions for which they are qualified on a statewide basis.

## **Section 8.4 – Selection of Consultants**

### **8.4.1 – Consultant Selection Source**

An LPA can choose to use a consultant from CDOT's approved fee agent list.

If the LPA chooses to use a fee agent (private consultant) or consulting company from CDOT's approved acquisition and relocation agent/companies list to perform right of way functions,

The LPA should be advised that caution must always be exercised in the choice of an agent or private consulting company, particularly with regard to experience. Each project and each LPA has unique demands. The mere fact that fee agents have met the broad qualifications contained in the application for qualification does not mean that every consultant can meet the unique demands inherent in certain projects.

Non-qualified LPAs must diligently pursue the fee agent selection process, as the LPA is accountable and responsible for the actions of the fee agents and/or the failure of consultants to properly execute their duties and activities in accordance with the Uniform Act. If the LPA's activities do not comply with the Uniform Act, loss of Federal funding could occur.

The LPA's must also comply with all requirements of Title VI of the 1964 Civil Rights Act on Federal-aid projects. The LPA must ensure all services and/or benefits derived from any right of way activity will be administered without regard to race, religion, color, sex, national origin, ancestry, age, or disability. If the LPA's activities do not comply with the Title VI, loss of federal funding could occur.

An important Title VI requirement for LPAs is the use of CDOT's ROW demographic surveys. FHWA requires CDOT to collect statistical data of participants in, and beneficiaries of, CDOT's activities, including data on relocatees, impacted citizens, and affected communities as a part of compliance with Title VI. 23 CFR 200.9(b)(4). Gathering data is an important part of a Title VI compliance program because it provides CDOT an overview of who is being impacted by CDOT's activities, and also assists in the determination of whether there may be disparate impact resulting from CDOT's programs. The ROW program's collection of data through demographic surveys provides helpful information in this determination. LPAs are required to provide the demographic surveys to relocatees who are impacted and provide them the opportunity to fill out the survey. Although relocatees do not have to fill out the surveys, the information provided by the survey will enable CDOT to conduct a more thorough analysis of the impact of CDOT's activities.

### **8.4.2 – Consultant Contracts**

The LPA, which enters into a contract with the fee agent or private consulting company for the performance of right of way work, retains ultimate responsibility for the actions of the fee agent or consulting company. CDOT has established broad criteria for use in evaluating the qualifications and selecting consultants for specific right of way functions. However, CDOT is not responsible for devising such criteria or for the performance of CDOT approved fee agent and consulting companies. In the event the actions or performance of the consultant result in a loss of Federal funds for the project, it is the sole responsibility of the LPA to pay back these funds.

Fee agents and consulting companies must perform right of way functions to the same

standards, practices, rules, and regulations as CDOT. The Region ROW staff using the same guidelines discussed under “The Monitoring Process,” in this chapter, will monitor the work products of the fee agents and the consultant companies.

## **Section 8.5– Environmental Approval**

### **8.5.1 – National Environmental Policy Act (NEPA)**

On LPA Projects, the environmental clearance procedure must comply fully with the provisions of the National Environmental Policy Act (NEPA). LPAs should not proceed with final design, right of way acquisition, or any construction phases of their project until full compliance with the NEPA requirements has been documented and approved. See Chapters 2, 4 and 5 of this Manual.

All LPA Projects must demonstrate compliance with NEPA and other Federal environmental laws before proceeding with right of way work or the final design of a project. The checkpoint in the right of way acquisition process for ensuring compliance with NEPA is right of way plans approval. A NEPA clearance should be issued prior to and as a pre-condition of CDOT approving a LPAs right of way plans.

### **8.5.2 – Acquisition in Advance of NEPA Clearance**

There are three circumstances under which LPAs can acquire or obtain right of way in advance of NEPA clearance, in all cases all acquisition is to follow the Uniform Act and the LPA must receive prior approval from the Region ROW Manager:

1. An agency may use its own funds to purchase right of way prior to NEPA clearance and may apply the purchase price (or if donated, the fair market value) toward its share of project costs, as long as it meets the requirements of 23 CFR 710.501. However, if any right of way is purchased in advance of NEPA clearance, the LPA cannot request or receive federal reimbursement toward any portions of the acquisition costs. In order to have the purchase price applied towards an agency's share of project costs, the agency must also be able to certify, with FHWA concurrence, that the early acquisition did not influence the environmental review process, including the decision on need to construct, the consideration of alternatives, and the selection of design and location. If an LPA desires to pursue early acquisition of right of way in advance of NEPA clearance under 23 CFR 710.501, the LPA must discuss such acquisition activities with the Region ROW Manager and the FHWA Operations Engineer prior to proceeding.
2. An agency may purchase right of way prior to NEPA project clearance under the protective buying and hardship acquisition provisions set forth in 23 CFR 710.503, and be eligible for federal reimbursement for the costs associated with such acquisitions. However, a categorical exclusion authorizing the early acquisition activity (which is a separate clearance from the project clearance) is required for protective buying and hardship acquisitions. In this scenario, acquisition of certain individual parcels will be cleared prior to the greater project receiving a formal clearance. Protective and Hardship acquisitions require prior approval from the CDOT Statewide ROW Program Manager. Application for such approval must be submitted to the Region ROW Manager.
3. LPAs can require private landowners to dedicate portions of their property as right of way for transportation projects as part of the local agency zoning approval process. Formal NEPA clearance is not required for dedications exacted through a local agency zoning approval process. However, conveyances of private property through dedications are not considered to be completed until a written agreement for such dedication is approved and executed by the local agency and the private landowner. If the proposed

time frame for completing such agreements is projected to exceed the right of way clearance date for the LPA Project, or if a proposed dedication fails to be consummated for any reason, the LPA must acquire the needed right of way in compliance with state and federal requirements, including the Uniform Act.

See the attached Exhibit L for further information on Early Acquisition Alternatives and Requirements from FHWA.

### **8.5.3 – Transportation Alternatives.**

1. **General.** 23 U.S.C. 133(h) sets aside an amount from each State's Surface Transportation Block Grant apportionment for Transportation Alternatives (TA). The TA projects that involve acquisition, management, and disposal of real property, and the relocation of families, individuals, and businesses, are governed by the general requirements of the Federal-aid program found in titles 23 and 49 of the CFR, except as specified in paragraph (b)(2) of 23 CFR §710.511.
2. **Requirements.**
  - A. Acquisition and relocation activities for TA projects are subject to the Uniform Act.
  - B. When a person or agency acquires real property for a project receiving title 23 grant funds on behalf of an acquiring agency with eminent domain authority, the requirements of the Uniform Act apply as if the acquiring agency had acquired the property itself.
  - C. When, subsequent to Federal approval of property acquisition, a person or agency acquires real property for a project receiving title 23 grant funds, and there will be no use or recourse to the power of eminent domain, the limited requirements of 49 CFR 24.101(b)(2) apply.
3. **Property Management and Disposal of Property Acquired for TA Projects.** 23 CFR part 710 subpart D applies to the management and disposal of real property interests acquired with TA funds, including alternate uses authorized under ROW use agreements. A TA project involving acquisition of real property interest must have a real property agreement between FHWA and the grantee that identifies the expected useful life of the TA project and establishes a pro rata formula for repayment of TAP funding by the grantee if –
  - A. The acquired real property interest is used in whole or part for purposes other than the TA project purposes for which it was acquired; or
  - B. The actual TA project life is less than the expected useful life specified in the real property agreement.

### **Transportation Alternatives Activities**

The Transportation Alternatives Program (TAP) was authorized under Section 1122 of MAP-21, and was codified in 23 U.S.C. sections 213(b), and 101(a)(29). Section 1122 provided for the reservation of funds apportioned to a State under section 104(b) of title 23 to carry out the TAP. The FAST Act was signed into law in 2015 and codified in 23 U.S.C. section 133(h). The FAST

Act replaced the TAP with a set-aside of Surface Transportation Block Grant program funding for transportation alternatives. These set-aside funds include all projects and activities that were previously eligible under TAP and defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; and projects for planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.

### **Who May Apply for Transportation Alternatives Funds**

Under 23 U.S.C. 133(h)(4)(B), the eligible entities to receive TA funds are:

- Local governments;
- Regional transportation authorities;
- Transit agencies;
- Natural resource or public land agencies;
- School districts, local education agencies, or schools;
- Tribal governments
- A nonprofit entity responsible for the administration of local transportation safety programs; and
- Any other local or regional governmental entity with responsibility for oversight of transportation or recreational trails (other than a Metropolitan Planning Organization (MPO) or a State agency) that the State determines to be eligible, consistent with the goals of subsection (h) of section 133 of title 23.

State DOTs and MPOs are not eligible entities as defined under 133(h)(4)(B) and therefore are not eligible project sponsors for TA funds. However, State DOTs and MPOs may partner with an eligible entity project sponsor to carry out a project. The FAST Act also allows an urbanized area with a population of more than 200,000 to use up to 50% of its suballocated TA funds for any eligible surface transportation block grant purpose described in 133(b)(1), subject to the existing TA-wide requirement for competitive selection of projects. Local government entities include any unit of local government below a State government agency, except for MPOs. Examples include city, town, or county agencies. Transit agencies include any agency responsible for public transportation that is eligible for funds under the Federal Transit Administration (FTA). Natural resource or public land agencies include any Federal, Tribal, State, or local agency responsible for natural resources or public land administration. Examples include:

- State or local park or forest agencies
- State or local fish and game or wildlife agencies
- Department of the Interior Land Management Agencies
- U.S. Forest Service

### **Eligible Transportation Alternative Activities and Project Categories**

Under 23 U.S.C. 133(h), eligible activities for TA funds consist of the those described in 23 U.S.C. 101(a)(29) and 213(b) prior to the enactment of the FAST Act. For the purpose of simplicity, CDOT has further defined these activities into three project categories:

1. Bicycle/Pedestrian, Non-motorized forms of transportation activities
  - A. Construction, planning, and design of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.).
  - B. Construction, planning, and design of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs.
  - C. Conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users.
  - D. The Recreational trails program as described in 23 U.S.C. 206.
  - E. The safe routes to school program under section 1404 of the SAFETEA-LU 23 U.S.C. 402.
2. Environmental Mitigation transportation activities
  - A. Any environmental mitigation activity, including pollution prevention and pollution abatement activities and mitigation to-
    - i) Address storm water management, control, and water pollution prevention or abatement related to highway construction or due to highway runoff, including activities described in sections 133(b)(11), 328(a), and 329 of title 23; or
    - ii) Reduce vehicle-caused wildlife mortality or to restore and maintain connectivity among terrestrial or aquatic habitats.
  - B. Vegetation management practices in transportation rights-of-way to improve roadway safety, prevent against invasive species, and provide erosion control; and
  - C. Archaeological activities relating to impacts from implementation of transportation projects eligible under title 23.
3. Historic/Scenic transportation activities
  - A. Construction of turnouts, overlooks, and viewing areas.
  - B. Community improvement activities, which include but are not limited to:
    - i) Inventory, control, or removal of outdoor advertising;
    - ii) Historic preservation and rehabilitation of historic transportation facilities. For more information about the TAP Program, please refer to the TAP Resources on the CDOT website here:

<https://www.codot.gov/programs/planning/grants/tap-fiscal-years-2024-26>

- C. Planning, designing, or constructing boulevards and other roadways largely in the right-of-way of former Interstate System routes or other divided highways.



## **Section 8.6 – Right of Way Plans**

### **8.6.1 – Plans Requirement**

Right of Way plans are required for all LPA Projects where acquisition of right of way is required. For additional detail refer to 23 CFR 710; the FHWA Project Development Guide, CDOT ROW Manual, Chapter 5; the FHWA Real Estate Acquisition Guide for Local Public Agencies; CDOT ROW Manual, Chapter 2, Plans, and the CDOT Survey Manual.

ROW Plans for LPA Projects must be prepared in compliance with CDOT requirements when the LPA is requesting Federal or State participation in Right of Way acquisition and relocation or when the LPA is proposing a program or project that will improve or modify any portion of a federal or state highway, regardless of the source of funding. Draft plans must be submitted to the Region ROW Manager or her/his designated representative (Region Representative). The draft plans must then be forwarded to the Region ROW Plans/Survey Unit for review. Once the draft plans are acceptable, a set of final plans must be submitted to the Region Representative for approval. The Region Representative will coordinate formal approval consistent with the guidelines set forth below.

### **8.6.2 – Plan Authorization for LPA Projects When the LPA is Requesting Federal Participation in the Right of Way Phase**

For additional detail refer to the CDOT ROW Manual, Chapter 2, Right of Way Plans Policies, Procedures and Information Section 2.25, Section 8.15 of this Chapter. Project Development Branch, Headquarters ROW requires the following package of materials from the Region ROW Plans Section before authorization of Project Level ROW plans can be done. The package shall contain pdfs of the following:

1. Memo listing individual ownerships requesting authorization of Functions 3111 and/or 3109
2. Chief Engineer's ROW Cost Estimate (Form 438) signed by the Chief Engineer or designee.
3. ROW Plan Review (ROWPR) Form.
4. Project Level Environmental approval (Form 128) or copy of signature page for the approved NEPA clearance document (i.e. CE, FONSI, ROD) for the project.
5. One set of 11" X 17" ROW Plans (colored).
6. One set of legal descriptions.
7. One set of memorandums of ownership (CDOT Form #242) or Title Commitments with deeds attached to insure ownership. Memorandums or commitments must be at least 90 days current.
8. Explanation of how conflicting property boundary evidence was addressed

Justification of these facilities is delegated by FHWA to CDOT. The construction of highways occasionally changes access conditions in a manner which may seriously inconvenience the

general public as well as the private property owner. The purpose of the land service facilities justification letter is for justification of federal participation in the costs of land service facilities designed to provide or restore access to properties affected by a highway facility.

Right of Way plan approval shall be by the Statewide Survey/ROW Plans Program Coordinator. The CDOT Chief Engineer or their designee, who will sign a CDOT Form 462 (Right of Way Plan Approval) authorizing the project for functions 3111 (acquisition) and/or function 3109 (relocation) as applicable. The ROW Plans Federal-Aid project signature block shall be signed by CDOT Chief engineer, approving the land acquisition costs and damages and the tendering of payment to landowners.

### **8.6.3 – Plan Authorization for LPA Projects Using Local Funds for Right of Way Acquisition and Relocation**

For additional detail refer to the CDOT ROW Manual, Chapter 2, Section 2.2.2, 2.25.4, 2.25.5 & 2.25.6 ROW Plan Transmittal of Data and Project Authorization and Section 8.15 of this Chapter.

The Region ROW Office requires the following package of materials from the LPA before authorization can be issued. All coordination with the LPA will be through the Region Representative. The package shall contain the following:

Right of way plan approval shall be by the Region ROW Manager or delegated representative in the CDOT Region office. Neither a 462, Land Acquisition Approval, or signature of the ROW plans are required. The Region shall provide Project Development Branch, Headquarters ROW, with copies of the LPA's ROW Plans and legal descriptions for their records.

1. ROW Plan Review (ROWPR) Form.
2. Project Level Environmental approval (Form 128) or copy of signature page for the approved NEPA clearance document (i.e. CE, FONSI, ROD) for the project.
3. One set of 11" X 17" ROW Plans (colored).
4. One set of legal descriptions.
5. One set of memorandums of ownership (CDOT Form #242) with deeds attached or one set of commitments to insure from a title insurance company with deeds attached. Memorandums or commitments must be at least 90 days current.
6. Explanation of how conflicting property boundary evidence was addressed.

## **Section 8.7 – Appraisal and Appraisal Review**

### **8.7.1 – Appraisal Required**

Before the initiation of negotiations, the LPA must obtain its own appraisal of the real property to be acquired if the anticipated value of the proposed acquisition is greater than \$25,000. CDOT Region ROW Manager approval is required before any waiver valuations are performed above \$10,000.

The Uniform Act contains basic requirements for the appraisal of real property acquired for public purposes. These basic requirements apply to all LPA Projects. For additional detail refer to 49 CFR 24.102 and 103; the FHWA Right of Way Project Development Guide, Appraisal Review; the FHWA Real Estate Acquisition Guide for Local Public Agencies; and CDOT ROW Manual, Chapter 3, Appraisal and Appraisal Review.

CDOT appraisal formats are required for appraisal reports.

A list of qualified appraisers approved by CDOT to perform LPA work is available from the Region ROW Manager or CDOT HQ Appraisal Program Manager, and is posted on CDOT's website. Qualified LPA appraisal staff (CDOT-approved) may prepare the appraisal, and in certain cases CDOT staff might be able to do the appraisal work for the LPA. Please contact your CDOT Region ROW Manager for more information.

If an LPA wants or requests to use an appraiser who is not on the current CDOT list of approved appraisers, then the procedure described in Exhibit C must be followed. An appraiser who is not currently approved must submit the Application for Appraisal Qualification (Exhibit C) consistent with procedures set forth under Selection of Consultants in this chapter. The LPA can retain the requested appraiser only if the application for qualification is approved.

### **8.7.2 – Appraisal Waiver Valuation**

There are two instances when an appraisal of real property may not be required:

1. The acquisition is estimated to be \$25,000 or less, subject to CDOT Region ROW Manager approval for acquisitions above \$10,000.
2. A donation is made and the property owner releases the agency from the obligation to obtain an appraisal. For additional information on donations, refer to Donations, Credits and Dedications in this chapter.

Based on 49 CFR 24.102(c)(2) and CRS 24-56-117 (b), an appraisal of a proposed acquisition parcel may be waived if a qualified LPA right-of-way employee, or an acquisition or appraisal consultant under contract to the LPA, determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data. This waiver valuation threshold may rise to \$25,000 as noted above for a property owner donation or on a parcel-by-parcel or project-by-project basis at the discretion of the CDOT Region ROW Manager. The Region ROW Manager must be consulted prior to the preparation of any waiver valuation above \$10,000. The \$25,000 may include site improvements and minor damages and/or restoration cost (cost to cure) considerations at the discretion of the Region ROW Manager.

For waiver valuations between \$10,000 and \$25,000, the landowner must release the LPA of its appraisal obligation and a person other than the negotiating agent must prepare the waiver valuation. A landowner may release their right to have an appraisal reimbursed for a parcel value above \$5,000. Such a release is not mandatory, unlike the release of the LPA's obligation to prepare an LPA appraisal above \$10,000. It is strongly recommended that the LPA obtain an appraisal if a landowner does not release their right to a reimbursement, regardless of whether the release of the LPA's appraisal obligation is obtained.

When CDOT concurs with the LPA that an appraisal is unnecessary, the LPA or fee agent (acquisition or appraisal consultant) will prepare a waiver valuation on CDOT Form 919 -- Determination of Just Compensation. A waiver valuation is not represented as an appraisal. It is an opinion of value on property with a value of \$25,000 or less. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation. The same person who performed the waiver valuation may also negotiate for the acquisition of the parcel.

A qualified staff person for the LPA or a fee agent (acquisition or appraisal consultant) shall review the waiver valuation estimate. If the value finding is acceptable, the review person will sign the Waiver Valuation Form as approved. For additional details refer to CDOT ROW Manual, Chapter 4, Acquisition.

### **8.7.3 – Separation of Appraisal and Acquisition Functions**

If an LPA or consultant is qualified to perform both appraisal and acquisition negotiation functions, he or she may perform both functions if the value of the property is \$10,000 or less. If the value of the property is more than \$10,000, the appraisal and acquisition functions must be separated, i.e. one person cannot prepare an appraisal and negotiate the acquisition of the property for which the appraisal was prepared. Waiver valuations are an exception.

For additional details, refer to CDOT ROW Manual, Chapter 4, Acquisition (Separation of Functions).

### **8.7.4 – Two Agency Appraisals on One Property**

In some circumstances the LPA might consider obtaining more than one appraisal when the acquisition parcel presents a complex appraisal problem, or is a high value property and which might include potential for significant damages. Complexities may be related to the real property improvements, larger parcel issues, damage issues, highest and best use, and similar. Obtaining two appraisals can help ensure that the property owner receives a fair market value offer in a complex appraisal situation.

When two appraisals are obtained by the LPA on a single property, both appraisals shall be separate and fully independent in their research, calculations, analyses, and conclusions. This will give a better basis for determining market value and help ensure a sound offer.

For additional details refer to CDOT ROW Manual, Chapter 3, Appraisal and Appraisal Review.

## **Section 8.8 – Appraisal Review**

All appraisals for federal-aid projects must be reviewed by a qualified staff or consultant review appraiser.

The requirements pertaining to appraisal review are set forth in 49 CFR 24.104; CDOT ROW Manual, Chapter 3, Appraisal and Appraisal Review; FHWA Real Estate Acquisition Guide for Local Public Agencies; and the FHWA Project Development Guide, Appraisal Review.

The appraisal review is CDOT's process to ensure appraisal reports show good research and analyses, are technically proficient, well written and presented, and result in well supported conclusions.

### **Review Appraisal Processes – Staff and Consultant**

The LPA should contact CDOT as early as possible about any federal-aid project the agency plans to do that requires real property appraisal. The prospective appraiser and review appraiser (CDOT staff or consultant) both should be selected as early as possible, and both should be involved as much as possible in the right-of-way planning stage that might include review of various draft right-of-way plans and field inspections of affected properties along the project.

Depending on circumstances, CDOT's ROW Manager may require or allow the LPA to outsource appraisal review by an appraiser on CDOT's Qualified Review Appraiser List. The ROW Manager may require the LPA to engage a specific review appraiser on the list, or may allow the LPA to choose the review appraiser from that list. CDOT's Qualified Review Appraiser List may be obtained from the Region ROW Manager.

It is helpful if the appraiser and the review appraiser are able to participate together in right-of-way project planning and have opportunity to discuss various appraisal aspects and concerns of the different parcels that will be appraised (complex valuation issues; likely appropriate appraisal methods in certain situations, etc.). This "up front" time can help reduce confusion, misunderstanding and sometimes difficult appraisal review processes between the reviewer and appraiser that might otherwise take a lot longer to finish than originally planned.

Draft appraisals will be delivered to the Region ROW Manager or, with the manager's permission, directly to the CDOT staff or contract review appraiser. The review appraiser will review the draft appraisal for necessary corrections, which may include discussion on points of appraisal judgement and opinion, to the point where a final signed appraisal report will be accepted and may be delivered to the reviewer.

The reviewer will review all appraisals submitted in connection with the proposed acquisition, and will determine one of the appraisals as most appropriate and supportable as basis for Fair Market Value (FMV). The reviewer will determine each reviewed appraisal as either:

1. Recommended (basis for the FMV)
2. Accepted (meets all basic appraisal requirements, but not recommended as FMV)
3. Not Accepted (Does not meet minimum appraisal standards and might be egregious in appraisal error or advocacy or bias, or all of these and more. An appraisal that is "Not Accepted" is one where it might be questionable whether it is appropriate to pay the appraisal fee)

Appraisal reports prepared for CDOT or an LPA should never land in the Not Accepted review category, but it could occur in a situation where the appraiser will not budge on some aspect or more of the appraisal, and the reviewer finds this aspect necessary, correct and critical to proper appraisal work. In this case the LPA will need to obtain an appraisal from another appraiser, or might seek a second independent review of the “problem” appraisal.

The review appraisal process from draft review to an FMV in the agent’s hands will easily take two (2) weeks up to several weeks for each appraisal reviewed, depending on circumstances. It is helpful for the LPA to stay in close contact with both the appraiser and review appraiser to stay informed on the process, as at any given time a draft appraisal may be coming in for review, some appraisal work is in review (desk and field review work), and some appraisal reports have been delivered in final print and the reviewer is writing FMVs and Review Reports.

A Review Report is written on each appraisal reviewed, and when more than one appraisal (agency and property owner) is reviewed, the reviewer will include basic information in the Review Report explaining why one appraisal report is recommended over the other as basis for FMV.

The review appraiser will sign the FMV as Review Appraiser and deliver the FMV to CDOT’s ROW Manager (typical), or to the delegated Local Agency signatory, as signing approver of the FMV as basis for the offer of just compensation to the property owner.

CDOT qualified staff or consultant appraisal reviewers (CDOT-listed) are the only reviewers authorized to issue FMVs. This requirement does not apply to waiver valuations. For requirements on waiver valuations, see Appraisal Waiver Valuation in this chapter.

## **Section 8.9 – Right of Way Acquisition**

### **8.9.1 – Basic Acquisition Policies**

The Uniform Act contains basic requirements for the acquisition of real property, which apply to all LPA Projects including but not limited to construction. For additional details refer to 49 CFR Part 24; the FHWA Project Development Guide, Acquisition; the FHWA Real Estate Acquisition Guide for Local Public Agencies; and CDOT ROW Manual, Chapter 4, Acquisition.

Prior to initiating negotiations for the acquisition of real property, the review appraiser recommends the amount believed to be just compensation based on submitted appraisals. The LPA must make a written offer to the owner(s) to acquire the property for the amount so established. The amount of the offer is established by an FMV determined by a CDOT review appraiser and approved by the Region ROW Manager (typical) or his/her delegate, which may include an appropriate person at the LPA. (See Appraisal Review in this chapter). In some cases, the offer amount of just compensation is based on a waiver valuation (with a release for appraisal) for property interests estimated to be less than \$25,000 (see Appraisal Waiver Valuation in this chapter).

The LPA should make every effort to acquire the property by negotiation. The LPA shall provide the owner(s) with a written statement explaining the basis for the amount it establishes as just compensation. The LPA must allow a meaningful time for acquisition negotiations to occur before filing condemnations. Appendix A to 49 CFR 24.102(f) provides that the property owner be given a reasonable opportunity to consider the agency's offer and to present relevant material to the agency. In order to satisfy this requirement, agencies must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, depending on the circumstances, but thirty (30) days would seem to be the minimum time these actions can be reasonably expected to require. Regardless of project time pressures, property owners must be afforded this opportunity. An initial and final offer followed by a condemnation filing in an unreasonably compressed time frame to meet project scheduling is not acceptable.

The Uniform Act prohibits the use of coercion to obtain negotiated settlements. LPAs must conduct all negotiations in good faith in attempting to obtain fair arm's length transactions. Condemnations are acceptable. However, condemnations are only allowed after good faith negotiations have failed to result in consensual transactions. LPA acquisition agents are responsible for securing all property rights necessary to certify the project, including obtaining releases of liens and encumbrances on property interests sought to be acquired (see LPA Certification in this chapter).

### **8.9.2 – Incentive Payments**

LPAs may decide to use an acquisition incentive payment program for a particular project. The use of acquisition incentive payments is not meant to be used for every project. It is project specific and must be justified for each project, as determined by the LPA.

The LPA must prepare an Acquisition Incentive Payment Plan for each project on which they intend to use acquisition incentive payments. The use of incentive payments must not be allowed as a substitute for appropriate project planning and development (including the scheduling of adequate right-of-way lead time).

Application of acquisition incentive payments on a project does not preclude the use of administrative settlements. Administrative settlements may be made and should be documented separately on merit. Administrative settlements based on merit are not incentive payments. If a property owner is to receive payment for both an administrative settlement and an acquisition incentive, each should be independently supported and documented. Receipt of an acquisition incentive payment does not affect an owner's entitlement to relocation payments and benefits.

Acquisition incentive methods may vary in approach depending upon the circumstances surrounding the acquisition, such as the needs of the project, the number of owners, the type(s) of property(ies), the disposition of the owner, the market in the area and other mitigating factors. Several methods listed below have been successfully applied. All feature a time element, wherein the incentive amount decreases as a factor of time increasing. Each of the options below is available for consideration. Additional reasonable incentive payment methodologies may also be used at the discretion of the LPA.

- A flat percentage (%) above Fair Market Value
- A flat \$ incentive above FMV
- A graduated (declining) \$ incentive above FMV
- A graduated (declining) percentage (%) above FMV



## **Section 8.10— Donations, Credits and Dedications**

### **8.10.1 – General Information on Donations**

Property owners whose real property is to be acquired for a highway project may make a gift or donation of the property, or any part of it, or of any of the compensation paid for it, to the agency needing the property for the project.

Many donations may involve damages to the remnant, access control, construction features, even airspace leases and, while these may not be eligible for a donation credit, they are still considered donations under 49 CFR 24.108.

A donation may be made at any time during the development of the project or during the acquisition phase of the project. At the time of the donation, the donor of the property must be informed of his/her right to receive just compensation for the property being donated. CDOT requires an appraisal of the donated property's fair market value be conducted unless the owner releases the agency from such obligation in writing.

Following is information concerning donation of real property or property rights (easements) by property owners. This information is also contained in CDOT ROW Manual, Chapter 3, Appraisal and Appraisal Review and Chapter 4, Acquisition. The donation of property is addressed in 49 CFR 24.108, 23 CFR 710.505, and CRS 24-56-117(j). An example copy is contained in CDOT ROW Manual, Chapter 4, Acquisition (Real Property Donation under Exhibits).

### **8.10.2 – Value of a Donation**

A donation of real property may have separate values for differing purposes. Generally, the value of the donation to the agency by the property owner 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 the LPA's share of project costs. The value of the donated property must be estimated by a qualified appraiser or by waiver valuation.

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 the agency 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 using the agency's fair market value estimate prepared by either its staff or fee appraiser for tax purposes. The LPA will pay the reasonable cost of an appraisal made by an independent appraiser for the property owner if the value is estimated to be more than \$5,000.

### **8.10.3 – 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 the LPA's participation in project costs, the fair market value of the property is used. Where a state 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 the State if the conditions listed in the preceding section are met.

The value of the donated property must be estimated by a qualified appraiser. The date of value is the same as the date of donations, i.e., the date the donation becomes effective, or when equitable title vests in the State, whichever is earlier. The 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.

#### **8.10.4 – Donation of Property with Value of \$5,000 or Less**

If the value of the donation is \$5,000 or less, as determined by the agency, a waiver valuation of the donated property's fair market value must be prepared unless the owner releases the agency from such obligation in writing.

If the value of the property to be donated 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.

#### **8.10.5 – Donation of Property with Value Greater than \$5,000**

If the value of the donation is greater than \$5,000, as determined by the agency, an appraisal or waiver valuation of the donated property's must be prepared unless the owner releases the agency from such obligation in writing.

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

#### **8.10.6 – Donation of Property with Value of \$25,000 or Less**

When CDOT concurs with the LPA that the value of the donation is \$25,000 or less, a waiver valuation (see definition, Section 4.5) or an appraisal (as determined appropriate by the agency with CDOT concurrence) of the donated property's fair market value must be conducted unless the owner releases the agency from such obligation in writing.

If the value of the property to be donated is less than \$5,000, the property owner will have to pay for their own appraisal if an appraisal is required for donation tax purposes. The agency must pay the reasonable costs of an appraisal made by an independent appraiser for the property owner if the value is \$5,000 or more. The owner should be advised to consult a tax consultant, tax attorney, CPA, or the Internal Revenue Service concerning donation tax implications.

#### **8.10.7 – Donation of Property with Value Greater than \$25,000**

If the value of the donation is greater than \$25,000, as determined by the agency with concurrence of the CDOT Region ROW Manager, an appraisal of the donated property's fair market value must be conducted unless the owner releases the agency from such obligation in writing.

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

#### **8.10.8 – Project Credits for Donations**

The value of the donated property may be claimed as a credit against the matching share of project costs. The value of the donated property must be determined through an appraisal by a qualified appraiser for the purposes of calculating a credit to the LPA's matching share of project costs. The value of the donated property may be used as part of the matching share of project costs, provided the donated property is incorporated into the project. A donation credit can only be applied to a Federal-aid highway project, and it must be a project related to and requiring the donated land. Dedications that are voluntary and not exactions are considered donations eligible for credit. Part I of the FHWA form, "Checklist for Pre-Approval of In-Kind Match," (refer to Exhibit J) must be completed by the LPA and submitted to FHWA through the CDOT Region.

#### **8.10.9 – Environmental Requirements for Donations**

A donation made prior to the approval of any environmental document required by National Environmental Policy Agency (NEPA) is subject to certain restrictions. These restrictions must be complied with regardless of whether the donation is used for credit to the matching share. A donation may not be accepted prior to approval of environmental documentation required by NEPA if the documents which affect the transfer do not clearly address the conditions described below. If for any reason the LPA cannot comply with these requirements, it may not accept the donation prior to processing and approving the environmental document. If the LPA fails to comply with or enforce those conditions, it could jeopardize the eligibility of the project for Federal-aid funding.

The LPA files must indicate that the donation will not preclude the study and consideration by the LPA of all alternatives to a proposed alignment. Even though the property to be donated is relatively small, the document transferring the property to the receiving agency must also state that all alternatives to an alignment will be studied and considered.

The acceptance of the donated property must not influence the environmental assessment of a project including the decision about the need to construct the project or the selection of a specific location for the project. In other words, the LPA must not be influenced by the donation of the property in its decision as to which alternative to approve.

The documents transferring the property to the LPA through its donation procedures must include a provision to re-vest the property in the grantor or successors in interest if the donated property is not required for the alignment chosen. If the donated property is not used for the project, the LPA must give it back. However, much of this has to do with State and/or local law. There may be time limits for the return of property, or there may be other factors which may allow the LPA to retain ownership.

**Note: Before accepting a donation, the acquiring agencies should have a process for determining whether or not the property is contaminated or has hazardous wastes present.**

#### **8.10.10 – Donation in Exchange for Construction Features**

The LPA 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 the LPA'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 the LPAs 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 the LPA'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.

#### **8.10.11 – Dedications**

The LPA may accept a parcel of land that a developer of a subdivision has dedicated, or proposes to dedicate, for street purposes in developing a subdivision. The LPA may also accept the land if the dedication is made pursuant to the local planning process or at the request of the property owner for land use concessions.

Right of way acquired through normal zoning and subdivision procedures requiring the donation or dedication of strips of land in the normal exercise of police power is not considered an acquisition or taking in the constitutional sense. Thus payment of just compensation or compliance with the provisions of the Uniform Act is not required since police power is not used. This is not a donation.

Land obtained in this manner may be incorporated into a Federally-assisted project without jeopardizing participation in other project costs. However, any dedication undertaken to circumvent Federal requirements is unacceptable and may result in Federal funds being withdrawn from the project.

#### **8.10.12 – Right of Way Plan Requirements for Donations**

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

#### **8.10.13 – Donation Form**

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

## Section 8.11 – Condemnation/Eminent Domain

Eminent Domain is the inherent power of government to acquire property for public use. The Fifth and Fourteenth Amendments to the U.S. Constitution and Article II, Section 15 of the Colorado Constitution provide that such private property shall not be taken without just compensation. Condemnation is the legal proceeding by which the power of eminent domain is exercised.

Condemnation cases proceed in two phases, possession and valuation. The condemnation statute allows a condemning authority to set an immediate possession hearing on an expedited basis. If the condemning authority proves the required elements at the immediate possession hearing, the court enters an order conveying the condemning authority a possessory interest in the property sought to be acquired which will allow for the construction of the transportation project. The court will require the condemning authority to pay certain funds into the registry of the court (usually the condemning authority's estimate of just compensation for the property interests sought to be acquired) to validate the order of possession. A formal conveyance to the condemning authority of the property interests sought to be acquired does NOT occur as a result of an order of possession. The order only grants a possessory interest to the condemning authority.

A valuation trial is then scheduled for a later date. The valuation trial is usually tried to a three-person commission or a jury under authority and oversight from a district court judge. The jury or commission determines the total amount of just compensation required for the property interests sought to be acquired. Such property interests are conveyed to the condemning authority by virtue of a rule and order, which is entered by the court after the valuation trial. The rule and order is not validated until the condemning authority pays the total amount of the just compensation required by the rule and order.

LPAs can request federal reimbursement of the amount paid for an order of possession and subsequently request federal reimbursement for additional amounts, if any, required by a valuation trial verdict. Approvals of such requests are subject to CDOT's discretion. Federal funds may participate in reasonable amounts greater than the amount of the last FMV issued before trial if the LPA provides the following:

- A trial report, signed by the trial attorney
- A signed statement from the legal counsel representing the LPA in the condemnation action stating her/his concurrence in the reasoning and disposition of the case.

When settlements include interest, such interest payments can only be claimed by Federal reimbursement in specified situations. Participation is available for a period not to exceed 45 days if court procedures result in the owner not being able to withdraw a deposit made in support of an Order for Possession. If the deposit is available and the owner declines to withdraw it, any subsequent interest payment is ineligible for reimbursement.

Interest is reimbursable on the amount of a court award in excess of the original deposit from the date of the original deposit until date of award. If court procedures prevent immediate delivery of the excess amount due following award, participation in interest on the excess amount for a period not to exceed 45 days is available. Participation may be allowed in the required interest payment on the excess until 45 days after final determination when the LPA has appealed a court award.

## **Section 8.12 – Relocation**

### **8.12.1 – Relocation Basics**

The Uniform Act also contains basic requirements when persons, businesses or personal property are displaced as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D, E, and F. The relocation procedures are also discussed in detail in the FHWA Project Development Guide, Relocation Assistance; the FHWA Real Estate Acquisition Guide for Local Public Agencies; and CDOT ROW Manual, Chapter 5, Relocation.

The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but also to the progress of the entire transportation project.

While the LPA needs information about any displacement which will occur because of the project, the displaced persons have an equal or greater need for information about their rights, the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the event these benefits are denied. CDOT has prepared a broadly written brochure entitled “Your Rights and Benefits as a Displaced Person.” The brochure explains these matters and should be available at public hearings. Copies are available from the CDOT Region ROW Manager.

The Uniform Act prescribes certain benefits and protections for persons displaced, whether they are owners or tenants. Any person who moves from the real property or moves his or her personal property from the real property by LPA Projects is entitled to these benefits. The Uniform Act provides relocation payments for residential displacees and for businesses, farms, and non-profit organizations. The Uniform Act also provides certain protections such as requiring the availability of replacement housing for residential displacees, minimum standards for such housing, and assurances that displacees have sufficient time in which to choose their replacement properties. Finally, the Uniform Act provides for certain “advisory services” for displacees. Each of these legal requirements must be satisfied and addressed under the Right of Way Certification in this chapter.

The relocation activities should be coordinated with the appraisal and acquisition functions.

### **8.12.2 – Separation of Real Estate Specialist Functions**

The Real Estate Specialist who performs the acquisition function on a parcel will also provide the initial relocation assistance. A different Real Estate Specialist will prepare the relocation determination. The Real Estate Specialist who performs the initial relocation assistance will also perform the decent, safe, and sanitary (DSS) inspection and the closing.

## **Section 8.13 – Property Management**

### **8.13.1 – Property Management Basics**

Property management includes the administration of property acquired for transportation projects so that the public interest is best served. FHWA regulations for the property management function are found in 23 CFR 710 Subpart D. These policies and procedures apply to all real property acquired by LPAs in connection with projects where Federal funds participate in any of the right of way costs for the project. FHWA may participate in the net costs incurred in leasing, rental, maintenance, the disposal of improvements, and the clearance of the property. For additional details refer to the CDOT ROW Manual, Chapter 7; Property Management, the FHWA Project Development Guide (Property Management); and the FHWA Real Estate Guide for Local Public Agencies.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the right of way;
- An accounting of the property management expenses and the rental payments received; and
- An accounting of the disposition of improvements and the salvage payments received.

### **8.13.2 – Excess Lands (Acquisition and Disposal)**

The regulations covering acquisition and disposal are found in 23 CFR 710 Subpart D.

## **Section 8.14 – Alternative Project Delivery Methods and Right of Way**

Design-build and Construction Manager/General Contractor (CM/GC) are two alternative project delivery methods which require special considerations for right of way acquisition. In the traditional design-bid-build method, the LPA is responsible for the design of the project, and then advertises and awards a separate construction contract based on the complete design. In contrast, the LPA procures both the design and construction in the same contract under the design build method, allowing for the risk of design errors and omissions to be shared between the LPA and contractor. The Construction Manager/General Contractor method involves a separate contract for a designer and construction manager which results in the construction manager being a partner in design and development.

For design-build projects, a schedule of right of way acquisitions will be developed and provided when selecting a contractor. The LPA will acquire right of way in the early stages of the project that make up a defined right of way footprint. The selected contractor may develop a project concept requiring additional right of way which must be funded within the contractors guaranteed maximum price. In that case, the contractor will provide research, survey and title work necessary to establish fair market value, and the LPA will generally be responsible for completing the acquisition. The project will be completed through a series of construction packages which are concurrent with design activities. The contractor may be responsible for completing acquisition, however the acquisition must still be performed by a member of CDOT's list of qualified acquisition and/or relocation consultants and follow the procedures described in CDOT's Right of Way Manual and the Uniform Act. The technical requirements for right of way acquisition will be described within Section 8 of the design-build contract.

For CM/GC contracts, the construction manager is identified early through a professional services contract. Typically, only 5% of design is complete at this stage and no right of way acquisition is required. The contract defines to what degree the LPA and the construction manager will be responsible and at risk for the final cost and time of construction, including the completion right of way acquisition. The project is then completed through a series of severable construction packages which are separately and independently procured. It is common for the early construction packages to only include the purchase of materials with long lead times, or activities requiring limited use of the right of way.

See Exhibit M for a visual representation of the different project delivery methods.



## **Section 8.15 – Right of Way Certification**

### **8.15.1 – LPA Certification**

LPA Certification and a subsequent CDOT right of way clearance are necessary before a project can proceed to construction. The purpose of the right of way certification is to document that all property interests necessary for the project have been secured and physical obstructions including utilities and railroads have been, or will be removed, relocated, or protected as required for construction, operation, and maintenance of the proposed project. The certification also states that right of way activities including the relocation of any displaced person were conducted in accordance with applicable laws and regulations.

A written certification on the status of right of way clearances from the LPA and the issuance of a subsequent CDOT right of way clearance is required before authorization to advertise the physical construction or to proceed with Force Account Construction. The LPA certification should state:

- The right of way necessary for construction has been acquired in accordance with current FHWA directives and state law requirements (see Exhibit D). In instances where right of way has been acquired, backup documentation supporting the certification must be submitted, including copies of executed conveyance deeds for fee acquisitions, executed easement agreements for temporary and permanent easements, executed possession and use agreements with evidence that the stated consideration has been paid, and orders of possession with evidence that the required consideration has been paid. If no residential and/or business relocation is involved, then a statement shall be included certifying the fact that no relocation was involved in the project.
- If residential relocation is involved, a statement shall be included certifying that all residential displacees have been relocated to decent, safe, and sanitary housing, or that adequate replacement housing has been made available to displacees in accordance with state and federal statutes, regulations and other requirements. If business relocation is involved, a statement shall be included certifying that all required business relocation benefits have been made available to the relocates in accordance with state and federal statutes, regulations and other requirements. If personal property relocation is involved, a statement shall be included certifying that all relocation of all personal property is complete. Each statement should indicate that all persons and entities displaced have vacated all lands and improvements. Refer to Exhibit D for a sample format of a clearance letter.

**or**

- The right of way necessary for construction will be entirely within the present city/county right of way and no additional right of way is required (see Exhibit E).

LPA right of way certifications should be tendered to the Region Representative. The certifications and supporting documentation will be reviewed, and if acceptable, a CDOT right of way clearance for the project will be issued. If the certification and/or supporting documentation are not acceptable, the Region Representative will notify the LPA of required changes or missing documentation.

### **8.15.2 – LPA Conditional Clearances**

In some situations, it may be necessary to clear construction projects early. In to clear the construction project and receive Federal Participation, all appraisals must be complete, FMVs issued, and all revisions to the right of way must be on the approved FHWA final plan. If the Region ROW Manager agrees that these conditions have been met, the ROW Manager may forward the LPA's conditional clearance memo request to the Project Development Branch, Headquarters ROW. A meeting may be held with the LPA's project engineer, the Region ROW Manager and Project Development ROW staff to review the LPA's memo justifying the following items:

1. An explanation of the critical need to accelerate the advertisement of the project.
2. Where acquisition of a few parcels has not been obtained, full explanation and reasons therefore including identification of each such parcel owner, FMV and offer date shall be set forth in the request along with a realistic date when possession is anticipated as well as substantiation that such date is realistic.
3. A statement that the imposition of the restrictions, the no-work sections, will not delay completion or affect the cost of the project must be included. Remember, any additional costs to the project due to the increased bid prices or construction claims caused by the no-work sections will be non-participating.
4. When relocation is involved a statement that all occupants of the residences on such parcels have had replacement housing made available to them in accordance with 49 CFR 24.204. CDOT must ensure that occupants of residences, businesses, farms, or non-profit organizations who have not yet moved from the right of way are protected against any unnecessary inconvenience or any action coercive in nature. A written description that essentially identifies the relocation status and the assistance that will be provided to the displaced persons(s) who have not yet moved from the right of way must be set forth in the request.

### **8.15.3 – Right of Way Clearances for Alternative Project Delivery Methods**

Design-build and CM/GC projects require modified procedures for the issuance of right of way clearances.

Under the design-build method, a conditional clearance will almost always be required at the time that a Request for Proposal/Request for Qualifications is issued. The conditional clearance request should include all identified parcels within the scope of any potential concept. If parcels are later added by the contractor, the conditional clearance does not need to be revised. The right of way technical requirements from the design-build contract should be included with the request.

For CM/GC projects, an LPA certification and right of way clearance will be required for each procurement of professional services or severable construction packages. The certification and clearance should only pertain to the scope of the service or construction package. For example, the initial procurement of the construction manager as a professional service would typically result in a certification stating that no additional right of way was required. If a construction package for an interchange reconfiguration requires the acquisition of additional right of way which has been completed, an LPA certification stating that all right of way has been acquired may be submitted, even though there may be pending right of way acquisition on subsequent construction packages. It is common that each individual construction package will be assigned

different project codes or numbers. In such a case, the clearance request should reference both the project code being advertised, and the project code under which the right of way plans were authorized.

#### **8.15.4 – Certification Forms**

A separate right of way certification must be completed by LPAs for each LPA Project even if no right of way is required for the project. All certifications should be prepared using forms specified by CDOT (see Exhibits D and E).

## **Section 8.16 – Document Retention**

### **8.16.1 – Records Retention by Local Public Agencies**

The acquiring agency shall maintain all records of its right of way actions for at least three years after payment of the final voucher to demonstrate compliance with 49 CFR Part 24. After the three-year period, the acquiring agency should maintain adequate documentation to prove ownership (plans, legal descriptions, deeds, Fair Market Value Form 930, original of parcel appraisals, etc.).

For additional details refer to 23 CFR, 710 Subpart B, Program Administration; the FHWA Project Development Guide; and CDOT ROW Manual, Chapter 2, Plans.

### **8.16.2 – Records Retention for LPA Projects Where the LPA is Requesting Federal Participation in Right of Way Acquisition and Relocation**

The Project Development Branch, Headquarters ROW Program, shall maintain the following records of LPA Right of Way actions for at least 3.5 years after the 950 date to demonstrate compliance with 49 CFR Part 24 (for additional details refer to 23 CFR, 710 Subpart B, Program Administration):

1. Refer to Plan Authorization for LPA Projects Where the LPA is Requesting Federal Participation in Right of Way Acquisition and Relocation in this chapter for the listing of required documents to be retained.
2. Additional record retention requirement is the Acquisition Stage Relocation Plan (CDOT Form #557 and 558) or letter from the LPA stating there are no relocations on the project.

Refer to the CDOT Record File Plan for Right of Way and Survey for additional records retention requirements. Records to be retained until 3.5 years after the 950 date or less may be retained in paper or electronic format.

Non-permanent records will be identified and prepared for destruction 3.5 years after the Form 950 project closure date. Original Right of Way acquisition documents, whether permanent or non-permanent, should only be destroyed after a destruction form has been approved by the ROW Program Manager.

### **8.16.3 – Records Retention for LPA Projects Where the LPA Will Use Their Own Funds for Right of Way Acquisition and Relocation and Federal Funds are involved in any Phase of a Project**

The CDOT Region ROW office shall maintain the following records of LPA right of way actions for at least 3.5 years the 950 date to demonstrate compliance with 49 Part CFR 24 (for additional details refer to 23 CFR, 710 Subpart B, Program Administration):

1. Refer to Plan Authorization for LPA Projects where the LPA Will Use Its Own Funds for Right of Way Acquisition and Relocation and Federal Funds are involved in any other Phase of the Project in this chapter for the listing of required documents to be retained.
2. Additional record retention requirement is the Acquisition Stage Relocation Plan (CDOT

Form #557 and 558) or letter from the LPA stating there are no relocations on the project.

Refer to the CDOT Record File Plan for Right of Way and Survey for additional records retention requirements. Records to be retained until 3.5 years after the 950 date or less may be retained in paper or electronic format.

Non-permanent records will be identified and prepared for destruction 3.5 years after the Form 950 project closure date. Original Right of Way acquisition documents, whether permanent or non-permanent, should only be destroyed after a destruction form has been approved by the ROW Program Manager.

## Section 8.17 – Settlements

The Uniform Act requires that “The head of a federal agency shall make every reasonable effort to expeditiously acquire real property by negotiation.” Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by agencies to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings, which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and CDOT encourage LPAs to carefully consider and maximize use of administrative settlements in appropriate situations.

An administrative settlement is a negotiated settlement of a right of way acquisition case in which the LPA and CDOT have administratively approved payment in excess of the FMV.

If the LPA anticipates requesting federal participation in the portion of the administrative settlement over the FMV, the administrative settlement must be approved by CDOT prior to the LPA finalizing the settlement. In this scenario, when the LPA agrees to the administrative settlement it should notify the landowner or landowner’s representative that the settlement is subject to CDOT approval. The LPA should then notify the Region Representative or Region ROW Manager of the amount of the administrative settlement and the reasons for entering into the settlement. If the settlement is within certain delegated limits and the Region Representative or Region ROW Manager determines that the settlement is reasonable, the Region Representative or Region ROW Manager can verbally approve the administrative settlement. A written justification and approval signature will follow. If the settlement is outside of certain delegated limits, a written request to approve the administrative settlement will be required. The Region Representative or Region ROW Manager can provide the LPA with the CDOT form to be used for such written request. After the form is completed, it should be tendered to the Region Representative or Region ROW Manager. If the portion of the administrative settlement is \$150,000 over FMV or less, the Region Representative or Region ROW Manager may approve the settlement for Federal participation if the authority has been delegated by the Region Transportation Director (RTD).

If the participating portion of the settlement is more than \$150,000 and \$500,000 or less than the original FMV, the Region Representative or Region ROW Manager will forward the settlement to the RTD for approval. If the participating portion of the settlement is more than \$500,000 over the original FMV, the Region Representative or Region ROW Manager will forward the RTD-approved settlement to the Statewide ROW Program Manager who will review the request, and then forward it to the CDOT Chief Engineer for approval.

If an administrative settlement is approved by the Region Representative, Region Right of Way Manager, RTD or CDOT Chief Engineer, the entire amount of the settlement is eligible for federal participation. If an administrative settlement is rejected, the LPA can request CDOT to notify it of an acceptable administrative settlement. If the LPA then agrees to an administrative settlement higher than the CDOT approved settlement amount, the LPA can agree to the higher settlement with the understanding that the amount of the settlement above CDOT’s approved settlement will not be eligible for federal participation.

For additional details refer to 23 CFR 710 Subpart A; the FHWA Project Development Guide (Settlements); the FHWA Real Estate Acquisition Guide for Local Public Agencies; and CDOT ROW Manual, Chapter 10, Settlements.

## **Section 8.18 – CDOT Services**

CDOT is committed to an ongoing program, which will provide effective assistance and guidance to LPAs. The Region ROW Manager in each region can provide information and establish appropriate state staff contacts; provide training and educational opportunities for LPAs; and provide mutually acceptable technical and advisory services as necessary to accomplish the acquisition program.

CDOT Region staff will consult and advise the LPA concerning real property acquisition activities to ensure that right of way is acquired in accordance with provisions of state and federal laws and FHWA directives.

At the earliest possible date, the LPA should advise the Region ROW Manager of the need for CDOT assistance. If CDOT is asked to perform the appraisal, negotiation, or relocation functions, the LPA should obtain the estimated incidental expenses (3114) for relocation and acquisition of right of way from the Region ROW Manager and include it in the LPA Agreement. The Region ROW Manager will arrange for the preparation of an agreement if CDOT has the personnel available to acquire the necessary right of way. CDOT will furnish the LPA with an estimate of the cost of CDOT's services. If CDOT provides these services, then CDOT will prepare all necessary documentation and certification.



## **Section 8.19 – Reimbursement of Right of Way Costs**

LPA's can request federal reimbursement for costs paid for completed acquisition/relocation activities in two ways, on an ownership by ownership (or displacement by displacement) basis, or on a total project basis. To ease the administrative burden created by numerous LPA Projects on a statewide basis, CDOT strongly recommends reimbursement on a total project basis. Either scenario requires the LPA to pay the required costs, submit proof of the payment made, and request reimbursement. Federal participation costs cannot be made available for direct payment to a landowner or displacee.

If a LPA requests federal reimbursement for costs paid on an ownership by ownership basis, the LPA must tender documents to the Region Representative evidencing proof of the payment made and the property interest acquired, or relocation benefit incurred. Negotiation or relocation contact logs, fair market values and/or waiver valuations, and approved Administrative Settlements must be included to demonstrate compliance with the Uniform Act. The Region Representative will then coordinate reimbursement for such costs with the Project Development Branch, Headquarters ROW.

If the LPA desires reimbursement on a total project basis, i.e. reimbursement for all right of way acquisition/relocation costs after all the parcels are purchased, it may apply for 3111/3109 charges based upon the Certificate of Cost of Right of Way form (Exhibit F), while providing the same documentation as is required for reimbursement of a specific ownership. The Project Development Branch, Headquarters ROW, will then issue one warrant to the LPA for these charges and transfer the information into SAP for the FHWA annual report. 3114 charges need not be broken down by ownership on the certification form but may be coded separately in the billing. The Certificate of Cost of Right Way form (Exhibit F) shall be tendered to the Region Representative or Region ROW Manager, who will in turn coordinate reimbursement with the Project Development Branch, Headquarters ROW, for 3111/3109 charges and with its region Business Office for 3114 charges.

However, the method of payment must be clearly stated in the Intergovernmental Agreement (IGA) with the LPA. The local agency match and maximum allowed reimbursement must be accordance with an IGA.