

Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects



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prepared by

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INTRODUCTION

This manual, designed by the North Dakota Department of Transportation (NDDOT), is a guide to right of way acquisition procedures which must be observed by Local Public Agency (LPA) representatives in the acquisition of road right of way. Information and procedures discussed in this manual pertain to all North Dakota road projects that involve the participation of federal funding, regardless whether federal monies are used in the actual project right of way costs. If federal funds are involved at any project stage, Right of Way Acquisition Procedures for Local Public Agency Federal Aid Projects must be observed to ensure compliance with state and federal regulations.

If you have questions concerning LPA guidelines, you should call the NDDOT's Environmental and Transportation Services (ETS) Division - Right of Way Section or the Local Government Division. If necessary, an NDDOT representative can assist the LPA in explaining appropriate procedures before or during the acquisition process.

Background

Right of way acquisitions must conform to specific federal and state laws. Specific federal laws include the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971; Sections 301 and 302 (42 U.S.C. '4651 and '4652), as amended by Public Law 100-17, April 2, 1987, Title IV, Uniform Relocation Act Amendments of 1987, and Title 49 C.F.R. Part 24.

Among the federal laws, Public Law 91-646 is intended to ensure that property owners are fully informed of their rights to receive just compensation for the acquisition of their property, that they are treated equitably, and that an agreement is reached without coercion of any type. Public Law 91-646 requires the LPA to establish an amount believed to be just compensation and to make a prompt offer to acquire the property for the full amount established if the property owner desires to be compensated.

North Dakota also has a specific state law (N.D.C.C. 54-01.1) concerning the acquisition of real property for right of way purposes. Both the federal and state laws implement the same ideas. Therefore, adherence to Public Law 91-646 should enable compliance with the requirements of North Dakota's state law.

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GENERAL REQUIREMENTS

Right of way acquisitions for road projects involving federal aid must comply with all applicable federal and state laws, and rules and regulations, including Public Law 91-646 and N.D.C.C. 54-01.1. The acquisition of any segment of road acquired after the following dates in a manner inconsistent with public law will be ineligible for federal aid.

Beginning Compliance Dates

1. County Major Collector (CMC) Routes: Also referred to as the farm-to-market system. The CMC is the system in the collector network typically connecting with state highways. Any right of way acquired for CMC routes after July 24, 1973, must comply with the federal and state laws.
2. Off-System Routes: County off-system routes that are not CMC routes are typically lower volume county roads, and may even be township roads. Any right of way acquired for off- system routes after April 3, 1975, must comply with the federal and state laws.
3. City Routes Classified as Collector or Higher: Any right of way acquired after July 24, 1973, must comply with the federal and state laws.

What Must Be Done Before the Acquisition Process?

1. Public Hearings: The applicable public hearing requirements must be satisfied before acquisition may begin. If a hearing notice is necessary, the expiration date shown in the Notice of Opportunity for Public Hearing advertisement shall pass, and the Certification of Hearing Satisfaction shall be completed before location and design approval are requested. If a hearing is requested, the hearing procedure must also be completed before location and design approval.
2. If right of way is acquired with federal funds environmental approval and authorization from FHWA must be received before right of way is acquired. If federal funds are not used for right of way acquisition, then other environmental approval is required prior to obtaining right of way. NDDOT's Local Government Division will notify the LPA when approval is received so acquisition of right of way can begin.

Time Requirements

Allowing sufficient time for proper acquisition and documentation of necessary right of way is critical to the success of a project. The LPA's engineer should emphasize the timing of acquisition when project plats are completed. All acquisition procedures should be started early enough so that right of way is acquired and properly documented.

If Federal Aid was used for the acquisition of right of way, the right of way documentation and certification shall be furnished to the NDDOT for review at least ten weeks prior to the scheduled bid opening date. If Federal Aid was not used for acquisition of right of way, the LPA's certification shall be furnished to NDDOT at least ten weeks prior to the

scheduled bid opening date. This ten-week requirement period applies to all projects and is especially important in the case of urban projects due to the tendency for increased project complexity.

NDDOT's right of way representative must have sufficient time to schedule the review of the LPA's acquisition procedures. NDDOT's project review must be completed at least eight weeks prior to bid opening. Upon completion of its review and if everything is complete, then the LPA will certify to NDDOT six weeks prior to the bid opening that the right of way has been acquired according to law.

AGENCY REPRESENTATIVES USED IN THE ACQUISITION PROCESS

Three different agency representatives are used in the acquisition of real property. They are the Appraiser, the Review Appraiser, and the Negotiator.

Appraiser

Qualifications: The LPA is responsible for selecting only a professionally competent, qualified appraiser who has the necessary knowledge and understanding of (1) the market containing the property to be appraised, and (2) the property type and appraisal problem.

While the LPA bears the responsibility of retaining competent appraisers, it is the Appraiser who is responsible for ensuring competent development and reporting of the appraisal.

Contract appraisers must be certified as 'Certified General' by the North Dakota Real Estate Qualifications and Ethics Board.

<http://www.ndappraiserboard.org/>

Duties The appraiser estimates (1) the value of the property interest to be acquired, and (2) damages sustained by the remainder parcel, if any. The appraisal is developed and reported in written format according to the current requirements of the Uniform Act and, as appropriate, the Uniform Standards of Professional Appraisal Practice (USPAP).

The appraiser may assume the dual role of appraiser and negotiator, but only when compensation due the property owner is \$10,000 or less.

Review Appraiser

Qualifications: A NDDOT realty officer, certified by the North Dakota Real Estate Appraiser Qualifications and Ethics Board, serves as the Review Appraiser. The Review Appraiser may not assume a dual role by acting as review appraiser and either appraiser or negotiator.

Duties:

The Review Appraiser, working with the LPA and the appraiser, determines the minimum scope of work required of each appraisal assignment. The LPA must initiate this process by contacting the Review Appraiser prior to the commencement of a project's market research and valuation activities. Valuation activities, including appraisals, must be completed prior to the onset of negotiations.

The Review Appraiser examines and reviews project appraisals for their analytical content and for consistency with the Uniform Act and the USPAP.

The agency Review Appraiser develops a recommendation of just compensation through a review of the appraisal and any other additional information that is deemed pertinent. This opinion becomes the amount offered to the property owner as compensation for the acquisition.

Completion of the appraisal review is required before negotiations with the property owner may begin.

Negotiator

Qualifications:

The Negotiator is an agent appointed by the LPA. The Negotiator may be an LPA employee, member of the city/county commission/board or other official, or a representative hired by the LPA.

The Negotiator must be able to read and understand project plans, plats, and appraisals, and should be able to explain them to the property owner.

Duties:

The Negotiator develops and presents offers by Waiver Valuation, when applicable.

When an appraisal is used as the basis for an offer, the appraisal must be reviewed and approved before the Negotiator may present the offer. In this case, the Negotiator notifies the property owner and presents the LPA's formal offer of just compensation using [Exhibit D - LPA Memorandum of Offer](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#).

The just compensation estimate offered to the property owner is the amount approved by the Review Appraiser.

[Exhibit E - LPA Memorandum Agreement](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#), are prepared and binds the terms of the transactions. The Memorandum Agreement must be signed by the property owner(s) and the Negotiator.

The Negotiator secures a deed or easement from the individual owner(s) of the parcel(s) to be acquired.

The Negotiator prepares a written report each time the property owner is contacted. The report will summarize the details of the contact and includes reference to all verbal and written agreements between the LPA and the property owner(s). [Exhibit F - LPA Negotiator Report & Ownership Contact](#)

The Negotiator may assume the dual role of appraiser and negotiator, but only when compensation due the property owner is less than \$10,000.

The Negotiator is independent of the Review Appraiser. The Negotiator may not act as Review Appraiser.

OWNERSHIP CONTACT AND FILE DOCUMENTATION REQUIREMENTS

Ownership Contact Requirements

Negotiations and acquisitions must be conducted in accordance with Public Law 91-646 to ensure that property owners are fully informed of their rights to receive just compensation; that they are treated equitably; and that agreement is reached without coercion of any type. The following specific requirements for ownership contact and file documentation must be observed:

1. The LPA must present the brochure, [Exhibit K - Info for Highway and Street Projects Pamphlet](#) (prepared by the NDDOT) to the property owner or property owner's designated representative. This publication describes the rights of the property owner and the right of way procedures used in the acquisition process. The LPA may obtain additional copies of the brochure by contacting the NDDOT's Local Government Division or Environmental and Transportation Services (ETS) Division - Right of Way Section.
2. The LPA may offer the following three options to the property owner/designated representative concerning the acquisition:
 - a. Donation;
 - b. Waiver of appraisal in exchange for payment via Minimum Payment Policy or Waiver Valuation (whichever is applicable); or
 - c. Request appraisal as basis for just compensation.

The above three options are discussed in a following portion of this manual.

3. The property owner or designated representative will select the desired option and complete, sign, and date [Exhibit C - LPA Notification and Appraisal Waiver](#), indicating which option is desired.
4. If the property owner agrees to donate the parcel or to waive the right to an appraisal in exchange for payment via the applicable Minimum Payment Policy or Waiver Valuation, [Exhibit E - LPA Memorandum Agreement](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#), shall be completed and signed by the negotiator and the property owner. The LPA will retain the original forms and a copy shall be provided to the property owner.
5. If the property owner requests an appraisal, the LPA will offer the property owner or designated representative the opportunity to accompany the appraiser during an inspection of the real property. The offer to accompany the appraiser should be documented by selecting the fourth option appearing on the Notification and Appraisal Waiver Form.
6. If an appraisal is completed, the LPA shall give the property owner a written summary ([Exhibit D - LPA Memorandum of Offer](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#)) describing the basis for the amount established as just compensation. If the property owner requests an appraisal, [Exhibit E - LPA Memorandum Agreement](#) will also be completed, but only after a final agreement for compensation is reached between the Negotiator and the property owner.

Documentation Requirements for All Parcel Files

Proper file documentation is necessary to meet federal and state requirements. Right of way acquisition files should contain the following completed documents:

1. [Exhibit C - LPA Notification and Appraisal Waiver](#), signed and dated by the property owner, indicating the desired option for donation/compensation. The property owner will also use this form to request an appraisal, if desired, and indicate whether he/she wishes to accompany the appraiser on an inspection of the property.
2. The appraisal report (or [Exhibit A - Short Form Appraisal Report](#)), comparable market data (basic data book, etc.), [Exhibit B - Certificate of Appraiser](#), and other file memoranda needed to adequately support the value estimate(s) made by the appraiser.
3. [Exhibit D - LPA Memorandum of Offer](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#), completed, dated, and signed by the negotiator. A copy is presented to the property owner. The original is retained in the file.
4. [Exhibit E - LPA Memorandum Agreement](#) and [Exhibit N - LPA Compensation and](#)

[Parcel Breakdown](#), completed, dated, and signed by property owner and negotiator. A copy is presented to the property owner. The original is retained in the file.

5. Signed easement or deed. Permanent easement and fee acquisitions must be signed in blue ink in the presence of a notary and properly notarized. ([Exhibit O - LPA Warranty Deed](#), [Exhibit P - LPA Temporary Easement](#), [Exhibit Q - LPA Temporary Easement with Permanent Maintenance](#))
6. Completed [Exhibit F - LPA Negotiator Report & Ownership Contact](#), and written negotiator report(s) describing all contacts and discussions with the property owner. Include a statement that [Exhibit K - Info for Highway and Street Projects Pamphlet](#), was presented to the property owner or to their designated representative.
7. [Exhibit L - W-9 Form](#) – To be completed by property owner.
8. [Exhibit G - LPA Agreement for Entry and Construction \(No Compensation\)](#) – Completed, dated and signed by property owner.
9. [Exhibit I – SFN60149 - Title VI Public Participation Survey](#) – To be completed by property owner.
10. [Exhibit H - LPA ROW Check List](#) – Shall be submitted with the completed document packet by the negotiator.

The above-completed documents should be kept in one complete file for retrieval purposes.

RELOCATION

The 1970 Uniform Relocation Act provides relocation benefits to any person whose business, residence, billboard(s) and/or personal property must be relocated because of the project. Under the Act, no one may be forced to move unless provided at least 90 days written notice. The 90-day period begins with the beginning date of negotiations (i.e. the date of the offer). The Act must be followed when relocation assistance is required on federal aid projects.

LPA representatives should review a project in its very early stages to ascertain whether relocation assistance will be needed. The relocation process is time-consuming. Therefore, if any relocation is needed, it is very important that the LPA notify the NDDOT Relocation Officer during a project's very early stages. The Relocation Officer will provide guidance and monitor the project to ensure that federal guidelines are met.

For additional information refer to [Exhibit M - When must I move Pamphlet](#)

VOLUNTARY RIGHT OF WAY ACQUISITIONS

Three voluntary options are generally available to property owners in the acquisition of real property by the Local Public Agency. Property owners may do one of the following:

1. Donate the right of way, in whole or in part;
2. Waive the right to an appraisal in exchange for payment based upon Waiver Valuation;
3. Request an appraisal to provide the basis for compensation.

The third option, appraisal, is available when the acquisition is uncomplicated but the value exceeds \$10,000. In the event that the acquisition is complex, an appraisal is prepared regardless of the amount.

More information concerning the above three options is continued in the following discussion.

Donation

Property owners can elect to waive the right to an appraisal and donate all or a portion of the property or its value. However, in many instances, the payment of just compensation will eliminate problems that could otherwise be encountered during negotiations. Property owners may donate their property only after being informed of their right to receive just compensation. ([Exhibit C - LPA Notification and Appraisal Waiver](#)).

Donations are addressed in 49 CFR 24.108 as follows:

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefore, to the Agency. The Agency is responsible for assuring that an appraisal of the real property affected is obtained unless the owner thereof releases the Agency from such obligation.

A donation occurs when the property owner voluntarily waives the right to an appraisal and agrees to donate all or part of the property. No compensation is paid to the property owner.

A donation may be accepted for the following types of acquisitions:

1. Temporary Construction Easements
2. Slope Easements

3. Permanent Construction Easements
4. Permanent Right of Way

When the property owner wishes to donate:

1. The property owner completes, signs, and dates [Exhibit C - LPA Notification and Appraisal Waiver](#). The property owner selects the following option on this form:

We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plats.

2. The Negotiator and property owner complete, sign, and date [Exhibit E - LPA Memorandum Agreement](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#). The word donation is written in place of a dollar amount on the form. The property owner retains a copy of the completed and signed Memorandum Agreement.
3. The property owner signs and dates the easement or deed. Permanent easement and fee acquisitions must be signed in the presence of a notary and properly notarized.
4. The negotiator completes [Exhibit F - LPA Negotiator Report & Ownership Contact](#) form describing all contacts and discussions with the property owner. If a public meeting was held, the minutes or summation of that meeting would suffice for the narrative requirement. The narrative must indicate that the brochure [Exhibit K - Info for Highway and Street Projects Pamphlet](#) (published by the NDDOT) was given to the property owner or property owner's representative.

No coercion may be used during the negotiation. For additional information, refer to Ownership Contact and File Documentation Requirements.

A partial donation occurs when the amount paid to the property owner as compensation for the acquisition is less than the property's full market value or is less than the full amount of anticipated damages. The LPA is then responsible for obtaining an appraisal of the real property affected, unless the property owner(s) releases the LPA from this obligation.

Property owners must be informed at the onset that (1) they have the right to receive just compensation for their property based on its market value, and (2) if a partial donation is made, the compensation offered by the LPA may not necessarily reflect the market value of the property interest acquired.

Meetings with property owners should begin by advising the property owners of their right to have the property appraised before negotiations. The property owner or

designated representative will be given the opportunity to accompany the appraiser on an inspection of the property. The property owner's right to receive just compensation for the taking should also be explained. The negotiator may find it helpful to have comparable sales and a sales map available prior to any discussion with the property owner. Such information may assist the property owner in making decisions concerning a potential donation and/or whether an appraisal will be necessary.

If the property owner wishes to donate a portion of the property and still requests the completion of an appraisal of the property:

1. The property owner completes, signs, and dates [Exhibit C - LPA Notification and Appraisal Waiver](#). The property owner selects the following two options on this form:
 - a. I/We do not wish to receive just compensation, but to donate the area, or a portion thereof, necessary for construction as shown on the plats, and
 - b. I/We do wish to have my property interest appraised.

In the second statement, the property owner also needs to indicate whether he/she (or a designated representative) wishes to accompany the appraiser on an inspection of the property.

2. The LPA bears the responsibility of retaining appraisers who are competent in the areas of (1) knowledge and understanding of the market containing the property to be appraised, and (2) knowledge, understanding, and ability to appraise the property type in question. The LPA is also responsible for securing the appraisal in a format appropriate to the situation.
3. After completion of the appraisal, [Exhibit D - LPA Memorandum of Offer](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#), is prepared, dated, and signed by the negotiator. The Memorandum of Offer is the LPA's formal offer to the property owner. The negotiator should include sufficient comments on the Memorandum of Offer to distinguish between the part that the property owner wishes to donate and the part that the property owner does not wish to donate. Compensation is disclosed only for the part that is not donated. A copy is presented to the property owner; the original is retained in the project parcel file.
4. Upon reaching an agreement for transfer of the property, [Exhibit E - LPA Memorandum Agreement](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#), are prepared, dated, and signed by the property owner and Negotiator. The Memorandum Agreement binds the property owner and the LPA to the terms of the agreement. A copy is presented to the property owner; the original is retained in the project parcel file.

5. The easement or deed for the acquisition is signed and dated by the property owner. Permanent easement and fee acquisitions must be signed in blue ink in the presence of a notary and properly notarized.
6. The Negotiator completes [Exhibit F - LPA Negotiator Report & Ownership Contact](#) form describing all contacts and discussions with the property owner. If a public meeting was held, the minutes or summation of that meeting would suffice for the narrative requirement. The narrative must indicate that the brochure [Exhibit K - Info for Highway and Street Projects Pamphlet](#) (published by the NDDOT) was given to the property owner or property owner's representative.

No coercion may be used during the negotiation.

For additional information, refer to Ownership Contact and File Documentation Requirements; and the Appraisal Section of this manual referencing Trees, Fences ([Exhibit J - SFN60955 - Fencing Calculation](#)), Severance Damage, and Uneconomic Remnants

Minimum Payment Policy and Fencing Schedule

Property owners have the option of waiving their right to an appraisal of the property in exchange for payment according to the Local Public Agency's Minimum Payment Policy. The waiver of an appraisal in exchange for minimum payment applies to the following types of acquisitions:

1. Temporary Construction Easements
2. Slope Easements
3. Permanent Construction Easements
4. Permanent Right of Way

The Minimum Payment Policy is an acquisition tool that allows the LPA to pay the property owner a token amount in lieu of conducting an appraisal. The Minimum Payment Policy is established by the proper LPA officials such as county commissioners, city council, etc. Regardless of the specific policy established, the LPA should ensure that its Minimum Payment Policy is fair and equitable from one property owner to the next. Federal aid participation in minimum payment policies is limited to the amount established by the appropriate LPA. If no minimum payment limit is established by the LPA, the minimum payment policy established by NDDOT is recommended to be used and the amounts can be found in the [NDDOT ROW Manual](#).

If the property owner receives payment based on waiver valuation:

1. The property owner completes, signs, and dates [Exhibit C - LPA Notification and Appraisal Waiver](#). The property owner selects the following option on this form:

I/we agree to receive the payment based on waiver valuation.

2. The negotiator and property owner prepare, date, and sign [Exhibit E - LPA Memorandum Agreement](#) and [Exhibit N - LPA Compensation and Parcel Breakdown](#)
- . The Memorandum Agreement binds the LPA and the property owner to the terms of the agreement.
 - a. A notation is made on the Memorandum Agreement that the property owner is receiving minimum payment.
 - b. The amount of the minimum payment is disclosed on the Memorandum Agreement.
 - c. A copy is presented to the property owner; the original is retained in the project parcel file.
3. The easement or deed for the acquisition is signed and dated by the property owner. Permanent easement and fee acquisitions must be signed in blue ink in the presence of a notary and properly notarized.
4. The negotiator completes [Exhibit F - LPA Negotiator Report & Ownership Contact](#) form describing all contacts and discussions with the property owner. If a public meeting was held, the minutes or summation of that meeting would suffice for the narrative requirement. The narrative must indicate that the brochure [Exhibit K - Info for Highway and Street Projects Pamphlet](#) (published by the NDDOT) was given to the property owner or property owner's representative.

No coercion may be used during the negotiation.

The LPA should also develop and approve a fencing schedule over and above its minimum payment policy. The fencing schedule will be approved by the proper LPA officials (i.e. county commissioners, city council, etc.) prior to the beginning of the acquisition process. Once again, the LPA should ensure that the fencing payment policy is fair and equitable from one property owner to the next. If no Fencing Schedule is established by the LPA, the Fencing Schedule established by NDDOT is recommended to be used and the amounts can be found on the NDDOT fencing schedule. ([Exhibit J - SFN60955 - Fencing Calculation](#))

If federal aid is used to acquire the ROW, the LPA needs to provide NDDOT with a copy of any Minimum Payment Policy and Fencing Schedule Policy adopted by the LPA. Both policies need to be available to the NDDOT during its review of the right of way process.

For additional information, refer to Ownership Contact and File Documentation Requirements; and the Appraisal Section of this manual referencing Trees, Fences ([Exhibit J - SFN60955 - Fencing Calculation](#)), Severance Damage, and Uneconomic Remnants

Waiver Valuations

Waiver Valuation, as defined in the Uniform Act, is

“...an administrative process for estimating fair market value for relatively low-value, non-complex acquisitions. A Waiver Valuation is prepared in lieu of an appraisal.”

A Waiver Valuation is the valuation process used and the product produced when the acquiring Agency (Local Public Agency) determines that an appraisal is not required, pursuant to appraisal waiver provisions of the Uniform Act and the N.D.C.C. By definition, a Waiver Valuation is not an appraisal.

The Uniform Act permits an appraisal to be waived:

1. When the property owner elects to donate the property and releases the acquiring Agency (LPA) from the obligation of performing an appraisal, or
2. When the LPA believes the acquisition of the property is uncomplicated and a review of available data supports a fair market value likely to be less than \$25,000, the LPA may assign a qualified individual to prepare a Waiver Valuation, rather than an appraisal, to estimate fair market value.

Determination of Acquisition by Waiver Valuation

Although a Waiver Valuation is not an appraisal, the Local Public Agency must still have a reasonable basis for its determination of market value. Some of the concepts inherent in valid appraisal practice are, therefore, appropriate for estimates made by Waiver Valuation.

Federal law requires the acquiring Agency to determine whether a Waiver Valuation is appropriate for a particular acquisition. The determination is made by a properly qualified agency employee knowledgeable in appraisal valuation methodology and able to properly assess the complexity of a particular valuation problem. NDDOT's Chief/Review Appraiser, or other staff review appraiser, acting under the direct supervision of the Chief/Review Appraiser, is that person if federal aid is used to acquire the ROW. If federal aid is not used to acquire the ROW, then NDDOT's Chief/Review Appraiser is available to provide assistance in this matter to the LPA if requested.

The Chief/Review Appraiser or staff review appraiser determines whether a Waiver

Valuation will be prepared. The determination is made after completing a Preliminary Project Review (PPR). The PPR is conducted after the project limits are established, and the project plats and the project appraiser's preliminary market research and analysis are complete, but before acquisitions commence. The LPA will provide this information to the NDDOT's Chief/Review Appraiser, who will assist in determining the scope of valuation services appropriate to the individual acquisitions of the project if federal aid is used to acquire the ROW. If federal aid is not used to acquire the ROW, then NDDOT's Chief/Review Appraiser is available to provide assistance in this matter to the LPA if requested.

The purpose and objectives of the Preliminary Project Review are:

1. To enable early identification of uncomplicated acquisitions eligible for Waiver Valuation.
2. To enable early identification of acquisitions that are likely to require an appraisal; to assess their probable level of complexity; and to develop an appropriate scope of work decision for each appraisal problem.
3. To review the subject real estate market, the subject properties, and comparable sales.
4. To ascertain whether the collective information and preliminary market analysis (Basic Data Book) prepared by the project appraiser provides an adequate supporting basis for acquisition by Waiver Valuation.
5. To reconcile the basis for offers via Waiver Valuation.
6. To prepare for reviews of project appraisals.
7. To assist in the early identification of problematic right of way issues that may be encountered during the project's right of way acquisition phase.

Successful completion of the above goals depends on the extent of detailed information available for each acquisition problem. The more complex the acquisition or project, the greater the need for detailed, accurate information.

The LPA will conduct the preliminary project review and may request assistance from the Chief/Review Appraiser or staff review appraiser, which includes a field review of the subject properties, the acquisition problems, the comparable sales, and the market analysis and conclusions developed and reported (e.g. Basic Data Book) by the project appraiser. If a field review cannot be completed, the reason will be noted in the project file. Any and all relevant information is considered in the PPR.

The acquiring Agency (LPA) has the responsibility to make all necessary arrangements

with the NDDOT's Chief/Review Appraiser in advance of a preliminary project review. This includes providing the right of way plats and other essential information; arranging for any necessary field inspections, and providing the name and contact information of the individual(s) who will be preparing market research and appraisals. The LPA will provide all relevant market information in support of proposed Waiver Valuations for the Chief/Review Appraiser's examination. Once the Chief/Review Appraiser's review of the available data is complete, the project's acquisition agent or Negotiator will then use the approved amount(s) to compute each agency offer by Waiver Valuation.

When to Use a Waiver Valuation

A Waiver Valuation may be developed when all of the following circumstances apply:

1. In situations where the total value of the uncomplicated acquisition (land, improvements, easements, damages/costs to cure, etc.) is less than \$10,000, LPA offers, and the property owner waives, the right to an appraisal.
2. The property type in question is not complex, and value is readily substantiated by an adequate availability of comparable sales data.
3. The acquisition, including the physical part taken, together with all easements, is of low value, i.e. less than \$25,000.
4. Damages, if any, are nominal and/or readily measured by their cost to cure.
5. The property's highest and best use as improved is the same as its highest and best use as vacant.
6. The acquisition does not change the property's highest and best use.

A Waiver Valuation is to be prepared objectively, consistent with, and supported by the local real estate market. Contrary practices are to be avoided, as they can lead to unfavorable perceptions of inconsistency or unfairness. These are a discredit to the acquiring Agency and can actually hinder current and future right of way acquisitions. A Waiver Valuation will not be used when circumstances require an appraisal, nor will a Waiver Valuation be used to justify a settlement that is administrative in nature.

Who Can Prepare a Waiver Valuation?

Any individual possessing an adequate level of knowledge of the local market and the nature of the acquisition, and who is able to differentiate uncomplicated acquisition problems from complex ones, may prepare a Waiver Valuation.

Individuals who prepare Waiver Valuations may not be supervised by those responsible for and actively involved in the acquisition or negotiations with property owners. Valuation staff and contractors doing valuation work (i.e. appraisals, Waiver Valuations,

etc.) must be removed from possible undue influence by those responsible for property negotiation.

The person preparing the Waiver Valuation may also act as Negotiator when the total amount of the acquisition (including physical part taken, easements, improvements, and any nominal damages or costs of cure) is less than \$10,000.

Role of Appraiser in Market Research for Waiver Valuations

A qualified appraiser will be used to conduct all market research and analyses used to substantiate the Waiver Valuation acquisitions. This research and analysis (typically reported in the Basic Data Book) should be developed prior to requesting authorization from FHWA to commence acquisitions, so that the Preliminary Project Review can be completed and approval issued for waiver offers, thus enabling Right of Way personnel to promptly initiate ownership contacts.

The appraiser will conduct the necessary market research, assembling, inspecting, confirming, and analyzing the data. The appraiser's information and analysis of the project, the subject real estate market, and supporting comparable sales, together with the appraiser's conclusions, are reported in a Basic Data Book. This collective work, referenced as the supporting basis for Waiver Valuations and uncomplicated appraisals, can be used to minimize unnecessary repetition, thereby aiding in improving the turnover time for appraisals. To ensure consistency, analytical impartiality, and to save on lead time, the appraiser preparing the Basic Data Book should also be assigned to the project's uncomplicated appraisals.

Documentation Requirements for Waiver Valuation

The Waiver Valuation will be documented as follows in the appropriate project parcel file:

1. Ownership Contact Report
 - a. Detailed narrative of acquisition.
 - b. All necessary calculations to clearly demonstrate how the estimate was computed, including a breakdown of fencing payments, nominal damages, and/or costs to cure (if any).
 - c. Reference to the LPA's or NDDOT's fencing schedule as the basis for payment, if the amount includes fencing. [Exhibit J - SFN60955 - Fencing Calculation](#)
 - d. A signed statement by the preparer of the Waiver Valuation, certifying that he/she has neither current nor prospective interest in the property that is the subject of the Waiver Valuation.
2. Comparable sales and the underlying rationale supporting the Waiver Valuation,

if a Basic Data book was not developed. If a Basis Data Book was developed, it should be referenced in the parcel file as the underlying support for the Waiver Valuation.

3. Bids for cost-to-cure items, if warranted.

Some Local Public Agencies have adopted a Minimum Payment Policy. When a Waiver Valuation results in a total amount that is less than the LPA's Minimum Payment Policy, the offer to the landowner should be rounded up to the amount by Minimum Payment Policy.

Any deviation from the established procedures for Waiver Valuations could result in loss of federal funds.

INVOLUNTARY RIGHT OF WAY ACQUISITION (CONDEMNATION)

The acquiring Agency has not only duty but statutory obligation to negotiate in good faith. Therefore, condemnation -- the taking of private property through the sovereign right of eminent domain -- is only exercised as a last resort.

Condemnation is used to acquire a parcel or interest when the property owner will not agree to accept the amount established by appraisal and negotiations as fair market value for the property or anticipated damages. In North Dakota highway laws, condemnation procedures are explained in Chapter 24-05, Section 09 to 14 of the N.D.C.C. and Section 16, Article I of the North Dakota Constitution. The LPA should consult with its city or state's attorney at the earliest moment that it appears condemnation may be necessary.

Typically, the steps taken in condemnation are:

1. Just compensation is deposited with the clerk of court.
2. The clerk of court sends a notice by certified mail to the property owner, informing the property owner of the deposit with the clerk of court for the condemnation action.
3. The condemning agency takes possession of the property on the date the clerk of court receives the money.
4. The property owner has 30 days to appeal the offer after the condemning agency takes possession. If the property owner does not appeal within 30 days, the property owner will have no other recourse but to accept the deposited funds as just compensation for the taking.

Required documentation includes:

1. The basis for the offer (e.g. reviewed, Agency-approved Appraisal)
2. Comparable sales
3. Map showing the location of comparable sales
4. Negotiator's Memorandum of Offer / Compensation & Parcel Breakdown
5. Memorandum Agreement / Compensation & Parcel Breakdown
6. Negotiator Report & Ownership Contact
8. Recorded receipt of payment

The condemning authority should be aware that additional documentation may be necessary and appropriate, depending upon the circumstances. Again, if condemnation is being considered, the LPA should immediately consult with its city or state's attorney.

APPRAISAL

Appraisal Requirements

An appraisal report is a written document containing sufficient documented information, valuation data, and the appraiser's analyses of that data, to support his or her opinion of value. The appraisal may be either uncomplicated or detailed.

An appraisal is uncomplicated when all of the following apply:

1. The parcel's present use is the property's highest and best use.
2. The property's highest and best use is the same before and after the taking.
3. Adequate comparable sales data are available.
4. Damages are measured by cost-to-cure or are nominal.

A detailed appraisal is necessary if any of the following apply:

1. A complicated valuation problem is involved.
2. A complex specialty report is needed.
3. The highest and best use of the property is different after the acquisition, compared to before the acquisition.

4. Damages, other than cost-to-cure, are more than nominal.
5. Decreases or increases in market value due to the proposed improvements are involved.
6. Market data for a sales comparison approach is inadequate and consideration must be given to the cost and/or income approaches, as appropriate.
7. The possibility of adversary eminent domain proceedings is high.

The depth of analysis contained in an appraisal report will depend upon the complexity of the appraisal problem. An *uncomplicated* appraisal will contain all necessary information to provide a supported opinion of value, but at considerably less detail than that expected of a *detailed* appraisal.

All appraisals must begin with the appraiser offering the property owner or designated representative the right to accompany the appraiser on an inspection of the property. Both in-state and out-of-state property owners shall be contacted and afforded this right of accompaniment. The appraisal report should contain a discussion of the ownership contact that indicates that the offer of accompaniment was extended to the property owner, whether the property owner/designated representative elected to accompany the appraiser, the date of the inspection, etc. In addition, at a minimum, both *uncomplicated* and *detailed* appraisals should contain the following items:

1. The purpose or function of the appraisal, a definition of the estate being appraised, a statement of the assumptions and limiting conditions affecting the appraisal, and the type of appraisal report.
2. An adequate description of the subject neighborhood; physical characteristics of the property being appraised, acquisition area/parcel, (and, in the case of a partial acquisition, an adequate description of the remaining property); a statement of the known and observed encumbrances, if any; title information; location; zoning; present use; and analysis of highest and best use; and a minimum five-year sales history of the property.
3. All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data is available to reliably support the fair-market value given the specific appraisal problem encountered, the LPA, at its discretion, may require only the market approach. If more than one approach is used, there should be an analysis and reconciliation of value that is sufficient to support the appraiser's opinion(s) of value.
4. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction,

source and method of financing, and verification by a party involved in the transaction.

5. Identified photographs of the subject property including all principal above-ground improvements or unusual features affecting the value of the property.
6. An identification or listing of the buildings, structures, and other improvements on the land as well as the fixtures which the appraiser considers to be a part of the real property to be acquired.
7. The estimate(s) of market value. In the case of a partial acquisition, a reasonable allocation of the market value estimate should be contained in the report.
8. The date of the property inspection, the effective date of the value estimate, and the date of the report's preparation. The date of the property inspection is usually the effective date of the value estimate.
9. The appraiser's certification, signature, and date of signature.
10. Other descriptive material (maps, charts, plans, photographs).
11. The federal aid project number and parcel identification.

Appraisals shall be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal Foundation, and, in some cases, the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Interagency Land Acquisition Conference and the Justice Department. Appraisals must also comply with state-approved requirements.

A Basic Data Book containing project data useful to more than one appraisal within a particular project may be developed and used in the appraisal process. Information contained in the Basic Data Book (typically, city and neighborhood analyses, comparable market data, etc.) can be used to supplement each appraisal report, thereby reducing or eliminating repetition. Specific information contained in the Basic Data Book is referenced in the appraisal report where applicable. Any information incorporated into an appraisal through reference to a Basic Data Book must be specific as to the type of data applicable to the appraisal, and to the data's specific location in the Basic Data Book.

All appraisals must be written in permanent form and should be retained in the project parcel file.

Special Appraisal Considerations

Appraisals prepared for eminent domain purposes occasionally encounter problems or

special considerations relating to trees, fences, severance damages, and/or uneconomic remnants. The following policies have been established to address these considerations:

Trees:

Tree valuation is influenced by many factors including project location, supply and demand, the condition and variety of tree impacted, and other factors that may be pertinent. Trees in one particular location may have little or no contributory value, yet the same tree variety may offer significant contributory value in another location. The appraiser should research various market sources to obtain evidence that supports contributory value estimates of trees, shrubs, or other on-site improvements. Sources may include discussions with area buyers and sellers, contacts with the North Dakota Forest Service, local extension agencies, owners of local greenhouses, etc. Reference materials such as the Guide for Plant Appraisal (published by the International Society of Arboriculture) or other similar publications may be considered. Value estimates for trees, shrubs, plants, etc. should be consistent with market conditions found in the project area and need to be clearly and fully explained.

Fences:

The LPA should develop and approve a fencing schedule over and above its minimum payment policy and ensure that the policy is fair and equitable. Fencing costs may be obtained through local fence contractors or fencing suppliers. The LPA may also contact the NDDOT's Right of Way Section regarding fencing costs. ([Exhibit J - SFN60955 - Fencing Calculation](#)),

The cost of fence or its relocation can be paid to the property owner without requiring an appraisal of the part taken if the property owner will donate the acquisition, or accept the LPA's minimum payment option, or accept just compensation based on Waiver Valuation. In these situations, the property owner must complete and sign [Exhibit C - LPA Notification and Appraisal Waiver](#), and indicate the donation or the acceptance of minimum payment.

Severance Damages:

Severance and cost-to-cure damage payments mitigate damage caused by the taking. The intent of mitigation is to put the property owner in the same position he/she was in before the right of way was acquired. Potential mitigating situations include fences, cattle passes, gates, replacement ponds, etc. Severance or cost-to-cure damages are to be paid if they exist. If it is determined that a cattle pass may be warranted within a project, the LPA should ensure the cattle pass meets all the established minimum qualifications in order not to compromise FHWA funding established by NDDOT is recommended to be used and the amounts can be found on the NDDOT fencing schedule.

Uneconomic Remnant:

An uneconomic remnant is, a remaining part of land, after a partial acquisition, that the

agency determines is of little or no use or value to the owner. The LPA will offer to purchase all uneconomic remnants.

ACQUISITION OF STATE-OWNED LAND

For information and procedures relating to the acquisition of state-owned lands, contact the North Dakota State Land Department at 328-2800.

EXHIBITS

[Exhibit A - Short Form Appraisal Report](#)

[Exhibit B - Certificate of Appraiser](#)

[Exhibit C - LPA Notification and Appraisal Waiver](#)

[Exhibit D - LPA Memorandum of Offer](#)

[Exhibit E - LPA Memorandum Agreement](#)

[Exhibit F - LPA Negotiator Report & Ownership Contact](#)

[Exhibit G - LPA Agreement for Entry and Construction \(No Compensation\)](#)

[Exhibit H - LPA ROW Check List](#)

[Exhibit I - SFN60149 - Title VI Public Participation Survey](#)

[Exhibit J - SFN60955 - Fencing Calculation](#)

[Exhibit K - Information for Highway and Street Projects](#)

[Exhibit L - W-9 Form](#)

[Exhibit M - Relocation Assistance Program](#)

[Exhibit N – LPA Compensation and Parcel Breakdown](#)

[Exhibit O - LPA Warranty Deed](#)

[Exhibit P - LPA Temporary Easement](#)

[Exhibit Q - LPA Temporary Easement with Permanent Maintenance](#)

[Exhibit R - LPA Administrative Settlement Summary Narrative](#)

REFERENCE AND BROCHURE WEBSITES

[NDDOT ROW Manual](#)

FHWA - Project Development Guide: <http://www.fhwa.dot.gov/realestate/pdg.htm>

FHWA - Real Estate Acquisition Guide for Local Public Agencies
<http://www.fhwa.dot.gov/realestate/lpaguide/index.htm>

FHWA - Acquiring Real Property for Federal and Federal-Aid Programs and Projects:
<http://www.fhwa.dot.gov/realestate/realprop/index.html>

FHWA - Guide for Preparing an Appraisal Scope of Work:
<http://www.fhwa.dot.gov/realestate/sow4.htm>

FHWA - Your Rights and Benefits as a Displaced Person Under the Federal Relocation Program: <http://www.fhwa.dot.gov/realestate/rights/index.html>

Uniform Act: http://www.fhwa.dot.gov/real_estate/uniform_act/

USPAP: <http://www.uspap.org/>