STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION

Right of Way Acquisition Manual

Prepared by the

Division of Right of Way and Access Management

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Section 1 Introduction

1.1 Purpose and Use

This Manual provides direction and guidance to personnel who carry out the New Jersey Department of Transportation's (Department) right of way acquisition program accomplished by the Division of Right of Way & Access Management. Its content is applicable to Department staff, right of way consultants and local agency personnel who acquire right of way on jointly funded projects. The Manual addresses all major right of way functions including valuation, acquisition, condemnation, relocation, property management, including consultant provided right of way services in any of these functional areas. It also covers important Department right of way administrative processes.

The provisions of this Manual comply with New Jersey and Federal statutes and regulations. The Federal Highway Administration (FHWA) has reviewed and accepted the Manual as meeting the requirement (23 CFR 710.201) that each State DOT maintain a Manual that describes its policies and practices for all phases of the right of way program.

The Manual is an authoritative and a stand-alone guide, which references other Department Manuals or authorities and includes references to forms and other materials that can be accessed electronically. It includes all State and Federal requirements for executing the right of way program. Staff and consultants who work under its scope are required to comply with its provisions. However, the Department recognizes that projects sometimes present situations that cannot be anticipated or addressed in formal policy. Complex or unique cases involving acquisition, relocation or other phases should be individually considered. Right of Way staff will inform the Project Manager and other leadership officials about special situations as soon as they are identified. This will enable prompt decisions to resolve issues.

Decisions on such cases will comply with laws, meet the intent of this Manual and be fair to all parties.

1.2 Manual Revisions and Updates

This Manual will be updated as necessary to conform to changes in law, regulations and Department organization as these events occur. It will also be revised to incorporate better practices identified through Quality Control/Quality Assurance (QC/QA) activities. The Department will certify to the Federal Highway Administration every five years that the Manual conforms to existing practices and that procedures comply with Federal and State laws and regulations.

Each person using the Manual has a responsibility to contribute to its improvement. Users are invited to make suggestions, supported by an explanation of the reasoning for the change, to the Director of the Right of Way & Access Management Division or to Right of Way & Access Management Division Bureau managers or your immediate supervisor.

All substantive changes to any form, letter, other documents, process, procedure or formal activities, must be submitted through the Manager, Technical Support Bureau or a member of the Change Control Group. This requirement includes any modifications to documents on the Intranet, PAECETrak system or the ROW Manual.The Director of the

Right of Way & Access Management Division is authorized to interpret, clarify or approve exceptions to provisions of the Manual. This may be done where application of policy as written might be misunderstood or have an unintended effect when applied to special situations. All interpretations, clarifications and exceptions must comply with requirements of State or Federal laws or regulations.

1.3 Definitions

Access: Any rights the owner may or may not have to place or keep a driveway opening onto a road at a specific location. Generally access rights are a separate issue from condemnation and represent an administrative exercise of the State's police powers. Any questions regarding this issue need to be discussed promptly to avoid incorrect conclusions and delays.

Administrative Determination of Value: This is not an appraisal and therefore there should be a commensurately lesser degree of investigation and analysis required. At a minimum, the property should be inspected and the preparer should secure basic comparable sales data. Sales verification and deed research should not be necessary. It is therefore anticipated that this format can be completed in an abbreviated time frame, in order to permit accelerated negotiations. It should be noted that owner accompaniment is not required, but may be accommodated by the preparer/ valuer, depending upon the situation and time permitting. Source Section 24.102(c) of 49 CFR.

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

Appropriate/Applicable: Items which are required to provide a meaningful appraisal report. Architectural reports describe building layout and structure in depth while parking studies identify building use, exterior dimensions, operating hours, parking demand, entrances and loading area. Questions as to required elements should be addressed to the ROW Appraisal Section. In all circumstances include any element needed to make sense of the report.

Bona Fide Negotiations: The State's Eminent Domain law defines bona fide negotiations as consisting of an offer in writing by the condemnor to the prospective condemnee holding the title of record to the property being acquired, setting forth the property and interest to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated. State Case Law requires that all appraisal/non-real estate reports that were relied upon in establishing the just compensation be provided to the property owner at the initiation of negotiations. The offer letter incorporates a statement concerning the environmental status of the property and the estimated cost of remediation, as applicable.

Business: Any lawful activity, except a farm operation, that is conducted (a) primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing and/or marketing of products, commodities and/or any other personal property; or (b) primarily for the sale of services to the public; or (c) primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or (d) by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

Compensable: Those damages to the property that the owner may be entitled to compensation for. Items such as noise and dust that are typical in the construction are not compensable. Non compensable items also include loss of business, circuity of travel, placement of a center divider, etc. Other elements of damages may be compensable depending upon the circumstances. Specific questions should be addressed to the ROW Appraisal Section.

Comparable Replacement Dwelling: A dwelling which is determined to be:

- Decent, safe and sanitary.
- Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principle features must be present, particularly with regard to the number of bedrooms. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the District Office may consider reasonable trade-offs for specific features when the replacement unit is “equal to or better than” the displacement dwelling.
- Adequate in size to accommodate the occupants as per local municipal occupancy and in an area not subject to unreasonable adverse environmental conditions and is conforming to local Certificate of Occupancy requirements.
- In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment.
- On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools or greenhouses.
- Currently available on the market to the displaced person. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. In such cases, any requirements of the government housing assistance program relating to the size of the replacement dwelling shall apply.
- Within the financial means of the displaced person.
- A replacement dwelling is considered to be within the homeowner's financial means for a 180 day homeowner (which is a homeowner that has occupied the dwelling to be acquired for at least 180 days prior to initiation of negotiations) if the owners cost to acquire the replacement dwelling does not exceed the owner’s acquisition cost for his or her residential displacement dwelling (excluding any portion of the cost not directly contributed to the owners residency) and the full amount of the replacement housing supplement, including a payment made under housing of last resort. The owner may receive the full price differential up to the amount of the housing supplement, all increased mortgage interest costs up to amount of their outstanding old mortgage, and all reasonable incidental (closing) expenses, based on actual costs incurred.
- A replacement dwelling to be rented by an eligible displaced person is considered to be within his or her financial means if the tenant after receiving his or her tenant rent

supplement, including any housing of last resort payment, doesn't pay more in rent and utilities than he or she was previously paying at the displacement dwelling.

- In those cases where an individual or family is classified as low income by the U.S. Department of Housing and Urban Development's Annual Survey of Income Limits for the Public Housing and Section 8 Programs and was paying more than 30 % of their average gross monthly income for rent and utilities, an alternative calculation is required. In such cases 30% of their average gross monthly income is used as the base rent in calculating the rent differential supplement amount.
- For a tenant who paid little or no rent for the rental unit in the dwelling being acquired, the fair market rent (economic rent) is used, unless its use would result in a hardship because of the person's income or other circumstances.
- For an owner-occupant, the fair market rent for the displacement dwelling is used for calculating a rent supplement when the owner selects to rent rather than purchase. At no time will the rent supplement be greater than what was calculated for the owner housing supplement.
- (Reference: The U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits are updated annually and are available on FHWA's Web site at http://www.fhwa.dot.gov/realestate/ua/ualic.htm).
- For a person receiving government housing assistance prior to the displacement as a result of the State's acquisition of the rental unit, the displacee replacement dwelling will be considered within his or her financial means if the replacement rental unit does not cause the displacee to forfeit his or her government assistance, doesn't create any additional financial obligations upon the displacee and the rental portion paid by the displacee doesn't exceed 30% of the average gross monthly income if qualified as low income.
- For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in 49 CFR §24.402(b)(2). This procedure specifies a rent to rent calculation if the displacee does not qualify as low income. If the displacee qualifies as low income, then the base rent on the displacement dwelling will be 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under replacement housing of last resort. (49 CFR Part 24 Section 403 (d)).

Contribute Materially: During the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the District Manager determines to be more equitable, a business or farm operation had:

- Had average annual gross receipts of at least $5,000: or
- Had average annual net earnings of at least $1,000: or
- Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

If the application of the above criteria creates an inequity or hardship in any given cases, the Agency may approve the use of other criteria as determined appropriate.

Decent, Safe and Sanitary Dwelling: A dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Director, Right of Way, with the concurrence of the Federal Highway Administration or other Federal agency providing funding for a project. The dwelling shall be the following:

- Structurally sound, weather tight and in good repair;
- Have a safe electrical wiring system adequate for lighting and other devices;
- Have a heating system capable of sustaining a temperature of approximately 70 degrees;
- Is adequate in size with respect to the number of rooms, particularly bedrooms, and area of living space needed to accommodate the displaced person(s). The number of persons occupying each habitable room used for sleeping purposes shall not exceed that permitted by local housing codes or the policies of NJDOT. The NJDOT will follow the requirements for separate bedrooms for children of the opposite gender included in local housing codes. In the absence of local codes, the NJDOT policy is that no more than 2 children of the same sex will be permitted to share the same bedroom, and that no more than two adults shall occupy the same bedroom;
- There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and that contains a sink, bathtub or shower stall and a toilet, all in good working order and properly connected to an appropriate source of water and to a sewage drainage system. 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; Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress;
- Contain unobstructed egress to safe, open space at ground level;
- For a displaced person with a disability, the dwelling shall be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person. Reasonable accommodation of a displaced person with a disability at the replacement dwelling means the NJDOT is required to address persons with a physical impairment that substantially limits one or more of the major life activities. In these situations, reasonable accommodation should include the following at a minimum: Doors of adequate width; ramps or other assistance devices to traverse stairs and access bathtubs, shower stalls, toilets and sinks; storage cabinets, vanities, sink and mirrors at appropriate heights. Kitchen accommodations will include sinks and storage cabinets built at appropriate heights for access. The Agency shall also consider other items that may be necessary, such as physical modification to a unit, based on the displaced person's needs.

Displaced Person: Any person who moves from the real property or moves her/his personal property from the real property 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. 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.

Dwelling: The place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Dwelling Site: A land area that is typical in size for similar dwellings located in the same neighborhood or rural area. This definition ensures that the computation of replacement housing payments are accurate and realistic (a) when the dwelling is located on a larger than normal site, (b) when mixed use properties are acquired, (c) when more than one dwelling is located on the acquired property, or (d) when the replacement dwelling is retained by an owner and moved to another site.

Eminent Domain: If an agreement cannot be reached as a result of bona fide negotiations, - condemnation proceedings shall be initiated promptly.

Encroachment: (Trespassing) Using the lands of another property owner or the right of way without permission. Can be permanent (building, paving, etc.) or a temporary use (see Illegal Parking)

Fair Market Value Definition: "Fair market value" for eminent domain purposes has been defined by the New Jersey courts as "the value that would be assigned to the acquired property by knowledgeable parties freely negotiating for its sale under normal market conditions based on all surrounding circumstances at the time of the taking." State v. Silver, 92 N.J. 507, 513-14 (1983).

In 2003, the New Jersey Supreme Court cited a 2000 Appellate Division decision, in which "fair market value" was defined as what a willing buyer and a willing seller would agree to as of the date of the taking, neither being under any compulsion to act. Hous. Auth. of New Brunswick v. Suydam Investors, 17 N.J. 2 (2003); County of Monmouth v. Hilton, 334 N.J. Super. 582, 587 (App Div. 2000), cetif, denied, 167 N.J. 633 (2001). The Court in Hilton also said that the inquiry [into Fair Market Value] should not be limited to the actual use of the property on the date of taking but rather based on its highest and best use.

Farm Operation: Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

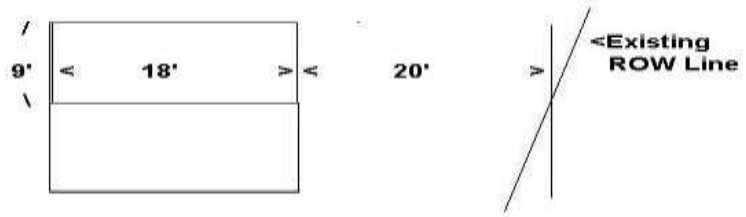
Household Income: Total gross income received for a 12 month period from all sources (earned and unearned) including, but not limited to wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full time students under 18 years of age. Household income does not include program benefits that are not considered income by Federal law such as food stamps and the Women Infants and Children (WIC) program. For a more detailed list of income exclusions see Federal Highway Administration, Office of Real Estate Services Web site: http://www.fhwa.dot.gov/realestate/ (FR 4644-N- 16 page 20319 Updated). If there is a question on whether or not to include income from a specific program contact the Federal Agency administering the program.

Highest and Best Use: The New Jersey Supreme Court has defined Highest and Best Use as set forth below, this definition is to be incorporated into all appraisal assignments. When preparing the appraisal, it is important that all four criteria are addressed. The appraiser must explain how each of the four criteria has been applied to the particular case.

"Highest and best use" is defined as that use of the property which is "1) legally permissible, 2) physically possible, 3) financially feasible, and 4) maximally productive. Hous. Auth. of New Brunswick v. Suydam Investors, 23 N.J. 2 (2003) Citing County of Monmouth v. Hilton, 334 N.J. Super. 582, 587 (App Div. 2000), certif. denied, 167 N.J. 633 (2001).

Incidental Expenses: The owner will receive payment for certain expenses incidental to the transfer of property such as recording fees, transfer taxes, costs for prepayment of any preexisting recorded mortgage and a pro rata share of prepaid property taxes.

Illegal Parking: Parking that is physically located in or uses part of the right of way. Example: Top parking stall has sufficient (20') clearance to maneuver. Lower stall maneuvering room crosses part of the diagonal right of way line making it illegal.



Initiation of Negotiations: The delivery of the initial written offer of just compensation, by the Department to the owner or the owner's representative to purchase the real property.

Just Compensation for a Tenant: Owner Improvement is the amount, which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater. No payment shall be made directly to a tenant-owner for any real property improvement unless: (1) the tenant-owner, in consideration for the payment, assigns, transfers and releases to the Department all of the tenant-owner's right, title and interest in the improvement; (2) the owner of the real property on which the improvement is located disclaims all interest in the improvement; and (3) the payment does not result in the duplication of any compensation otherwise authorized by law.

Mobile Home: Includes manufactured homes and recreational vehicles used as residences. Refer to 49 CFR Part 24, Appendix A, § 24.2(a)(17) for additional guidance pertaining to the use of mobile homes for replacement housing.

Negotiated Purchase: Every reasonable effort shall be made to expeditiously acquire real property by bona fide negotiations.

Non conforming: Those improvements that do not meet current Municipal standards. May be preexisting (grandfathered by virtue of existing before the code). It is important to address zoning standards and their impact on the property in relation to both the before condition and the proposed condition.

Nonprofit Organization: An organization that is incorporated as a non-profit organization under the laws of New Jersey or other State jurisdiction, and is exempt from payment of Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C.501).

Non-Real Estate Reports: Non-Real Estate (NRE) or Specialist reports cover unique real estate valuation issues such as building severance (partial demolition of buildings), architectural studies, machinery cost estimates and cost to cure estimates (replacement parking spaces, wells and septic systems). Cure reports are used to mitigate damages caused by acquisitions and are also used by the owner in planning and obtaining approvals for reconstruction or restoration of items damaged by the acquisition.

Owner: A person who owns legally or equitably a fee title, a life estate or is the contract purchaser of any such estates or interests; has an interest in a cooperative housing project which includes the right to occupy a dwelling; or any other interest, including a partial interest, which in the judgment of the District Manager warrants consideration as ownership.

Parking Safety issues: Identify spaces which are clearly substandard to industry accepted safety standards and would not be designed by a competent responsible parking specialist.

Real Estate Taxes: Owners of real property are responsible for real estate taxes until:

1. the date the State accepts possession of the property in accordance with the terms of an agreement or a right of entry; or
2. the State files a Declaration of Taking and deposits the just compensation with the Superior Court in condemnation cases.

Specifics regarding tax reimbursements to the owner are covered in the Titles Section.

Relocatee: Any occupant that is eligible for relocation assistance and relocation payments.

Small Business: A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of the payment for reestablishment expenses.

Summary Statement: The owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

- a statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining property shall be separately stated;
- a description and location identification of the real property and the interest in the real property to be acquired;
- an identification of the buildings and other improvements, including removable building equipment and trade fixtures, which are considered to be part of the real property to be acquired;
- and where appropriate, an identification of any separately held ownership interest in the property and a statement that such interest is not covered by the offer.
- a summary statement of any contamination on the site and the cost of remediation, if possible.

Surrender of Possession: No owner shall be required to surrender possession of the real property until either the purchase price is paid or the just compensation has been deposited with the Superior Court.

Surrender of Possession Prior to Payment: Should an owner agree to surrender possession of the real property prior to payment, the following clause shall be included in the agreement:

"The seller acknowledges that he/she understands that he/she is not required to surrender possession until such time that payment is made and hereby relinquishes that right and agrees to surrender possession of the property in advance of payment by or before the date herein specified".

Tenant: A person who has the temporary use and occupancy of real property owned by another.

Tenant Owned Improvements: If the Department acquires any interest in real property, it shall offer to acquire at least an equal interest in all buildings, structures or other improvements located upon the property, owned by a tenant, which: (1) it requires to be removed from the real property; or (2) it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term. Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located shall be considered to be real property for purposes of this section.

Uneconomic Remnant: The term uneconomic remnant means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the NJDOT has determined has little or no value or utility to the owner.

Unlawful Occupant: A person who occupies a property without having a property right, title or payment of rent or a person legally evicted, with no legal rights to occupy a property under State law. The New Jersey Department of Transportation's Director of the Right of Way & Access Management Division may, for good cause, consider such a person to be in lawful occupancy.

Utility Costs: Expenses for electricity, gas, other heating or cooking fuels, water and sewer as applicable.

Weiswasser Cases: Property valuation where the NJDOT provides a piece of replacement land to facilitate the cure. Requires consideration of the property with the additional land and consideration without the additional land. The report should reflect two costs, one with the additional land in place and one without the land in place. Damages to be paid to the owner are limited to those that would occur with the additional land added, even if the owner declines to accept the land and takes the equivalent value of the additional land as compensation.

Written Notice:

a. No person lawfully occupying the real property to be acquired shall be required to move from a dwelling, or to move a business or farm operation, with not less than 90 days written notice of the date by which such move is required.

b. Immediately upon the project's transmittal to the District office each owner will be notified in writing via certified mail that the Department is proceeding to acquire their property. Each notification will contain a copy of the booklet, "How Property is Purchased for Transportation Projects", which describes the various aspects of the acquisition program and an Individual Parcel Map (IPM). Source 24.102(b)

Zoning: A code of development standards set in place by municipalities to control land use. Zoning normally specifies setbacks, building size, development density (bulk requirements) and parking ratios. It should be noted that some zoning codes only address the bulk limits in that zone while a separate portion of the municipal code deals with parking ratios and "aesthetic" standards for development of a site over and above the zoning standards.

Section 2 Appraisal and Review

2.1.1 Overview

The Division of Right of Way & Access Management (ROWA), within the New Jersey Department of Transportation (NJDOT) utilizes Real Estate Appraisals, and Administrative Determinations of Value (ADV) to establish offers of just compensation for properties to be acquired or excess land to be sold or leased. The Division uses Non Real Estate (NRE) reports to aid in the mitigation of damages resulting from partial acquisitions of real property or to provide specialized valuations not typically performed by real estate appraisers.

Appraisals are prepared by ROWA staff or by qualified appraisal consultants. ADV reports are prepared by ROWA staff or by qualified consultants and approved by ROWA staff. NRE reports are normally performed by consultants hired by the ROWA from a pre-qualified list of NRE Specialists. Parking mitigation NREs may also be performed by the Design Consultant as a part of developing a project in consultation with ROWA staff.

Appraisal Reviews are used to evaluate appraisals and NRE reports for quality.

Appraisal Review assignments are performed by in house staff or by consultant appraisers hired by the Division from a pre-qualified list. All appraisal reviews, whether produced in-house or by consultants must be registered by ROWA staff to approve an appraisal for use as the estimated just compensation offer to owners.

2.1.2 Authority

The NJDOT is authorized by N.J.S.A. 27:7-22 et seq. to acquire lands or rights therein by gift, devise or purchase, or by condemnation in the manner provided in the Eminent Domain Act of 1971 N.J.S.A. 20:3-1 et seq. The NJDOT is also subject to the requirements set forth in the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended [42 U.S.C. §4601 et seq.] and the attendant regulations as set forth in 49 CFR 24. The NJDOT is authorized under an FHWA Programmatic Waiver to use Administrative Determinations of Value (ADV) where the estimated compensation is $25,000 or less in order to set what it believes to be just compensation as referenced in 49 CFR 24.2(a)(33) and 24.102(c)(2).

2.1.3 Organization Overview

The Division of Right of Way & Access Management's valuation responsibilities are divided between the District offices and Headquarters.

A. District Offices

District offices are assigned real estate appraisal specialists who function as Staff Appraisers and as Review Appraisers. The Districts can request the use of consultant specialists such as contract fee appraisers, contract fee reviewers and contract NRE specialists to assist with completing Projects through Consultant Order Requests (Appraisal, NRE & Appraisal Review).

Typically, Projects are assigned to a Project Team, which is supervised by a Team Leader (Realty Specialist 4) or other person assigned to assist with the valuation process for parcels on a project. This process may begin as early as initial scoping and continue until

an agreement is reached with the property owner or the matter is referred for condemnation.

B. Technical Support Bureau Appraisal Section

The Appraisal Section in the Headquarters' Technical Support Bureau is responsible for guidance and technical support for the Division and the Department for appraisal and valuation related issues. The Appraisal Section reviews appraisal plans and proposed consultant contracts, conducts quality reviews and has audit oversight of appraisals and NRE services. The Appraisal Section provides contract administration for valuation and NRE consultants. The Appraisal Section upon request will also obtain Access Impact Assistance reports or other valuation services for the Office of Access Design (OAD).

C. Closing Bureau Litigation Support Unit

The Litigation Support Unit provides valuation management services similar to the District Offices once a case has reached the condemnation phase. The Litigation Support Unit assists the assigned Deputy Attorney General (DAG) from the Division of Law in preparation of the case for condemnation.

D. Responsibility for Valuation Consultant Order Requests

The District Offices request consultant valuation services during the initial phases of a project through the negotiation phase. The responsibility for ordering condemnation update appraisals, appraisal reviews and NRE reports shifts from the District Office to the Litigation Support Unit once a case is processed for condemnation. District Office staff may be requested to provide support in resolving valuation issues that arise during the condemnation process. In rare circumstances, the District Office may need to resubmit an offer on a parcel due to issues found during the condemnation process. In that circumstance, the District Office will resume oversight, if needed, of the appraisal services for that parcel until the case is finally settled or returned to the Litigation Support Unit for continued condemnation.

E. Management of Valuation Services

No person shall attempt to unduly influence or coerce an appraiser, a review appraiser or an NRE specialist regarding the valuation process. Supervision of appraisal staff shall be as set forth in 49 CFR 24.102(n)(2).

F. Legal Issues

Legal guidance is provided by the Division of Law, Department of Law & Public Safety on any appraisal or NRE issues involving access, compensable damages, unity of use or any other legal issues regarding valuation whenever these issues may arise.

2.2 Project Valuation Responsibilities

This section provides an overview of the basic steps involving the valuation process as it relates to a typical Right of Way Project. The Division may be requested to undertake work outside of the typical project framework. This may involve any of the right of way services the Division provides including but not limited to, performing preliminary estimates and obtaining appraisals and/or appraisal reviews for an outside agency. To the extent possible, these atypical assignments are to be undertaken as closely as possible within the project format set forth herein. Regardless of the source of an assignment, all valuation services must be completed in compliance with the standards in this manual.

2.2.1 Preliminary Engineering Phase

The Right of Way District office undertakes the following tasks upon being assigned a Preliminary Project:

- Initial Scoping
- Map Reviews
- Prepare Acquisition Estimate
- Prepare Relocation Estimates
- Initial planning for valuation and NRE Report needs.

The District Office may submit Consultant Order Requests to engage the services of Valuation consultants to assist in the scoping and preliminary engineering phases of a project. These requests are meant to assist in project planning and are separate from any advance acquisition requests.

2.2.2 Project Acquisition Phase

The District Office will obtain appraisals and other valuation services for projects in conformance with this Manual.

A. Map Review

The District should identify and address any mapping errors and technical right of way related issues which create constraints for the project as early in the process as possible. Map issues identified after the case has progressed to condemnation will be initiated by the Litigation Support Unit unless the changes are sufficient to require a return to negotiations, in which case the District Office will resume map oversight for the parcel.

B. Initial Valuation Needs Planning

The District Office assigned team or consultant, in consultation with the Review Appraiser, shall evaluate the valuation needs (appraisal, appraisal review and/or NRE) for the Project. Prospective assignments to valuation and /or NRE consultants shall be based upon geographic competency (appraisal services), quality of previous work, complexity of assignments, licensure required and the consultant's expertise and skill level. Those consultants that are deemed to be qualified for a particular assignment will be contacted to determine their availability for assignments, as well as their ability to deliver the work product in accordance with the project schedule. Real estate appraisers (staff) shall likewise be selected based on their availability, individual experience/capabilities and licensure needed to complete the assignment.

The valuation needs assessment (appraisal, appraisal review and NRE) for a project shall result in a formal "Appraisal Plan". The appraisal plan is reviewed and approved by the Realty Specialist 4 and the District Program Manager for all District Office projects. All appraisal plans require the approval of the Appraisal Section Supervisor. Appraisal plans should consider the following elements:

- When ADV's are to be used, the "Appraisal Plan" shall indicate which appraisers would provide backup appraisals in the event negotiations based on the ADV fail.
- In determining what appraisal and NRE services are appropriate, the assigned team must take into account all acquisition impacts to the property to avoid the need for revised reports.

- The Scope of Work should reflect all issues which are required for a complete valuation or NRE report. (See "Ordering Appraisal and NRE Reports" below.)
- Project timing is a critical element of valuation planning. Some considerations in the analysis are: assignment due dates, total of number of assignments given to any one provider from all projects, types of valuation assignments, relationship between parcels, level of expertise and licensure required and availability to do the work required.
- The appraisal plan should seek to minimize the total time required to complete the valuation phase of the project except where project timing is not critical. Limiting the number of assignments to any single provider is one method to decrease the time required to obtain the reports. Bundling assignments into larger assignments to save costs should only be considered where longer time frames for completing assignments do not significantly increase the risk for substantial project delay costs.
- As part of its planning, the District Office should consider assignments to less experienced appraisers and NRE consultants where acquisition value is nominal and project schedule provides time so as to increase the experience level of appraisers and NRE consultants. The District Office reviewers and the Appraisal Section Supervisor are available to assist newer appraisers during the initial assignments.

C. Ordering Appraisal and NRE Reports

Upon approval of the appraisal plan, and Workable Relocation Assistance Plan (WRAP) the Realty Specialist 4 or Realty Specialist 3, working with the Staff Review Appraiser, schedules on site meetings with consultants and/or staff appraisers to obtain work commitments and review the scope of work needed for each parcel. If there are any changes in the scope of work from the appraisal plan, they must be reflected in the Staff Assignment or Consultant Order Request. In the event that a full service right of way consultant is tasked to assist in obtaining consultant services, the Realty Specialist 4 assigned to oversee the project will be responsible for ensuring that the proposed Consultant Order Requests meet the Project schedule needs and that the appropriate scope of work is addressed.

1. Scope of Work - The Scope of Work is to be mutually agreed to by the NJDOT and the person performing the assignment. The term "Scope of Work" defines both the general parameters of the assignment and specifically for an appraisal assignment; it describes the level of research and work which goes into appraisal or appraisal review reports. The scope of work for an assignment should be developed cooperatively by the person performing the assignment and a NJDOT official who is competent to both represent the NJDOT's needs and to respect valid appraisal or NRE practice.

    a. For appraisal assignments, the scope of work statement should include the purpose and/or function of the appraisal if different from a standard eminent domain report, a definition of the estate being appraised if it is not fair market value, and any assumptions and limiting conditions affecting the appraisal that are not standard for NJDOT appraisals. If this is a "land only" appraisal, or directs a report that does not consider all three approaches, the scope of work must state that as well. The Scope of Work must also set forth any special conditions such as consideration of one or more NRE reports, realty/personalty reports, legal instructions, special dates of value such as the date of complaint, etc. Scope of work for appraisals is addressed in 49 CFR Section 24.103, 24.102, and Appendix

A to Part 24—Additional Information and in the latest edition of the Uniform Standards of Professional Appraisal Practice (USPAP).

b. For NRE reports, the scope of work should address any elements of the mitigation or valuation service that would be necessary to obtain a workable NRE report along with the level of research needed to be complete a competent report. For mitigation reports, this could include considering the use of adjoining NJDOT property, truck maneuvers around the site, locations of loading docks, specific access instructions from the Division, specific date of value, etc. NOTE: The use of NJDOT property as part of a mitigation can only occur with the approval of the Relocation and Property Management Section as discussed in Section 4.

c. Regardless of the type of report, the scope of work must specify the type of work needed for the assignment. Where a specific service is needed that is not typically part of the assignment, such as consideration of a property in an interim condition or as of a specific date, that consideration must be included in the scope of work to avoid having to redo the report and creating project delays.

2. Due Dates - Due dates should be based upon the project schedule and the time typically required to complete reports. Issues such as complex assignments and relocations may indicate a need for an early start on appraisals to accommodate complex valuation or acquisition issues within the project schedule.

- In obtaining due date commitments from staff and/or consultants, the valuation expert should agree to the due date and be aware that late delivery ("slippage") is discouraged.
- For projects with g sufficient lead time, isolated instances of short term lateness, for valid reasons, are acceptable without formal sanction. Should instances of lateness become a pattern, the appraiser/consultant is to be advised in writing of the unacceptability of such service. Copies of written notifications are to be retained for the purpose of staff performance evaluations and the annual consultant evaluations.
- The District Office or the Unit originating the assignment is responsible to make sure that the assignment is done within the project schedule. If, during the follow up process, it is determined that the delivery date will not be met due to substantial non performance of the appraiser/consultant, written notification of the intent to cancel the contract shall be sent immediately with a copy forwarded to the Appraisal Section Supervisor. Notification shall indicate that in such instances, consultants risk loss of payment for work already done on open parcel assignments, in addition to loss of pre-qualified status. Where the Consultant does not provide the service required within a reasonable time after notification, the Appraisal Section Supervisor will be notified that the reports have not been received and will take any required corrective action up to and including cancellation of the report. The District Office shall not cancel contracts without concurrence from the Technical Support Bureau. Information from each step in this process shall be entered into the Right of Way database and retained for annual ratings.

3. Staff Appraisal Assignments - Staff appraisal assignments are issued within the District or the unit handling the Project by the Realty Specialist 4 or Realty Specialist 3 or Staff Reviewer. They are to contain all relevant information required for the Staff

Appraiser to competently complete the assignment. This includes any information regarding access changes and legal instructions.

4. Consultant Appraisal Order Requests - Appraisal Order requests for consultants must state the full scope of the work required as described above and include the due date. The appraisal order should also contain justification for negotiated fees and where the assignment exceeds $5,000 the order should provide a breakdown of the cost in the form of a quote in hours. Appraisal consultant assignments and due dates are to be maintained in the Right of Way database.

5. General Appraisal Assignment Guidance - Audit appraisals are required where the compensation exceeds the limits shown under Section 2.4 A. The Division of Law should be consulted in those appraisal situations involving questions of a legal nature. In the event that an NRE report is or will be needed, the Appraiser must work with the NRE consultant to ensure that the proper valuation issues are addressed. While an Access Impact Assessment report will normally be a separate item, the input of the Appraiser on the cost effectiveness and reasonableness of an Access Impact Assessment report is appropriate to avoid paying more to mitigate than the economic damages are worth to the property.

Appraisers shall not be instructed to limit their evaluations merely to valuing the land and impacted site improvements; unless they fully agree that the existing improvements are not adversely impacted by the acquisition and thus do not need to be valued. If the appraiser is undertaking a "land only" report and the appraiser's research indicates the need for more than a "land only" report, the appraiser must contact the unit which originated the assignment for a supplemental order expanding the scope of work.

6. Consultant NRE Order Requests - NRE order requests for a consultant NRE must state the full scope of the work required and must include written proposals from the consultant with each NRE order. The proposal is to include a breakdown of tasks with lump sum costs based on hourly rates. The CPM overhead rate is not used by the Division and the proposal costs should be based on lump sum or hourly rates that reflect the total charges due the consultant. The proposal is to be reviewed by the unit originating the assignment to assure that the consultant fully understands the scope of the problem to be addressed and any legal and/or regulatory implications and the extent of the information to be contained within the report. Guidance from the Division of Law should be sought in those situations involving questions of a legal nature. The NRE consultant is expected to work with the appraiser in developing his/her report. NRE consultant assignments and due dates are to be maintained in the Right of Way database.

7. Staff Appraisal Review Assignments - Staff appraisal review assignments are issued within the District office or the unit handling the project by Realty Specialist 4 and are to contain all relevant information required for the Staff Reviewer to competently complete the assignment. This includes any information regarding access changes and legal instructions. Staff appraisal review assignments and due dates are to be maintained in the Right of Way database.

8. Consultant Appraisal Review Order Requests – Consultant Appraisal Review Order requests must state the full scope of the work required. Special attention should be paid to unusual circumstances, such as consideration of a non-real estate report, departure from standard practice, or elements required to satisfy legal requirements. Guidance from the Division of Law should be sought in those situations involving questions of a

legal nature. Consultant assignments and due dates are to be maintained in the Right of Way database.

9. Review Assignment Guidance - In the event that an NRE is or will be needed, the scope of work must provide for the appraiser to comment on the strengths and weaknesses of each NRE report used for the assigned parcel. In the event that more than one appraisal is obtained, the Review Appraiser must evaluate and explain which one of the appraisal reports is best supported by market data and analysis and thus recommended to support the estimate of just compensation offer to the owner.

2.2.3 Submitting Consultant Order Requests

Consultant orders are to be submitted in the approved format and must contain a scope of work which covers the nature of the acquisition and the valuation or NRE problem. The scope of work from the Appraisal Plan may be used for the Consultant Order if it remains unchanged. Changes or modifications to the scope of work since the Appraisal Plan must be reflected in the scope of work section for the Consultant Order. The Consultant order forms the basis for the contract. If the Scope of Work is not properly defined the consultant may not provide the correct service, creating delays and contracting issues. Consultant orders are generated by the District Office during initial negotiations and by the Litigation Support Unit during condemnation and forwarded to the Technical Support Bureau for approval and issuance of consultant contracts from Headquarters. Requests made by the assigned DAG for condemnation related work or special services will be processed by the Litigation Support Unit and by the District Office if associated with the negotiation phase.

The negotiation of fees and compensation will be undertaken by the District Office for negotiation phase parcels and by the Litigation Support Unit for condemnation phase parcels. While a DAG is expected to participate in the determination of a scope of work for the condemnation related appraisal and NRE reports, only the Division is authorized to undertake contract commitments and to negotiate fees with consultant valuation and NRE experts. All fees are subject to approval by the Technical Support Bureau and the Director in accordance with NJDOT procedures and policies.

A. Headquarters Consultant Order Request Processing

Upon review and acceptance of the Consultant Order Request from the District Office or the Litigation Support Unit, the Appraisal Section Supervisor prepares a consultant contract and a Department Action to authorize the expenditure of funds. This package is submitted to the Manager of the Technical Support Bureau for review and upon acceptance, the Bureau Manager submits the package to the Director of the Division of Right of Way & Access Management for final approval.

B. Consultant Acceptance of Order

The consultant agrees to the terms of the contract by signing and returning the executed acceptance copy. The contract represents the full and complete terms. No payment can be made for any work that does not comply with the contract terms. The consultant cannot proceed with his/her assignment until they have executed and returned the contract. The contract process commits funding on eh part of the Department. Work done without a contract in place is strictly at the risk of the consultant. The Department does not recognize oral contracts and no funding is obligated until a contract is approved internally within the Department.

1.2.4 Report Delivery

All reports, whether prepared by staff or consultants, must be submitted in the format specified by the NJDOT and are to be signed by the individual preparing the report and delivered as specified in the contract, ready for immediate use. Where electronic delivery is specified, the electronic report shall contain a signature. The NJDOT will treat the initial report, together with any corrected versions as drafts upon receipt. Upon proper review and acceptance, the final corrected version will become the final product. At that time the valuation specialist or NRE consultant will be notified of acceptance of the report and requested to deliver properly bound copies of the report in triplicate to the District Program Manager or Litigation Support Unit unless the assignment indicates another addressee or other amount of bound copies.

2.2.5 Report Review

All Appraisal and NRE reports, regardless of value must be reviewed and accepted by the NJDOT. ADV reports do not require a formal review, however, each must be approved/registered by a person familiar with the facts behind the valuation and competent to determine if the estimated valuation or mitigation compensation is reasonable.

A. Initial Review for Completeness

Each report will receive an initial review upon receipt to determine if it meets the basic criteria, relevant standards and is complete. For pre-condemnation reports, an Appraiser II is normally assigned to the initial review process, regardless of whether the final review will be conducted in-house or by an outside fee reviewer. The District Office will complete this initial review within ten (10) days of receipt of the report. On or before the tenth day, the District Office will either accept the report as substantially complete for payment purposes or reject the report with a written explanation of the non conformity. This initial review period is for "New Jersey Prompt Payment Act" compliance purposes only and is not a substitute for a formal review of the report. Acceptance in an initial review does not relieve the report provider of the responsibility to make corrections identified later in the formal report review process.

B. Formal Review

The formal review process will be carried out in accordance with NJDOT Standards provided in Section 2.7. In the event that no appraisal is accepted by the Review Appraiser or there is no appraisal which, in the opinion of the NJDOT, properly reflects just compensation, the situation should be reviewed with the Appraisal Section Supervisor to determine the next course of action.

C. Formal Reviews Prepared for Local Aid Projects

For Local Aid Projects, when the Division undertakes to prepare Reviews on behalf of a local unit, the Reviews will be treated as if they were internal reviews and retained within the Division for audit purposes. A letter indicating the outcome of the review will be prepared for the use of the local unit in place of the actual Review document.

D. Corrections, Revisions, and Additions

When correction or revision is necessary as a result of the review or other changes, the appraiser or specialist shall furnish corrected, revised or supplemented pages or portions of the report for attachment to the copies already delivered. Where reports are submitted electronically, the revised report shall be submitted in whole. Changes

initiated by the appraiser or specialist must be delivered through regular channels and accepted by the Division as a formal revision of the original report.

2.2.6 Processing Consultant Payment Requests

The consultant specialist must utilize the official NJDOT payment voucher (invoice). Consultants typically submit the signed invoice for payment when conveying the initial report. Invoices will not be processed until after the initial review process is completed. Partial payments are not made EXCEPT where the contract stipulates otherwise or where the assignment is cancelled prior to completion and the partial work is to be paid for or where minor revisions due to map changes are made for a supplemental fee. Testimony services are generally billed separately from the contracted fee for the valuation/NRE service based upon the contract specified rate for testimony.

2.2.7 Project Assigned to a Full Service Right of Way Consultant

Where a consultant is assigned a Project or a portion thereof, the consultant shall conduct those functions assigned under the terms of its contract in accordance with this Manual. The Realty Specialist 4 and the Staff Review Appraiser retain responsibility to oversee the Project functions undertaken by the right of way Consultant. Decisions to commit State money (actual selection of appraisers, registration of appraisals and ADV reports, fee negotiations, settlement amounts, etc.) can only be made by Division officials authorized for that activity. Consultants are not authorized to determine the amount of or approve the expenditure of State funds.

2.2.8 Registration of Case

All offers made in the Acquisition Process are based on the Division's estimate of just compensation and must be based on a registered appraisal or an ADV approved by a Division official. For appraisals, the Registration must be based on an accepted and approved appraisal as determined during the Review Process described in Section 2.7, upon which the NJDOT bases its estimate of just compensation as required by Section 24.102(d) of Part 24 of 49 CFR. The approval of an ADV by a NJDOT official is considered to be a Registration for the purpose of providing an estimate of just compensation for the acquisition process. An ADV has special requirements as discussed elsewhere.

The official who registers the approved appraisal will normally be an Appraiser II. Under limited circumstances a higher level Division official with sufficient experience and understanding of the process to perform a fair and proper determination of the estimate of just compensation may register the approved appraisal instead of an Appraiser II.

Administrative Determinations of Value should be approved (registered) as the Division's Estimate of just compensation by the Staff Review Appraiser or Realty Specialist 4. An appraisal review is not required.

Upon registration (or approval of an ADV), the Division will proceed promptly to acquire the property by negotiation in accordance with the Section ___ (Acquisition and Relocation/Property Management) [see 49 CFR Section 24.102(a) and (d)].

2.2.9 Pre Condemnation Revisions and Report Updates

If information presented by a property owner, or a material change in the character or condition of the property or proposed acquisition occurs, which indicate the need for changes to the appraisal and/or NRE information, or if a significant delay (dependent

upon market conditions) has occurred since the time of the appraisal(s) of the property, the Division will have the appraisal(s) and if needed NRE(s) updated or obtain new appraisal(s) and if needed NRE(s) to reflect the changed conditions or elapsed time as set out in 49 CFR Section 24.102(g).

Delays created by a property owner during negotiations do not necessarily create the need for an update provided that the report was up to date and appropriate at the start of negotiations and that there are no significant changes to the conditions that would otherwise require an update. This decision should be reviewed with the DAG assigned to the District.

Updated reports may not be required in those cases where:

- The original consultant and property owner are unchanged,
- The real estate has undergone no significant change since the original report,
- The time frame between the original valuation and the complaint date is not unreasonably long for the type of real estate and market conditions involved
- Only minor change has been made to the acquisition and
- No significant change in the original value estimate is indicated by the appraiser.

If these conditions apply and the appraiser is satisfied that despite the revisions her/his value estimate remains appropriate, the appraiser may prepare an updated and expanded transmittal letter referencing their original report, definition of value, date of value estimate, property rights appraised, approaches used, reconciliation, value conclusion, scope of investigation and analysis involved in determining the particular circumstances occurring during the intervening time period and a new certification and any additional qualifying/limiting conditions or underlying assumptions.

In the event the appraiser's investigation supports a significant change in value, regardless of the time period intervening, a full, updated appraisal report shall be secured using the process set forth above.

Where circumstances indicate that the NJDOT would be better served by an entirely new report, the Realty Specialist 4 in consultation with the Review Appraiser will undertake to obtain a new appraisal report in accordance with the Manual.

Staff Appraisal assignments or Consultant Order requests required for updated reports pre condemnation are to contain an explanation of the revised work or need for a new appraisal and are processed in the same manner as set forth previously. Where consultant fees are negotiated, those negotiations should also consider the work already done in the initial report and the amount of additional work required. The Consultant Order Request should have the appropriate scope of work and justification for consultant fees.

2.2.10 Pre Condemnation Update Offer of Just Compensation

If the NJDOT determines that a change in the purchase offer is warranted as a result of the elements in Section 2.2.9, the NJDOT will promptly reestablish just compensation and offer that amount to the owner [49 CFR Section 24.102 (g)].

2.2.11 Post Condemnation Update Requests

Upon submission of a case for condemnation, the oversight for valuation and NRE consultants shifts from the District to the Litigation Support Unit which will order updated appraisals, appraisal reviews and NRE reports required for condemnation in accordance with the Consultant Order process and standards set forth previously, acting in place of the Project Team for this function. The Litigation Support Unit and the Appraisal Section assists the assigned DAG with valuation issues in litigating the condemnation case. The selection of the appraiser(s) and NRE specialist(s) for the updated report(s) will be made by the Litigation Support Unit in consultation with the assigned DAG. The Litigation Support Unit and not the DAG is responsible for obtaining contract commitments from consultants and the negotiation of consultant fees.

The District Office remains involved in the valuation process in an advisory and assistance role where appropriate. Examples would be conducting the review of NRE reports by the District's engineering witness and background discussions by the District's reviewer with the reviewer assigned for the condemnation phase (if different from the original assignment). The District remains responsible for any corrective negotiations that may be determined to be necessary to meet bona fide negotiations. Relocation efforts remain the responsibility of the District even during condemnation.

The appraiser(s) and/or (NRE) specialist(s) will submit draft report(s) directly to the Litigation Support Unit in accordance with instructions specified in the contract. Drafts will only become final work product upon acceptance by the Division.

The Litigation Support Unit representative(s) will coordinate with the designated fee or staff reviewer, NRE specialists and the assigned DAG, as well as the original reviewer to ensure that any legal requirements have been considered within the report.

An initial review for completeness will be conducted by Litigation Support Unit staff at the same time as the report is being formally reviewed by the assigned Staff or Consultant Fee Reviewer. Updated or new reports should not be registered until they are reviewed and approved by the DAG assigned to the case.

The assigned DAG will review the materials and advise the Litigation Support Unit to re-register the appraisal report as appropriate. Upon notification that the Department has accepted the report the appraiser(s) and NRE consultant(s) will provide the Litigation Support Unit with the required number of bound copies of the appraisal(s) and NRE(s) which the DAG will distribute to the property owner and Condemnation Commissioners in accordance with the New Jersey Court rules.

The assignment or consultant contract will specify how many copies of the finalized accepted report the appraiser or NRE consultant will supply as well as a set fee (where applicable) for any additional copies that may be needed at a future date.

The necessity for additional court deposits shall be predicated upon a consultation between the assigned DAG and the Legal Processing Realty Specialist 3.

2.2.12 Miscellaneous Valuation and NRE Service Requests

On occasion consultant Appraisal and NRE services will be needed outside of the normal Project framework. The person assigned to oversee or liaison with the Special Project will request Staff and/or consultant services using the standard Appraisal and NRE Order process set forth in Section 2.2.1 et seq. All reports must adhere to the relevant standards and requirements found within this Manual.

2.2.13 Reports to be Provided to the Property Owner

The property owner shall be provided a copy of each approved appraisal report or ADV report along with any NRE report for the parcel that the Division receives during the negotiations phase of the acquisition process. Generally, if a report is not approved by the reviewer, the owner must still receive a copy in the pre condemnation phase of the acquisition. The assigned DAG should be consulted to determine if the unapproved report is exempt from distribution to the owner or if some form of explanation regarding the unapproved status is appropriate to be provided to the owner with that report.

In the event of a condemnation, the owner is given copies of the approved and registered Appraisal and NRE reports which the Division relied upon in estimating just compensation. Other reports obtained during the condemnation phase which was not relied upon for valuation are not provided to the owner. Questions about this process are to be discussed with the assigned DAG.

2.2.14 Presentation of ADV Offer to Owners/Agents

Administrative Determinations are presented directly to the owner/agent and the offer letter is to reflect that the value is set on an ADV instead of an appraisal.

2.2.15 Owner's Request for an Appraisal (ADV Cases)

If the owner requests an appraisal for a settled ADV case, the District Office should order an appraisal for presentation to the Owner/Agent.

2.2.16 Interagency Administrative Determinations of Value

Where the Department is providing an estimate of value to another state agency or similar body, and the land to be transferred is not to be acquired through eminent domain, the Division may prepare an estimate to support that transaction in a format similar to a standard ADV in an amount in excess of $25,000, to include the level of documentation requested by the receiving agency. This process is limited to intergovernmental transfers and is used in lieu of an appraisal where the agencies agree that an estimate method is sufficient for the transfer.

2.2.17 Administrative Determinations of Value in Condemnation

If a settlement cannot be reached using an ADV, or the owner requests an appraisal with a settlement, the District Office will request an appraisal which will then be presented to the owner. If continued negotiations with the appraisal are unsuccessful, the case will proceed through the normal condemnation process using the appraisal. The ADV cannot be used in place of an appraisal when condemnation is undertaken.

2.2.18 Appraising Green Acres, Farmland and Conservation Restrictions

Appraisal reports which are needed for Green Acres or conservation restricted lands should be obtained from consultants who are on the Green Acres approved list as identified in the Division qualified appraisal list. Likewise, preserved farmland appraisals should be obtained from SADC approved appraisers as noted on the Division qualified appraisal list.

2.2.19 Appraisals required per parcel

One appraisal is obtained for each parcel or group of parcels that form a functional entity unless any of the following exceptions apply:

- The project is of such a critical or accelerated nature that the Division determines that multiple appraisals will help to assure completion on schedule.
- The Division deems that the acquisition is of a complex nature, requiring an additional appraisal.
- A staff appraiser prepares an appraisal as a secondary report to a consultant appraisal in order to gain experience. Caution should be exercised in using this option to ensure that this second report does not create an excessive burden to the Project schedule or exceed the staff appraiser's license or certification.
- Two separate appraisal reports are required where the just compensation exceeds $1,000,000 for an entire acquisition or $500,000 for a partial acquisition.
- Two separate appraisal reports are required where the just compensation exceeds $250,000 for a Green Acres regulated parcel. Additional reports will also be obtained when required by other regulatory bodies as part of their approval process.
- An appraisal is not required where an ADV has been performed and accepted by the Owner and the case has been settled unless the Owner requests an appraisal.

2.2.20 Appraisals for Dedications and Donations

Donations: An Owner may donate property, but must be informed of his right to compensation. Appraisals are not required where an Owner donates the property and releases the NJDOT from the obligation to provide an appraisal. This release from the appraisal obligation must be in writing.

Dedications which result from an exercise of police power such as zoning approval conditions or developer dedications under the access code are not considered takings and do not require compensation or appraisals.

2.3 Valuation Management

2.3.1 Consultant Pre-qualification List

The Appraisal Section Supervisor, Technical Support shall maintain a list of qualified fee appraisers and NRE specialists. As updates occur, copies of this list should be provided to the Director, the District offices, Division of Law, and the NJDOT's Consultant Selection Committee (CSC).

2.3.2 Consultant Eligibility for Pre-qualification List

In order to be added to or remain on the pre-qualified employment list, each Consultant Service Provider must meet all State laws, rules and regulations governing continued employment with the State. In addition, Consultant Providers must be familiar with and adhere to the Division Appraiser and NRE Retention Policy.

The Consultant Selection Committee considers the recommendations of the Technical Support Bureau and approves consultants based on comparative evaluations of their professional/technical qualifications by the Division. Applicants for consultant appraiser status must possess a general or residential certification and should have demonstrated

experience in condemnation appraisal and expert testimony. NRE consultants must be licensed or certified in their discipline and have documented education and experience in their particular discipline.

Upon filing the application and providing supporting documentation, the applicant is interviewed by the Appraisal Section Supervisor. The interview should include evaluation of the consultant's staffing and support resources. An effort must be made to confirm the references, as well as any experience or education not fully documented. Following the interview and investigation, the Appraisal Section Supervisor submits a recommendation on the application to the Director.

Upon approval by the Director, the supporting documentation is sent to the Consultant Selection Committee for concurrence by the Commissioner. Appraisers/NRE specialists are given tentative status until they demonstrate competency with all aspects of the assignment and initial assignments will be of a less complex nature. In the event assignments are unacceptable and efforts at achieving correction are unsuccessful, removal from the list may be considered. If an initial application is not recommended for approval and the Consultant Selection Committee concurs, the applicant is notified in writing and given the basis for the decision.

Removal from the list shall be based upon reasonable grounds and applied in a manner which is not discriminatory or arbitrary. A consultant may be removed for failure to be licensed/certified (where applicable), or for such other reasons as may be established by policy.

2.3.3 Review of Prequalified Consultant List

The consultant appraiser/NRE specialist list shall be reevaluated on an annual basis by the Appraisal Section Supervisor, who shall remove those consultants who do not meet the qualifications. The Supervisor will review the critiques submitted by the review appraisers of the work submitted by consultants during the course of the year.

In instances where a consultant has not completed any assignments for a five year period, he/she shall be required to update the experience and qualifications statements. Consultants who do not respond to requests for license updates, "pay to play" certifications, or contact documentation will be removed from the prequalified list.

2.3.4 Consultant Fee Guidance

Fees will be in accordance with the current policies of the Department.

The fee for an assignment is intended to represent fair payment for the services rendered. Among the factors to be considered when using the fee schedule are:

- Complexity of the assignment and skills necessary to effectively complete the job.
- Number of parcels assigned on a project and degree of similarity or variation.
- Quantity of information provided to the appraiser, versus the need to gather information independently.
- Type of report and supplemental information required.
- Time constraints imposed by the project.

For condemnation update reports, the amount of the fee shall represent a fair payment for the services to be performed and be commensurate with the scope of work for this

assignment. Considerations include the length of time since the original report, any additional research or work required, etc.

2.3.5 Additional Division Staff Functions

A. Division Report of Review Statements and Appraisals

District office staff will make the appropriate entries in a timely manner to the Right of Way Database as to appraisals received and registrations made.

Additional Functions for Staff Reviewers

The review appraiser may provide valuation services for functions other than property acquisition. This will be coordinated by the District Program Manager or by the Technical Support Manager for Headquarters related functions.

B. Preparation of ADVs

Staff appraisers and staff review appraisers may prepare and approve ADV reports. Consultant Appraisers may prepare but not approve ADV reports.

C. Valuation in Support of Relocation and Property Management

Staff reviewers (and staff appraisers) may provide valuation services needed in support of relocation and property management activities as follows:

- Value estimates, or reviews of appraisals of surplus property;
- Estimate of market rent to be charged in lease of NJDOT owned property;
- Estimate of economic rent of an owner-occupied dwelling in support of a rental replacement housing payment determination for relocation.
- "Carve outs" or allocations of the appraised value for major exterior attributes or excess land etc. For the determination of the "base value" to be used in calculating relocation replacement housing payments.

2.4 Quality Control

Quality Control in the valuation process is primarily the responsibility of the staff/consultant service providers who are providing the work product. It is expected that each consultant has in place and will maintain a quality control program. The Appraisal Section Supervisor monitors consultant compliance with this requirement.

It is the responsibility of the District Program Manager to implement and actively comply with the District Operations Quality Assurance Plan and to require adherence to the Uniform Standards of Professional Appraisal Practice as well as all related Federal Regulations and the State Eminent Domain Statute.

The Appraisal Section Supervisor is to be provided with copies of all District communications to consultants regarding inadequate performance. Each review is to be accompanied by a rating of the appraisal work product. These findings are utilized to highlight areas needing improvement and to develop staff and consultant training programs based upon an ongoing assessment of corrective action requests. The Appraisal Section Supervisor, in conjunction with the District Office will conduct at least one information session annually for consultants, covering changes in regulatory procedures, legal guidelines and appraisal format requirements. Individual training

and/or orientation will be provided as needed, with particular emphasis on those consultants performing initial assignments.

On a regular basis, the Appraisal Section Supervisor shall select one or more experienced District office Reviewing Appraisers which will comprise a quality review team. The FHWA Right of Way Officer may, at her/his discretion, participate as a member of the team. The team shall perform a quality review of selected cases within each of the District offices and issue a report as to their findings. Corrective action will follow as determined necessary by the findings of the report. In the event the FHWA Right of Way Officer does not participate as a member of the team, a copy of the report will be provided to the FHWA Division Office.

2.5 General Valuation and NRE Background Information

This general information applies to Appraisals, NRE reports, ADV's and Appraisal Review Reports. The person performing the valuation or NRE report should take these general standards into account as well as the individual specific standards for Appraisals, ADV's, NRE's and Appraisal Reviews which follow later in this Manual.

A. Consultant Acceptance of Contract

The consultant agrees to the terms of the contract by signing and returning an executed acceptance copy. The contract represents the full and complete terms. No payment can be made for any work that does not comply with the contract terms. The consultant cannot proceed with his/her assignment until they have executed and returned the contract. The contract process commits funding on the part of the Department. Work done without a contract in place is strictly at the risk of the consultant. The Department does not recognize oral contracts.

B. Consultant Payment Request Process

The consultant specialist will utilize an official NJDOT payment voucher (invoice) when submitting a request for payment. Typically consultants submit a signed invoice for payment when conveying the initial report. The invoice will not be processed until after the initial review process is completed. Partial payments are not made EXCEPT where the contract stipulates otherwise or where the assignment is cancelled prior to completion and the partial work is to be paid for or where technical corrections are made and a supplemental fee is to be paid. Testimony services are generally billed separately from the fee contracted for the valuation/NRE service at the rate set forth in the contract.

C. Quality of Submitted Report

All paper versions of reports submitted by a valuation or NRE specialist must be properly bound, signed, and submitted on 8.5 x 11 inch high quality white paper. Maps larger than 8.5 x 11 may be included if folded to fit within the report. Exhibits are to utilize color photos and color IPM or acquisition maps (except where only a tax map is used as the acquisition map). Reports must be permanently and neatly bound and must reflect a professional quality report. Since these bound copies will be used in negotiations and/or court proceedings, the report must be presented in a professional manner that reflects positively upon the specialist and the NJDOT. Reports submitted electronically will likewise by 8.5 x 11 inch in size, signed and submitted as a PDF file with all attachments included as for a paper report (maps within PDF may exceed 8.5 x 11).

D. Valuation and NRE Service Obligations

The service provider is expected to be completely familiar with and responsible for any reports submitted. While the person performing the report may have assistance from colleagues or employees, the final work product must be that of the service provider. The Division must be able to rely upon valuation and NRE reports for testimony purposes. Therefore, the use of sub-consultants or employees to prepare reports is unacceptable due to the loss of credibility in the work product and testimony of the valuation or NRE service provider. An individual service provider who is contracted through a firm is considered to be the service provider for that contract. The firm in accepting the contract is obligated to provide the approved service provider and may not substitute without permission from the Division. In the event that the service provider leaves that firm, the Division as a result of the contract may hire the service provider to complete work, including as yet unordered update work.

2.5.1 Date of Valuation & Date of Report

The Date of Valuation is normally the same date in both the before condition and the after condition valuation. The Division will notify the appraiser if a date different from the general rules below would apply.

A. Pre Condemnation Reports

Date of Report: The date of the report is the date that the expert prepares the report.

Date of Valuation: Prior to condemnation, the date of valuation will normally be the date that the expert last inspected the subject property unless otherwise instructed.

B. Post Condemnation Reports

Date of Report: The date of the report is the date that the expert prepares the report.

Date of Valuation: The Litigation Support Unit will provide the expert with the appropriate date of valuation. Normally, the date on which the condemnation complaint was filed in the Superior Court is the applicable date of value sometimes also called the "as of date". (N. J. S. A. 20:3-30. states in part: "Just compensation shall be determined as of the date of the earliest of the following events: (a) the date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee…")

2.5.2 Benefits Resulting from a Project

Benefits accruing to a property owner as a result of a transportation project are: (a) general benefits which affect the entire community or neighborhood, or group of properties along the roadway. These general benefits accrue by increasing the efficiency of travel or attracting population; and (b) special benefits which directly increase the value of a particular piece of property. General benefits should not be considered in valuing a property. Special benefits are those changes created by a project which provide a direct and unique benefit to a single property. Special benefits may be considered to reduce the damages element of the just compensation but do not offset the value of the fee acquisition. Special benefits are very case specific, such as providing a highway frontage to property that was landlocked before the project. If the appraiser believes that a particular acquisition presents a special benefits issue, the Realty Specialist 4 or Litigation Support Specialist working with the appraiser should be

contacted to determine if legal advice is necessary. Market value changes as a result of Project Influence are discussed in Section 2.6.10.B.

2.5.3 Fixtures/Personalty & Functional Unit Items

An owner may not be compensated for items of personalty; however, she/he is entitled to payment for enhancement of the real estate as a result of the presence of "functional unit items." An item assumes this status when the real estate with which it is associated is enhanced beyond the salvage value of the item in question. A building and an item within it form a functional unit when the difference between the value of the building with the item and without it is substantial.

Additionally if required in the appraisal Scope of Work a realty/personalty report will be prepared by the appraiser [Section 24.103(a)(2)(i)].

Functional unit items must be an "integral or essential part" of the building. This means the item is incapable of removal without material injury to itself or the real estate; or is specifically adapted to the purpose of the improved realty and is not capable of use elsewhere and would substantially lose all value if removed.

If there are a significant number of functional unit items, a specialist report will typically be obtained for their valuation. If there are only a few such items, they may be valued by the appraiser. The appraiser or NRE specialist should not include any items that are already included in the base cost of the building classification selected by the appraiser, such as wall outlets in a wall. Questions regarding the treatment of functional unit items should be brought to the attention of the Division.

2.5.4 Highest and Best Use and Fair Market Value

The New Jersey Supreme Court definition of Highest and Best Use is set forth below, this definition is to be incorporated into all appraisal assignments unless a different standard has been agreed to by the NJDOT. When preparing the appraisal, it is important that all four criteria are addressed. The appraiser must explain how each of the four criteria has been applied to the particular case.

"Highest and best use" is defined as that use of the property which is "1) legally permissible, 2) physically possible, 3) financially feasible, and 4) maximally productive. Hous. Auth. of New Brunswick v. Suydam Investors, 23 N.J. 2 (2003) Citing County of Monmouth v. Hilton, 334 N.J. Super. 582, 587 (App Div. 2000), certif. denied, 167 N.J. 633 (2001).

If a property's highest and best use is determined to be other than as zoned or based on the reasonable probability of a zoning change or variance, site plan approval or subdivision approval, the conclusions regarding an as yet unrealized highest and best use must be supported and not based on speculation.

"Reasonable probability" is the standard for determining whether or not a potential zoning change or variance, site plan approval, or potential subdivision approval can be considered to affect the value. The factual detail required to support a finding of reasonable probability of subdivision approval increases significantly for a major versus a minor subdivision. Site plan approval obtained prior to the date of valuation must relate to the condition of the property as of the date of valuation in order to be considered.

If a potential zoning change or variance is found to be reasonably probable, the property may be valued as zoned, with an increment, if any, that the market would recognize for

the reasonable probability that the property would be rezoned in the future; or valued as rezoned, with an appropriate deduction to reflect the fact that the zoning change or variance has not or may not occur.

Likewise, if a change in use is part of the highest and best use, the appraiser must consider the risks inherent in making the change, including any costs required to create that change and the time value of money during the period needed for the change to occur. The appraiser cannot simply create that change as an extraordinary assumption.

For the purpose of preparing an appraisal for New Jersey valuations, the appraiser should use the following language as the Fair Market Value definition:

Fair Market Value is "the value that would be assigned to the acquired property by knowledgeable parties freely negotiating for its sale under normal market conditions based on all surrounding circumstances at the time of the taking." State v. Silver, 92 N.J. 507, 513-14 (1983).

This definition results in a Market Value opinion as set forth in the current version of USPAP Definitions section. When using this definition in an appraisal, the “normal market conditions” of sale or lease are to be cash or cash equivalent, and are to include exposure in a competitive market for a reasonable time prior to the sale or lease and that the parties are both knowledgeable and acting without undue motivation. The Fair Market Value is to be based on the Highest and Best Use as of the date of valuation.

Where the UASFLA standards are to be used for an appraisal, the appraiser may substitute the Fair Market Valuation applicable to that limited assignment.

2.5.5 Compensability of Damages

In eminent domain, or condemnation proceedings "damages" or "severance damages" is a legal term of art that means a compensable loss of real property value that the remainder of a partial acquisition suffers as a result of the State's acquisition of property rights from the subject property (the acquired property) or as a result of the State's use of the acquired property. Damages must be in some way measurable and must also be compensable in order to be part of the valuation process. While market data may indicate that the remainder suffers a loss of value as a result of the partial acquisition, which alone is not sufficient to establish that the remainder has been "damaged" by the partial acquisition from a compensation standpoint. It is essential always to bear in mind that not every loss of value resulting from the State's acquisition of property, however real that loss of value may be, is compensable.

An acquisition may cause a loss of value to the remainder in two ways. Firstly, if the acquired property supported a valuable use of the remainder which the remainder alone could not continue to completely support, then the value of the remainder will be diminished by the reduction in its utility. That loss of value probably constitutes damages to the remainder. Secondly, if the State's use of the acquired property impairs a valuable use of the remainder, then the value of the remainder may be diminished by the impairment of the use. The law on the compensability of the latter type of loss of value is still evolving. Such a loss of value may or may not constitute damages.

If there is a loss of value to a remainder that is not caused in one of the two described ways, it is not compensable in a condemnation action. If a loss of value is not compensable under the applicable law, it does not constitute "damages." If unsure about the compensability of any loss of value, ask for clarification from the Realty Specialist 4

or Litigation Support Specialist and if necessary the assigned DAG. In summary for purposes of this section, a loss of value to a remainder may be compensable, may constitute damages, only if it results from the remainder's loss of the acquired property or from the State's use of the acquired property. If the loss of value is compensable, those damages are an element of the just compensation due a property owner in the acquisition process or subsequent condemnation proceeding.

A. Location of Source of Loss of Value

A property owner is not entitled to compensation in a condemnation proceeding for any loss of value caused by (1) the State's acquisition from a property other than the subject or (2) the State's use of property already owned by the public. For instance, a loss of value allegedly caused by the State's interference with the subject's use of parking spaces located on public property is not compensable. Similarly, a loss of value allegedly caused by the State's interference with the subject's use of public property to maneuver into and out of parking spaces located on the subject is not compensable. The subject never included a property right for such uses, so the State acquired no property right from the subject by preventing such uses. Two other examples of losses of value that are not compensable follow: (1) a loss of value allegedly caused by construction of a sound wall on property other than the subject and (2) the regulation of access points, or driveways, on properties other than the subject that the subject has no legal right to use. However, if any portion of a sound wall is constructed on the acquired property and market data establishes that the portion of the wall constructed on the acquired property actually causes the remainder to suffer a consequential loss of value, that loss of value might be compensable. In short, to be compensable a loss of value must result directly from the loss of the acquired property or from what is constructed on the acquired property. In each case, the State's acquisition of property from the subject would be the provable cause of the loss of value to the remainder.

B. Access

Every property in the State of New Jersey located on a highway has a presumptive right of vehicular access. This right is a property right, but it is not absolute. Ingress and egress to a property along a State Highway is controlled pursuant to the State Highway Access Management Act (Access Act) and the State Highway Access Management Code (Access Code). An owner of land abutting a highway is not entitled to access at each and every point along the boundary, but only to reasonable access to the general system of streets and highways.

When the State plans a highway improvement project, it determines what access points (driveways) will be permitted to exist after the project is completed. The Office of Access Design, Division of Right of Way and Access Management (OAD), regulates access points by exercising the State's police power pursuant to the Access Act and the Access Code, not by exercising the State's power of eminent domain.

The police power and the power of eminent domain are fundamentally different, and the exercise of each has vastly different consequences. The significance of the difference cannot be overemphasized. It is a difference in kind, not merely degree. Most importantly for this discussion, a loss of value caused by an exercise of the police power is not compensable in a condemnation action. Generally, a loss of value caused by an exercise of the power of eminent domain is compensable, while a reasonable exercise of the police power is not compensable.

Hence, an appraiser should not consider any loss of value caused by an exercise of the police power, including the power to regulate access points, in opining on the value of the subject either before or after the State's highway project. To avoid attributing value to the State's exercise of its police power pursuant to the Access Act and the Access Code, the appraiser should value the subject as if it had the same access after the State's highway project as it did before the State's highway project. (The alternative, to use the access to be provided after completion of the project when opining on a subject's value as of a condemnation complaint date might depress both before and after subject values, thereby inappropriately reducing the determination of just compensation.)

Further, effects the highway project may have on access to a property without touching the property are the result of the exercise of the police power. Any loss of value attributable to such effects, however demonstrable with market data, is not compensable. For example, loss of value to the subject caused by circuitry of travel, diversion of traffic, or the creation of a connector or frontage road providing access to the subject property are not compensable.

1. Access Process - When OAD alters access points, that is, regulates access points, it determines what access points will be permitted and it determines whether those access points (1) will provide reasonable access to the general system of streets and highways and (2) will satisfy the legal standards, requirements, and criteria for alternative access to the subject, given its class (commercial, industrial, residential or agricultural). Those criteria are set forth in the Access Act and Access Code. If the access points to be permitted satisfy the criteria, the access alterations were affected by the State's exercise of its police power and any loss of value caused by the access alterations are not compensable. OAD must make the determination whether the altered access satisfies the legal criteria. If OAD has not done so prior to commencement of the acquisition process and the plans show that the access points will be altered, the matter must be referred to OAD.

   As is implicit in the preceding discussion, prior to the initiation of the acquisition process OAD will determine whether the proposed altered access points will satisfy the legal criteria for alternative access. Time permitting; the appraiser will be provided with OAD's determination and its determination should be incorporated into the appraisal. Where time does not permit, the appraiser may be asked to assume that the matter is resolved and value the property accordingly.

2. Denial of Access through Eminent Domain - Only if the access points to be permitted cannot meet the legal criteria set forth in the Access Act and Access Code might the State have to compensate for a loss of value caused by an access alteration. If the proposed alteration of access cannot meet the criteria, the State may have to acquire part or all of the access property rights through the exercise of its power of eminent domain. Such an acquisition is called a denial or partial denial of access. An example of a potential partial denial of access would be an access alteration that precluded certain delivery vehicles that previously could enter and circulate on the property in support of its existing development, from doing so after the access alteration. Though the property would still have access, its diminution in value, if any, might be compensable.

   In such a case, the appraiser will have to determine the value of the property before the access alteration and after it. The appraiser should not assume that the after value will be lower than the before value.

In cases in which OAD has not processed the access alteration administratively, the matter must be referred back to OAD for its determination prior to commencement of the appraisal assignment. The appraiser must not make the determination as to the reasonability of the altered access or whether the altered access satisfies the legal criteria. Never assume that OAD has determined that alternative access satisfying the legal criteria cannot be provided and that any loss of value resulting from the alteration of access demonstrable with market data is therefore compensable. OAD must make any determination that alternative access satisfying the legal criteria cannot be provided. The District Program Manager and if necessary the District assigned DAG should be contacted if the appraiser requires additional information or clarification about the compensability of losses of value attributable to an access alteration.

Properties not located on highways, while not subject to the State Highway Access Management Act, may still be subject to non compensable access restrictions as an exercise of police power under common law or local regulations or ordinances. Compensability of such changes must be investigated before damages are assigned in an eminent domain appraisal.

2.5.6 Business Losses

Loss to, or destruction of good will, loss of profits, inability to relocate or frustration of plans are not compensable. Likewise, loss of a franchise is not compensable. However, under the unique situation where a temporary taking of an entire property shuts down a business for a finite period of time, loss of profits and goodwill are compensable. The owner shall be responsible for providing the Department with adequate documentation of such losses. Compensability does not apply to short term temporary driveway closures resulting from construction activities.

2.5.7 Changes in Grade

A change in grade between a property and an abutting roadway is not compensable, unless it deprives a property of reasonable access. (See previous comments on access). If a change in grade causes specific conditions on a property, those conditions may result in compensable damages. For example, the slopes required to support the new roadway grade are so intrusive as to prevent either the use of existing parking spaces or an effective mitigation elsewhere on the site.

2.5.8 Drainage

If drainage damages result from the NJDOT’s use of its own upland property, the damages are only compensable if the NJDOT has unreasonably used its property. If the drainage damages result from the NJDOT’s use of property taken from the affected owner, they are compensable. NJDOT has an obligation to address flooding on the subject which is a direct result of changes in the roadway. Typically this will be done by providing inlets, ditches or other grading to restore existing conditions. Drainage rights needed for the highway will have drainage easements, those required to restore the drainage from the property will be temporary construction. The owner will be required to do routine maintenance, however the NJDOT would restore the physical structure if required due to collapse. Thus, drainage changes which benefit the owner alone require only a temporary right with a rental payment.

1.5.9 Noise

Typically, noise impacts are speculative, in that they are projected to occur at some point in the future and generally arise from the overall project, not from the taking from the specific property. The District Program Manager should be notified if the appraiser believes that the noise impacts in a particular case are specific to the property, the noise levels are measurable and the market impact is quantifiable, otherwise damages attributable to increased noise is not compensable.

2.5.10 Landscaping / Crops

Trees, topsoil and other landscaping elements are part of the land and should not be valued separately unless part of a plant nursery business. Also, often trees are replaced by NJDOT. If so, then that should be noted and no compensation is warranted. The loss occasioned by the taking of these elements, if any, can only be considered to the extent that the value of the land was enhanced by their presence before taking and diminished by their absence after taking. Sand deposits should be treated in a similar manner.

A separate payment is authorized for loss of income resulting from the interference with the harvesting of standing crops or other agricultural commodities, under certain conditions by the "Peach Tree" law, which like relocation, is a benefit in addition to the actual real estate value of the land. If the appraiser believes that such a payment is warranted, the District Program Manager should be notified. If applicable, this payment will be based upon an analysis which is separate and apart from the appraisal report.

2.5.11 Visibility

Compensation is required for the diminution in the value of the remainder of the property that is specifically attributable to loss of visibility as a direct result of the acquisition of a portion of the property. In order to be compensable, the loss of visibility must result from the partial taking itself, or what is done on the partial taking. The loss of visibility must be "actual and specific" to the remainder of the property and must result in damages that are not speculative, but rather specific to the property and quantifiable by objective market data.

The construction of an overpass on lands contiguous to, but not on, the acquired property should not result in damages, even though the overpass obstructs the view from the highway to the commercial property, since the loss does not result from the taking. The loss of visibility for a large tract of residential land, the utility of which is not dependent upon highway view, may not result in damages; conversely, the loss of visibility to an improved commercial property that will result in increased advertising costs to maintain the highest and best use, will likely result in damages. The appraiser, through the District Program Manager, should consult with the Project Manager regarding sight distance and other related issues and the Division of Law, Transportation Section contacted on compensability issues.

2.5.12 Unity of Use / Ownership

Two or more properties should be valued together, regardless of whether they are contiguous if: (a) the properties are functionally integrated, each being reasonably necessary to the use and enjoyment of the other; and (b) the properties are under substantially the same ownership. Two separate properties with the same ownership but

with different highest and best uses can still be appraised in one appraisal provided that two separate values are determined by the appraiser.

Where there are partial acquisitions of two separate properties before and the appraiser believes that the highest and best use of the two properties after would be in combination, the combined value of the two remainders can be considered. The combination of the two properties must be reasonably probable and there must be a common ownership of the two properties.

The appraiser should notify the District Program Manager for a review of any unity of use issues from a legal standpoint with the DAG assigned to the District office.

2.5.13 Limits of Grading

Limits of grading rights are temporary in nature and their purpose is to permit entry in order to re-grade the property. The right terminates after the work has been completed.

2.5.14 Easements in General

In valuing easements, appraisers should consider the impact to the property and not just a formulaic percentage adjustment. For instance, a slope easement on a hilly parcel may actually improve the grade and utility of the property. Conversely, replacement wetlands may have a buffer impact beyond the easement limit. The appraiser must also avoid paying more than fee value when more than one easement overlaps. The appraiser must also note the existence of existing easements and account for them in the valuation process. Existing easements should be treated consistently with the way new easements are treated. It is improper to provide damages for new easements while ignoring the impacts of existing easements. The appraisal must also consider existing easements within proposed fee parcels. If the appraiser determines that an easement will create an unexpected and significant impact on the property related to parking or another loss of utility, the Realty Specialist 4 should be notified to determine if some alternative is possible or if an NRE is required.

Improvements located in easements which will physically reshape the land (slope, ditch, bridge, etc.) will usually need to be removed. If displaced improvements are not to be relocated and are not replaced in kind by the NJDOT, they must be compensated for in the appraisal. The appraiser should be certain of the impacts of each type of easement to determine which improvements will remain in place and which need to be relocated or acquired and valued in the appraisal.

A. Slope Easements

Slope easements are permanent; however, a slope does not necessarily preclude an owner from installing improvements in the area once construction is complete, as long as the integrity of the slope is maintained. The appraiser should discuss with NJDOT what items can remain within the slope and what items might be allowed within the slope in the future. If there is an existing slope easement on property that is being acquired in fee, the improvements to be removed from the easement area must be addressed in a similar manner.

1.5.15 Aerial Encroachments

If the appraiser identifies a potential aerial encroachment, such as a building or a large sign base located on the remainder with a portion of the sign or building overhanging the

new right of way, the Realty Specialist 4 or Litigation Support Specialist should be notified so that a determination can be made as to whether the encroachment must be removed and compensated for (if not in original right of way), or addressed in some other manner. The most common encroachments are signs and lighting.

2.5.16 Environmental Conditions (Other Than Contamination) and Valuation

The presence of wetlands is to be considered like any other natural condition affecting value, such as topography. Environmental regulations affecting value, such as Pinelands, Highlands, CAFRA, Stormwater and Freshwater Wetlands regulations, must be considered and discussed in the valuation process.

2.5.17 Contaminated Property and Valuation

Property should be appraised as if it is not contaminated and, if any contamination is present, as if it has been remediated. This statement should appear in the appraisal.

The appraiser should determine if the remediation of the property involves restrictions that would affect the highest and best use of the property in terms of extraordinary engineering and development costs and possible environmental stigma. As an example, the redevelopment of a landfill will require special controls and dynamic compaction, expenses which will directly impact development potential and can be considered, even if the impact of the material within the landfill is not considered by the appraiser.

2.5.18 Mitigation of Severance Damages / Replacement Property

Where a potential mitigation of severance damages is possible, appraisers should value the remainder without any replacement property. If the potential replacement does result in a reduction in economic severance damages, the appraiser should also value the remainder with the replacement property as a separate analysis. Offset of both the fee acquisition and damages are permitted in this situation. For those cases requiring NRE reports, alternatives with and without the replacement property should be provided. Care must be exercised to ensure that site improvements included in any proposed mitigation are not also compensated for as part of the acquisition.

2.5.19 Tidelands

Appraisal reports should consider properties with formerly flowed claims as if the claims do not exist for valuation purposes. The area of the claims which are identified on the maps as formerly flowed will be used by the Tidelands Resource Council (TRC) when they clear the claim. The appraiser should value areas with claimed land simply as part of the overall tract. The TRC will utilize the claimed land area shown on the maps and the unit rate from the appraisal to determine what they will charge the owner to clear the parcel. Lands below the Mean High Water Line (MHWL) are normally appraised by obtaining the value of limited use uplands (wetlands, restricted farmland, etc.) and applying those unit rates to lands under the MHWL. This methodology is subject to potential changes by the Tidelands Resource Council, and may not apply where the Department is working in very high value locations, or constructing docks or other nontraditional uses. The appraiser should verify the types of sales needed before proceeding with the assignment.

2.5.20 Green Acres and Farmland and Conservation Restricted Lands

In general, these properties are valued at the highest and best use as if the restriction was not present to allow for replacement land purchase of other non restricted land. Often restricted lands are down zoned to Park or Conservation. The appraiser should consider other properties in the area and determine what the subject property would most likely have been zoned if it had not been restricted.

2.6 Appraisal Requirements and Standards

This section contains information about performing appraisals.

2.6.1 Appraiser Qualifications

Staff appraisers and Staff Review Appraisers shall hold the NJ State Appraisal certifications required by State law and NJDOT Policy. Consultant appraisers shall be State General Certified or Residential Certified in accordance with NJ State law and Division policy and must hold the designation required to perform the work they accept from the Division.

Consultant appraisers are retained directly by the NJDOT and are required to personally perform the contracted services; subcontracting is not permitted unless specifically authorized by the NJDOT. If the contract is with a partnership or corporation, the contract shall identify the persons who will render the valuation services. This does not prevent an appraiser from using her/his staff to assist, providing the appraiser personally attends the property inspections and actually produces the appraisal report and value estimate. The contracted appraiser must be present at the mandatory inspection of the owner's property to comply with the Eminent Domain Act. This inspection cannot be delegated.

2.6.2 Information to be Furnished to Appraisers

The appraiser is to be provided with the Individual Parcel Map (IPM) or other map designated for the acquisition of the subject as well as information relative to the interpretation of State law concerning non-compensable items, determination of realty vs. personalty and the treatment of benefits. If the acquisition is partial, the appraiser will be provided with information relative to the nature of the proposed highway construction and remaining areas.

In those instances where the appraiser feels that she/he is capable of completing the appraisal assignment without cross sections and profiles, or any other essential part of the final geometry, the appraisal of the partial acquisition may proceed. If the appraiser requires additional construction related information in order to properly assess the impact of the acquisition upon the remainder, the matter shall be brought to the attention of the District Program Manager for a decision as to whether the appraisal should be placed in a hold status pending availability of the construction details.

Where an approved cost to mitigate report(s), NRE and/or Access Impact Assessment report is obtained, the appraiser will be provided with copies.

A. Maps and Map Errors or Omissions

- Unless otherwise specifically directed, all appraisals shall use the ownership, area, property dimensions, building locations, access rights, parcels and easements as shown on the IPM or other map designated for use in the assignment. In considering

the maps, the appraiser is reminded to use an extraordinary assumption to treat the after condition on partial acquisitions as if it has in effect occurred, for the purpose of determining the after value of the property. The appraiser should note that the IPM or other maps provided by the NJDOT may be approximate as to building dimensions because they are based in part on aerial photography, which does not take into account any roof overhangs in the plotting of the building dimensions. Thus, if a building or other improvements are a significant part of the valuation or mitigation, the NRE specialist must use the proper techniques to measure the building or site improvements in order to determine their correct dimensions. Where a building is or should be valued, the appraiser must provide the measurements in a property sketch on any acquisition where the value of the building is required or given significant consideration.

- If the appraiser finds plan errors/omissions, she/he should notify the District Program Manager or Realty Specialist 4 or the assigned Litigation Coordinator before proceeding with the appraisal. The Realty Specialist 4 or once in condemnation, the Litigation Support Coordinator is responsible for the liaison with the CPM Project Manager for clarification and/or correction of any errors or omissions and to provide the appraiser with any corrected or revised plans.

2.6.3 Submission and Review of Appraisal

The appraiser will submit a properly signed version of his/her report either as a bound paper copy, electronically or both in accordance with the contract specifications and requirements set forth in this manual. All initial reports are considered to be draft but must be properly signed and ready for use in the event that there are no corrections needed. If the report is acceptable, the draft will become the final version and the appraiser will be requested to forward properly bound paper copies of the report to the person requesting the appraisal service as set forth in the contract.

2.6.4 Delivery and Review of Appraisal Addenda

In the event that corrections are requested to the appraisal, the appraiser will resubmit a corrected version of his/her report electronically with the necessary corrections, or to submit corrected pages depending upon the original submission format. Upon final concurrence, the appraiser will be advised to forward three (3) properly bound paper copies of the final version of the report to the person requesting the appraisal service.

2.6.5 Appraisal Testimony

Appraisers are expected, as part of their contract terms, to be available to testify in commission hearings, and, if necessary in court on the contents of their reports.

1.6.6 Ethical Standards Regarding Valuation Services

- The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property or personal property being valued. [49 CFR Section 24.102(n)(1)] If known prior to accepting an assignment, and/or if discovered at any time during the assignment, an appraiser (or other person performing a valuation) must disclose to the Division, and in the subsequent report certification: any current or prospective interest in the subject property or parties involved (owners, tenants or representatives); and any services regarding the subject property performed by the appraiser (or valuation provider) within the three year

period immediately preceding acceptance of the assignment, as an appraiser or in any other capacity. [USPAP] Casual business dealings, such as purchases at a Wal-Mart are not an interest contemplated by this requirement.

- In the event that a potential conflict is discovered in the course of performing the assignment, the person performing the valuation service must contact the Division as soon as she or he becomes aware of the potential conflict.
- The Division reserves the right to determine what, if any level of actual or potential conflict of interest can be accommodated.
- Compensation for making an appraisal shall not be based on the amount of the valuation estimate. [USPAP 49 CFR Section 24.102(n)(1)].
- No person shall attempt to unduly influence or coerce an appraiser regarding any valuation or other aspect of an appraisal, review or waiver valuation. Supervision of appraisal staff shall be as set forth in 49 CFR 24.102(n)(2)
- The valuation specialist must conduct his/her work in accordance with the highest ethical standards and must not have been convicted of a crime of moral turpitude.
- Consultant valuation specialists must be in compliance with all State laws, regulations and Executive Orders regarding eligibility for work as a consultant with the State of New Jersey.
- Consultants must understand and abide by the Division Specialist Fee Consultant Policy

2.6.7 Ownership of Report

Appraisal, appraisal review and ADV reports and work product submitted to the NJDOT become the property of the NJDOT and once delivered shall be retained by the NJDOT and are subject to public disclosure in accordance with NJ law.

2.6.8 Report Corrections, Revisions, and Additions

When a correction or revision is necessary, the appraiser shall furnish corrected, revised or supplemented pages or portions of the report for attachment to the copies already delivered. Changes to the report initiated by the appraiser must be delivered through regular channels and accepted by the Division as a formal revision of the original report.

2.6.9 Regulatory Requirements and Standards

All appraisal and appraisal review assignments are required to conform to the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice (USPAP) unless a particular requirement is contrary to a law, rule, regulation or court decision, in which case a Jurisdictional Exception to USPAP would apply. In addition, reports must also comply with governing statutory, regulatory requirements and court decisions of the State of New Jersey, the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) along with its implementing regulations and any relevant federal court decisions. The Department utilizes the URA valuation requirements on all projects regardless of the source of funding. Local Aid funded projects where no federal funding is used in any phase of the project are technically not required to use the URA based appraisal requirements, however, if there is any chance of any federal dollars

being used, it is strongly recommended that all local aid projects follow the URA standards, which for the most part parallel USPAP.

A. Purpose

This section defines the requirements, standards and format required in preparing appraisal reports. It is expected that the appraiser will refer to these instructions as a guide as to the minimum standards and acceptable format.

All reports are to be prepared in accordance with these instructions, unless it has otherwise previously been agreed upon in the contract between the appraiser and the NJDOT.

B. New Jersey Statutes, Regulations and Policy

Appraisal Requirements related to New Jersey statutes, regulations and court decisions regarding real estate appraisals for transportation projects are presented throughout this section.

C. Uniform Relocation Assistance & Real Property Acquisition Policies Act (URA)

It is the intent of the NJDOT that this Manual will be in compliance of the applicable elements of the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970 (URA) and its implementing regulations at Title 49 CFR Part 24. Federal regulation 49 CFR 24.103(a) delineates appraisal requirements for projects that have federal funding in any part thereof. Although these appraisal requirements are considered to be compatible with USPAP, should a conflict occur on a Department project or on a federally funded local aid project, the URA requirements and any applicable New Jersey statutory, regulatory and policy requirement would take precedence over USPAP. Where a conflict with USPAP occurs, the appraiser must use the Jurisdictional Exception provision of USPAP to remain compliant, noting specifically the element of law or regulation which requires the deviation from USPAP.

The URA regulatory and other appraisal requirements are summarized as follows:

- URA, USPAP, AND UASFLA – The URA sets forth the requirements for real property acquisition appraisals for Federal and federally-assisted programs. Appraisals are to be prepared according to these requirements, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) [See URA regulations at Appendix A, § 24.103(a)].
- In some cases, property owned or funded by federal agencies may require the incorporation of the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA). The link to access the UASFLA is http://www.usdoj.gov/enrd/land-ack/. The use of UASFLA standards is limited to those lands where federal ownership or funding involvement requires it to be used. Since portions of the UASFLA are relevant only under federal condemnation law and do not apply under New Jersey statutes, use of the UASFLA is not authorized under any other circumstances. If a condemnation in a NJ court is needed where a UASFLA consistent report was prepared, the appraiser may be asked to provide a modified or additional report reflecting NJ condemnation law. In the event of any questions, the appraiser should contact the Division for clarification before concluding the report.
- Scope of Work - The NJDOT in acquiring real property has a legitimate role in contributing to the appraisal process, especially in developing the Scope of Work and defining the appraisal problem. The Scope of Work and development of an appraisal

under these requirements depends on the complexity of the appraisal problem. The report must meet the statutory and regulatory requirements in a manner which will allow the NJDOT to utilize the report in eminent domain acquisitions.

- URA Appraisal Standards - The NJDOT has the responsibility to assure that the appraisals it obtains are relevant to its program needs, reflect established and commonly accepted federally-assisted program appraisal practice, and as a minimum, complies with the definition of appraisal as referenced in § 24.2(a)(3) the five following requirements: (See URA Appendix A, §§ 24.103 and 24.103(a).)
- An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, including a copy of the last deed into the current ownership, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property. [See URA Appendix A, § 24.103(a)(1)].
- All relevant and reliable approaches to value consistent with USPAP and established federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value. [See URA Appendix A, § 24.103(a)].
- 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.
- A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

D. Uniform Standards of Professional Appraisal Practice (USPAP)

Where there is no federal or state law, rule, regulation, court decision or public policy to the contrary, the Appraiser and Appraisal Reviewer will conduct all Appraisals and Appraisal Reviews in conformity with the current Uniform Standards of Professional Appraisal Practice (USPAP) requirements.

Where deviation from a USPAP standard is mandated by a specific law, regulation, court decision or public policy, the Appraiser should note these as Jurisdictional Exceptions. A method of appraising using a different set of valuation criteria is not typically considered to be an exception so long as the assumptions are clearly stated. USPAP does not require the use of a specific type of valuation, and these can take many forms, including value in use, insurance value, etc. Some examples of special valuation considerations which would not in and of themselves rise to the level of exceptions include:

- Valuation of a property where the driveway has been moved as part of an access change to a side street but meets the Highway Access Code’s reasonable alternative access test. In this case the appraiser would consider the property as if access remained unchanged, ignoring any potential damages from the change even though market research might indicate a change in the value.

- Valuation of a property without adding or subtracting changes in market value due solely to general Project Influence (see Section 2.6.10 B).

The use of Jurisdictional Exemptions applies only when there is an actual deviation from USPAP required by law, regulation, court decision or public policy.

The use of hypothetical condition and extraordinary assumptions must be fully discussed and disclosed in the Scope of Work section of the report. Examples include:

- The Before and After Method where the after condition is assumed to have occurred. If that scenario doesn't occur, the valuation would be incorrect (extraordinary assumption).
- Valuation of a contaminated site as if remediated even though that is not currently the case (hypothetical condition as this is clearly false).
- Economic conditions which are assumed to continue as they are currently forecast in the appraisal report (extraordinary assumption).

2.6.10 General Appraisal Standards

Appraisals must be independently prepared and each appraisal must be signed by the individual(s) making the appraisal. The appraiser must possess the level of State Certification necessary in order to perform the appraisal report.

Appraisals may not include any payment for relocation assistance or consider that such payments will be made.

A. Subject Property Inspection & Owner Accompaniment

Both State law and federal regulations require that the owner or his/her designated representative must be given an opportunity to accompany the appraiser during the inspection of the property prior to the onset of negotiations. This gives the appraiser the opportunity to discuss any information that the owner may have that could assist in the valuation process.

The appraiser must notify the property owner in writing of the invitation to meet via Certified Mail with a Return Receipt. The Appraisal must also include a copy of the inspection letter and the Return Receipt. Because this is a statutory requirement, it is critical that the appraiser utilize the correct mailing address. The invitation to meet and the results of any contacts with the owner must be reported under Owner Contacts in the Appraisal report. The Appraiser should alert the Division of any issues or questions raised by the owner which would impact the valuation process or create an opportunity to reduce or mitigate acquisition damages.

It is recommended that the appraiser carry a copy of the inspection letter and signed return receipt on inspections. If the owner is not present, the appraiser should not enter any buildings or spaces which would not otherwise be open to the public.

The appraiser must perform that level of inspection which results in a credible appraisal. If an interior inspection is appropriate but cannot be conducted, the appraiser should note that in the Owner contacts and make such extraordinary assumptions as are appropriate to undertake a credible report.

The appraiser who is contracted to perform the assignment must participate in each subject property inspection and cannot delegate this function. The appraiser must also view the comparables as well. This is critical so that the appraiser fulfills the legal

requirements and can knowledgably talk about the property and the comparables in his/her reports and testimony.

For condemnation updates, appraisers who have already appraised the acquisition for the Division may elect not to conduct an onsite physical inspection if there are no substantive changes to the property, but must at a minimum view the property from the exterior (road) to determine if conditions have changed. This exterior inspection should be noted as such in the owner contacts section. If in viewing the property the appraiser concludes that significant changes have occurred, a new inspection may be necessary.

In the event that a physical inspection is appropriate during the condemnation phase, the appraiser should consult the assigned Litigation Support Specialist to determine if an inspection letter to the owner is still necessary. For partial acquisitions, only that portion actually acquired (outside of a building) would be open to the appraiser, the remainder would still require an inspection letter for a direct inspection. Even though the state may now own a portion of the property, a courtesy letter to the owner of the remainder is appropriate. In the event that a new appraiser is brought on board during the condemnation phase, the new appraiser will undertake an inspection as set forth above.

To the extent possible, where an NRE report is being undertaken, the appraiser should coordinate inspections with the NRE specialist.

B. Project Influence - Increase/Decrease in Value Due to Project

Any decrease/ increase in the fair market value of real property, prior to the date of valuation, caused by the public project for which the property is acquired, will be disregarded in determining the just compensation. As an example of such a general benefit, a new highway in a rural area may create a market change from rural to commercial; however, this change is a result of the project and must be disregarded. Where a project may have decreased the value of property to be acquired, the appraiser will disregard such decreases other than those due to physical deterioration within the reasonable control of the owner [see49 CFR Section 24.103(b)]. The appraisal would consider special benefits such as a new highway ramp that benefits only one property or a road that will now serve a previously landlocked parcel. The determination of special benefits needs to be done in consultation with the Division of Law.

C. Appraisal must separately state Damages

The appraiser must separately state the damages and benefits to the remaining property and the value of the property acquired. [see 49 CFR Section 24.103(a)(2)(iv)]. The consideration of general and special benefits is to be in accordance with NJ practices.

D. Tenant Owned Improvements

The appraiser must value all buildings, structures and improvements (including those owned by tenants, which are considered as realty) as part of the real property, if they are adversely impacted by the acquisition. Tenant owned buildings, structures or improvements are to be appraised as part of the real property based on their contributory value (as if they could remain in place for their remaining economic life), or their value for removal (salvage value), whichever is greater. The appraiser will disregard lease terms that require a tenant to remove buildings, structures or improvements and appraise them as if they could stay through their usual economic life.

E. Realty/Personalty Report

The Appraiser should note all items of realty that will be impacted and for which a value must be paid. If an item to be acquired as part of the proposed acquisition is personalty, the appraisal must clearly identify that as such. The appraiser must properly identify any tenant claims to real property that will be acquired. If there are any questions regarding what is tenant vs. owner or realty vs. personalty, the appraiser should make arrangements to work with the NJDOT's relocation official assigned to the case to discuss. The results of these investigations are to be presented in the realty/personalty descriptions of the appraisal report. The relocation official will, if necessary, consult with a DAG to provide a legal interpretation. Under no circumstances should an appraisal be unclear as to the ownership and nature of items to be acquired. Some examples include the treatment of a kiosk and signs at a leased service station as personalty and the removal of same by the oil company. Specialty industrial machinery attached to a building may also be leased rather than a permanent part of the real estate.

F. Appraisal Adjustments

In making adjustments, appraisers should consider the reasonableness of the adjustment in the overall market. For instance, a percentage adjustment for market conditions (time) may be appropriate, but an adjustment for the fact that the property under appraisal is 300' from a sewer connection while all of the comparable sales are connected to sewer should be considered in a lump sum dollar adjustment to reflect the actual cost to mitigate the subject property's comparative deficiency. If a percentage adjustment were applied to the price per unit (e. g., per acre, per sq. ft.) of each comparable for the sewer connection, the adjustment to each of the comparables would vary, depending on the price per unit of the comparable, and might have no relationship to the actual cost to mitigate the subject's deficiency. Source is Uniform Appraisal Standards for Federal Land Acquisitions at http://www.usdoj.gov/enrd/land-ack/

G. Uneconomic Remnant

The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the NJDOT has determined has little or no value or utility to the owner. Land which may have significant economic value can still be uneconomic to that particular owner. By way of example two residential lots remaining after a 30 lot subdivision is acquired from a major developer would have limited utility to a developer of larger properties. A remainder with a significant assemblage value likewise may be uneconomic to the original owner because that owner would have to assume the risk of creating an assemblage sale.

The NJDOT will normally include uneconomic remnants in the acquisition. Where there are multiple remnants and some are economic and some are not, the uneconomic remnants will usually be combined with the parcel acquired as a single parcel. It is lawful to acquire by lot lines and acquire the entire property, regardless of whether the remnants may be uneconomic.

The property owner may petition the NJDOT to retain ownership of an uneconomic remnant. On the other hand, the property owner may petition the NJDOT to acquire a remnant which in the opinion of the owner has little or no value or utility. However, the decision to acquire the remnant shall be at the sole discretion of the NJDOT.

The determination as to whether or not to acquire a remnant should be made by the Director or his designee in consultation with the Project Manager. The determination

should be made as early as practical with the assistance of the appraiser and the appraisal reviewer. The Division of Law should be consulted if necessary.

Where contamination and/or solid waste have been detected on a remnant, the NJDOT has the discretion to acquire the remnant only after it has been remediated by the property owner or another party to the degree acceptable to the NJDOT.

Where a contaminated remainder is to be acquired, the agreement will normally provide for a hold back of the payment of the appraised remainder value and for transfer of the land upon acceptable remediation. The appraiser should provide a separate valuation for uneconomic remnants, unless they have been included in the main acquisition parcel and are not contaminated.

H. Relocation Assistance "Carve-outs"

The appraiser may be asked to calculate the value of certain structures or portions thereof, appurtenances on or land areas within the parcel to facilitate the "carve out" of such features in the administration of relocation benefits required by the Federal URA. Usually this will be done during the relocation assistance phase of the project and may also be done by the review appraiser utilizing information from an approved appraisal.

I. Appraiser's Certification & Limiting Conditions

Appraisers are required to use the NJDOT's standard certification; however they may add to the certification certain items that may be required by law, by USPAP, and/or by the appraiser's professional organization(s). An example would be that the report must be available for Peer review by the Appraiser's professional organization. However, appraisers are not permitted to add items which directly contradict the NJDOT's standard certification.

If there are additional limiting conditions needed that are not provided by the NJDOT's Standard Limiting Conditions, the Appraiser may add them to the standard limiting conditions provided that :

- The limiting condition is pertinent to the specific appraisal assignment
- The limiting condition does not conflict with the standard certification or standard limiting conditions. If the Appraiser has any questions about what is permitted in a certification or the limiting conditions, they should contact the Realty Specialist 4 for clarification.
- Any additional limiting conditions must be appended at the end of the standard limiting conditions so that a reviewer will be able to find them.

Hypothetical Conditions and Extraordinary Assumptions must be clearly set forth in the report in accordance with USPAP.

2.6.11 Report Documentation

A. Approaches to Value

While the minimum format elements are flexible as to the manner of response, it is the NJDOT's intent that the cost; sales comparison and income capitalization approaches will be utilized [USPAP & 49 CFR Section 24.103(a)(2)] whenever applicable and that these approaches will then be analyzed and correlated into a final estimate of value. If an approach is not applicable, the appraiser may omit it only by sufficiently explaining the reasons for so doing. Where the impact to the property is sufficiently minor, the NJDOT

may request a “Land Only” report. The Appraiser remains responsible to inform the NJDOT if this is inconsistent with the level of valuation needed for a credible assignment in accordance with USPAP standards.

B. Partial Acquisitions (Before and After Valuation Premise)

Where the acquisition is partial, a before and after valuation will be made in all instances except for minor acquisitions where the appraiser, in consultation with the NJDOT, has determined that there are only nominal damages to the remainder. The before and after appraisal method does not contemplate the appraiser's estimation of severance damages in advance of valuing the remainder property (after condition). Before and after appraisals should consist basically of an appraisal of the entire property in the “before condition” as it exists before the acquisition and a second separate “after condition” appraisal of that portion of the property remaining as if the acquisition has already occurred (extraordinary assumption).

On occasion, one or more additional steps must be added to the before and after approach. Two different scenarios which have occurred are presented below:

A landlocked parcel which gains road frontage from a new road. The before and after approach reveals an increase in value in the after condition. This property has a special benefit which can be used to offset damages but not land value. Here, after the before and after sections, a reconciliation section is created and the land area acquired is paid using the before value unit rate.

Another variant based on the Weiswasser case occurs where NJDOT proposes to provide its land to add to the subject parcel for mitigation purposes. The appraiser considers two values, one is presented with the mitigation parcel, plus any (economically justified) mitigation costs or a second value with the value of the mitigation land, plus any (economically justified) mitigation costs required for the remainder without the mitigation land. The owner may accept the land, or the cash value of the mitigation land, but cannot receive damages to the property which the mitigation land would have reduced or eliminated.

C. Use of NRE Reports by Appraisers

The appraiser may request, or as part of the assignment may be provided with an NRE report covering valuation of specialty items or potential mitigation of acquisition related damages to the remainder. The appraiser should consider these reports and determine if they are sufficient for the assignment. In the case of mitigation, the appraiser must determine if it is economically justifiable to apply the proposed mitigation. The use of a mitigation solution where the damages to be mitigated are less than the cost to mitigate is inappropriate. An example of an inappropriate mitigation is the replacement of two parking spaces in a 100 space lot where only 50 spaces are required by zoning and by property use.

D. Use of Mitigation Parcels

The appraiser may suggest, or as part of the assignment may be informed about lands owned by or to be acquired by NJDOT which are intended to be used for mitigation purposes. These lands, like NRE mitigations must diminish damages and make economic sense to use. The appraiser should discuss any issues regarding the use of land for mitigation purposes with the Division. (See Section 2.4.11 B)

E. Addenda Documents

The appraisal addenda section should contain a copy of the latest deed into the subject, copy of the zoning regulations, a copy of the acquisition description and a copy of sale deeds. The appraiser may include any other documents that the appraiser deems relevant to the assignment. Where the deeds may be overly large or zoning regulations too voluminous, the appraiser may copy the most relevant portions and include those in the addenda.

2.7 Non Real Estate Report (NRE) Standards

NJDOT Use of NRE Services

The Division utilizes NRE reports to provide valuations for specialty items which are not typically valued in appraisals and to provide guidance in mitigation issues. Wherever possible, the NRE specialist should arrange to meet with the assigned appraiser during the appraiser's inspection.

NRE reports can be divided into valuation and mitigation functions and the mitigation function can be further divided into Access mitigation and Acquisition mitigation reports.

2.7.1 NRE Valuation Reports

Reports which provide valuations for mechanical equipment, nursery stock, specialized inventories and any other area where an estimate of value is needed outside of typical real estate appraisal practice. All valuations should explain the basis of the valuation estimate such as cost manuals, published auction results and other acceptable market data sources.

2.7.2 NRE Mitigation Reports

Non-real estate reports used for mitigation can usually be divided into two distinct functions.

A. Access Mitigation

An Access Impact Assistance Report (AIA report) is provided to an owner as part of the State's statutory obligation to provide all necessary assistance to the owner in the determination of reasonable alternative access to the general system of streets and highways. AIA Reports are not required for every access case but can be provided in more complex situations. These reports are used to demonstrate the proposed restoration of circulation and other functions within the property that were disturbed solely as a result of the access alteration. Typically these reports deal with changes to circulation aisles, other maneuvering areas, realigning loading docks and related parking layout issues. An AIA report is not part of the offer of just compensation as it is obtained in furtherance of the access process. These reports must be limited to only those changes directly related to access alterations and must not include any changes from any proposed property acquisition. Access regulation or alteration is a separate activity from the acquisition of property. An Access Impact Assistance Report is distinct from NRE and real property appraisal reports, and AIA reports are presented separately to the owner. In preparing an AIA report, if governmental approvals are required to implement the proposed mitigation, reasonable costs to cover this process must be included in the cost estimate for the report. In rare instances the proposed alternative access assistance may need to be revisited if it does not provide an economically sound approach to the problem or does not provide a reasonable solution to the damages. Persons reviewing or using an AIA report should alert the OAD of a situation where the proposed assistance

appears to be either inadequate (doesn't resolve access damages) or excessive (costs more to mitigate then damages to the property are worth).

In the event that it is not possible to completely differentiate access related impacts from those resulting from an acquisition, the resultant report will be in the form of an NRE mitigation report rather than an AIA report and will be treated as part of the regular acquisition process.

Where mitigation is not possible, the specialist may be asked to convert their services to an NRE report because the access process will not be able to proceed without an adequate mitigation and thus the change of access will be converted from an access code driven process to an eminent domain acquisition.

B. Acquisition Mitigation

Acquisition Mitigation Reports (AM reports) are NRE reports which are utilized by the real estate appraiser in the process of estimating the just compensation. The State is not obligated to mitigate, or "cure" damages, particularly when the "cure" costs more than the impact to the property is worth. An AM type of NRE report is used to identify potential mitigation solutions and to determine if paying to change the property to mitigate damages caused by an acquisition is economically sound. Wherever possible, the NRE specialist preparing the AM should arrange to meet with the assigned appraiser during the appraiser's inspection. At a minimum, the NRE specialist preparing a mitigation report should provide a draft to the unit requesting his/her services at least one week prior to the due date for the submission of the AM report.

Complex parcels may require the use of more than one type of NRE report. The NRE consultant should alert the Realty Specialist 4 or Litigation Support Specialist of a situation where the proposed mitigation appears to be economically unsound.

If governmental approvals are required to implement the proposed mitigation, reasonable costs for this process must be included in the cost estimate of the report. The expert must consult with the municipality to determine if approval of the proposed mitigation is "reasonably probable." If the municipality requires consideration of the entire property in judging the proposed mitigation, the expert must expand the work product to cover this, since it may impact upon the reasonable probability of approval of the mitigation solution. The Realty Specialist 4 and if necessary the District assigned DAG should be consulted if there are serious issues raised by the municipality in the pursuit of a reasonable probability of approval.

Mitigation solutions are implemented only if the solution mitigates economic damages or more simply, saves money over paying the owner for the damages. One example would be mitigating two lost parking spaces in a one hundred space lot where only 80 spaces are required under municipal code and the parking usage of the site does not require the full 100 spaces either.

If the NRE expert determines that a mitigation plan is not possible or reasonable for economic or other reasons, he/she should cease work and alert the Realty Specialist 4 or OAD as appropriate, providing an explanation of their concerns. If the expert determines that mitigation is possible, but that the highway project's construction plans would be affected by the proposed mitigation plan or vice versa, the NRE Specialist should contact the Realty Specialist 4 so that a determination can be made as to whether the highway project plans can be modified to incorporate the mitigation plan or the mitigation modified to accommodate the highway project plans.

2.7.3 NRE Consultant Qualifications

Consultant NRE Providers shall have the level of expertise and State Licensure and/or Certification required for performing the contracted task in a credible manner in accordance with State law, rules and regulations. NRE Consultants are to be selected for assignments from a pre-qualified listing of NRE Consultants.

2.7.4 NRE Testimony

NRE Consultants are expected, as part of their contract terms, to be available to testify at the commission hearings and, if necessary, in court on the contents of their reports. Where the Consultant is a firm, the firm agrees to provide competent testimony on the contracted services, either through the use of replacement professionals from the firm acceptable to the Department or by releasing the preparer of the original report to testify as to the report.

2.7.5 Ethical Standards of Service for NRE Providers

The NRE Consultant shall not have any interest, direct or indirect, in the real or personal property to be valued, nor business dealings with its owner(s), tenant(s) or representatives.

All potential conflicts of interest must be reported by the NRE Consultant to the Appraisal Section Supervisor prior to the acceptance of any proposal for services. In the event that a potential conflict is discovered in the course of performing the assignment, the NRE Consultant must contact the Appraisal Section Supervisor prior to submitting any reports.

Compensation for making an NRE shall not be based on the outcome of the report or the amount of any valuation estimate.

No person shall attempt to unduly influence or coerce a person preparing an NRE report regarding any valuation aspect of the NRE report.

The NRE specialist must conduct his/her work in accordance with the highest ethical standards and must not have been convicted of a crime of moral turpitude.

Consultant valuation specialists must be in compliance with all State laws, regulations and Executive Orders regarding eligibility for work as a consultant with the State of New Jersey.

Consultants must understand and abide by the Division Specialist Fee Consultant Policy.

1.7.6 Information to be furnished to NRE Specialists

The NRE specialist must be provided with the IPM, Access Cutout or other map designated for the assignment as well as information relative to the interpretation of State law concerning non-compensable items and the treatment of benefits. For mitigation reports, the Specialist will be provided with information relative to the nature of the proposed project and remaining areas.

2.7.7 Maps & Map Errors or Omissions

Unless otherwise specifically directed, all reports shall be made in accordance with the ownership, area, dimensions, building locations, access rights, parcels and easements as shown on the Individual Parcel Map (IPM), Access Cutout or other map designated for

the assignment. In considering the maps, the NRE specialist is reminded to treat the after condition on partial acquisitions as if it has in effect occurred, for the purpose of determining the valuation of mitigations unless a different scenario is requested by the Division. The NRE specialist should note that the IPM or other maps provided by the NJDOT may be approximate as to building dimensions because they are based in part on aerial photography, which does not take into account any roof overhangs in the plotting of the building dimensions. Thus, if a building or other improvements are a significant part of the valuation or mitigation, the NRE specialist must use the proper techniques to measure the building or site improvements in order to determine their correct dimensions.

If the NRE specialist notices plan errors/omissions, she/he should notify the District Program Manager or Realty Specialist 4 or the assigned Litigation Support Coordinator in the case of condemnation before proceeding with the report. In the case of an AIA, the NRE specialist should notify the OAD. The Realty Specialist 4 or Litigation Support Coordinator or OAD, as applicable, is responsible for the liaison with the CPM Project Manager for clarification and/or correction of any errors or omissions and to provide the NRE specialist with any corrected or revised plans.

2.7.8 Ownership of Reports

NRE reports (including AIA reports) and accompanying work product submitted to the NJDOT become the property of the NJDOT and once delivered shall be retained by the NJDOT and are subject to public disclosure in accordance with NJ law.

2.7.9 Report Corrections, Revisions, and Additions

When a correction or revision is necessary, the NRE specialist shall furnish revised, corrected or supplemented pages or portions of the report for attachment to the copies already delivered as needed. Changes to the report initiated by the NRE specialist must be delivered through regular channels and accepted by the Division as a formal revision of the original report.

2.7.10 NRE Report General Standards

NRE (non-real estate) reports cover many unique circumstances, such as architects' studies, landscape estimates, machinery cost estimates, cost to mitigate estimates, planning studies, replacement of wells and septic systems, etc. It is expected that the NRE specialist will utilize these instructions as a guide as to the minimum standards and acceptable format. The goal of these standards is to ensure uniformity in the requisite elements of all NRE reports, while providing latitude for the specialist to prepare reports in their own narrative style, concurrently meeting licensing requirements and professional organization standards in this field. The following elements shall be required for all specialist reports:

- NRE Reports must be independently prepared and each NRE must be signed by the individual(s) making the report.
- NRE Reports may not include any payment for relocation assistance or consider that such payments will be made.
- In the event that an inspection of the property is required to prepare a credible report, the owner or designated representative must be given an opportunity via certified mail to accompany the specialist during the inspection of the property.

Information provided by the owner may assist in the valuation or mitigation process. The specialist performing the report must be present during this inspection.

- The NRE specialist will perform the assignment and prepare the resultant report in accord with the generally recognized professional standards governing the specialty under which the assignment is conducted.
- The NRE specialist working on a mitigation report must meet with the appraiser assigned to the parcel(s) upon which the specialist is working if an appraiser is assigned to the parcel.

2.7.11 NRE Report Format

In completing the assignment, the NRE specialist shall provide properly bound reports on 8.5 x 11 inch quality white paper (except maps, which may be larger, if folded to fit within the report) and shall adhere to the Sample Report Format guidelines in Section 2.10. Because AIA reports are NRE reports which deal specifically with mitigating access damages, the NRE specialist performing an AIA report will refer to the NRE instructions set forth in this manual as a guide to the minimum standards and acceptable format, subject to any special requirements requested by the Office of Access Design.

2.8 Administrative Determinations of Value

An Administrative Determination of Value or (ADV) represents an informal estimate by the Division of the just compensation to be paid to an owner. The ADV is analogous to the waiver valuation as defined in 49 CFR 24.2(a)(33) and set forth in 49 CFR 24 Subpart B Section 24.102(c). An ADV is used in lieu of an appraisal and by definition is not an appraisal.

2.8.1 Ethical Standards of Service for ADV Provider

The person performing the ADV shall not have any interest, direct or indirect, in the real or personal property to be valued, nor business dealings with its owner(s), tenant(s) or representatives. All potential conflicts of interest must be reported by the person performing the ADV to the Appraisal Section Supervisor prior to undertaking any services. In the event that a potential conflict is discovered in the course of performing the assignment, the person performing the ADV must contact the Appraisal Section Supervisor prior to submitting an ADV.

Compensation for making an ADV shall not be based on the amount of the valuation estimate.

No person shall attempt to unduly influence or coerce the person preparing an ADV regarding any valuation or other aspect of an ADV.

The person preparing an ADV must conduct his/her work in accordance with the highest ethical standards and must not have been convicted of a crime of moral turpitude.

2.8.2 Ownership of Report

ADV reports and any supplemental work product submitted to the NJDOT become the property of the NJDOT and once delivered shall be retained by the NJDOT, subject to disclosure in accordance with NJ law.

2.8.3 Report Corrections, Revisions, and Additions

When a correction or revision is necessary, the ADV preparer shall furnish replacement reports. Changes to the report initiated by the ADV preparer must be delivered through regular channels and accepted by the Division as a formal revision of the original report.

2.8.4 Applicability

The Project Realty Specialist 4 in conjunction with the Review Appraiser(s) in the development of the appraisal plan determines which cases can be initially valued utilizing an administrative determination of value. Among the factors to be considered are the nature and complexity of the acquisition, estimated value and the anticipated reaction of the property owner, based upon any prior experience with the owner and community reaction to the project. It is necessary that owners on a given project be treated with consistency and uniformity as the determinations of value are developed.

2.8.5 Preparation of Administrative Determinations of Value

The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the ADV. [See 49 CFR Section 24.102(c) ii (B)]. If the person preparing the ADV is a licensed or certified appraiser, they should not include any appraisal license information on the ADV to avoid creating the impression that the ADV is a form of an appraisal. To the greatest extent practicable, the person preparing the ADV should also prepare the appraisal report, when negotiations cannot be concluded successfully. If the ADV was prepared by a person without the appraisal license or certification needed for this type of appraisal assignment, then the appraisal assignment should be done by a person who does hold the requisite license.

2.8.6 Scope of Administrative Determinations of Value

The Administrative Determination of Value is not an appraisal [49 CFR 24.103], and has a lesser degree of investigation and analysis involved than an appraisal. At a minimum, the property should be inspected from the roadway unless there is a need to actually enter the property, in which case an inspection letter is required. The preparer should secure basic comparable sales data. Sales verification and deed research should not be necessary. It is therefore anticipated that this format can be completed in an abbreviated time frame, in order to permit accelerated negotiations. It should be noted that property owner accompaniment is not required unless the property is to be entered for inspection.

2.8.7 Level of Documentation for ADV

- $5,000 or less—None required.
- $5,001-10,000—Provide unit values to convey to property owner how the acquisition estimate was prepared. Provision of sales data is optional. Sales data should be maintained in project file, if not provided in the administrative determination of value, for reference by acquisition agent.
- $10,001-25,000— Provide unit values, sales data, fee/easement calculations and zoning. The presentation can be a spreadsheet type of document without the need to show any individual adjustments.

2.9 Appraisal Review

2.9.1 Standards

Minimum requirements for appraisal review are based upon USPAP Standard 3 and 49 CFR 24.104.

2.9.2 Review Requirements

All appraisals, regardless of value, shall be reviewed and NRE reports considered, by a qualified review appraiser who will recommend the estimate of just compensation prior to the initiation of negotiations. The review appraiser must determine that the appraisal documentation, including valuation data, demonstrates soundness as to the opinion of value. The level of explanation for the reviewer's recommended value depends upon the complexity of the appraisal problem.

Upon receipt of the appraisal/NRE reports in the District office, a qualified Staff Review Appraiser is to perform an initial desk review of the report for compliance with contract terms, generally accepted appraisal theories/practices; and in cases involving NRE mitigation reports, the acceptability of the mitigation concept proposed by the consultant.

If preliminary review finds the work product acceptable, the report receives a formal review and is then registered. The expected completion dates for a review assignment shall be consistent with the project schedule, workloads and complexity of the review. All initial appraisal reports are to be desk/field reviewed.

2.9.3 Review Functions

The appraisal review function is a critical quality control element in the valuation/acquisition process. An appraisal review is not an arithmetic or grammatical review of an appraisal report. It is a comprehensive examination of the appraisal as reported by the appraiser that addresses the following responsibilities:

- Examination of the appraisal's analysis and presentation of data.
- Assure all appraisal requirements are met in relation to the assignment.
- Determine that report meets definition of appraisal in 49 CFR 24.2(a).
- Determine that report meets the standards set forth herein.

A. Field Inspections

Field inspections consist of an interior and/or exterior inspection of the subject property and all of the sales and lease data utilized within the appraisal reports submitted by the review appraiser. The date of such inspections shall be noted by the review appraiser in the written review report that is prepared.

B. Review Analysis

The review appraiser shall examine the appraisal reports to determine that they are complete in accordance with the appraisal fee contract or staff appraisal assignment conditions. The review appraiser will determine if the report(s) comply with USPAP; follow accepted professional principles and techniques, comply with applicable laws, rules and regulations; contain the information and documentation necessary to substantiate the conclusions and estimated value and contain an identification or listing of the

buildings, structures and other improvements on the land, as well as the fixtures that the appraiser considered to be a part of the real property under appraisal; include consideration of all compensable items and do not include compensation for non compensable items; and provide an appropriate arbitrary breakdown allocating the estimated just compensation between the land, improvement, and damage elements resulting from the taking.

The Review Appraiser may consider all pertinent value information that is available, including other appraisals obtained by the NJDOT and information or appraisals provided by the property owner, as well as sales not included in the appraisals, but of which the Review Appraiser has knowledge. The review of the appraisal(s) shall be documented in accordance with State and Federal procedures and USPAP Standard No. 3. In the event the Reviewer should conclude that a fair market value should differ from that which was established in the appraisal report(s), the Reviewer may request an additional appraisal report or the Reviewer may provide his/her own opinion of value in which case the reviewer becomes the appraiser of record and must provide an appraisal report properly documented in accordance with USPAP Standards 1 & 2 and the standards referenced in this Manual.

As part of the review process, the review appraiser shall send the appraiser an addendum request for corrective supplementation to appraisal reports and NRE reports that do not conform to the standards as set forth in this manual. Return date for the supplemental material is to be at least one week prior to the review assignment due date. Addendum requests shall be sufficiently detailed so as to attain a goal of one addendum request per review assignment. All addendum requests (staff or consultant) shall be in writing for anything other than minor corrections and entered into the appropriate fields in the Right of Way database at the time of occurrence.

The review form may provide an explanation regarding minor factual errors or omissions found in the appraisal report in lieu of making corrections to the appraisal, provided the errors or omissions in the appraisal do not materially affect the final value conclusion or in the aggregate affect the credibility of the value conclusion. The use of this option should be very limited because NJDOT appraisals are being used in a potentially adversarial process and the impact of minor errors on an appraiser’s credibility can become magnified in this type of setting.

The review form will identify and document the findings and conclusions arrived at during the review of the appraisal(s) and consideration of any NRE reports. Damages or benefits to any remaining property shall be identified in the review appraiser's report.

C. Acceptance, Rejection and Recommendation of Appraisals

The review form will clearly state the reviewer’s determination of whether an appraisal report is accepted based upon the quality of the report and its compliance with applicable standards, rules, regulations and laws.

If a report fails to meet basic standards and is not corrected by the appraiser, the review appraiser will note that the report is not accepted (rejected). The reviewer must have very specific, valid and supportable reasons for recommending that a report not be accepted. Valid reasons for rejection do not include personality conflicts, difficulty working with an appraiser or minor errors which do not impact the valuation process, etc. Any appraisal report that the reviewer intends to recommend not be accepted because it cannot be satisfactorily supplemented/corrected must be discussed with the

Appraisal Section Supervisor prior to submittal of the review recommending that the report not be accepted.

The Review Appraiser will, as a result of his/her review of the appraisal reports, recommend one of the accepted appraisal reports as the basis for the establishment of the amount believed to be just compensation.

If the review appraiser is unable to recommend an appraisal for the establishment of just compensation, and it is determined that it is not practical to secure an additional appraisal, the review appraiser's scope may be enlarged to include development of an independent report consistent with the standards previously set forth for the preparation of appraisals.

D. Reviewing Cases with More than one Appraisal

In performing a review of a case with multiple appraisals, the appraiser must provide an analysis of the similarities, dissimilarities, strengths, weaknesses, etc. of each of the reports and make a recommendation of the report having the greatest strengths in analyzing market trends and data provided. Where the appraisals for a single parcel have substantive factual elements in dispute or conflict (e.g. zoning, improvement size, etc.), the reviewer must resolve such conflicts so that the appraisers are reporting on essentially the same set of circumstances. Factors then weighing into the selection of one report over another must be explained clearly within the registration. In the event of problems in resolving widely divergent opinions, the matter should be elevated to the Appraisal Section Supervisor, who will then assist in resolving the matter.

When reports have been updated, the Review Appraiser must provide an explanation of substantial changes, if any, which have occurred between the update report(s) and the original reports. Review appraisers should be given access to the original reports in order to understand any changes in the valuation work that occurred earlier in the case.

E. Use of ADV when Negotiations Fail / Condemnation

In those cases where the original offer was predicated upon an ADV and the fair market value of the subsequent appraisal is lower than the ADV, the review appraiser shall present both the ADV and the appraisal information in the review form. The registered just compensation estimate shall be based on the higher value of the ADV. In the event that the case is submitted to condemnation, if the appraisal which replaces the ADV is to be used for testimony, the ADV offer will be submitted and the appraiser will testify to her/his lower fair market value. If a subsequent update appraisal is produced, the subsequent offer and testimony would be based upon the updated appraisal.

2.9.4 Review Appraiser's Delegated Authority

A. Staff Review Appraisers

In preparing their Fair Market Value Statement persons holding the Appraiser II title are delegated the authority to do the following actions with an appraisal report:

- Accept and recommend as the basis for the offer of just compensation,
- Accept, but not recommended for use as the basis for an offer or
- Not Accept (rejected) in accordance with Section 2.9.3.
- Register the appraisal as just compensation to be offered to the property owner

The Staff Review Appraiser must discuss the non acceptance (rejection) of an appraisal report with the Appraisal Section Supervisor prior to submission of his/her Fair Market Value Statement.

B. Consultant Fee Reviewers

Consultant Fee Reviewers in preparing their Fair Market Value Statement are delegated the authority to do the following actions with an appraisal report:

- Accept and recommend as the basis for the offer of just compensation,
- Accept, but not recommended for use as the basis for an offer or
- Not Accept (rejected) in accordance with Section 2.9.3.

Fee Reviewers are not permitted to register an appraisal.

The Fee Reviewer must discuss the non acceptance (rejection) of an appraisal report with the Appraisal Section Supervisor prior to submission of his/her Fair Market Value Statement.

2.9.5 Registration & Re-registration of the Estimated Just Compensation

Staff Reviewers and higher titles are authorized to register an appraisal as the Department's estimate of Just Compensation. These titles, along with qualified Realty Specialists 3 and 4 may likewise approve an ADV prepared by a person other than an Appraiser 1 or Appraiser 2. The registration of an appraisal and the approval of an ADV cannot be delegated to a non departmental employee. The person registering the appraisal report must select from one of the reports accepted by the review appraiser. If the person registering the appraisal report is not using the appraisal report recommended by the reviewer, the person registering the appraisal report must append a written explanation as to the reason for using a different appraisal. All re-registrations of fair market value are to be prepared in the same manner as original registrations and are to be processed as previously set forth. Registrations should be recorded with the Right of Way Database system.

A. Registering a case with pending Minor Corrections

Cases may be registered pending minor appraisal correction, pending the Reviewing Appraiser's receipt of the supplemental information. This will permit the Agent to initiate preparatory work on the case as well as the arrangement of an appointment with the owner, consistent with the anticipated delivery of the corrected appraisal information. Minor appraisal corrections would typically include items such as mathematical or technical errors not affecting the final value conclusion and non-judgmental items that can be corrected promptly and with a high degree of certainty as to the corrective action to be taken. Cases registered pending correction should contain a memorandum stating the type of correction sought and the anticipated delivery date.

2.9.6. Ethical Standards of Service for Appraisal Review Providers

- The review appraiser shall not have any interest, direct or indirect, in the real or personal property to be valued, nor business dealings with its owner(s), tenant(s) or representatives. No reviewer shall undertake a formal review or registration of any property upon which she/he has previously rendered a value through an appraisal or through an ADV. To avoid potential conflicts, an appraiser who has worked on a project shall not review other reports on that same project. All potential conflicts of

interest must be reported by the review appraiser to the Appraisal Section Supervisor prior to undertaking any assignment. In the event that a potential conflict is discovered in the course of performing the assignment, the reviewer must contact the Appraisal Section Supervisor prior to submitting any reports.

- Compensation for making an appraisal review shall not be based on the amount of the valuation estimate or outcome of the review.
- No person shall attempt to unduly influence or coerce a review appraiser regarding any valuation or other aspect of the review.
- The Appraisal Reviewer must conduct his/her work in accordance with the highest ethical standards and must not have been convicted of a crime of moral turpitude.
- Consultant Appraisal Reviewers must be in compliance with all State laws, regulations and Executive Orders regarding his/her eligibility for work as a consultant with the State of New Jersey.
- Consultants must understand and abide by the Division Fee Consultant Policy

2.9.7 Ownership of Report

Review appraisal reports and work product submitted to the NJDOT become the property of the NJDOT and once delivered shall be retained by the NJDOT.

2.9.8 Appraisal Review Report Corrections, Revisions, and Additions

When a correction or revision to the appraisal review report is necessary, the review appraiser shall furnish corrected, revised or supplemented pages or portions of the report for attachment to the copies already delivered. Changes to the report initiated by the review appraiser must be delivered through regular channels and accepted by the Division as a formal revision of the original report.

2.10 Sample Report Formats

Unless otherwise specifically provided in the contract, the samples provided in the link below are the minimum elements which shall be required in all appraisal reports, appraisal review reports, ADV reports, and NRE reports, respectively.

http://www.state.nj.us/transportation/eng/forms/

Section 3 Negotiations

3.1 General

- The acquisition of real property is governed by the State's Eminent Domain Act of 1971 (N.J.S.A 20:3-1, et seq.) and the Federal Highway Administration (FHWA) regulations as contained in 49 CFR Part 24 and 23 CFR Part 710.
- This Manual contains the necessary procedures to ensure compliance with Federal and State law and regulation. Every five years, the chief administrative officer of the Department shall certify the same to the Federal Highway Administration. The Manual will be updated periodically to reflect changes in operations and the Department will submit the updated materials for approval by the FHWA.
- Federal participation in real property acquisition cost is limited to costs associated with property incorporated into the final project and the direct costs associated with real property acquisition required under the laws of New Jersey.

3.1.2 FHWA Oversight of the Right of Way Process

The FHWA exercises full oversight of the ROW process regardless of the particular project classification. It is the responsibility of the Manager, Bureau of Technical Support to provide a yearly report to the FHWA in accordance with Appendix B, 49 CFR Part 24. This report will be complied by the Relocation and Property Management Section of the Bureau and submitted to the FHWA as required.

3.2 Separation of Functions

The Division of Right of Way and Access Management is decentralized, with District Offices. Each District Office is responsible for the appraisal, appraisal review, negotiations as well as relocation and property management functions, except for the processing of rental payments which is the responsibility of headquarters' Division of Right of Way and Access Management.

- Each District Office is comprised of several project teams, with each team being charged with the responsibility for the completion of the appraisal/appraisal review, negotiations and relocation functions for assigned projects as well as other project planning activities.
- The Headquarters' office is comprised of the Office of the Director, and the Technical Support, and Closing Bureaus. The Technical Support Bureau is responsible for project coordination, appraisal contracts, audit of district operations, quality control, property management, oversight of relocation operations and provision of technical guidance to district offices. It also is responsible for the programming/funding of right of way projects including the final vouchering of closed projects The Closing Bureau is comprised of the Title Section which is responsible for title searches, agreement processing and closing of title. The Legal Processing Section having responsibility for the preparation of the legal pleadings necessary to accomplish the Eminent Domain process.

3.3 Preliminary Engineering

Involves the following activities:

Prepare ROW Report, Initiation of ROW Impact Plan, ROW Kickoff meeting

- During initial scheme development, a representative from the District Office will provide guidance to the Scoping Team in evaluating the feasibility of various alternative alignments. Following the initial scheme development and selection of the initially preferred alternative, a design consultant or in-house design staff will prepare preliminary right of way plans and transmit the plans to the District Office.
- The District Office develops preliminary estimates for property acquisition and relocation along with a projected duration for the acquisition process, which are utilized in the alternative selection process. The District will also perform a review of the preliminary plans and submit any comments to the ROW Project Coordination Section.
- The Bureau of Landscape Architecture & Environmental Solutions (BLAES) initiates preliminary environmental screening to identify "environmentally sensitive parcels" (ESP's) so that they can be identified as such on subsequently prepared right of way plans. Preliminary letters/data are forwarded to the Project Coordination Section within the Technical Support Bureau, to be transmitted to the District Office with the preliminary right of way package.
- Project Access Plan & Access Impact Summary, initiates the access study and notifies property The Bureau of Right of Way Engineering and Access Design prepares the owners of proposed access modification/revocation.

3.4 Transmittal of Project to District Office

This process includes the following steps:

- Subsequent to the approval of the Department Action and federal authorization, the Project Coordination Section transmits the individual parcel maps (IPM's), acquisition forms and descriptions to the assigned District Office for the initiation of acquisition. The District office is also provided with a file, containing any project specific material generated to this point in time. This includes public meeting/hearing records, comments from property owners and any other prior public contact. The District will also be provided a list of all parcels which have gone through the Access Design process. In addition, all pertinent correspondence including the final determination letter or last correspondence with the owner, copies of all signed Lot Owner Access Concurrence forms (LOACs) and copies of signed Lot Owner Lease Agreements (LOLAs) as well as a copy of the Final Access cutout plan will be included.
- Detailed processes involving the transmittal of projects to the District Office and Technical Support/district liaison are presented in the Right of Way Administration Section. The District Program Manager will receive the transmittal and review the package for completeness and complexity prior to assigning the project to a Team Leader. The District Manager, along with the Team Leader and others, shall determine the ROW Availability date to be assigned to the District. This date will be transmitted to the Project Coordination Section and Project Manager for inclusion in the database and the PRS system. Only the Director, District Program Manager or their designee are allowed to determine the ROW availability date. The use of

electronic scheduling systems such as Paecetrak or Microsoft Scheduler is required to establish an accurate availability date.

- The District Office will deliver or mail the owner's notification letters and, if not completed, prepare the appraisal plan. In some cases, administrative determinations of value are prepared for uncomplicated takings valued at $25,000.00 or less and staff/fee appraisers are assigned responsibility for all other appraisals. Title searches are reviewed; site surveys initiated and a Workable Relocation Assistance Plan prepared, as appropriate. Final right of way plans are provided to the district's Engineering Witness for review, to ensure conformance with construction plans. The project is then assigned to a project team for acquisition.
- Owner's notification letters will be prepared by the Project Team assigned to the Project. The letters, to be prepared using the Division's data base system, are to be sent after the owner's proper address is confirmed with the municipal records. The letters should include the Owner's letter, the Individual Parcel Maps (IPM) plus a copy of the "How Property is Purchased for Highway and Public Transit Projects" brochure. The letters must be sent via an approved delivery service. The letters must be sent and receipt confirmed prior to owner contact by the appraiser or realty specialist.
- After the appraisal and relocation order is approved, consultant appraisal order requests are transmitted to the Supervising Appraiser, Technical Support Bureau, where the contracts are prepared, circulated for approval and processed to the consultant appraiser. Consultant appraisal reports and non-real estate reports are ordered simultaneously, ensuring that the consultants will work in tandem, developing an appropriate solution to the appraisal assignment. The District Project Team Supervisor communicates regularly with each consultant during the information gathering and problem solving stages.
- Completed appraisals are examined by a qualified review appraiser, within a Project Team or by a consultant review appraiser, to ensure compliance with standards. The Review Appraiser will prepare a written report consistent with the requirements of the Appraisal and Appraisal Review Section. Prior to acceptance, the assigned Review Appraiser (staff or consultant) will secure necessary corrections or revisions to the appraisal. The staff review appraiser will determine the amount of just compensation and will set it forth in a signed statement. Subsequently, the appraisal report is given to the Project Team Leader for the assignment of negotiations and the completion of the acquisition process.
- Detailed processes for the appraisal and appraisal review function are contained in the Appraisal/Appraisal Review Section.

3.5 Parcel Records

- A separate case file is maintained for each ownership of real property to be acquired. Parcel records are important in that they contain the department's formal record of acquisition and relocation activity on the parcel. Files shall be maintained with all materials in chronological order and firmly fastened in the parcel file folder.
- These records document the fact that bona fide negotiations were conducted with the property owner, are utilized for audit purposes and form the basis upon which a determination is made for eligibility of Federal reimbursement for project costs incurred. The realty specialist's negotiations contact record must clearly support the completion of bona fide negotiations. The use of the Division's data base system is

required for proper record keeping. Copies of all paper correspondence should be made into a PDF file and included into the Division's data base system. The Division's data base system is the main and most reliable storage for parcel records. Any other file is secondary and should not be used as the prime storage process for the District.

3.6 Assignment of Negotiations

- It is a requirement that each owner is to be provided with copies of all real property appraisal reports, ADV's and all non-real estate reports obtained prior to the filing of condemnation.
- The procedures for ordering appraisals, appraisal reviews and NRE reports is found in the Section 2, Appraisal and Review. No negotiations should commence until such time as the amount of Just Compensation is established in accordance with Section 2.
- Subsequent to establishing the just compensation amount for a parcel, the Project Team Leader/Realty Specialist 4 and/or Realty Specialist 3 shall review and evaluate the case file, plans, appraisal and registration prior to initiating a written assignment of the case to a realty specialist. The purpose of this review and evaluation is to determine the level of experience believed necessary to conduct negotiations in a competent and effective manner. Also, it is to identify particular areas of concern that may impact the conduct of negotiations, and possibly influence a favorable outcome. Upon completion of the review and evaluation, the case is to be assigned according to the experience level of the individual realty specialist. The assignment shall note any areas of concern and contain a date by which negotiations are to be completed. This date shall be compatible with the District Office due date for completion of negotiations on the project.
- Cases involving acquisition from a utility company, railroad company, NJDEP or riparian parcels will be handled by the District Office.
- The realty specialist will be provided with:
    1. all appraisal and non-real estate reports which were relied upon in establishing the just compensation
    2. a case summary form, which contains the reviewing appraisers determination of fair market value
    3. the individual parcel maps and parcel description
    4. the Owner Housing Supplement on parcels which the owner occupies as his/her primary residence, so that any supplemental payment due the owner can be tendered simultaneously with the offer of the just compensation for the property
    5. a copy of the environmental summary memorandum and/or remediation cost report, as applicable
    6. Prior to the initial negotiations contact, the realty specialist should secure the site survey and any data developed during the preparation of the Workable Relocation Assistance Plan. Specifics regarding supplemental housing payments are presented in the Relocation Section.
    7. Subsequent to being informed of the right to receive just compensation, based on an appraisal of the real property, the owner may make a gift or donation of the property, any part thereof, any interest therein, or any compensation paid therefore.

8. the standards for appraisals and appraisal review, as well as qualifications for appraisers, are presented in the Appraisal Section.
9. If the assignment contains Underground Storage Tanks or Decommissioning of Underground Storage Tanks, guidance can be found in Section 4.

3.7 Realty Specialist Pre-Negotiations Activities

The realty specialist should take the following steps:

- consult with the Project Team Leader regarding any concerns cited on the assignment
- review and understand the appraisal/non real estate reports and the appraisal review
- consult with the reviewer/team leader/Realty Specialist regarding any questions as to the appraisal process or valuation
- review the right of way plans, construction plans, profiles and cross sections to verify consistency with the appraisal report and to identify any design changes in the vicinity of the property
- review the District's project scoping file, which may contain records of public information centers, hearings and other prior public contact
- conduct an on-site inspection of the parcel, noting evidence of any recent or pending improvements and physical access in the before situation; note any improvements and/or circumstances that differ from those within the appraisal report
- become familiar with any owner housing supplements which may be included in the offer; (Specifics regarding owner/tenant housing supplements are contained in Relocation Section.)
- ensure that an environmental screening has been completed and that BLAES has provided the environmental summary memorandum and/ or remediation cost report to the Division of Right of Way and Access Management, so that a copy can be provided to the owner
- secure a copy of the appropriate environmental clauses that will appear in Paragraphs 6, 7 & 8 of the Complaint; (Bona fide negotiations may not be considered completed, nor a Complaint filed until these documents have been provided to the property owner.)
- prepare the offer letter and assemble an agreement package containing the appropriate clauses and pages

If, after completing the above steps, the realty specialist believes the case is beyond his/her experience level in terms of complexity, he/she is to document in writing the basis for such a belief and consult as appropriate with the Team Leader. The Team Leader will consider the issues raised by the realty specialist and make a determination as to their merit. A written response will be issued to the realty specialist.

In the event the Team Leader disagrees with the realty specialist, the response will set forth the basis for such a determination and the realty specialist will then continue to process the case in accordance with the assignment. If the Team Leader determines that the issues identified are beyond the scope of the realty specialist's experience, either of the following actions may take place:

- The case, or one or more of its component parts, may be reassigned to another realty specialist having more experience with the particular circumstances. In those instances whereby a more experienced realty specialist is providing assistance, this interaction shall be as a lead worker, as opposed to exercising any supervisory responsibilities; or,
- The Realty Specialist 3 may be instructed to actively participate with the assigned realty specialist in completing the case. This participation may, among other things, include attendance at meetings with property owners/specialists, project managers, designers, and DAGs.

The assigned realty specialist shall retain primary responsibility for processing the case, even though some form of the above-indicated assistance is being provided.

It is recognized that issues may arise during the course of negotiations that may introduce complexities beyond the realty specialist's experience level. In such instances, the realty specialist shall report to the Team Leader in the same manner as indicated above, who shall then respond accordingly.

The written communications between the parties, relevant to this procedure, are to be maintained in a District file and are subject to audit by the Manager, Bureau of Technical Support.

3.8 Negotiations with the Property Owner

A. When arranging meetings with the property owner for commencement of negotiations, the realty specialist must be careful not to place any undue burden on the owner to satisfy the realty specialist's personal desires or schedule. There may be occasions where the realty specialist is unsuccessful in promptly arranging for an initial negotiations contact with the owner. In such instances, in order to formally initiate the negotiations phase of the acquisition process, the realty specialist may transmit the offer letter and appraisal/specialist reports to the owner or owner's representative by certified mail or via an approved delivery service. The realty specialist should, subsequently, actively attempt to schedule an appointment to meet with the owner to go over the material in person.

B. Negotiations involving absentee or out of State owners may, of necessity, be conducted by mail. This method should be the methodology of choice when involving national firms or corporations, or, when there is a letter of representation already in the file.

C. If the owner states that he /she is represented by counsel, the realty specialist should request a written statement from the owner's counsel affirming the representation arrangement. Upon receipt of the letter of representation, the specialist should only contact the representative regarding the case. Under no circumstances should the specialist discuss value with the owner without express permission of the owner's representative. An owner's representation can only be rescinded in writing. Verbal information from an owner does not rescind the letter of representation. If no letter is forthcoming, a confirming letter will be sent to the owner with a copy to the representative.

D. Owners of improved residential properties who are being displaced and sign an agreement shall be eligible for a down payment up to 25% of the purchase price,

provided the amount of the down payment does not exceed 75% of the owner's equity in the property.

E. If time permits, an owner may be permitted to retain improvements or fixtures located on the property. Specifics regarding improvement retention are presented in the Relocation Section.

F. At the initial negotiations contact, the realty specialist shall:

1. Provide the owner with a written statement of the basis for the offer of just compensation, which shall include the items listed in the definition of "Summary Statement." In those instances where negotiations are initiated based on an ADV, the letter shall clearly state that the offer is predicated upon an Administrative Determination of Value, rather than an appraisal report.

2. Present the owner/ representative with all appraisal/specialist reports and discuss the appraisal report(s) with the owner/representative. If negotiations are based upon an Administrative Determination of Value (ADV), inform the owner/representative that he/she is entitled to a formal real estate appraisal report if an amicable settlement cannot be reached based upon the ADV.

3. Explain the meaning of the various terms and conditions of the real estate agreement. It should be made perfectly clear to the owner/representative that he/she is not required to surrender possession of the premises until final payment is made available.

4. Advise the owner/representative that an environmental screening has been performed and that the offer letter sets forth the environmental status of the property. As applicable, ensure that the BLAES has mailed the remediation report to the owner or that it will be provided to the owner during the initial negotiations contact. The remediation report will provide the owner with a description of the required remediation and the estimated cost to remediate. This cost will appear in the written offer to the owner. Any additional environmental information disclosed during owner contact should be transmitted to BLAES for further investigation for possible revision to the environmental summary memoranda and complaint language.

5. Provide the owner with a copy of the real estate agreement and discuss the environmental clauses that are contained in the agreement. A copy of paragraphs 6, 7 & 8 of the Complaint should be provided to and discussed with the owner. The owner should be made aware of the fact that our Complaint will contain the environmental clauses, in the event that bona fide negotiations do not result in a settlement.

G. The owner should be made aware of the fact that the real estate agreement is not binding upon the State until it is approved by the Commissioner or his/her designee. Therefore, the time period to closing begins to run upon execution by the Commissioner or his/her designee, not the date that the owner signs the agreement.

H. The realty specialist shall inform the owner that the terms of the written agreement represent the full understanding between the owner and the Department and that, regardless of prior discussions, understandings or communications, the terms of the agreement control the conveyance of the property. Owner requests for changes to our standard agreement should be directed to the Closing Bureau or Division of Law, Transportation Section as well as the Capital Program Project Manager.

I. Once executed by the owner, the agreement shall not be revised or altered, unless it is accomplished through the execution of a new agreement or concurrence in the change by the initialing of the change by the owner. Any unauthorized change or alteration to a signed agreement is a fraudulent act and subject to disciplinary and possibly legal action. Each page of the agreement including the description page shall be initialed by the owner as well as any additions or subtractions approved per paragraph H of this section.

J. The realty specialist shall assure the owner that the signing of the agreement does not terminate the Department's responsibility to the owner and that the realty specialist will be available to assist the owner at any time.

3.9 Realty Specialist's Case Summary (call data)

A. The record of the realty specialist's personal negotiations contacts are an important tool on which the Department relies when it requests reimbursement for acquisition costs on Federal-aid projects. In addition, the call data documents that bona fide negotiations have been conducted and serves as an integral component of the justification either for an administrative settlement or for initiating condemnation. Comprehensive call data enables a substitute realty specialist to successfully continue negotiations in those instances where the original realty specialist cannot continue the negotiations.

B. The realty specialist is to make detailed entries in the Division's data base system covering each contact and meeting with the owner or owner's counsel. The call data should be factual and avoid editorial or emotional entries. These entries are to be made as soon as possible after each contact to ensure accuracy. The negotiations record (diary) may be subject to discovery during the initial stages of the condemnation action prior to the Appointment of Commissioners and may be evidential in court in determining whether bona fide negotiations occurred.

Call Data should include, but not be limited to the following:

1. Date of parcel assignment

2. Date, telephone number and full name of any parties in interest, contacted by telephone

3. Date, address and place of any meeting with parties in interest

4. Full names of all adult participants and their relationship to the owner

5. Amount of the offer and the verification of the fact that the offer was made in writing

6. Verification of the presentation of:

   a. All real estate and non-real estate appraisal reports; The just compensation offer letter

   b. The owner housing supplement, if applicable

   c. The environmental summary memorandum and remediation cost report, as applicable

7. The details regarding any negotiated administrative settlement

8. A summary of the events of meetings, including:

a. The owner's response to the offer

b. Details of any counteroffer

c. Owner's questions and realty specialist's responses; and

d. Any comments regarding the appraisal process/report.

9. Note that "intent to condemn" letter was transmitted to the owner, if applicable.

C. The call data documents that the State has followed acquisition practices that:

10.1. Encourage and expedite the acquisition of real property by agreement with owners

11.2. Avoid litigation

12.3. Assure consistent treatment for owners in the public improvement program

13.4. Promote public confidence in public land acquisition practices.

3.10 Realty Specialist Responsibility/Authority

A. Once assigned a case, the realty specialist retains responsibility for the case, until an agreement is consummated or the final judgment as to the Department's authority to condemn is completed. After a case has been submitted for condemnation by the District Office, any communication between the District Office and the property owner shall be coordinated with the assigned DAG. As the primary contact with the property owner, the realty specialist should be accorded significant authority and responsibility in negotiations and should:

1. Consider and respond to any counteroffer received from the owner

2. Be encouraged to develop a direct liaison with the project managers and other units within the department, concerning design changes, access and environmental issues and any other issues related to the acquisition of the property

B. Dependent upon the complexity and/or dollar amount of the acquisition, the Project Team Leader may decide to assign a more experienced realty specialist to accompany the realty primary realty specialist on a negotiations contact.

C. Negotiations shall be conducted without any attempt to coerce the property owner into reaching an agreement:

1. The realty specialist should be particularly careful not to imply that the negotiation is a "take it or leave it" situation.

2. At the appropriate time, the initiation of condemnation should be presented as an opportunity for the owner to receive an unbiased decision as to the just compensation and should not be stated in a threatening manner.

D. The time of condemnation shall not be advanced, negotiations deferred, or the deposit of funds with the Superior Court deferred, in order to induce an agreement on the price to be paid for the property.

3.11 Conflict of Interest

A. As presented in the Department of Transportation Policy 2.109-D, no Department employee shall have any direct or indirect interest, financial or otherwise, or engage in any business transaction or professional activity which is in conflict, or could appear to be in conflict, with the proper discharge of her/his duties.

No employee shall represent, appear for, or negotiate on behalf of, whether by him/herself or by or through any partnership, firm or corporation in which he/she has an interest, any person or party other than the State in any negotiations for the acquisition or sale by a State agency of any interest in real or tangible or intangible personal property, or in any proceedings relative to such acquisition or sale before a condemnation commission or court.

B. If an employee of the Department is the owner of property required for a project, it is the policy of the Department to complete the appraisal and review of appraisal of the property using only independent appraisal consultants. All property owner inquiries or questions prior to registration of the property value shall be coordinated through the Attorney General's Office. When the property value is registered, the Department's file shall be transferred to the Attorney General's Office. The Department's offer of compensation for the required property shall be made through the Attorney General's office and an acceptance of that offer or any subsequent questions that the owner may have shall be made through the Attorney General's Office. It is also the policy of the Department that after appraising the owner's property and making its fair market value offer to the owner, the Department will initiate condemnation to allow the Commissioners, and if necessary the court, to establish the amount of just compensation due that person, if the fair market value offer is not accepted by the owner. The Attorney General's Office will appoint two DA'sG; one to address any questions that the owner may have and one to present the case if necessary before the Commissioners and/or Court.

C. It is the policy of the Department that no employee shall accept any gift or other thing of value from any firm, organization, association or individual doing business with the Department, or those that could reasonably be expected to do business with the Department.

D. Every appraisal report, offer, counteroffer and settlement is a confidential matter between the owner and the realty specialist and such information shall not be shared with other owners on the project.

E. Under no circumstances will the same person that appraised, reviewed or prepared an Administrative Determination of Value negotiate with the property owner.

F. Federal requirements now preclude appraisers, review appraisers, and those that prepare ADVs from being supervised by or having their performance evaluated by persons functioning as a realty specialist. The purpose of this requirement is to assure these individuals are protected from inappropriate pressure in the performance of their valuation duties. Within the Bureau of Technical Support and in the District Offices, no appraisal staff or ADV valuers shall be supervised by or have their performance evaluated by someone that routinely conducts property negotiations.

3.12 Counsel

- Legal counsel is available from the Division of Law, Transportation Section, during the planning, design and bona fide negotiations phases of the acquisition process, as well as during post complaint settlement discussions. Project Team Leaders and their staff are strongly encouraged to avail themselves of this resource.
- A DAG may be a useful resource for detecting complex valuation pitfalls which can be avoided or minimized during the appraisal process and should be called upon for advice on the law on benefits, before value/after value appraisals and the compensability of particular items.
- In complex cases, a DAG should be afforded the opportunity to participate in the realty specialist's pre complaint negotiations meetings with the owner or owner's counsel and to provide input into the decision to initiate the condemnation process. Questions regarding changes in design are not an appropriate topic for legal advice.

3.13 Administrative/Legal Settlements

A. An administrative settlement is any settlement made through administrative means, prior to the filing of a condemnation complaint, which is in excess of the approved valuation of just compensation.

B. A Legal settlement is any settlement made after the Complaint is filed. A DAG may prepare a memorandum documenting the basis for the proposed settlement, upon which the appropriate Right of Way official may note concurrence.

C. Both Federal and State law and regulation require an attempt to expedite the acquisition of real property by reaching agreements with owners to avoid litigation and to relieve congestion in the courts.

D. Administrative settlements are entered into for properly documented administrative reasons which are considered to be in the public interest. The administrative settlement process shall be maintained separate from the appraisal and appraisal review function.

E. All proposed settlements must include written justification regarding the proposed settlement. The amount of justification should be consummate with the value of the settlement. For larger settlements, details including sales charts and grids, detailed explanations of the issues and recommendations, copies of alternate comparable sales and other such documentation is required. At no time can any settlement be approved solely on the basis to avoid condemnation proceedings.

F. Some authority relative to recommending/approving an administrative settlement may be delegated to the realty specialist at the direction of the District Program Manager with the concurrence of the Director. The extent of the delegation will depend on the experience of the realty specialist and the amount of the administrative increase involved.

G. Proposed settlements beyond any delegated authority must have prior approval of the Director or the Manager, Bureau of Technical Support.

H. Proposed settlements above the fair market value must be accompanied by written justification, signed by the person authorizing the settlement, when the case is submitted for management review.

I. No supervisor shall delegate his/her administrative settlement authority under any circumstances.

J. The fact that a possible settlement requires the realty specialist to obtain authorization from a supervisor and then to secure an agreement, does not constitute the realty specialist performing supervisory duties. Rather, this is a system check and balance to ensure the appropriate expenditure of public monies. Processing of the case from the point of settlement authorization forward is handled in the routine manner.

K. Realty Specialist Trainees must get approval from the Realty Specialist3 for all settlements above Fair Market Value regardless of the amount.

3.14 Relocation Assistance

A. The relocation process begins at the preliminary plan submission phase, when district personnel develop a cost estimate for the relocation of residential and commercial occupants. Prior to the initiation of the appraisal process, site surveys are completed for each occupant and a Workable Relocation Assistance Plan prepared.

B. Each residential occupant may be eligible for consideration for an owner/tenant replacement-housing supplement. The owner housing supplements are prepared immediately upon the registration of the fair market value and any supplement is offered to the owner with the tender of the fair market value. Tenant supplements are prepared and offered to tenant occupants promptly after the offer to the owner. Residential and commercial occupants are eligible for reimbursement for moving costs.

C. Agreement Cases - The real estate agreement should refer to and include as an exhibit, the appropriate residential/commercial lease agreement with the owner or any tenants in occupancy. The lease agreement between any remaining occupants and the Department should provide for the lease taking effect upon the date of closing. An agreement should not be executed by the owner, nor accepted by the Department, until a lease(s) is executed by the owner and/or occupants of the premises. The lease agreement should terminate all prior leases. The Department representative at the closing should verify that there are no new occupants in the premises to be conveyed.

D. Condemnation Cases - In accordance with our Eminent Domain Statute, any leasehold interest is condemned along with the fee interest. That Statute provides that the Department is entitled to rents, issues and profits twenty days after Service of Process. Nevertheless, the Department should endeavor to secure leases from holdover occupants on condemnation properties. If any existing leases contain a condemnation clause, the owner should be asked to provide the appropriate notice to any lessees.

E. All lease agreements should be included with all agreement packages. The package must include justification for the lease rental amount of each lease. Appropriate documentation reflecting the lease determination should accompany the lease package. As occupants relocate, properties are secured by the district personnel.

F. Specifics regarding relocation assistance and property management are contained in the Relocation Section.

3.15 District Preparation of the Case for Agreement/Condemnation

A. The realty specialist must supply the owner's name and address; spouses name; nature of taking; all tenant information; copy of the intent to condemn letter; and a copy of the agreement and description, when the case is submitted to the Acquisition Section.

B. The realty specialist shall transmit via certified mail return receipt requested or approved delivery service, the "notice of intent to condemn" to the owner. The notice shall contain a summary of the negotiations contacts and a statement as to why condemnation is to be initiated. The realty specialist shall respond to any questions generated from the owner by the letter and settlement discussions may continue based upon the response from the owner. A copy of the notice must be included in the acquisition package.

   Once the "Intent to condemn" letter is sent, continued conversations with the owner or counsel should not be characterized as negotiations, but rather as "settlement discussions."

   It is important that any communications after the letter is sent clearly indicate that negotiations are not being resumed. Failure to make this clear to the owner may impair our ability to file the Complaint. If the realty specialist is unsure of what would be characterized as negotiations, they should contact the DAG assigned to their District for advice.

C. Upon the completion of bona fide negotiations, resulting in either the execution of an agreement by the owner, or the decision that further negotiations would not be productive; the Realty Specialist shall prepare the case for transmittal to the Acquisition Section of Technical Support for closing on the agreement or the initiation of the eminent domain process.

   1. To ensure prompt payment to the owner, the case file shall be transmitted to the Acquisition Section within five working days of the receipt of the executed agreement from the owner. The case file should contain the following items:
   2. a Department Action signed by the District Program Manager, recommending the appropriate disposition of the parcel
   3. the Case Summary Form (which contains a summary of the specialist's negotiations call data as well as the reviewing appraiser's determination of value statement). This must be reviewed and signed by the specialist's team leader or project supervisor
   4. copies of all appraisal/non-real estate reports and correspondence with the owner/counsel
   5. the comparable sale or lease exhibit for cases being submitted for condemnation
   6. the original and copy of the executed agreement (where appropriate) and the agreement shall be assembled in the following order: consideration page, parcel description, subordinate clauses concerning title, environmental clauses and signature page(s)
   7. cut outs of the parcel/condemnation and entire tract maps
   8. confirmation of offer letter; environmental screening letter/remediation cost report

9. copy of "intent to condemn" and access clearance letters

D. The Team Leader is responsible for ensuring that the case file is complete and accurate prior to transmittal to the District Program Manager. At this point, the case file shall be separated into (1) a permanent file which will be retained after final disposition of the case; and (2) a temporary file which shall be retained only until payment has been made, after which it can be discarded.

E. Subject to extenuating circumstances and with the approval of the Supervisor of the Acquisition Section, the date of vacation in the real estate agreement shall normally be at least 90 days from the anticipated date of its approval by the Director, Division of Right of Way and Access Management. This will assure that the deed will have been delivered and the Title Section will be prepared to conduct a closing and make final payment as of the stipulated date of vacation of the premises contained in the agreement.

3.16 Processing of Case by Headquarters Technical Support

A. Upon receipt of the case file from the District Office, the Acquisition Section transmits the case to the Funding Section for confirmation that funds are available. Upon confirmation of the available funds, the case is transmitted to the Director for approval of the Department Action and execution of the agreement forms; or alternatively for approval to initiate the eminent domain process. Upon authorization to initiate the eminent domain process, the Acquisition Section transmits a case file to the Division of Law, Transportation Section for preliminary review and comments. The response from the Division of Law, Transportation Section should be within 30 days.

B. The executed original agreement is sent to the District Office for mailing or hand delivery to the owner by the realty specialist. Copies of the agreements and the parcel file are transmitted to the Legal Processing Section for closing on the agreement and payment to the owner. The Titles Section sets forth the policy and procedure for all title related activities.

C. Upon receipt of the complaint, map and title update, the Acquisition Section will transmit the file to the Legal Processing Section for initiation of condemnation. This package will include the (a) approved Department Action, (b) case summary, (c) appraisals/non real estate reports, (d) complaint map and description, (e) offer letter, (f) intent to condemn letter, (g) environmental summary memorandum/remediation cost report and (h) the sale or lease exhibit. Please refer to the Legal Processing Section for the processes followed to condemn property that cannot be acquired by agreement.

D. The decision to accomplish additional court deposits, in any given case, shall be predicated upon a consultation between the assigned DAG, Condemnation Coordinator from the District or the Appraisal Section and the Acquisition Section Supervisor.

3.17 Quality Control

A. Quality control in the acquisition process is primarily the responsibility of the District office realty specialist assigned responsibility for the negotiations on a particular case. The realty specialist is responsible for the quality of negotiations and the proper preparation and execution of the real estate agreement; or alternatively, of assuring that

all requirements have been met for the initiation of the condemnation process. The Team Leader or Realty Specialist 3 is responsible for audit of the realty specialist's case file.

B. Particulars regarding the District Office quality control process are contained in the District Operations Quality Assurance Plan. It is the responsibility of the District Program Manager to implement and actively comply with the Plan and to ensure that acquisition activities are accomplished in accordance with State and Federal Law and Regulation.

C. Upon transmittal of the case file to Technical Support for processing of the real estate agreement or the initiation of the condemnation process, the case file is audited by the Supervisor, Acquisition Section, Bureau of Technical Support. If the case file is deficient in any substantive matter that would impair the processing of the case, the case is returned to the District Program Manager with a written critique of the deficiencies. The Section Supervisor retains a record of the deficiencies as a tool to determine areas needing improvement and to develop staff training programs.

D. On a semi-annual basis, the Supervisor, Acquisition Section, shall select one or more experienced District Office Realty Specialist 3 staff which will comprise a quality review team. The FHWA Division Right of Way Officer may, at his/her discretion, participate as a member of the team. The team shall perform a quality review of selected cases within each of the three District offices and issue a report as to their findings. Corrective action/training will follow as determined necessary by the findings of the report. In the event that the FHWA Division Right of Way Officer does not participate as a member of the team, a copy of the report will be provided to the FHWA Division Office.

3.18 Database Input and Use

It is critical that the proper use of the Division's Database is performed by all staff members. The data base system tracks all aspects of the case and enables supervisory staff to monitor the progress of the case. The system allows for the generation of reports and data that is used by staff throughout the Division and Department. The lack of detailed information input can delay projects; create cost overruns and poor quality control. It is the responsibility of each employee of the Division to become proficient in the data base system and to use it as much as possible.

Section 4 Relocation and Property Management

4.1 Introduction

This section describes the organization and the procedures by which Relocation Assistance and Property Management activities shall be accomplished so as to comply with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and Chapter 50, NJ Public Laws of 1989.

The Relocation and Property Management Section is located within the Technical Support Bureau, in the Division of Right of Way and Access Management. Responsibility for property management issues and technical support for relocation issues for the Districts rests with the Relocation and Property Management Section of the Technical Support Bureau. The responsibility for the provision of relocation assistance and payments rests with the Right of Way District Offices. The District Managers have the responsibility of implementing the provisions of Chapter 50, Laws of 1989 and have the primary responsibility for ensuring compliance with the Relocation laws and regulations.

Each District Office will have one or more real property acquisition teams, whose function will be to negotiate for the purchase of the right of way; to prepare cases for agreement and condemnation; to assist in the condemnation of parcels and to provide relocation advice and relocation assistance and payments to persons whose property is acquired for transportation projects.

Relocation advice and assistance must comply with all State and Federal laws and regulations regarding discrimination. The Department has a zero tolerance policy regarding activities which are discriminatory in nature.

4.1.1 Public Information

To assure that the public has adequate advance and continuing knowledge of the relocation program, the Department shall present information and provide opportunity for discussion of relocation services at public hearings and provide copies of the relocation brochure. The District Office shall be responsible for the presentations. The Office of Community Involvement shall notify the District Manager as to the time and place of hearings and information centers and the Manager will arrange to have staff present to provide the information.

The presentation shall include, at a minimum, the following information:

1. The availability of relocation assistance and advisory services, eligibility requirements and payment procedures
2. The estimated number of individuals, families, businesses, farm and non-profit organizations that are to be displaced and subsequently relocated by each of the alternatives under consideration
3. The studies that have been or will be made and the methods that will be followed to assure that housing needs of the relocatees will be met.

Copies of the relocation brochure and other literature, as applicable, shall be distributed at the hearings and/or information centers.

4.1.2 Relocation Brochure

The District Managers are responsible for obtaining the Federal Relocation brochure titled "RELOCATION – Your Rights and Benefits as a Displaced Person under the Federal Relocation Assistance Program" from the Federal Highway Administration. The brochure describes the relocation program and will be distributed without cost at public meetings. In order to give proper information and assistance to relocatees, every effort should be made to communicate with them in their language.

4.2 Relocation Planning

Data will be developed documenting that displacements will not exceed available housing resources. During project scoping, projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms and non-profit organizations are recognized and solutions are developed to minimize the adverse impact of displacement. Planning shall precede any action which will cause displacement and should be scoped to the complexity and nature of the project. Solutions to problems, which may involve a relocation study, will be developed and include an evaluation of resources available to accomplish relocations.

The needs of every individual to be displaced will be evaluated and compared with available decent, safe and sanitary housing to ensure that an inventory of currently available housing is provided. Concurrent displacement by other agencies should also be assessed.

4.2.1 Preparation of the Workable Relocation Assistance Plan

All projects will have a Workable Relocation Assistance Plan (WRAP) prepared before any appraisal plan will be approved or before any negotiations are to start. The WRAP will be prepared by the appropriate District and a copy will be provided to the Manager of Technical Support. The WRAP is required to be reviewed and approved by the Manager of Technical Support prior to the final approval of the District Appraisal plan. The purpose of the workable relocation assistance plan is to secure, through site surveys, the data necessary to determine the number and needs of the persons, families, businesses and non-profit organizations or governmental agencies being displaced from the project. Site surveys shall be secured as necessary by personal contact. Occupancy data should be matched against the supply of present and future projected housing availability, as well as the ability of supporting services and agencies to assist with special problems. The WRAP contains 9 sections in addition to a cover memorandum and a table of contents. The sections are as follows:

A. Project Location and Summary of Project

This section provides an overview of the project, its purpose, its location and the number of parcels to be acquired, along with a breakdown between the number of partial and entire take parcels. In addition there shall be a mention of the number of parcels that will require relocation. In the event that there are no relocations, a statement will be made as to a negative relocation impact and only the completed site surveys will be needed.

B. Summary of the Anticipated Relocations

This section is to include the total number of parcels with anticipated relocations, excluding sign only relocations or relocations involving only personal property, such as

storage trailers, sheds, construction materials. The total number of parcels with anticipated relocations should be broken down as to the total number of owner occupied and total number of tenant occupied commercial relocations, the total number of owner occupied and tenant occupied residential relocations, and the total number of non-profit or governmental agency owner or tenant occupied relocations. A separate statement shall be made as to the number of parcels that require the relocation of signs and a statement as to the number of parcels that require only the relocation of personal property. Refer to Section 4.17.1 regarding the policy pertaining to advertising signs.

C. List of parcels with Anticipated Relocations

This section provides a list of all the parcels with a description of the type of relocation for each parcel with an anticipated relocation. A notation shall be made next to those parcels that will require additional special assistance, such as a home owner that is disabled and confined to a wheel chair or a business that has operations that are regulated by another agency or is complex such that it will require a lengthy period of time to relocate.

D. Site Relocation Office and Personnel Requirements

This section details whether or not a site office will be required, and what potential sites are available for a site office. (The need for a site office will depend on several factors, the number of residential and commercial occupants anticipated to have to relocate, the distance of the job site from the District Office, and the availability of transportation. Any potential field office site will have to be easily accessible to those that may need relocation assistance as a result of the projected project.) In addition this section shall list the number of personnel required to adequately provide relocation services and as to whether any will need to be bi-lingual.

E. Residential Units Available for Sale or Lease

This section includes available residential listing for sale and for lease as required. If there are no residential relocations anticipated, then a "Not Applicable" statement will apply. There must be at least one residential property available with comparable rooms and size for each one listed that is anticipated to be acquired and that require the relocation of an owner occupant. There must be available at least one comparable rental unit, with the required number of bedrooms, for each residential tenant anticipated to be displaced.

F. Commercial Properties Available for Sale or Lease

This section lists available commercial listings for sale or lease as required by the type of commercial, non-profit or governmental anticipated relocations.

G. Time Required and Concluding Comments

This section identifies a projected amount of time needed from the start of negotiations to complete all the relocations. In addition this section shall offer any additional comments that may be warranted given the nature of the relocations, particular whether or not there will be anticipated problem relocations.

H. Table of Parcels with Breakdown of Anticipated Relocations

This table lists each parcel and the number of relocations required per parcel for each type of anticipated relocation, as applicable.

I. Signed Copies of the Completed Site Surveys

Each site survey shall be completed, with a photo attached of the taking area and signed by the Reality Specialist who obtained the information.

4.2.2 Local Site Office

A local site office will be established when it has been determined that there is a need for a site office because of the number of residential and commercial occupants anticipated to have to be relocated, the distance of the job site from the District Office, and the lack of available transportation. Any potential field office site will have to be easily accessible to those that may need relocation assistance as a result of the projected project. The office should be located convenient to public transportation or within walking distance for those to be relocated. The District Manager shall make the determination for the establishment of a field site office during scoping or as early as possible to permit sufficient time to open the office concurrent with the initiation of negotiations. Site offices shall be open during hours convenient to the persons to be displaced and shall include being open at least one evening per week.

The site office shall maintain: current lists of replacement dwellings, suitable in price, size and condition for displaced persons; multiple listing services; data regarding security deposits, closing costs, down payments and interest rates/terms; maps showing the location of public facilities, public transportation routes; and current listings of commercial properties and the Federal relocation brochures.

4.2.3 Site Surveys and Business Interview Requirements

Upon assignment of a project, a personal interview will be conducted with the occupants and a site survey prepared. The data gathered during the survey will enable the realty specialist to measure the replacement needs against available housing resources and to develop a personalized relocation plan specifically tailored to the needs, circumstances and preferences of the displaced family or business. If there is reason to believe that an occupant is an alien, not lawfully present in the United States, the realty specialist shall obtain verification from the Immigration and Naturalization Service (INS). If INS confirms and if denial of relocation benefits would not result in extreme hardship to such person’s spouse, parent or child (who are lawfully present in the U.S.), such person will be deemed ineligible for relocation assistance and payments.

The data generated from the Site Surveys must include for “Residential” occupants - the number of persons in the household, health; age; income of persons indicating source (wages, social security payments, pensions, public assistance); employment status, place of employment and means of transportation to employment; and special needs for anyone in the household and verification of occupancy status as appropriate.

In the cases of “Business, Non-Profit, Governmental Agencies or Farms” the Site Survey’s include - the nature of operation; income as reported for Federal tax purposes, if applicable; number of employees; length in present quarters; geographic relation to market and suppliers; nature of ownership, as applicable.

Additionally, for nonresidential relocation (primarily businesses), the personal interview requirement as part of the Site Survey includes, at a minimum, six specified items as follows:

1. The business's replacement site requirements, current lease terms and other contractual obligations and the financial capacity of the business to accomplish the move.

2. Determination of the need for outside specialists in accordance with 49 CFR Part 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
3. For businesses, an identification and resolution of personalty/realty issues. (Every effort must be made to identify and resolve realty/personalty issues prior to, or at the time of, the appraisal of the property. This will tie back to the appraisal requirement for this determination in the appraisal. The appraisal requirements are in Subpart B, § 24.103(a) (2) (i) and Appendix A. The appraiser is to identify realty/personalty items and coordinate with the agent responsible for relocation as appropriate in doing so).
4. An estimate of the time required for the business to vacate the site.
5. An estimate of the anticipated difficulty in locating a replacement property.
6. An identification of any advance relocation payments required for the move, and the Department's legal capacity to provide them.

4.2.4 Department of Labor Mine Safety Act

Safety precautions concerning mines, sand pits, quarries, gravel pits, and shale pits are governed by the provisions of the Mine Safety Act, NJSA 34:6-98.1 et seq. This Act ensures that owners of properties provide protection to the public. Prior to acceptance of possession of such a property, the District Manager shall arrange to accomplish steps necessary to assure compliance with the Act.

4.2.5 Special Replacement Housing Needs

Families or individuals whose age and/or health may be such as to require special relocation housing (nursing homes, senior citizen housing) should be assisted through referral to appropriate supporting agencies. If language barriers exist, the District Manager will request assistance from the Manager of the Bureau of Technical Support in obtaining the services of a bilingual employee within the Department or within another State, County or Municipal government agency to assist in communicating with the potential displacee. If none is available, the District Manager may obtain the services of a translator.

4.2.6 Estimating and Developing Housing Resources

Private Sale and Rental Housing available should be based on the market and what is actually listed as available.

At no time shall the realty specialist refer anyone to persons, brokers or builders, on an individual basis. Any owner asking to have a property listed shall furnish an anti-discrimination certification, stating that the owner will abide by all open housing regulations and that he/she will not discriminate against any individual or family on the basis of race, color, religion, sex, national origin, or handicap.

4.2.7 Replacement Housing of Last Resort

Last resort housing must be justified on a case by case basis giving appropriate consideration to:

1. Availability of comparable replacement housing in the program or project area
2. Resources available to provide comparable replacement housing

3. Individual circumstances of the displaced persons
4. The method selected for providing last resort housing assistance must be cost effective, considering all elements which contribute to total project costs.

Occupants of less than 90 days prior to initiation of negotiations and persons occupying the property subsequent to the initiation of negotiations, but prior to the acquisition of the property, may be eligible for a replacement housing payment under this category. Additional information regarding this situation is provided in Section 1 in the definition of "Comparable Replacement Dwelling".

Last resort housing may be provided by:

1. Provision of a replacement housing supplement in excess of $5,250 for tenants and $22,500 for owners
2. Rehabilitation of and/or additions to an existing dwelling
3. Construction of a replacement dwelling
4. Provision of a direct loan, which requires regular amortization or deferred repayment; (e) relocation and/or rehabilitation of a replacement dwelling;
5. Purchase of land and/or a replacement dwelling by the Department and its subsequent sale or lease to, or exchange with, a displaced person;
6. Removal of barriers to the handicapped; and
7. Change in status of the displaced person with his or her concurrence, from tenant to homeowner, when it is more cost effective to do so (cases where a down-payment may be less expensive than a last resort housing rental assistance payment).

4.2.8 Relocation Housing/Business Summary and Lead Time Analysis

Replacement housing requirements shall be compared with the availability of replacement housing in all categories. The availability of housing will determine the time necessary to effect the relocation of the families and the overall time required to complete the acquisition of the right of way. Needs for businesses, non-profit organizations and farms shall also be analyzed to determine the lead time required. An analysis of the commercial market will prove effective during scoping, in estimating the time required for business moves and the probable availability of replacement sites. Additional information regarding this topic is referenced in Section 4.2.3.

4.3 Relocation Advisory Services

4.3.1 General Requirements

The District Office shall conduct an advisory assistance program which satisfies Federal and State requirements and offers the services described in this section. If it is determined that a person occupying a property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, advisory services may be offered to such person.

The realty specialist should constantly keep in mind that the displaced person or business is being forced to relocate by virtue of the need to construct the proposed transportation improvement and should be creative in anticipating the needs of the

person/business and to call upon all available private and public resources to minimize the impact of the relocation.

4.3.2 Services to be provided

The advisory assistance program shall:

1. Determine the relocation needs and preferences of each person to be displaced
2. Explain the relocation payments and other assistance for which the person may be eligible as well as the eligibility requirements;
3. Describe the procedures for obtaining such assistance and payments;
4. Provide current and continuing information on the availability, purchase prices and rental costs of replacement properties;
5. Explain that a residential occupant cannot be required to move unless at least one comparable replacement dwelling is made available; and
6. Minimize hardships to persons in adjusting to relocation by providing counseling and advice as to other sources of assistance that may be available.

Replacement Housing offered to a relocatee shall be inspected prior to being made available to the relocatee to assure that the housing meets applicable standards and that it is Decent, safe and sanitary.

As soon as practicable, the realty specialist shall inform the relocatee, in writing, of the specific comparable replacement housing and the price or rent used for establishing the upper limit of the replacement housing payment and the basis for the determination, so that the person is aware of the maximum replacement housing payment to which he/she may be qualified. No comparable replacement housing shall be selected for the purpose of calculating the replacement housing supplement without having first been inspected and determined to be decent, safe and sanitary and no housing supplement payment shall be made without the realty specialist first verifying that the housing that the relocatee is anticipated to relocate to is decent, safe & sanitary.

Minority occupants shall be afforded reasonable opportunities to relocate to housing not located in an area of minority concentration and that is within their financial means. This policy does not require the provision of a larger housing supplement than would be necessary to enable the person to relocate to a comparable replacement dwelling.

All persons shall be offered transportation to inspect housing to which they are referred. Assistance shall be provided to a business or farm to obtain and become established in a suitable replacement location. Any person, whose occupancy of an acquired property began subsequent to the acquisition of the property, shall be eligible for relocation advisory services.

4.4 General Information Notices

As soon as practicable, a displaced person shall be furnished with a written description of the relocation program which:

1. Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible
2. Outlines the basic requirements for eligibility and the procedures for obtaining relocation payment(s)

3. Informs the person that he or she will be given relocation advisory services, including referrals to replacement properties and assistance in filing payment claims
4. Informs the person that he/she will not be required to move without at least 90 days advance written notice
5. That he/she cannot be required to relocate permanently unless at least one comparable replacement dwelling has been made available
6. Describes the person's right to appeal any determination as to benefits to which they may be entitled

4.4.1 Relocation Information for Owner/Tenant Occupants

Promptly following authorization to acquire and prior to the initiation of negotiations, the relocation booklet shall be mailed to all occupants. In the case of owner occupied residential properties, the relocation letter and booklet will be hand delivered. The relocation booklet can also be hand delivered to business displacees.

This notice will advise that there will be subsequent notice of relocation eligibility that will provide specifics about the benefits for which they are eligible.

This relocation notice shall state that the occupant is not required to move until and unless: an agreement has been executed and payment made; or for when negotiations having failed, a court deposit has been accomplished and the Commissioners have been appointed and the occupant has been provided with a thirty and a ninety day notice to vacate; and at least one comparable replacement dwelling has been "made available" to the relocatee for residential occupants. A comparable replacement dwelling will be considered to have been made available to a person if the person is informed of its location, has sufficient time to negotiate and enter into a purchase agreement or lease for the property and the person is assured of receiving relocation assistance and the acquisition payment in sufficient time to complete the purchase or lease of the property and the comparable has been determined by the realty specialist to be decent, safe and sanitary. The relocation letter shall also explain the relocation benefits that the occupant may be eligible for.

For all tenant occupants the relocation brochure together with an informational relocation letter shall be provided to inform the relocatee that relocation advisory assistance will be provided and the relocatee may be eligible for relocation payments. The relocation letter shall explain the relocation payments that the occupant may be eligible for. The letter will state that the tenant is not required to vacate until an agreement has been executed and the property owner has been paid; or for when negotiations having failed, a court deposit has been made and the Commissioners have been appointed and the occupant has been provided with a 30 and a 90 day notice to vacate. The letter shall also state that the tenant will be notified when an agreement has been executed or condemnation instituted and until that time, they should continue to pay rent to the owner. Once the owner has been paid for the property by the Department, all rental payments due shall be paid to the Department.

Upon the registration of the fair market value and prior to the initiation of negotiations, the Principal Reviewing Appraiser shall provide the District Manager with the Right of Way Case Summary/Reviewing Appraiser's Fair Market Value Statement. Negotiations cannot be initiated until the acquisition agent sends or delivers the relocation letter and brochure to the occupants. The realty specialist shall enter the date of the mailing of the

letters and names of the occupants notified in the data base and on their relocation call data sheet. This notation will serve as a permanent record that negotiations were not initiated until all occupants had been notified of the relocation assistance program.

4.5 Miscellaneous Requirements

4.5.1 Department Actions

Department Actions (Form RE-27) shall be processed for all relocation payments, except where the payment authority is contained in the owner's purchase agreement.

4.5.2 Civil Rights

The acquisition agent shall inform relocatees of their rights and options in selecting replacement housing in areas of their choice and assist relocatees in ensuring against discriminatory practices in the purchase/rental of residential units on the basis of race, color, religion, sex, national origin, or handicap.

4.5.3 Relocation Call Data

Realty specialists will keep separate relocation call data for each relocatee. The relocation call data will maintain a record of all correspondence sent out to the relocatee and received from the relocatee and or their representative, all phone conversations related to the relocation of the relocatee, all meetings and all actions taken with regard to the relocation of the relocatee. The call data shall indicate when the relocatee has vacated the property being acquired and where the relocatee has relocated to. All payments received by the relocatee must be recorded on the call data.

4.5.4 Status of a Displacee in the United States

If a displacee is an alien not lawfully present in the United States then the displacee is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child. When the realty specialist suspects that a displacee is not a citizen or otherwise legal present resident of the United States, the realty specialist may require documentation such as a birth certificate or a passport or residency card. The realty specialist may not require such documentation without justification as to why the displacee is suspected as being an alien not lawfully present in the United States.

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify that in the case of an individual, that he or she is either a citizen or national of the United States, or an alien who is lawfully present in the United States; or in the case of a family, that each family member is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the head of the household on behalf of other family members; or in the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the United States, or an alien who is lawfully present in the United States. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons with an ownership interest; or in the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the United States. The information regarding this process is to be entered into the ROW database.

4.6 Administering The Relocation Program

4.6.1 Initial Personal Contact

At the time of initiation of negotiations with the owner or in the case of a tenant, subsequent to the initiation of negotiations, but no later than two weeks after the start of negotiations, the occupants must be advised, by personal contact, as to their eligibility for relocation payments and advisory assistance. These items are covered in the relocation brochure, which must be provided to the occupant during the initial personal contact and explained in the relocation letter. All occupants shall be personally provided an explanation of the moving reimbursement amounts and options available to them, as well as the requirements to secure reimbursement. In those instances where the relocatee is unwilling to meet the realty specialist, then a certified letter shall be sent to the relocatee which will explain the relocation advisory services available, as well as to the types of relocation payments that the relocatee may be eligible for. The relocation booklet will accompany the letter.

At the initial personal contact, each occupant shall be informed:

1. That they are not required to move until an agreement has been executed and payment made or a deposit of fair market value along with the appointment of Commissioners has been accomplished;
2. That they are not required to relocate without first being provided with a 90 day written notice to vacate and a 30 day notice to vacate. The 30 day notice to vacate will only be sent out after the condition in the preceding paragraph has been met and for residential occupants at least one comparable housing unit that is decent, safe and sanitary has been offered;
3. That tenants should continue paying rent to the owner; and the possibility that they may be able to remain in occupancy after acquisition of the premises under a lease with the Department;
4. of the availability of suitable private sales/rental/housing;
5. That no payments received shall be considered as income for the purposes of the Federal Internal Revenue Code, or for determining the eligibility of any person for assistance under the Social Security Act;
6. The procedures to be followed to appeal a determination as to eligibility for or the amount of benefits are described in the relocation booklet and in the appeal section in Section 20.

Personal contacts may be conducted either in the occupant’s home, project office or the District Office, at the occupant's option. In all instances, the initiative and responsibility to make such personal contact rests with the realty specialist. Should the occupant refuse to meet after reasonable efforts, a record of the attempted contacts shall become a part of the relocation call data and alternative steps shall be taken to contact and assist the family.

Case assignments and the date by which the initial personal contact is to be made shall be entered into the database as well as onto the realty specialist relocation call data sheet for the relocatee. The realty specialist shall be furnished with a copy of the site survey and the Realty Specialist’s Report section of the Case Summary shall be kept current and personal contacts continued for all aspects of the relocation until the occupant has successfully relocated.

4.6.2 Individual Relocation Plan

During the initial and subsequent personal contacts, the realty specialist and the occupant shall mutually develop a relocation plan. This plan will specify the preferred type, size and location and price range for relocation housing, and the replacement business locations, as well as the timing of the move and the need for other supporting services. This plan for a business will take into consideration the needs and strategies developed during the interview conducted during the site survey process described in Section 4.2.3.

4.6.3 Locating a Satisfactory Unit

The realty specialist shall provide the following:

1. Listings of available and suitable sale/rental housing units and business sites;
2. Transportation to inspect replacement units;
3. An inspection of the replacement property selected by the occupant to ensure that the property is decent, safe and sanitary;
4. Assistance in applying for public housing and in establishing their priority;
5. Assistance in arranging financing for their new home or business relocation, including liaison with the Federal Housing, Veterans or Small Business Administrations and other lending institutions; and
6. Referrals to other supporting agencies and organizations to properly assist the family or business.

4.6.4 Inspection of Relocation Housing

Prior to making a replacement housing payment or utilizing dwelling units available on the market as comparable housing, the prospective replacement unit and comparables shall be inspected to verify that the unit is decent, safe and sanitary. The assigned realty specialist shall complete the dwelling inspection and listing record. Public housing units and FHA/VA financed units are exempted from this requirement.

4.6.5 Action to Correct Substandard Units

A realty specialist will not knowingly make referrals to substandard units. If a family accepts a unit against the advice of, or without the knowledge of the realty Specialist, the Realty Specialist will inspect the dwelling to determine its condition; notify the owner of the deficiencies found and encourage the owner to voluntarily correct any substandard condition. If the deficiencies are not corrected, the Realty specialist shall refer the matter to the local housing inspector and inform the relocatee that a replacement housing payment cannot be made until the deficiencies are corrected.

4.6.6 90-Day Notices and Subsequent 30-Day Notices

No displaced person shall be required to move from his/her home, farm or business until the displacee has received a 90 day notice to vacate, a 30 day notice to vacate and for residential occupant the displacee was made available a comparable replacement housing unit. All 90 day notices will be provided to the displacee at the time when initiations of negotiations have started. The 90 day notice cannot be sent to residential

occupants until the initiation of negotiations or comparable replacement housing has been offered, whichever is later. The 90 day notice will contain no specific date.

The 30 day notice to vacate will contain a specific date and will only be sent out after the displacee has received a 90 day notice to vacate and at least 60 days have elapsed since the 90 day notice was received by the displacee. Additionally the 30 day notice will only be given after the owner has been paid or in cases involving condemnation, a declaration of taking was filed and a deposit of the fair market value made and an appointment of Commissioners. The 30 day notice shall incorporate the Notice to Quit and Demand for Possession.

If a 90 day notice to vacate the premises has not been sent by the time the State has taken ownership, then a combination 90 / 30 day letter must be sent.

4.6.7 Emergency Relocations

A waiver of the requirements regarding the availability of a comparable replacement dwelling may be granted in any case where it is demonstrated that a person must move because of a major disaster, or national or other emergency which requires immediate vacation of the property. Whenever a person is required to relocate temporarily, the agent shall take appropriate steps to ensure that the person is relocated to a decent, safe, and sanitary dwelling; pay the actual reasonable moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and make available to the displaced person as soon as feasible, at least one comparable replacement dwelling.

4.6.8 Tracing Relocatees

Records shall be maintained of all relocations. The realty specialist will attempt to trace any occupants who move from the taking area (after the initiation of negotiations) without our knowledge. If an occupant cannot be located within a 30 day period, a record shall be made of the actions taken and the case closed without further action.

4.6.9 Relocation Records

The District Manager shall be responsible for ensuring the maintenance of the records of displacement activities in sufficient detail to ensure compliance with Federal and State regulations. Records shall be maintained for at least three years after all displaced persons receive final payment. The realty specialist relocation call data shall contain:

1. The names and addresses of displaced persons
2. Their original and new addresses and telephone numbers
3. personal contacts made with each displaced person, including the name of the acquisition agent or others providing relocation assistance
4. An indication as to whether the offer of assistance was declined or accepted and the name of the individual accepting or declining the offer
5. The dates and substance of subsequent follow up contacts
6. The date on which the displaced person was required to move from the property
7. The date on which the actual relocation occurred and whether the relocation was accomplished with the assistance of the realty specialist

8. The amounts of all relocation payments made and the dates made
9. The dates of all notices sent, including but not limited to the relocation benefit letter, the moving cost authorization letter, the 90 day notice to vacate, the 30 day notice to vacate as well as other relevant notices
10. All relevant actions taken in regard to the relocation of the displacee/relocatee. A file shall be maintained for each relocatee, with all materials in chronological order and firmly secured in the file folder. The use of the ROW database for storage of records is required.

4.6.10 Annual Federal Reports

Statistics concerning acquisition activities and relocation assistance and payments (in accordance with 49 CFR Part 24, Appendix B) are required by the Federal Highway Administration as soon as possible subsequent to September 30, but not later than November 15 of each year and the reporting period is October 1 through September 30, but will be prepared for a reporting period of July 1st to June 30th. The Manager, Technical Support, based upon data furnished by the District Managers, is responsible for submitting the reports on a timely basis to the Federal Highway Administration.

4.7 Replacement Housing Payments for 180-Day Occupants

4.7.0 Eligibility - A displaced person is eligible for this payment if the person:

A. Has owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

B. Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Department may extend such one year period for good cause):

   1. The date the person receives final payment for the displacement dwelling or,
   2. In the case of condemnation, the date the just compensation is deposited in the court, or
   3. The date we meet our obligation to make comparable replacement housing available to the occupant

4.7.1 Amount of Payment

Owner replacement housing supplements are to be made on Form RE-150. The estimates shall include at least three comparables. In properly documented circumstances, less than three comparables may be utilized. The selected comparables must be the most nearly comparable and equal to or better than the subject property. The listing considered to be most comparable shall be used as the basis for determining the replacement housing supplement payment. This listing must have been inspected by the realty specialist and deemed as decent, safe and sanitary.

The replacement housing payment may not exceed $22,500 (unless last resort housing provisions are invoked.) The payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the owner is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to the owner, whichever is later.

The payment shall be the amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling. The owner occupant is also to receive a payment for any increased interest/debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling based on the amount of debt that the owner occupant had remaining on the property being acquired and the reasonable closing costs and expenses incidental to the purchase of the replacement dwelling. In the case where the owner(s) occupied a portion of the acquired property as a residence, the value of the residence will be carved out of the total acquisition price and then that value will be used to calculate any payment differential to purchase a comparable replacement dwelling. Should an owner occupant purchase a replacement dwelling/home for an amount greater than the comparable replacement dwelling selected, incidental costs would be adjusted as appropriate.

A 180-day homeowner occupant eligible for a replacement housing payment, but electing to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed the amount of the owner housing supplement.

The amount of the rental assistance payment is based on a determination of market rent for the acquired dwelling with the cost for utilities compared to a comparable rental dwelling available on the market with the expected costs for utilities. The increase in difference, if any, would be the amount of the monthly supplement, which would be for 42 months that the homeowner would be eligible for but the total amount would not be permitted to exceed the amount that the owner could have received as a 180 day homeowner housing supplement if the owner had elected to purchase and occupy a comparable replacement dwelling. If it did exceed, then the owner housing supplement would be the maximum amount that could be used for any rental difference.

Remember, if the homeowner elects to rent a unit where the rent and utilities are less than the market rent and utilities used to calculate the possible owner rent supplement, then there would be no supplement payment.

4.7.2 Computation of Price Differential

The price differential is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of: (a) the reasonable cost of a comparable replacement dwelling or (b) the actual purchase price of the decent, safe and sanitary replacement dwelling purchased and occupied by the displaced person.

Payment shall be the lesser of:	
A. Estimated cost of replacement housing	$150,000.00
Minus acquisition cost of present dwelling	$125,000.00
Replacement housing supplement	**$25,000.00**
OR	
B. Actual purchase price of replacement housing	$140,000.00
Minus acquisition cost of present dwelling	$125,000.00
Replacement housing supplement	**$ 15,000.00**

4.7.3 Determining the Cost of a Comparable Replacement Dwelling

The maximum replacement housing payment shall be based on the listing price of the selected comparable replacement dwelling. The payment shall be computed utilizing the comparable most nearly representative of the three comparables that is equal to, or better than, the replacement dwelling. To the extent practicable, comparable replacement dwellings shall be selected from the neighborhood in which the replacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

The realty specialist who prepares the housing supplement will be prohibited from being assigned responsibility for the relocation of the relocatee for whom the supplement was prepared.

4.7.4 Offering the Replacement Housing Payment

The realty specialist, at the initiation of negotiations, shall explain how the replacement-housing supplement was computed and when there is no entitlement, the owner shall be informed of this fact and the rationale for the determination. At the time of the offer, the realty specialist shall also tender to the owner the estimated replacement-housing supplement amount for which the displacee/relocatee is eligible.

The realty specialist will inform the displaced person, in writing, of the specific comparable replacement dwelling(s) and the price used as the basis for establishing the upper limit of the replacement housing payment. The owner shall be notified that a replacement housing payment may not be made unless the replacement dwelling is issued a certificate of occupancy (if required by the municipality) and inspected and determined to be decent, safe and sanitary by the realty specialist.

In instances where the owner housing supplement payment is needed prior to a closing on a replacement dwelling to be occupied by the owner, arrangements may be made by the realty specialist to have the funds deposited into the owner occupants attorney escrow account with the understanding and agreement of the owner and counsel that the funds are not to be released unless the replacement dwelling has received a certificate of occupancy as required by local municipal code and has been inspected by the realty specialist and determined to be decent, safe & sanitary. It is to be further understood and agreed that if a closing doesn’t occur, the entire amount will be returned to the State.

4.7.5 Special Situations

A. Major Exterior Attribute - If the site of the comparable replacement dwelling lacks an attribute of the subject site (e.g., the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the subject dwelling for purpose of computing the payment.

B. Partial Acquisition - If the acquisition of a portion of a residential property causes the displacement of the owner from the dwelling and the remainder is a build able residential lot, an offer will be made to purchase the entire property. If the owner refuses to sell the remainder, the fair market value of the remainder may be added to the acquisition cost of the subject dwelling for purposes of computing the replacement housing payment.

C. Land Typical for Area - Where a dwelling is located on a tract typical for residential use, the maximum replacement housing payment is the listing price of a comparable dwelling on a tract typical in size, less the acquisition price of the acquired dwelling and the tract on which it is located.

D. Land Larger than Typical for Area - Where a dwelling is located on a tract larger than the typical residential use, the maximum replacement housing payment is the listing price of a comparable dwelling and the tract typical in size for residential use, less the acquisition price of the acquired dwelling; plus the acquisition price of that portion of the tract typical in size for residential use.

E. Multiple Units - If the subject unit was part of a property that contained another dwelling unit and/or space used for non-residential purposes, only that portion of the acquisition payment which is actually attributable to the subject dwelling unit occupied by the owner shall be considered its acquisition cost when computing the price differential. An appraiser will calculate the acquisition value of the carve out portion of the owner occupied unit of the multiple dwelling.

F. Joint Ownership - When a single family dwelling is owned by several persons and occupied by only some of the owners, the replacement housing payment shall be the lesser of the difference between the owner occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement, or the difference between the total acquisition cost of the acquired dwelling and the amount determined as necessary to purchase a comparable dwelling of that portion of the acquired land which represents a tract typical in size for residential use.

G. Highest and Best Use - If a dwelling is located on a tract and the property is appraised on a higher and better use than residential, the maximum payment shall be the difference between the listing price of a comparable on a typical residential tract and the acquisition price of the acquired dwelling, plus the acquisition price of that portion of the acquired land which represents a typical residential tract.

H. Owner Retention of Replacement Dwelling - If the owner retains ownership of the dwelling, moves it from the subject site and occupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of the cost of moving and restoring the dwelling to a condition comparable to that prior to the move; the cost of making the unit a decent, safe and sanitary replacement dwelling; the current fair market value for residential use of the replacement site; and the retention value of the dwelling, if the retention value is reflected in the “acquisition cost” used when computing the replacement housing supplement.

Any exceptions in the carve-out and highest and best use applications which appear to result in an excessive housing supplement should be discussed with and resolved by the District Manager and in conjunction with the Manager of Technical Support or designee.

4.7.6 Limitations on Payment

The amount established as the replacement housing supplement sets the upper limit of the payment as follows:

A. If the person purchases and occupies a decent, safe and sanitary dwelling adequate for his/her needs at a price less than that computed, the supplement will be reduced to the amount required to pay the difference between the acquisition price of the subject dwelling and the actual purchase price of the replacement dwelling.

B. If the person purchases and occupies a decent, safe and sanitary dwelling at a price less than the acquisition price of the subject dwelling, no supplemental payment shall be made.

C. The amount of any insurance proceeds received by a person in connection with a loss to the subject dwelling shall be included in the acquisition cost of the replacement dwelling when computing the supplemental payment.

4.7.7 Application for Payment

Owners shall submit their application for housing payments on Form RE-152, together with a certified copy of the closing statement for the replacement dwelling and a copy of the certificate of occupancy (if required by the municipality). The realty specialist shall inspect the replacement property and confirm on Form RE-162 that it is decent, safe and sanitary and the realty specialist will sign and date the form.

Some municipalities require a Certificate of Occupancy prior to occupying a property. All applicable documentation, specifically the housing supplement report, and a department action shall be transmitted to the Relocation & Property Management Section of the Technical Support Bureau for processing to Accounting for payment.

4.7.8 Preparation of Housing Supplements

A supplemental housing payment may be prepared by a Realty Specialist 2 or higher titled person who is not assigned relocation responsibility for the particular parcel. In no instance may a person who appraised or reviewed the appraisal to establish the fair market value, prepare the replacement supplement estimate for that property. Prior to the initiation of negotiations, all housing supplements shall be independently reviewed and signed off by the appropriate District Manager. Form RE-186 shall be utilized for the review and shall become part of the case file. The housing supplement will not be revised unless there is error, the appraisal is revised, the residential real estate market conditions change measurably, or a remnant is acquired.

4.7.9 Updating of Housing Supplement

A revised housing supplement shall be prepared and updated whenever housing is no longer available on the market within the offered amount as concluded by the realty specialist and relocatee. Whenever changes, revisions, or updates appear warranted, they shall be in writing and supported as in the original report. The revised supplement shall be independently reviewed before the payment is tendered. If the revised supplement is less than that originally computed, the supplemental payment may only be reduced if it does not prejudice actions which the owner has taken to acquire replacement housing.

The supplemental payment is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the owner is paid for the displacement dwelling, or the date a comparable replacement dwelling is made available to the owner, whichever is later. Any Owner Housing or Tenant Rental Supplement calculated to be over $50,000 will be reviewed by the District Manager.

4.7.10 Multiple Occupancy of the Same Dwelling Unit

If two or more occupants, who have been determined to be one family, move to separate replacement dwellings, each occupant is entitled to a pro rata share of any

housing payment that would have been made if the occupants moved together to a comparable replacement dwelling.

If the District Manager determines that two or more occupants maintained separate households within the same dwelling, the occupants have separate entitlements to supplemental housing payments. Separate households exist when two or more occupants can document separate rental payments to the landlord, as well as private occupancy of a portion of the quarters, in addition to community rooms which may be shared. If two or more eligible individuals with no identifiable head of household occupy the same single family dwelling unit, they are to be considered as one family for replacement housing supplemental payment purposes.

4.7 11 Administrative Settlements

Replacement housing supplements are predicated upon the acquisition price of the subject dwelling. In an administrative settlement/award, the supplemental payment shall be proportionately reduced or increased (without need for a new estimate) by the amount the administrative settlement/award exceeds or is less than the acquisition cost attributed to the dwelling and typical lot.

4.7.12 Time Limit For Filing Claims

All relocatee's must submit to the Departments representative a relocation claim for payment within 18 months from the time that they vacated the property being acquired by the Department, except for owner occupied relocatee's.

Owner occupied relocatee's must submit to the Departments representative a relocation claim for payment within 18 months from they vacate the property being acquired by the Department or 18 months from the time that they receive payment for the property, which ever date is later. Payment for the acquisition of the property is considered as either the deposit made with the declaration of taking, as with a condemnation case or with the payment made with a closing based on an agreement.

Failure to submit the claim in the time allotted will result in the relocatee forfeiting the right to file a relocation claim.

It is the responsibility of the realty specialist to notify all relocatees of the claim submission requirements and time frames prior to the relocatee vacating the property that the Department is acquiring. Failure of the realty specialist to notify the relocatee of the time limit for submitting a relocation claim will result in the relocatee having grounds to appeal the time limit for submitting relocation claims. The Department may have to extend the time that the relocatee has to submit a relocation claim.

4.8 Mortgage Costs/Incidental Expenses

The payment for increased mortgage interest cost shall be the amount which will reduce the mortgage balance on a new mortgage to an amount which will allow for the same monthly payment for principle and interest as that for the mortgage(s) on the subject dwelling for that number of payments that was outstanding on the old mortgage. Additional payments may include other debt service costs as deemed appropriate, if not paid as incidental costs and shall be based only on mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations.

1. The payment shall be based on the unpaid mortgage balance(s) on the subject dwelling. In the event the owner obtains a smaller mortgage than the mortgage balance(s) computed in the buy down determination, the payment will be prorated and reduced accordingly. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.
2. The payment shall be based on the remaining term of the mortgage(s) on the subject dwelling or the term of the mortgage on the replacement dwelling, whichever is shorter.
3. The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
4. Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent: (a) they are not paid as incidental expenses; (b) they do not exceed rates normal to similar real estate transactions in the area; (c) it is determined they are necessary; and (d) the computation of such points and fees is based on the unpaid mortgage balance on the subject dwelling, less the amount determined for the reduction of such mortgage balance.
5. The displaced person shall be advised of the approximate amount of the payment and the requirements to receive the payment as soon as the facts relative to the person's current mortgage(s) are known and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended. During the initial personal contact, the realty specialist shall secure the necessary documentation from an owner occupant to compute a preliminary mortgage interest rate differential payment, which shall be tendered when possible to the owner concurrently with the housing supplement.

4.8.1 Application For Mortgage Interest and Incidental Expense Payment

Owner Mortgage Interest Rate and Incidental Expenses Application, Form RE-194, shall be accompanied by a certified copy of the closing statement (unless previously submitted), as well as the mortgage note and final payoff statement. These documents shall be reviewed in the District Office and approved by the Realty Specialist 4. When the amounts have been established, a Department Action will be prepared and transmitted to the Project Funding Section of the Technical Support Bureau, accompanied by the invoice, an expense distribution sheet, frap (Federal Relocation Assistance Program Report) and the completed and signed RE-194 and the copy of the closing statement for the replacement dwelling for processing to Accounting for payment.

4.8.2 Incidental Expenses

Incidental expenses, also known as closing costs, are those reasonable costs incurred by the displaced person in the purchase of a replacement dwelling, customarily paid by the buyer, including:

1. Legal, closing and related costs, including title search, conveyance instruments, surveys, notary and recording fees
2. Lender application and appraisal fees

3. Loan origination or assumption fees that do not represent prepaid interest
4. Certification of structural soundness and termite inspection, when required
5. Credit report
6. Title insurance (not to exceed the costs for a comparable replacement dwelling)
7. Escrow agent's fee
8. State revenue or documentary stamps, sales or transfer taxes, not to exceed the costs for a comparable replacement dwelling
9. Home inspection report
10. And other costs determined by the District Manager to be incidental to the purchase

If an owner occupant displacee purchases a replacement property costing more than the comparable replacement offered, any additional costs associated with and incurred for the more expensive dwelling above the cost of the comparable replacement offered are not eligible for reimbursement. If there is no eligibility for a differential, then the acquisition price of the owner occupied portion of the acquisition property sets the limit for the amount of incidental expenses that can be reimbursed.

4.9 Replacement Housing Payments For 90-Day Occupants

A displaced tenant or owner occupant may be entitled to a payment not to exceed $5,250 for rental or down payment assistance, if the person:

1. Actually and lawfully occupied the subject dwelling for at least 90 days immediately prior to the initiation of negotiations
2. Rents or purchases and occupies a decent, safe and sanitary replacement dwelling within 1 year after the date the owner/tenant moves from the subject dwelling, the date the owner receives final payment for the subject dwelling, or the date of the court deposit, whichever is later

4.9.1 Rental Assistance Payment

An eligible displaced person that rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance except as required under the last resort housing provisions. The tenant rent supplement payment shall be 42 times the amount obtained by subtracting the base monthly rental and utilities cost for the subject dwelling from the monthly rent and anticipated cost of utilities for a comparable replacement dwelling selected as most comparable to the subject and having the required number of bedrooms and being similar in number of rooms and square footage to subject.

Utility costs must be considered and factored into every tenant rental supplement computation.

4.9.2 Base Monthly Rental for Subject Dwelling

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

A. The average monthly cost for rent and utilities at the subject for a three month period prior to displacement. For an owner occupant, the fair market rent for the subject will be utilized. For a tenant who paid little or no rent for the subject dwelling, the fair market rent will be used, unless its use would result in a hardship because of the

person's income or other circumstances). For instances where the tenant doesn't pay rent for the rental unit, but instead performs services, such as those of a super for an apartment complex, in lieu of paying a rent or in exchange for paying little rent, the market rent value of that rental unit will be considered as the monthly rental and that value will be added to the income that the household declares; or

B. Thirty (30) percent of the person's average gross household income when that amount is considered as low income per the U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits as indicated on FHWA's Web site at http://www.fhwa.dot.gov/realestate/ua/ualic.htm and which are updated annually. If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on item (a) above. When a household income fluctuates, whether it because of seasonal type of work performed or as a result of a commission based income or for some other justified reason, the total household's income for the last twelve months will be averaged to give a monthly amount. All household's considering the 30% of their income as the base for their monthly rental must provide the realty specialist with a signed and notarized affidavit of their income, as well as proof of the income. Pay stubs for at least the last four weeks, a copy of the Federal and State income taxes and W-2's that were filed for the previous year will be considered sufficient documentation. If there is a big discrepancy downward between the gross household income from the previous year and the projected income for the current year as calculated by multiplying by 12 (or 6, depending on the length of the pay period covered, i.e., 1 week or 2 weeks) the total of the last four pay stubs for the household, the realty specialist is required to have the relocatee explain and provide as necessary justification for the discrepancy. A full time student or resident of an institution may be assumed to be a dependent, unless demonstrated otherwise, and their income is excluded from the household income computation; or

C. The total of the amounts designated for shelter and utilities, if the occupant is receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities.

4.9.3 Manner of Disbursement And Documentation Required

All rental assistance payments in excess of $10,000.00 shall be disbursed in installments unless the District Manager or the Technical Support Manager determines that a payment in excess of $10,000 is warranted and approves the lump sum payment of the rental assistance, also known as the tenant rent supplement payment. The full amount of the Tenant Rent Supplement vests immediately, whether or not there is any later change in the household's income or rent, or in the condition or location of the person's housing.

Tenant Rent Supplement Payments that are paid out in installments are to be used for the displacee's rental and the realty specialist is advised to make an effort to see that the displacee rental assistance installment payment is applied to the rental and security deposit, if necessary. The realty specialist may arrange to have the displacee's rental assistance installment payment made as a two party check, with the name of the landlord for the displacee's replacement rental unit on the check for those instances where the realty specialist suspects that the displacee may not pay the rental for the replacement rental. The realty specialist may also have the displacee endorse the rental

installment payment over to the landlord for prepaying of the rental obligations for the replacement rental.

In either event the realty specialist is required to have the landlord provide a receipt for the advance rental payment to the displacee, with a copy to the realty specialist. The realty specialist will also draft a receipt letter that both the displacee and the landlord will sign, and be witnessed by the realty specialist. This receipt letter will stipulate and be acknowledged by all that the payment is to be applied to the displacee's monthly rental obligation for the rental year with the beginning and ending dates of the rental period noted and the total amount of the monthly rental with that portion of rental that the displacee is required to pay each month noted. The receipt letter will also acknowledge who is responsible for what utilities and that if there is a security deposit, it will be deposited into an interest bearing security account for the displacee. The receipt letter will also state that if the Displacee vacates before the end of the lease, the balance of the rental payment will be returned to the State. This amount can then be used for the displacee for the rental of another rental unit that is decent, safe & sanitary.

Before any Tenant Rent Supplement Payment is made to a displacee, the displacee is required to provide a copy of the signed lease for the replacement rental to the realty specialist, which will be kept on file at the District and will be sent to the Project Funding Section of the Bureau of the Technical Support. Additionally a copy of the decent, safe & sanitary inspection sheet for the replacement rental unit, the copy of the tenant rent housing supplement report and invoice for payment of the supplement and related documentation will be submitted with the signed lease.

4.9.4 Down Payment Assistance Payment

An eligible tenant occupant who purchases a dwelling is entitled to a down payment assistance payment up to $5,250 or a higher amount if the tenant rent supplement is based on housing of last resort. Claim for payment is to be accomplished on Form RE-195. The full amount of the replacement housing payment for down payment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

A tenant displacee who elects to use the Tenant Rent Supplement as a down payment for the purchase of a decent, safe and sanitary residential dwelling must demonstrate that the payment of the mortgage, along with taxes, insurance, utilities and other fees and or expenses associated with owning a residential dwelling will not result in an undue hardship on the tenant and that the tenant can afford to pay the aforementioned. The District will be responsible for obtaining documentation from the tenant that will demonstrate that the tenant displacee can afford to make the payments associated with buying and maintaining a residential dwelling without undue hardships. This documentation will be submitted to the Project Funding Section of the Bureau of the Technical Support along with the TRS report, contract of sale, D.S. & S. inspection sheet for the property to be purchased, Department Action, Invoice, expense distribution form, frap and W-9.

4.9.5 Rental Supplement Forms

Tenant/owner rental supplements shall be prepared on Form RE-150 and include photographs of the comparables. Supplements shall be completed within 30 calendar days of the initial personal contact with the occupant and be reviewed on Form RE-151. A separate report form shall be prepared for each occupant.

The realty specialist who prepares the tenant/owner housing supplement will be prohibited from being assigned responsibility for the administration of relocation assistance to the relocatee for whom the supplement was prepared for.

4.9.6 Offer of Replacement Housing Supplement

A written confirmation of the tender of the rental supplement to the occupant shall be accomplished on Form RE-176. The confirmation shall contain:

- The date of the initiation of negotiations with the owner
- The amount of the replacement housing payment
- An explanation of the requirements to receive a housing payment
- Of the tenant's option to purchase replacement housing and to receive a down payment assistance payment and incidental expenses
- A presentation of the listings utilized in the preparation of the supplement.

The tenant shall be notified that a replacement housing payment may not be made unless the replacement dwelling, whether for rental or purchase, is subsequently inspected by the realty specialist and determined to be decent, safe and sanitary, and where required by local municipality, a Certificate of Occupancy has been issued.

4.10 Replacement Housing Payments Less Than 90-Day Occupant (Including "Subsequent Occupants")

No person to be displaced shall be required to move from his/her dwelling unless at least one comparable replacement dwelling has been made available. Less than 90 day occupants, including those who move in subsequent to the initiation of negotiations, but prior to the acquisition of the property, are considered to be displaced persons that are subsequent occupants. Should the subsequent occupant reside in the property until such time as the State takes ownership of the property, the displacee may be eligible for a Tenant Housing Supplement. A determination will be made by the Manager of the Bureau of Technical Support or designee.

For such occupants, comparable replacement housing must still be made available. Comparable replacement rental housing is considered to be within the person's financial means if the Department pays that portion of the monthly housing costs of a replacement dwelling which exceeds the person's base monthly rent for the displacement dwelling as described in 49 CFR§24.402(b)(2). This procedure specifies a rent to rent calculation if the displacee does not qualify as low income.

Comparable housing is considered to be within the occupant's financial means if the monthly rental and utility costs do not exceed 30% of the occupant's gross monthly household income when that amount is considered as low income per the U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits, or if receiving a welfare assistance payment, the total of the amounts designated for shelter and utilities. If such housing is available, no rental assistance payment is due the occupant. However, if comparable housing is not available within 30% of the occupant's gross monthly household income when that amount is considered as low income per the U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits (or the designated welfare assistance amounts), a rental assistance payment must be computed and offered to the occupant under last resort housing provisions.

The incidence of subsequent occupants can be controlled through a protective leasing procedure that is described in Sections 4.20.4 and 4.20.16. Under this procedure rental units may be rented and kept vacant by the department while negotiations with the owner are ongoing.

4.11 General Requirements: Housing Supplements

If any eligible occupants have not submitted an application for a supplement upon their vacating of the premises, they shall be notified, by certified mail, that to receive the supplemental payment, they must occupy a decent, safe and sanitary dwelling unit within one year from the date they vacated the acquired property in order to maintain their eligibility for payment. The letter must clearly specify the final date that they can file a claim.

4.11.1 Purchase of Replacement Dwelling

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- purchases a dwelling;
- purchases and rehabilitates a substandard dwelling;
- constructs a dwelling on a site that he or she owns or purchases;
- contracts with a builder for the purchase or construction of a dwelling on a site that the person owns or purchases; or
- currently owns a previously purchased dwelling and site, the valuation of which shall be on the basis of current fair market value and the displacee intends to relocate to and occupy the dwelling.

All replacement dwellings must be verified as decent, safe and sanitary by the realty specialist.

4.11.2 Occupancy Requirements

No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements for a reason beyond his or her control, including: a disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the Department; or any other reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay.

4.11.3 Conversion of Payment

A displaced person who initially rents a replacement dwelling and receives a rental assistance payment as part of an installment of the supplement is eligible to use the balance of the tenant rent supplement, that portion that has not yet been paid, as a down payment for a purchase of a decent, safe and sanitary dwelling, if the displacee meets the eligibility criteria for such payments, including purchase and occupancy.

4.11.4 Payment After Death

A replacement housing payment is personal to the displaced person and upon death, any undisbursed payments shall not be paid to the heirs, except that;

1. The amount attributable to the person's period of occupancy of the replacement housing shall be paid;
2. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy the replacement dwelling;
3. And any portion of a housing payment necessary to satisfy the legal obligation of an estate shall be disbursed to the estate.

4.11.5 Claims for Relocation Payments

A claim for a relocation payment shall be supported by reasonable documentation and shall include a Department Action detailing the payee, the amount and what the payment is for, an invoice with attached expense distribution sheet, a FRAP, a W-9 if not already on file and a cover memorandum and the appropriate claim for payment forms.

For a housing supplement payment, the housing supplement report, a copy of the decent, safe & sanitary report of the replacement property, the lease or the contract of sale, shall be submitted when requesting the housing payment.

For a moving cost payment that is not a room count payment, a copy of the paid mover’s bill is required. If not a direct payment to a mover, a copy of the move estimate and the moving cost authorization letter, and the completed RE-92 form is to be submitted when requesting a moving payment. For payments made directly to the mover, a copy of the bill for the move, a copy of the estimate, the moving cost authorization letter and an affidavit from the mover acknowledging the move, and the completed RE-92 form shall be submitted.

A displaced person must be provided assistance in completing and filing the claim for payment. The claimant shall be promptly notified as to any additional documentation that may be required to support the claim. Payment for a claim shall be made as soon as practicable following receipt of sufficient documentation to support the claim. If a person requires an advance relocation payment in order to avoid or reduce a hardship, the payment shall be issued, subject to reasonable safeguards.

4.11.6 Time for Filing

All claims for payment shall be filed within 18 months after: (a) tenants: the date of displacement; (b) owners: the date of displacement, or the date of the acquisition of the real property, as described in Section 4.7.12, whichever is later. This time period may be waived for good cause as determined and documented by the District Manager.

4.11.7 Deductions from Relocation Payments

Advance relocation payments, which can only be made with the approval of the District Manager, shall be deducted from the payment(s) to which a displaced person is entitled. A relocation payment to a displaced person shall not be withheld to satisfy an obligation to any creditor.

4.11.8 Notice of Denial of Claim

If all or part of a payment is disapproved because of late filing or other grounds, the claimant shall be promptly notified, in writing, of the determination, its basis and the procedures for appealing that determination.

4.12 Residential Moving Payments

Any occupant of a dwelling, who qualifies as a displaced person, is entitled to payment of actual moving and related expenses, as the District Manager determines to be reasonable and necessary, including expenses for:

1. Transportation of the person and personal property within a 50-mile limit. Payments for a distance beyond 50 miles are not eligible, unless the District Manager determines and documents that relocation beyond 50 miles is justified
2. Packing, crating, unpacking, and uncrating of the personal property; disconnecting, dismantling, removing, reassembling and reinstalling household appliances and other personal property
3. Storage of the personal property for a period not to exceed 12 months (unless the District Manager determines that a longer period is necessary) and insurance for the replacement value of the property in connection with the move and necessary storage. Storage of personal property is not an automatic entitlement. The District Manager must determine that storage is a reasonable and necessary expense for a displaced person. This determination will be based on the needs of the Department and the displaced person, the nature of the move, the plans for permanent relocation, and the amount of time available for the relocation process and whether storage will facilitate the relocation. The District Manager will establish the terms for storage, including prohibiting the storage site's use as a temporary business and the length of the storage period.
4. Insurance for the replacement value of the property in connection with the move and necessary storage. The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
5. Other moving-related expenses that are not listed as ineligible in Section 4.13.1 and which the Department considers reasonable and necessary.

4.12.1 Residential Room Count Schedule

Any person displaced from a dwelling or seasonal residence is entitled to receive a moving payment based upon a residential room count schedule maintained by the Department which, on federal projects, shall be approved by the Federal Highway Administration. This payment shall be determined according to the Fixed Residential Moving Cost Schedule approved by the Federal Highway Administration and published in the Federal Register on a periodic basis. When individuals or families elect to use this option, the following conditions shall apply:

1. Counted rooms shall be space occupied and containing a normal quantity of household furniture; including basements, recreation and living rooms, libraries, kitchens, laundry rooms (when containing items such as washers and dryers), enclosed sun porches (if containing furniture), attics, greenhouses, garages and permanent sheds (when containing household or garden equipment), foyers and alcoves (when containing furniture).
2. Combination living/dining rooms and kitchen/dinettes shall be counted as one room. Vestibules, bath and powder rooms shall not be considered rooms except in unusual circumstances as approved by the District Manager.

4.12.2 Actual Moving and Related Expenses

Any residential occupant, not electing to utilize the room count schedule, may be reimbursed for actual moving expenses by commercial mover, supported by receipted bill from the commercial mover. Alternatively, direct payment may be made to the commercial mover, upon request by the occupant. This is a State policy, which is above and beyond that of the Federal Regulations.

4.12.3 Multiple Family Provisions

Two or more families occupying the same dwelling unit are each eligible to be reimbursed using actual costs or the fixed payment schedule. A fixed payment will be based on the number of rooms actually occupied by each family, plus community rooms utilized by each. Two or more individuals, not a family, who occupy the same dwelling unit, are considered to be a single family.

4.12.4 Costs of Transportation

The costs of transportation of occupants to the new location are also eligible. Such costs may be on a mileage basis, not to exceed the current Internal Revenue Service allowance for mileage (or actual cost if commercial transportation is used) and may include necessary special transportation services. The actual, reasonable costs of meals and lodging, when it is determined that such costs are required because of unforeseen circumstances or the practical necessities of moving, are also eligible. Transportation costs are available only to those occupants who elect to move on the actual cost basis.

4.12.5 Moves of Personal Property Only (Dwelling Not Displaced)

Moving expenses are reimbursable for an eligible person who is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), as set out in the Section 4.12 introduction of the manual, if applicable.

Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the residence will not be taken and can still be utilized after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired. If a question arises concerning the reasonableness of an actual cost move, the acquiring District Office may obtain estimates from qualified movers to use as the standard in determining the payment.

Those items listed in A through E in the introductory portion of Section 4.13 are eligible for reimbursement under this type of move.

4.12.6 Ineligible Residential Moving and Related Expenses

Certain moving expenses are not eligible for reimbursement for residential moves as set out in Section 4.13.1.

4.13 Commercial Moving Payments

Any business or farm operation, which qualifies under the definition of a displaced person, is entitled to payment for such actual moving and related expenses as the District Manager determines to be reasonable and necessary, including expenses for:

A. Transportation of Personal Property - Transportation costs for a distance beyond 50 miles is not eligible, unless the District Manager determines that further mileage is justified. If a move is in excess of 50 miles, bills must have the costs separately itemized and set forth the amount of extra costs attributable to travel the distance in excess of 50 miles.

B. Packing, crating, unpacking, and uncrating of the personal property. Disconnecting, dismantling, removing, reassembling and reinstalling machinery, equipment and other personal property (including substitute personal property) and connection to utilities. Modifications to personal property necessary to adapt it to the replacement structure, site, or the utilities at the replacement site; as well as modifications necessary to adapt the utilities at the replacement site to the personal property. Expenses for providing utilities from the right of way to the building or improvement are excluded.

C. Storage of the personal property for a period not to exceed 12 months, unless the District Manager determines that a longer period is necessary. See discussion of storage in Section 4.12.

D. Insurance for the replacement value of the personal property in connection with the move and necessary storage.

E. Replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, agent, or employee) where insurance covering loss, theft, or damage is not reasonably available.

F. Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit or certification.

G. Professional services necessary for planning the move of the personal property; moving of the personal property; and installation of the personal property at the replacement location.

H. The reasonable cost incurred in attempting to sell an item that is not to be relocated.

I. Re-lettering signs and replacing stationery (in stock at the time of displacement) that is made obsolete as a result of the move.

J. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the operation. The payment shall consist of the lesser of: (a) the fair market value of the item as is for continued use at the acquired site, less the proceeds from its sale. To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the District Manager determines otherwise). When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price), or (b) the estimated cost of moving the item, as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site.

K. Purchase of Substitute Personal Property - If an item of personal property which is used as part of a business or farm operation is not moved, but is replaced with an item that performs a comparable function, the business/farm is entitled to payment of the lesser of: (a) the cost of the substitute item, including installation costs, minus any proceeds from the sale of the item; or (b) the estimated cost of moving and reinstalling the item, with no allowance for storage.

L. Searching for a Replacement Location - A displaced business or farm operation is entitled to reimbursement for actual expenses (not to exceed $2,500) as the District Manager determines to be reasonable, which are incurred in searching for a replacement location. These expenses include transportation, meals and lodging away from home, time spent searching and fees paid to a real estate agent to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site. With the exception of time spent in searching, any other expenses must be supported by receipted bills. Payment for time actually spent in the search shall be based on the hourly rate for the person(s) conducting the search. A written statement of the time spent in the search shall accompany the claim.

Additional eligible activities in for searching for a replacement location could include the investigation of replacement sites by the owner, or the time of the owner's or owner representative's to attend hearings and apply for permits and negotiate purchase/lease of replacement property.

M. Other moving expenses such as the move of low value/high bulk Personal Property - When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the Department, the allowable moving cost payment shall not exceed the lesser of:

1. The amount which would be received if the property were sold at the site or
2. The replacement cost of a comparable quantity delivered to the new business location.

Examples of personal property covered by this provision include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by the Department. If the Department elects not to use this provision, the displacee will be required to remove the material.

N. Moves of Personal Property Only (Business not Displaced) – Moving expenses are reimbursable for an eligible person who is required to move personal property from real property, but is not required to move from a business, farm or nonprofit organization include those expenses described in items A through E and item O in this Section.

Examples of personal property only moves might be: personal property that is located on a portion of property that is being acquired, but the business will not be taken and can still operate after the acquisition; personal property that is located in a mini-storage facility that will be acquired or relocated; personal property that is stored on vacant land that is to be acquired. For a nonresidential personal property only move, the owner of the personal property has the options of moving the personal property by using a commercial mover or a self-move. If a question arises concerning the reasonableness of an actual cost move, the Department may obtain estimates from qualified movers to use as the standard in determining the payment.

O. Other moving expenses, which are not listed as ineligible, as the District Manager determines to be reasonable and necessary.

4.13.1 Ineligible Moving and Related Expenses

- The cost of moving any real property in which the displaced person reserved ownership.
- Interest on a loan to cover moving expenses; or loss of goodwill or profits.

- Loss of trained employees; or any additional operating expenses of a business or farm operation incurred because of operating in the new location.
- Personal injury; or any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department.
- Physical changes to the real property at the replacement location of a business or farm operation, except those changes permitted under reestablishment expenses.
- Costs for storage of personal property on real property already owned or leased by the displaced person.
- Expenses related to searching for a replacement dwelling.
- Reimbursement for a refundable security and or utility deposit.

4.13.2 Notification and Inspection

The displaced business, farm, or non-profit organization:

1. Shall be informed, in writing, of the moving cost reimbursement requirements as soon as possible after the initiation of negotiations. This information may be included in the relocation brochure provided to the occupant.
2. Must provide reasonable advance notice of the approximate date of the start of the move or disposition of the personal property, as well as a list of the items to be moved. The District Manager may waive this notice requirement.
3. Must permit reasonable and timely inspections of the personal property at both the subject and replacement sites in order to properly monitor the move.

4.13.3 Fixed Payment-Commercial Occupants

A. A displaced business is eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses and reestablishment expenses. The fixed payment shall equal the average annual net earnings of the business, but may not be less than $2,500 or more than $20,000. The displaced business is eligible for the payment if the District Manager determines that the business:

1. Owns or rents personal property which must be moved and for which an expense would be incurred in such move; and the business relocates from the acquired property.
2. Cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). Increased costs related to taxes, rent or other operating expenses can be considered in the determination of loss of patronage. A business is assumed to meet this test unless the District Manager determines that it will not suffer a substantial loss of its existing patronage
3. Is not part of a commercial enterprise having more than three other locations which are not being acquired and which are under the same ownership and engaged in the same or similar business activities
4. Is not operated at the displacement site solely for the purpose of renting the site to others

B. Determining the Number of Businesses

In determining whether two or more displaced entities constitute a single business and thus entitled to only one fixed payment, consideration shall be given to the extent to which: the same premises/equipment are shared; substantially identical or interrelated business functions are carried out and business and financial affairs are commingled; the entities are held out to the public/customers as one business; the same person or closely related persons own, control, or manage the entities.

4.13.4 Farms-Fixed Payment

A displaced farm may choose a fixed payment, in lieu of the payments for actual moving (and related expenses) and reestablishment expenses, in an amount equal to the average annual net earnings (but not less than $2,500 nor more than $20,000). In a partial acquisition of land which was a farm before the acquisition, the fixed payment shall be made only if the District Manager determines that the acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land, or the partial acquisition caused a substantial change in the nature of the farm operation.

4.13.5 Non Profit Organizations-Fixed Payment

A displaced nonprofit organization may choose a fixed payment (not less than $2,500 nor more than $20,000) in lieu of the payments for actual moving and related expenses and reestablishment expenses, if the District Manager determines that it cannot be relocated without a substantial loss of existing patronage. The organization is assumed to meet this test, unless the District Manager demonstrates otherwise. Any payment in excess of $2,500 must be supported with financial statements for the two 12 month periods prior to the acquisition. The amount to be used for the payment is the average of 2 years annual gross revenues less administrative expenses.

Gross revenues may include membership fees, class fees, cash donations, tithes, and receipts from sales or other forms of fund collections that enables the non-profit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, and salaries, advertising and other like items as well as fund-raising expenses. Operating expenses for carrying out the purposes of the non-profit organization are not included in administrative expenses. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

4.13.6 Average Annual Net Earnings - Business or Farm

The average annual net earnings of a business or farm are one-half of its net earnings before Federal, State and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 years prior to displacement, net earnings shall be based on the actual period of operation at the replacement site during the 2 taxable years prior to displacement, projected to an annual rate.

Average annual net earnings may be based upon a different period of time when the District Manager determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by the owner, spouse and dependents. The person shall furnish proof of net earnings via income tax returns, certified financial statements, or other reasonable evidence that the District Manager determines is satisfactory. The District Manager will compute the entitlement.

4.13.7 Processing Applications for In-Lieu Payment

The displaced business, farm or non-profit organization shall make application for the fixed payment by submitting Form RE-180. The District Manager may approve or reject the application, completing Form RE-180, after reviewing the income tax returns or other documentation submitted. The applicant will be notified of the amount to which he/she is entitled and provided with an invoice. Upon return of the signed invoice a Department Action will be processed to the Project Funding Section of the Bureau of Technical Support Bureau and then to Accounting for payment. The completed and signed RE-180, invoice, expense distribution form, frap, W-9 if not already on file along with Department action will also need to be submitted.

4.14 Competitive Estimates (Commercial Moves)

The realty specialist shall secure three moving cost estimates from licensed commercial movers, which shall serve as the basis for a pre-move determination of the estimated moving cost payment due the occupant. The moving cost estimates should be for a move to a specific site, which may be a storage site. The occupant may elect to secure his/her own estimate(s) of the cost of relocation. The realty specialist will still be required to obtain at least one independent estimate if the displacee has obtained the other two estimates. The realty specialist will send a Moving Cost Authorization letter to the displacee after the three estimates have been obtained and the letter will authorize the lower of the three estimates to move the personal property. All Moving Cost Authorization letters must be signed by the Realty Specialist 4.

Actual, reasonable costs incurred in the move, supported by receipted bills or other evidence shall be reimbursed to the occupant up to the amount approved in the moving cost authorized letter that was sent to the displacee. Any amount above this will require justification and approval of the District Manager and will be forwarded to the Project Funding Section of the Technical Support Bureau with the request for payment. Alternatively, the occupant may present the bill for direct payment by the Department to the moving company.

Before approval of a moving cost estimate, the realty Specialist shall make an on-site inspection of the personalty to be moved. For complex business relocations, specifications shall be developed and additional estimates may be secured.

The realty specialist shall accompany those individuals providing the moving cost estimates to ensure that each estimator is provided the same information. Each estimator shall be provided a copy of the inventory and the specifics of the move. All moving estimates obtained shall be reviewed by the realty specialist and their Supervisor. The goal is to compare one estimate against the other in order to verify the accuracy of the estimates; to determine which is most reasonable; and to determine if the prices quoted are reasonable for the service to be provided. The realty specialist shall request a breakdown of cartage, labor, equipment and material to assist in recognizing differences between estimates. The realty specialist shall provide the occupant/displacee/relocatee with copies of the estimates and the Department’s analysis of the estimates. The relocatee must be advised that this is an estimate only and that reimbursement will be made on the basis of the actual, reasonable and necessary costs incurred.

4.14.1 Estimate Format

Moving estimates shall contain sufficient information to clearly specify the quantity of personalty, the origin and destination of the move, as well as the company performing the move. Sufficient information must be presented to permit the realty specialist to properly analyze the move and to audit the costs submitted to be certain they are competitive.

All moving and/or reinstallation estimates shall include at a minimum: the nomenclature and description of goods to be moved and/or to be reinstalled; applicable pricing factors by unit, weight, and/or hourly rate for cartage, labor, equipment and materials.

4.14.2 Inventory of Personal Property

Affidavit and Certification Form RE-190 must accompany all moving estimates and the estimates should indicate that an inventory was provided including any specific instructions regarding the move. Inventories typically fluctuate from the date of the estimate to the date of the actual move and pre-move and post-move inspections are required.

The realty specialist shall prepare the inventory in company with the relocatee, however, an on-site review of an inventory prepared by the relocatee will be acceptable. In either case, identify any unusual item by estimated weight, size and/or quantity or volume. If an inventory is extensive or items are spread over several floors or buildings, the inventory is to note the location of the items. This will be helpful to the mover, since it is more costly to move items from upper floors as compared with a ground level access.

During the earlier interview with the business owner or the inventory phase, the occupant may discuss a preference of moving options (i.e. standard move, self-move or some combination) and this is an ideal time to discuss the pros and cons of the various alternatives. The realty specialist responsible for securing the inventory must consult the appraisal report to ensure that items included in the real estate valuation are not included in the inventory of items to be moved. The appraisal report now contains a separate section dealing with the identification of realty/personalty items. This may have already been coordinated earlier by the appraiser and the realty specialist prior to the appraisal phase of the project.

An inventory for an industrial property will typically include machinery and equipment, not considered realty, which are used in manufacturing. During the inventory, options can be developed for moving the equipment and a determination made as to what is involved in servicing or re-installing the unit. This is also the time to identify items that will be abandoned, for which a substitute will be purchased, or that may cost more to move than their worth.

A copy of the inventory shall be provided to and acknowledged by the Movers providing an estimate. The inventory will serve as the basis for the competitive estimates and should assist in maintaining consistency between the estimates. The realty specialist is expected to accompany the mover(s) on the site inspection to observe the personalty to be moved.

Prior to the move, the inventory shall be re-verified to determine items that may have already been relocated, sold or scrapped. Any significant changes from the pre-move inventory are to be addressed to assess any impact on cost. In situations where an

inventory may change daily, it may be necessary to obtain estimates based upon a "typical" inventory, and then adjust the payment based on the inventory actually moved.

4.14.3 Tips on Performing an Inventory

Draw a floor layout and take photographs of all major items or groups of items. Ask questions about unfamiliar items or the intentions of the operator. Take a physical count of the inventory and use specific units of measurement to describe items or to express quantities, e.g., 6-8' metal shelves. Note special circumstances such as machine anchoring, delicate glass display racks and machines requiring special balancing or calibration. Do not feel compelled to define specific relocation methods or to solve relocation problems while taking the inventory, this is the task when writing the specifications.

Note items that are questionable as to personal or real property and resolve these questions before estimates are secured. Ask the operator to certify to the correctness of the inventory as of the date it is performed. The realty specialist should flag items which are potential candidates for a direct loss of tangible personal property or substitute property claim and discuss this possibility with the business operator before including on the inventory for the mover estimate. The realty specialist shall perform a final inventory just before the move takes place. There shall be prior agreement to adjust the reimbursement to reflect significant additions or reductions in inventory.

4.14.4 Monitoring the Move

All moving expenses must be actual, reasonable and necessary. The realty specialist shall accomplish inspections and provide surveillance commensurate with the complexity of the move. All moves require the realty specialist to perform a pre-move inspection (within 5 days prior to the move) to ensure that items included in the original inventory have not been disposed of and will not be moved.

After the vacation of the premises and prior to the approval of payment, the realty specialist shall inspect the vacated premises to be certain that only items of personalty were moved. The realty specialist shall also inspect the new location (within 5 days following the move) to verify that the personal property has actually been relocated and/or reinstalled in accordance with the moving authorization. A written report of the post-move inspection shall be prepared and made part of the case file.

4.14.5 Moving Payment Approval

Moving reimbursement and reestablishment expenses shall be actual, reasonable and necessary. Claims for moving reimbursement must be on State Invoice Form AR/50/54, accompanied by the mover's receipted bill and the moving reimbursement claim Form RE-92. The occupant may request and be granted the option of a direct payment to the mover.

Claims shall be accompanied by a certification from the occupant that the personal property was actually moved and movers shall also submit a certification that they performed the work presented in the claim and that they were paid by the occupant for services performed. The realty specialist performing the post-move inspection shall document the results of the inspection in the realty specialist’s relocation call data and on the database for the displacee/relocatee.

At this point, the claim may be endorsed by the District Manager and processed. All moving reimbursement, reestablishment and fixed payments require Department Actions authorizing the payment prior to transmitting the Project Funding Section of the Bureau of Technical Support for payment processing and review. The invoices with the expense distribution sheet, frap, W-9, if not already on file, and other supporting documentation and appropriate claim forms are to be submitted with the Department Action.

4.14.6 Self Moves

A business, farm or non-profit operation may be authorized to perform the relocation of its personal property under the following conditions:

1. The application shall be made in advance of the move on the Self-Move Agreement, formerly known as Form RE-154 and be approved by the Director. Applications shall be accompanied by an inventory describing the items to be moved. Those items not being moved as part of the Self-Move, must not have been included in the estimates obtained that was used to determine the Self-Move amount to be paid. Those items not part of the Self-Move may be paid as reimbursement items for the actual cost associated with their move. This may occur when you have specialty items that can only be moved by the manufacturer or a specialist.
2. The three moving cost estimates shall be obtained by the realty specialist from licensed movers; or prepared by qualified staff. Provision shall be made for all allowable costs, including cost of supervision of the move, insurance, equipment rental and permits. In circumstances where estimates cannot be obtained, the occupant may be paid actual, reasonable moving costs supported by receipted bills or other evidence of expenses incurred, at the Discretion and with the Approval of the District Manager. The amount to be paid for a self-move shall not exceed the lower of the three estimates.
3. The self move option relieves the displaced business or farm operator from documenting all moving expenses. Payment may be made without additional documentation as long as payment is limited to the amount shown on the approved and executed Self-Move Agreement and the Department has verification from the realty specialist assigned the relocation that the move has been complete or if the payment is made in more than one payment that the conditions of the Self-Move have been met to warrant the payment. Claim for payment shall be shall include the approved Self-Move Agreement, the Department action, invoice, expense distribution sheet, frap and W-9, if not previously submitted.
4. Payment shall not be processed until a post-move inspection has been accomplished to verify that the occupant has accomplished the move and vacated the premises. Payment may be provided in installments, permitting a third to be provided at the start of the move, a third upon 50 % completion of the move and a third at the end of the move. This payment option will be spelled out in any eventual Self-Move Agreement.

4.15 Expense Finding (Commercial or Residential Personal Property)

The District Manager may arrange for a qualified realty specialist (other than the realty specialist handling the case) to prepare an expense finding (in lieu of regular moving costs), not to exceed $5,000.00 for those moves where only personal property is being displaced. Payment may be made without documentation of expenses incurred and the

finding will be based upon the actual costs the displacee would likely incur and not on the amounts a commercial moving firm would charge. The amount of the expense finding must have written as justification for the amount of the expense finding. This justification shall be prepared in the District and approved by the District Manager.

4.16 Reestablishment Expenses And Related Nonresidential Eligible Expenses

4.16.1 Nonresidential Reestablishment Expenses

A business having not more than 500 employees working at the acquired site, farm or nonprofit organization may be eligible to receive a payment (not to exceed $10,000.00), for expenses incurred in reestablishing the business at the replacement site. Sites occupied solely by outdoor advertising signs, displays or devices do not qualify as a business for the purpose of reestablishment expenses. Reestablishment expenses must be reasonable, necessary, actually incurred.

Eligible expenses include the following:

1. Repairs or improvements to the replacement real property as required by Federal, State or local code, as well as modifications to the replacement property to accommodate the operation or to make the replacement structures suitable for conducting the business
2. Construction and installation costs for exterior signing to advertise the business on the replacement site, redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling or carpeting
3. Advertisement of the replacement location
4. Estimated increased costs of operation during the first 2 years at the replacement site for such items as leasing costs, personal/real property taxes, insurance premiums and utility charges, excluding impact fees, and other items that the District Manager considers essential to the reestablishment of the business

4.16.2 Related Nonresidential Reestablishment Expenses

The following expenses, in addition to those provided by Sections 4.13 and 4.16.1 for moving personal property, shall be provided if the Department determines that they are actual, reasonable and necessary.

1. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
2. Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person’s business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the Department a reasonable pre-approved hourly rate may be established. Reasonable hourly rates established should compare with the rates of other similar professional providers in the area.
3. Impact fees or one time assessments for anticipated heavy utility usage, as determined necessary by the Department

4.16.3 Ineligible Reestablishment Expenses

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

4.17 Underground Storage Tanks

During the preliminary engineering phase, the Bureau of Landscape Architecture and Environmental Solutions (BLAES) screens those properties, which are considered likely candidates for the presence of contamination. BLAES sends the owner a letter and the results of the investigation and sampling, providing the owner time to conduct the remediation prior to acquisition of the property. If the owner does not remediate, the site is identified on the right of way plans as an "Environmentally Sensitive Parcel" (ESP), but is not so designated on the individual parcel maps. Typically, underground storage tanks are encountered in the acquisition of gasoline stations and the acquisition of such properties should be accorded a high priority during the acquisition process to permit sufficient time for proper closure.

4.17.1 Decommissioning of Underground Tanks

Decommissioning is the process of excavating, cleaning, degassing or removal of an underground storage tank system. The NJ Department of Department of Environmental Protection, Division of Remediation Management and Response (DEP-DRMR), regulates the decommissioning of such tanks.

The realty specialist will provide the owner with a copy of the Individual Parcel Map and explain why the acquisition will require the removal of the underground storage tank(s) (USTs). The owner will be requested to provide the tank registration information that should have been previously obtained from the DEP-DRMR. This information shall be placed on the Underground Tank Survey Form. The owner shall be asked if there are other USTs on the property and their locations.

NOTE: If it is determined that the USTs should have been registered with DEP-DRMR, then the owner is responsible for the costs of registration and closure. If this is done by the Department then reimbursement will be sought from the owner. The owner will be reimbursed for the reasonable costs of removing registered USTs or USTs which were exempt from registration. Payments made for decommissioning tanks should be clearly labeled "tank decommissioning costs."

The realty specialist shall interview the appropriate persons and complete the Contamination Checklist, which will provide the Division of Law, Transportation Section with the data it requires in the event that a cost recovery action must be initiated. A copy of the checklist shall be provided to BLAES. The realty specialist shall discuss the following options, available to the owner, to accomplish the removal of underground tanks:

Option A (Owner Decommissions Tank and Remediate Site)

If the tank(s) are properly registered with DEP-DRMR, the owner will be reimbursed for the actual, reasonable costs incurred in the decommissioning of the tank(s). The owner may be able to accomplish the removal at a lesser cost than the Department. If the

owner elects this option, the Department reserves the right to monitor the decommissioning of the tank(s). The owner must comply with DEP-DRMR closure requirements for underground storage tanks. Costs incurred by the owner for site remediation are not reimbursable.

The following are reimbursable decommissioning costs:

- Preparation of the DEP-DRMR Standard Reporting Form
- Preparation of the implementation schedule
- Preparation of the DEP-DRMR UST Closure Plan Approval Application
- Preparation of the Final Report documenting closure activities
- Installation of required groundwater monitoring wells and sampling
- Post-excavation soil samples; (g) costs for excavation, cleaning and disposal of tanks; and
- DEP-DRMR closure fees (does not include registration or annual certification fees)

BLAES may retain a consultant to monitor the work performed by the owner's contractor and BLAES or the consultant will:

- review the contractor's cost estimate for decommissioning to ensure that projected costs are reasonable and do not include site remediation activities. BLAES approval is required prior to the owner submitting the DEP-DRMR Reporting Form;
- conduct a periodic review to ensure that the contractor secures all necessary permits and accomplishes the required submissions to DEP-DRMR correctly and in a timely manner;
- monitor contractor progress to ensure that the tanks are decommissioned in accordance with the DOT project schedule;
- ensure that the owner/contractor provides sufficient prior notice of the date on which the excavation will take place to enable proper monitoring by BLAES or its consultant;

Option B (Department Decommissions Tank and Remediate Site)

The owner shall be informed that the Department shall contract with a consultant/contractor to decommission the tank(s) and to accomplish any necessary site remediation. The Department will seek reimbursement from the owner for all costs associated with the decommissioning of the UST(s), including any remediation costs.

4.17.2 Decommissioning Process

In order to decommission an underground storage tank, the owner/Department must comply with prevailing DEP-DRMR regulations and the decommissioning must be accomplished in accordance with the provisions of an approved Closure Plan. Subsequent to the decommissioning, the owner/Department must submit a final report to DEP-DRMR detailing the closure activities.

4.18 Advertising Signs

4.18.1 Policy

In those cases involving the partial acquisition of real property, signs within the area of the parcel to be acquired, whether owned by the tenants or the property owners, are to be treated as relocation items, unless the circumstances otherwise justify a determination that they constitute part of the realty or are fixtures.

Relocation of on-premise (advertising/trademark) signs will necessitate obtaining the necessary local/municipal approvals wherein the sign is located. However, where the contractor for the State (a contractor awarded a contract under the bidding laws or the construction contractor for the project) relocates the sign, permits may not be necessary when the following conditions are met:

1. The Project Manager or other authorized State representative has consulted (drafted a plan of reinstallation in compliance with applicable municipal requirements where practicable and safe) with the municipality:
2. There is no affirmative objection by the municipality;
3. Arrangements are made for inspection of the reinstalled sign by the municipality; and
4. There is willingness by the municipality to issue a Certificate of Occupancy or other form of written approval.

Off-premise (billboards/poster panels) sign panels which have been erected and maintained pursuant to a valid State outdoor advertising permit may be relocated. However, the supports and foundation of billboards are to be considered realty, and not relocated. Applications for a State outdoor advertising permit are made to NJDOT's Office of Outdoor Advertising Services. Issuance of an unconditional State outdoor advertising permit will also entail obtaining all relevant municipal permits. The owner of the off-premise sign is responsible for obtaining the State permit and all other required approvals.

The owner of the advertising sign is eligible to be reimbursed:

1. For the actual, reasonable costs incurred in the relocation of the sign; or
2. For the actual direct loss of an advertising sign when the owner of the sign is entitled to relocate it, but does not do so. The amount of the direct loss will be the lesser of the depreciated reproduction cost of the sign, less the proceeds from its sale; or the estimated cost of moving the sign, but with no allowance for storage.

Owners of advertising signs are eligible for reimbursement for their actual, reasonable expenses in searching for a replacement sign site, not to exceed $2,500.00. A relocation payment shall not be made if the sign is moved to a replacement site in violation of any Federal, State or local regulations.

4.18.2 Process

When the project is transmitted to the District Office to initiate acquisition, the Project Team Leader will contract with a professional sign contractor who will be responsible for:

1. Inventorying the advertising signs to be relocated,
2. Assuring that municipal approvals/permits/variances/site plans necessary to relocate the sign to the remaining property have been secured by the sign owner.

3. Documenting the costs necessary to accomplish the relocation.
4. Liaison with the sign owner regarding the selection of a location to which the sign will be relocated on the remaining property.
5. The physical relocation of the advertising sign to the remaining property.

Several sign companies should be pre-qualified to perform the service and utilize a standard format for preparation and presentation of estimates. The scope of work shall clearly set forth the responsibilities of the consultant sign company as with an NRE report order.

As far as possible, one contractor should be assigned the responsibility for a given project in order to more efficiently handle municipal applications for permits and/or site plans and variances. If a municipality delays or is uncooperative in granting site plan/variances necessary for the sign relocation, after a good faith effort to comply with the ordinances, the Department's sign contractor will relocate the sign, providing notification to the municipality regarding the placement of the sign. The Department is not subject to local ordinances, but the property owner is.

The owner/tenant should be contacted early on in the process and encouraged to participate in the process of selecting an alternative site for the relocated sign. This approach would minimize or eliminate those instances where a property owner may desire to create severance damages due to the inability to relocate a sign.

The estimated cost of relocation of the sign will be provided to the owner occupant with the written tender of the fair market value; or to the tenant sign owner under the normal relocation advisory assistance and payments process. At this point, the sign consultant will have secured the necessary site plan/variance approvals. The owner/tenant would be given the right to relocate the sign to the remainder, or alternatively, to have the State's sign contractor accomplish the relocation. If there is an entire take and there is no available site to relocate the sign, the realty specialist shall obtain an estimate of the depreciated value of the sign in place.

4.19 Mobile Homes

This section governs the provision of relocation payments to a person displaced from a mobile home and/or site, who meets the eligibility requirements. The displaced person is entitled to moving expense and replacement housing payments to the same extent and subject to the same requirements as persons displaced from conventional housing. If the mobile home is not actually acquired, but the occupant is considered displaced from the site, initiation of negotiations is the initiation of negotiations to acquire the land; or if the land is not acquired, the written notification that the occupant is a displaced person.

4.19.1 Moving Expenses

A person displaced from a mobile home and/or site is entitled to payment for the actual cost of moving the mobile home as prescribed in C. Relocation, Section 4.12. A non-occupant owner of a rented mobile home is eligible for actual moving cost reimbursement as prescribed in Section 4.13. If the mobile home is not acquired, but the occupant obtains a replacement housing payment and the land where the mobile home is situated is acquired, the owner is eligible for payment for moving the mobile home, as well as eligible for a payment to move the owner's personal property from the mobile home.

A displaced mobile homeowner, who moves the home to a replacement site, is eligible for the reasonable cost of disassembling, moving and reassembling any appurtenances, such as porches, decks, skirting and awnings as well as utility "hook-up" charges. If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe, and sanitary and it is determined that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable. A non-returnable mobile home park entrance fee is reimbursable (to the extent it does not exceed the fee at a comparable mobile home park), if the person is displaced from a mobile home park or it is determined that payment of the fee is necessary to effect the relocation.

4.19.2 Replacement Housing Payment - 180-Day Mobile Home Occupant

A displaced owner occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500.00, if:

- The person owned the mobile home and occupied it on the subject site for at least 180 days immediately prior to the initiation of negotiations and the person meets the other basic eligibility requirements as prescribed in Section 4.7.0.
- The mobile home and/or site is acquired; or the home is not acquired but the owner is displaced because it is determined that the mobile home cannot: (a) economically be made decent, safe and sanitary; or (b) be relocated without substantial damage or unreasonable cost; or (c) be relocated because there is no available comparable replacement site; or (d) be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not acquired and the District Manager determines that it is not practical to relocate it, the acquisition cost of the subject mobile home used when computing the price differential amount, shall include the salvage value or trade in value of the mobile home, whichever is higher.

4.19.3 Replacement Housing Payments - 90-Day Mobile Home Occupants

A displaced tenant or owner occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250.00 if the:

- Person actually occupied the mobile home on the subject site for at least 90 days immediately prior to the initiation of negotiations;
- Person meets the other basic eligibility requirements as prescribed in Section 4.9 or 4.10; and
- Department acquires the mobile home and/or site, or the mobile home is not acquired, but the owner or tenant is displaced from the mobile home because of other circumstances, as described in Section 4.19.2.

4.19.4 Replacement Housing Payment Based on Mobile Home and Site

Both the mobile home and mobile home site must be considered when computing a replacement housing payment. A displaced mobile home occupant may have owned the mobile home and rented the pad site, or may have rented the mobile home and owned the pad site. Also, a person may elect to purchase a mobile home and rent a site, or rent a mobile home and purchase a site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each

computed under the applicable section of Sections 4.7.1 and 4.9.1. However, the total replacement housing payment shall not exceed the maximum payment (either $22,500.00 or $5,250.00) permitted under the section that governs the computation for the dwelling.

4.19.5 Comparable Replacement Dwelling

If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling. The term mobile home as defined by Federal regulations includes manufactured homes and recreational vehicles used as residences. Such accommodations can also include house boats if they are consistent with local codes and meet DSS requirements.

If the District Manager determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the owner is not entitled to a replacement housing payment for the purchase of a replacement mobile home. The owner would be eligible for moving costs described at 49 CFR Part 24.301 and any replacement housing payment for the purchase or rental of a comparable site as described in this section or 49 CFR Part 24.503 as applicable.

4.19.6 Mobile Home Relocation

If the owner is reimbursed for the cost of moving the mobile home, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The owner may be eligible for assistance in purchasing or renting a replacement site.

4.19.7 Partial Acquisition of a Mobile Home Park

The acquisition of a portion of a mobile home park may leave a remainder that is not adequate to continue the operation of the park. If it is determined that a mobile home located on the remainder must be moved as a direct result of the project, the occupant shall be considered a displaced person and is entitled to relocation payments and other assistance.

4.19.8 Last Resort Housing

In the event the statutory maximum amounts of $22,500 and $5,250 will not afford the relation of the mobile home displace (owner or tenant), within their financial means, the provisions of housing of last resort as discussed in Section 4.2.7 will be used.

4.20 Appeal Process

Any person may file a written appeal, regardless of form, where the person believes that the Department has failed to properly consider her/his application which may include, but is not limited to, the person's eligibility for, or the amount of, a relocation payment. The appeal must be initiated within ninety (90) days after the person receives written notification of the Department’s determination on the claim. The written appeal shall be addressed to the District Manager. If the matter is not resolved, the person may request an in-person review by writing to the Director, Right of Way.

A person has the right to be represented by counsel or other agent, at the person's expense. The person shall be permitted to inspect and copy all materials pertinent to the

appeal, except those considered confidential. Reasonable conditions may be imposed on the person's inspection of documents. In deciding an appeal, all materials submitted shall be considered to ensure a fair and full review of the appeal.

Confidential items that may be withheld from appellant's inspection include, but are not limited to personal data such as Social Security numbers, financial data, phone numbers, ect.

Within 30 calendar days after receipt of all information from the person in support of an appeal, the Department shall make a written determination, including the basis for the decision and furnish the person a copy. If the full relief requested is not granted, the person shall be advised of her/his opportunity to request a contested case before the Office of Administrative Law.

4.21 Property Leasing

The Relocation & Property Management Section of the Bureau of Technical Support will draft all leases that are not in connection with an active job and will do so in accordance with N.J.S.A. 27:7-21.4, N.J.S.A. 27:7-21.6, and N.J.S.A. 52:31-1.8. The Relocation & Property Management Section will obtain all the necessary Department review units' approval prior to drafting any leases. The Department review units are the same as for those for having excess land declared as available for sale as surplus and which are listed in the Section 4.22.2 (Department Clearance of excess land). The Section will then work with the Appraisal Section of the Bureau of Technical Support to determine a rental value, which will include the municipal service in lieu of taxes charge, and will obtain State House Commission Approval if required. Whether or not State House Approval is needed, notification will be sent to the Clerk for the Municipality and the County of where the property is located about the Department's decision to proceed with a lease. If an auction is required, it will be done so in accordance with the Department's auction procedures (Section 4.22).

If a lease entered into by public auction contains an annual rental adjustment provision, State House Commission approval is not required to renew the existing lease. If the lease does not contain such a provision, any adjustment to the lease rental must be approved by the State House Commission. The Commission can adjust the rental without the need for a new public auction. Any substantive changes to existing leases require prior State House Commission approval.

As with all leases drafted by the District, only the Director or designee is to sign the lease for the Department.

The Districts will prepare all leases on active projects and in accordance with N.J.S.A. 27:7-21.4, N.J.S.A. 27:7-21.6 and N.J.S.A. 52:31-1.8.

N.J.S.A. 27:7-21.4. Leasing property acquired for transportation purposes and provision for termination of lease - Any real or personal property heretofore or hereafter acquired by the Department of Transportation for a transportation or transportation related program or project may be leased by the Commissioner of Transportation to any person or public body or agency on a temporary basis. The Commissioner shall include a provision in the lease which would allow the termination of the lease upon written notice thereof to the lessee prior to the conclusion of the term of the lease in accordance with a minimum period of time for that notice, such provision having been the subject of negotiation between the Commissioner and the prospective lessee, so as to ensure that the occupancy of the property does not in any manner interfere with or delay the

transportation program or project for which the property is needed. No person, public body or agency shall remain in possession of premises beyond the conclusion of the term of the lease or, in the case of a notice of termination, the date fixed by the Commissioner in the notice. If the lessee remains past conclusion of the term of the lease or beyond the date fixed in the notice of termination, the department may institute a summary proceeding in the Superior Court, for an order to show cause as to why the department should not be granted immediate possession of the leased property and the property be vacated of its occupants.

N.J.S.A. 27:7-21.6. Option to prior owner or person in possession; lease to public body or agency; competitive public bidding: publication of notice - If pursuant to this act the Commissioner of Transportation determines to permit the temporary lease of property, he shall give the first option to acquire the lease to the prior owner or person in possession at the time of acquisition or taking of said property. If the property is leased to an owner or person in possession at the time of acquisition or taking of said property, to a public body or agency for public use, to persons in need of temporary relocation facilities as a result of being displaced by any public action, or to persons or for uses exempted pursuant to article 2 of Title 54 of the Revised Statutes, the Commissioner may lease such property by private negotiation upon such terms and conditions as he shall determine to be in the best interests of the State.

Leasing to a public body or agency, such as a municipality, - Where property is leased to a public body or agency for public purposes, the lease may be at a nominal rental.

Leasing subject to an Auction - Except as provided by this section all property leased pursuant to this act shall be leased by competitive public bidding procedures to the highest responsible bidder, except for those leases where the property can only be used by one party. An example would be a landlocked piece of NJDOT property that has only one adjoining owner and cannot be accessed except through that adjoining owner property. (Approval to lease property through auction to the highest bidder must have been approved by the State House Commission prior to an auction taking place).

Publication Notice - Where property is leased pursuant to competitive bids, a notice of intention to receive bids, briefly describing the property to be leased and summarizing the terms and conditions of the proposed lease, including any minimum rental established for the property, shall be published in at least one newspaper in the municipality in which the property is located at least 10 days prior to receipt of bids.

N.J.S.A. 52:31-1.8 Notification to municipality of State's determination to sell, convey interest in real property – When a determination is made by the head or principal executive of any State department to sell and convey all or any part of the State's interest in any real property held by the department and the improvements thereon or to grant an easement in or across such property, without regard to the value of the property or easement, upon a finding that the department does not require such property or interest for any public purpose and that such sale is in the best interest of the State, the department shall notify in writing the governing body of each municipality in which the property is located that the determination has been made by the department for such sale or conveyance of the state's interest or the grant of an easement. The notice shall be made regardless of the value of the property and also shall state whether approval by the State House Commission is required prior to the sale or conveyance or grant. The notice shall be sent at least 14 days prior to any further action taken by the department after the determination in order to permit a municipal review and formulation of a response, if any. This notification shall apply to all property

to be sold or conveyed or for which an easement is to be granted pursuant to the authorization granted by P.L.1962, c.220 (C.52:31-1.1 et seq.) or pursuant to any other statute or authority.

The Property Management & Relocation Section of the Bureau of Technical Support shall be responsible for sending the written notice to the Clerk of the Municipality and the Clerk for the County at least 14 days prior to any further action by the Department for all proposed leases that are not in connection with an active job.

The District will be responsible for sending the notices for all proposed leases associated with active jobs. The notice shall be sent certified mail, return receipt requested. If the proposed lease is to the occupant of a property we have acquired for an active job, the notice shall state that such leasing is required by State and Federal law and regulation regarding the provision of relocation assistance and that it is our intention to lease the property until it is required for construction purposes. These leases do not require State House Commission approval.

4.21.1 Establishment of Rental for Leases in Connection with "Active Projects"

When a displaced person desires to lease, the District Manager will confirm that a fair rent was established for the unit. For tenants, the rent shall normally be the average rent that the tenant has paid for the unit over the preceding 12 months prior to the acquisition. For owners, fair rent shall be economic rent for the dwelling occupied. Consideration shall be given to the condition of the property and the terms and conditions of the occupancy, specifically the short term nature of the lease and the responsibility of the lessee to be responsible for utilities and repairs. The rent shall not exceed fair market (economic) rent for similar properties in the area and shall be predicated upon a short-term occupancy.

Adjustments from the average rent paid over the preceding 12 months (tenants), or the economic rent (owners) shall be approved by the District Manager prior to submission to the Director of Right of Way for approval:

1. If the historic rent exceeds fair market rent;
2. If the services provided are less than the occupant previously received;
3. If the occupant is to provide services; or
4. For demonstrated hardship. For residential occupants, the rent rate shall not exceed the ability to pay standards 30% of the family's gross monthly income for low income as established by the U.S. Department of Housing and Urban Development's Public Housing and Section 8 Program Income Limits.

All leases shall state that lessee is responsible for all utilities and all repairs, unless otherwise stipulated in the lease.

All leases are to be approved by the Director.

4.21.2 Rental to Public Agencies or Persons Not Displaced

Properties may be rented to other public agencies and organizations for public purposes at a nominal cost. In such cases, the rental rate shall be approved by the Director. In leasing to persons not displaced by a project, the rent shall be established as a result of public auction if the property can be used by more than one entity. The Manager of the Bureau of Technical Support shall oversee the establishment of the economic rent, which

shall serve as the minimum bid at the auction which shall be conducted in accordance with standard auction procedures.

4.21.3 Rental of Properties to be Acquired Prior to Ownership

Instances may arise where the occupants of a dwelling relocate subsequent to the initiation of negotiations, but prior to closing of title or court deposit. In order to prevent re-occupancy, the District Manager may enter into a lease with the owner (until closing of title or court deposit) paying rent for the vacant unit(s), but only with the approval of the Director. Please reference Section 4.10 and 4.21.16 for additional information on the use of a protective leasing strategy.

4.21.4 Lease Agreements

Displaced persons wishing to remain in occupancy after the date the State takes ownership, shall execute the Departments approved dwelling lease occupancy agreement. No Lease is effective until signed by the Lessee and the Director of Right of Way. Upon execution by the Director of Right of Way, the lease agreement will comprise the rental arrangement between the occupant and the State. All lease agreements require a Department Action. All lease rental amounts must have justification as to how the rental was determined and will show what portion of the total monthly rental is for the "In Lieu of Municipal Services" charge. The rental amount will be determined by an appraiser.

4.21.5 Starting Date of Rent

- All Tenants of Former Owners - Rents shall accrue and be collected from the first of the month following the acquisition date. Any rent prepaid to the former owner beyond the rental date shall be collected from the former owner at the time of settlement.
- Former Owner Occupants - The rent shall begin the first day of the month following the date of closing. Leases shall begin as of the date of closing to establish a landlord-tenant relationship as of that date. The interim from the closing until the first day of the following month shall be on the basis of a one-dollar lease.
- Other Rental Occupancies - Rent shall be payable as of the first day of the month following the execution of a lease, unless specific circumstances indicate that other provisions would best serve the public interest.

4.21.6 Lease Approval Process in connection with "active projects"

Leases in connection with "active projects" shall be prepared in the District Offices and reviewed by District Manager prior to submission to the Director for approval. The District Manager shall ensure that a Department Action is prepared and transmitted with the lease along with any agreement regarding the acquisition to the Bureau of Technical Support, Acquisition section. A copy of the lease will also be sent to the Supervisor of the Relocation and Property Management Section. Upon approval of the action, the District Manager shall notify the proposed tenant, in writing, of the lease approval and provide the tenant a copy of the executed lease. The letter shall inform the tenant that notification will be sent with regard to the date the rent is due and that the rental is to be transmitted to the Manager of the Technical Support Bureau. This notice will be sent out by the District and a copy provided to the Supervisor of Relocation & Property

Management Section. The District Manager shall ensure that the Relocation & Property Management Section Supervisor is notified if the tenant moves before the State acquires the property. The notification to pay rent will be coordinated between the Districts and the Bureau of Technical Support Property Section.

The District Manager and the Supervisor, Relocation & Property Management shall mutually establish and maintain a data base containing information on rental collections, arrearages and expenses incurred in maintaining the rental properties. A separate rental account number shall be established for each lease and this number shall remain constant, even though a unit is vacated and then re-occupied. The account number shall be placed on all Department Actions and on all rental records.

4.21.7 Receipt and Posting Rentals Collected

All payments for the lease accounts are to be sent to the Manager of the Bureau of Technical Support, Right of Way. Upon receipt of the payment, the secretary for the Manager will notify the Supervisor of the Relocation & Property Management Section of receipt of the payment. The Secretary will proceed to present all checks to the designated representative of the Project Coordination and Funding Section of the Bureau of Administrative Services, Right of Way for the purpose of recording the receipt of payment in the Right of Way Cash data base system, the ROW Checks Program. All checks will also be scanned at this time.

4.21.8 Rental Deposits and Mailing of Receipts of Payment Received

After the designated representative of the Project Funding Section has logged in the receipt of the rental payment, the check will be provided to a designated representative of the Relocation & Property Management Section of the Bureau of Technical Support. The designee will log the receipt of the payment into the appropriate rental account in the Property's rental data base, recording the following:

1. The Cashier Receipt number for the deposit, which is recorded after the deposit has been made
2. The date the payment was due, which is the month the payment is being applied for
3. The date the payment was received
4. The amount of the payment, noted as "Rent" in the data base
5. The portion of the rent payment received for the municipal service charge, noted as "Escrow" in the data base
6. The portion of the rent payment for the base rental, noted as "Net" in the Data Base
7. The Check Number of the rent payment received
8. Any Comments, noted as "Notes" in the data base

Once the rent payment has been logged into the appropriate rental lease account, a rental deposit slip will be prepared and the payment and rental deposit slip will be taken to the NJDOT"S Cashier for deposit. A copy of the check will be made, along with a copy of the rental deposit slip before taking the payment to the Cashier and will be kept in the individual lease account rental file and in a master file, where all receipts for the calendar year are kept. All rental payments received will be recorded on either the State or the Federal rental deposit receipt form depending on whether the lease originated

from a State or Federal project. The cashier will provide a receipt of all deposits made, and a copy will be made for each of the appropriate lease rental account files and a copy of the rental deposit slip will also be provided to the designee of the Project Funding section and the receipt number will be recorded into each of the appropriate lease rental accounts in the data base by the Relocation & Property Management Section Designated representative that made the deposit. A copy of the entry into the rental data base shall be printed and kept in the appropriate rental lease file.

Once a receipt number has entered into the individual rental lease account, the Relocation & Property Management designee will mail the lessee an acknowledgement letter of the amount of the rent payment received and as to what month the payment was applied towards. If there is an outstanding rent payment due, it will be noted as to the amount and for what month(s). This notice will be sent certified mail only if there is an outstanding rent due balance. A copy of the letter will be kept in the lease account file and a comment about the rent owed will be made in the appropriate rental account in the rental data base in the Notes section, specifically the comment will state the date the notice was sent about the rent arrears owed.

Income from all rental sources shall be deposited daily.

4.21.9 Delinquent Rentals

All rents become due as of the first of each month and must be paid no later than the 10th. No extension will be granted beyond the 10th of the month unless approved by the District Manager. Application for extensions must be initiated by the tenant. On the 15th of each month a letter (copy to the Project Funding Section) shall be mailed to any delinquent tenant outlining the eviction policy and stating that legal action may ensue unless payment is made no later than the 20th of the month.

After 60 days, the Supervisor, Relocation & Property Management Section shall determine if the delinquency warrants referral to the Department of Law for collection and/or eviction. A diligent effort shall be made to collect all rents; however, some accounts are uneconomical to pursue. If, after reasonable efforts have been taken and the Supervisor determines that there is no reasonable prospect of collection, or that further efforts to collect would be uneconomic or unwarranted, a Department Action shall be prepared to write off the uncollectable rents. Any uncollectable rents shall be charged against the project operating expenses.

With regard to lease accounts where rental is due from a non-residential occupant(s), the District Manager or designee shall in conjunction with the Supervisor of the Relocation & Property Management Section of the Bureau of Technical Support arrange to collect all back rents owed the Department before releasing any relocation payments to the occupant. Any claims or obligations, including back rents owed by the displacee cannot be offset against any relocation benefit entitlements of the displaced person or business. This does not mean that the Department is precluded from pursing other legal means to satisfy the claims or obligations, including back rent, from the displacee.

4.21.10 Eviction Policy

On the 1st of each month, following a total month’s delinquency, a 30-day notice to quit and demand for possession may be issued (at the Manager’s discretion) to any tenant who has failed to respond to the notices. The 30-day notices shall be sent only if the required 90-day notice has expired for those leases entered into in association with an

active job. Eviction of tenants shall be used only as a last resort and shall be undertaken only under one or more of the following circumstances:

1. Failure to pay rent;
2. Maintenance of a nuisance or use of the premises for illegal purposes;
3. A material breach of the rental agreement;
4. Refusal to consider a reasonable number of accommodations meeting relocation standards;
5. Refusal to admit a realty specialist; and
6. Situations requiring eviction under State or local law or regulation.

An otherwise eligible occupant, evicted for cause after the initiation of negotiations, retains the right to relocation payments and other assistance. Deductions for rental arrearages may not be made from relocation funds.

4.21.11 Maintenance of Leased Property

From the date of acquisition until a structure is vacant, the Department shall maintain plumbing, heating and electrical systems in an operating condition; shall make repairs necessary to keep the premises habitable; provide for the extermination or control of rodents and other vermin; and do anything necessary to protect the health and safety of the occupants.

N.J.S.A. 27:7-21.5. Management, maintenance, repair and operation of leased property - The Commissioner is hereby authorized to perform or contract for the performance of all acts necessary for the management, maintenance, repair and operation of property leased pursuant to this act and to expend moneys out of any rentals received for such management, maintenance, repair or operation.

Procurement Policy - The Department's Procurement Office should be contacted initially when vendor services are required to determine if the particular service provider is already under contract. Procurement has a number of vendors who provide specialty services and that office will assist in the preparation of the appropriate forms to initiate a work order.

Minor Repairs and Replacements - If minor repairs and replacements (up to and including $1,000.00) are necessary to keep rented properties habitable, the realty specialist shall inspect the property and on verification of the need, will complete and sign Repair Authorization, Form RE-158. Upon approval by the District Manager, the repair may be ordered from reputable vendors, utilizing the competitive bidding process. Upon completion of the work, the invoice and the Repair Authorization Form shall be transmitted to the Project Funding Section of the Bureau of Technical Support and then to Accounting for payment. A Department Action is not required.

Major Repairs and Replacements - Generally, where major repairs or replacements appear necessary, consideration should be given to relocating the tenants to other habitable properties owned by the State. All major repairs shall be approved by the District Manager after conferring with the Director.

Emergency Repairs - Emergency repairs necessary to protect the health and safety of the occupants will be treated as minor repairs and replacements and the District

Manager may contract directly with a reputable vendor, without the necessity of securing competitive bids.

4.21.12 Property Management

Properties containing multiple units may require the provision of heat, electricity and janitorial services. Such items shall be processed in a manner similar to repairs and replacements. The District Manager, with approval of the Director, may have contract with private management firms for very large properties and, on smaller properties, a tenant may be authorized to perform services. Where a tenant provides services in lieu of rental, the difference between the rent charged and the lease amount shall be charged to the property as an operating expense.

4.21.13 Registration of Leasehold Information

Chapter 170, NJ Laws of 1980 requires every landlord of a residence containing one or more units to file a registration certificate with the Clerk of the municipality in which the residential property is situated - Form RE-202.

Chapter 442, NJ Laws of 1981 requires landlords of residences containing one or more units to provide each residential occupant or tenant with a copy of the registration certificate. The landlord must provide each occupant or tenant a copy of any amended certificate within seven days after such amended certificate is filed with the municipal clerk.

Chapter 48, NJ Laws of 1974 requires landlords of residences containing ten or more units to provide tenants "information regarding crime insurance."

Chapter 310, NJ Laws of 1975, "Truth in Renting Act," requires the distribution of a statement to tenants as to the rights and responsibilities of landlords and tenants. The provisions of this Chapter are applicable to landlords of residences containing three or more units.

Registration Process - The District Manager on active projects is responsible for registering the rental unit with the Clerk of the municipality in which the unit is located, by certified mail on Form RE-202. The duplicate copy of this form shall be provided to the tenant and remaining copies shall be retained in the District Office. The certified mail receipt from the postal authority shall be made a part of the permanent case file.

Truth in Renting - Copies of "Truth in Renting-A statement for Landlords and Tenants," published by the New Jersey Department of Community Affairs shall be utilized where residences contain three or more residential units. The agent is responsible for posting the "Truth in Renting" statement in the residence and all residential leases shall include a statement acknowledging receipt of a copy of the statement.

Crime Insurance - Information regarding crime insurance obtainable through the Federal Crime Insurance Program will be furnished by the agent to tenants in residences containing ten or more residential units and all such residential leases shall include a statement acknowledging receipt of said crime insurance information.

4.21.14 Real Estate Taxes and the Payment of the In Lieu of Municipal Services

An In Lieu of Municipal service charge in lieu of local taxes shall be charged to each tenant in the amount of 1/12 of prorated share of the tax on the property in the year it was acquired if available, if not then an estimated amount and in accordance with

N.J.S.A 27:7-21.7. Such payments are to be made to the municipality in which a property is located, except that no payment shall be made for that portion of the year which has been previously paid by the State or the former owner. In the event that such a payment was made, the municipality will be requested to refund the payment.

Remainder of Tax Year in which Property is Acquired - The State is required to pay the taxes for the remainder of the tax year in which a property is acquired and taxes for this period are an acquisition expense and shall be paid by the Title Section.

Subsequent to Tax Year in which Property is Acquired - The designee of the Relocation & Property Management Section of the Bureau of Technical Support will maintain in the rental data base that portion of the rental collected for each account that is for the In lieu of municipal services.

N.J.S.A 27:7-21.7. Monthly service charge payable by lessee; in lieu of local property or leasehold estate taxes - Every lease agreement, except leases entered into by public bodies or agencies for public purposes, nonprofit housing corporations, or with persons or for uses exempted from taxation pursuant to the provisions of Title 54 of the Revised Statutes, shall contain a provision requiring the lessee to pay to the Department of Transportation, in addition to the rental price, a monthly service charge in lieu of local property or leasehold estate taxes for each month or portion thereof of possession or occupancy, said charge to be equal to 1/12 of the tax on the property for the year in which it was acquired by the Department, if such tax information is available or estimated if it is not available. All such service charges shall be for the use of and shall be transmitted to the municipality in which such property is located; provided, however, no service charge collected by the department pursuant to such a provision shall be transmitted to the municipality for that portion of a calendar year in which taxes have previously been paid by the department or by the previous owner.

Remittance to Municipalities – At the end of each tax year for occupied units, the Bureau of Technical Support Relocation & Property Management Section shall compute the tax credit due any municipality from the municipal services collected for each lease account in that municipality. A separate invoice will be prepared for the amount collected for every lease account in that municipality. In the body of the invoice the individual lease account number with the Block and Lot number, if any, associated with that lease account will be detailed along with the amount of In Lieu services collected, as well as what the leased area is used for. The total of the amount of the Municipal Services In lieu of Taxes collected for the lease account will be noted. The invoice shall indicate that the check will be delivered, and not mailed direct, to ensure that the Department receives proper credit for the payment. This invoice and a letter of explanation shall be forwarded to the tax collector for the municipality and a copy kept in the master file for In Lieu for Municipal Service charges file. If it is the first time a payment is being made to the municipality, a W-9 vendor ID Questionnaire form will need to be sent along with the invoice. The invoice and the W-9, if needed, shall be returned to Relocation & Property Management Section of the Bureau of Technical Support for processing. Once the invoice and W-9 has been returned, copies are made for placement in the individual lease accounts that the tax In Lieu invoice is for, and a copy will be placed in the master file and attached to the copy of the unsigned invoice in the file. The Relocation & Property Management Section will process the invoice to Project Funding together with a copy of the lease and expense distribution form. A copy of the invoice and expense distribution form to be processed will also be provided to the Closing Unit and a copy kept with the Supervisor of the Relocation & Property Management Section.

When Treasury has issued a check for the In Lieu of Municipal Services Payment, it will be sent to the Department of Transportation Accounting Unit, which will notify the Project Funding Section of the Bureau of Administrative Services of Right of Way to pick up the checks. The Project Funding section representative will scan a copy of the check and record the receipt. It will then provide the check to clerk of the Closing Section of the Bureau of Titles for additional recording; the clerk will then provide the check to the Project Funding Section of the Bureau of Technical support for recording and distribution.

The Relocation & Property Management Section will record on each of the rental lease accounts in the rental data base that the check is for:

1. The check number for the In Lieu of Municipal Services Payment
2. The amount of the check in the Notes section and a statement of the year for which the payment is being made for
3. In the section noted as "Net" the amount of the check that is for the In Lieu of Municipal Services for that lease account and it shall be put in parenthesis ( ) to indicate a payment was made.

Once the check is recorded in the rental data base, it will be delivered or sent certified return receipt mail along with a letter to the municipality explaining that the payment is for In Lieu of Municipal Services that were collected on the lease accounts in the municipality. The letter shall indicate the lease accounts, with associated Block and lot that the money was collected. A copy of the entry of the In lieu of Services Payment on the individual rental lease account will be printed out and kept in the lease account file, along with a copy of the check that is mailed and the letter to the tax collector with the explanation.

Credits on Federal Projects - States are now permitted to retain the proceeds from the lease or sale of real property acquired with Federal assistance. The proceeds are deposited into NJDOT trust account for use in Title 23 USC eligible projects.

4.21.15 Protective Leasing

Protective leasing is a mechanism designed to compensate owners for lost rental income, when their tenants vacate the premise, prior to the conveyance of title, in response to our right of way acquisition process. Protective leasing benefits the Department by mitigating the costs associated with relocation, including moving expenses and supplemental housing payments.

Protective leasing may only be utilized subsequent to the approval of the Manager of the Bureau of Technical Support. Protective Leasing is not to be pursued prior to the initiation of negotiations for the parcel.

Subsequent to the appropriate approvals, the realty specialist shall have a Lease Agreement executed by the owner, which prescribes the specific term of the agreement and the consideration to be paid. Documentation must be included setting forth how the monthly rental was determined. The projected monthly rental could be predicated on the amount paid by a prior tenant (supported by the actual lease document), or comparable rentals in the area. The Lease Agreement will be drafted only after consulting the Bureau of Technical Support and the Departments legal counsel.

The agreement, together with the supporting documentation and the Department Action will be sent to Technical Support for approval by the Director of Right of Way. Once the agreement is approved, the realty specialist must actively pursue, if not already done,

the completion of negotiations and submit the case to Bureau of Technical Support for an agreement or condemnation, thereby minimizing the funds expended on the Protective Leasing Agreement.

Please reference Section 4.10 and 4.21.4 for additional information related to protective leasing.

4.22 Taking Possession of Property

4.22.1 Possession Distribution

Possession of a property is to occur after the Department has paid for the acquisition of the property and the property acquired has been vacated or if occupied all the occupants in the acquired property are under lease with the State. Copies of the completed possession certificate shall be distributed as follows:

- Owner(s)
- Municipal Tax Assessor sent certified mail
- The file
- Administration Section of the District
- Title

Prior to the acceptance of possession of an improved property, an inspection is to be made to determine if the owner has complied with the terms of the agreement. If the owner has complied, the realty specialist may issue Form RE-7, Certificate of Possession-Removal. If the owner is to retain and remove a structure, the realty specialist shall inspect the premises and consult the case file to determine which items of realty are to be retained by the owner as a part of the agreement.

The offer letter, Form RE-132, indicates those items to be conveyed as a part of the real estate and is to be used as a reference when inspecting the premises. The realty specialist shall inspect the premises, in the owner's or authorized agent’s presence, to determine whether: the structure is vacant of personal property; the owner has removed any part of the realty not authorized by the agreement, all public utilities are turned off. At this time the realty specialist is to accept the keys for the dwelling, which are to be retained in the District.

4.22.2 Utility Removal for Dwelling Acquired

Once a dwelling owned by the State is vacant, the realty specialist will arrange to have the following done:

- Electric meter removed and the wires removed from the dwelling
- Gas meter removed and the gas line cut at the curb
- Phone lines removed from the building
- Cable lines removed from the building
- Water shut off and the meter removed
- Local municipality police department notified that the dwelling is vacant and owned by the State

- DOT Maintenance Division contacted for the purpose of having the building boarded up and secured (which is done after the meters have been removed from the inside of the house)
- Coordinate with the Realty Specialist 4 for the asbestos survey and demolition request

Arrangements shall be made to periodically inspect the dwelling until the structure is demolished. Once the dwelling is demolished, the municipality and police department should be notified, the RE – 7 Certificate of Possession-Removal can be used for this purpose.

All utility companies are to be requested to send a demolition permitted letter with regard to the removal of their meters and services from the dwelling. A demolition permit will not be issued by the municipality until the State Contractor can produce demo release letters from all the utility companies: electric, gas, phone, cable and water. Although the realty specialist will arrange to have the water turned off and the water meter removed, the contractor will be required to arrange for the cutting and capping of the water and sewer line before the demolition will be permitted by the municipality. The demo release letter will be kept with the possession certificate for the parcel that the release letters were obtained.

4.22.3 Pre Construction and Transfer of Keys & Documents

Pre Construction Meeting – The District is responsible for ensuring that the keys, copies of all the demo release letters and the possession certificates for the project are turned over to the State's resident engineer at the pre-construction meeting. A copy of all the Agreements shall also be presented to the resident engineer with a notation for any special arrangements that may have been reached and are part of the agreements. Copies of any available judgments from the condemnation cases shall also be provided to the resident engineer.

4.22.4 Asbestos & Demolition for Properties that are Improved and Acquired

All improved properties that have been acquired by the Department will have an Asbestos survey requested by the Realty Specialist 4 for the project. Every effort should be made to have the asbestos survey request done for the whole project at once, but when necessary the requests may be done in patches as the properties become available. While it is preferred to have the dwelling owned and vacant before requesting a survey, it is possible to request an asbestos survey if the owner has signed a limited Right of Entry for the purpose of conducting the asbestos survey and the occupants have agreed to permit the survey. The survey request will have to note that the dwelling is occupied and any damage caused by the survey sampling will have to be repaired.

In instances where a project construction is more than a year off, it is recommended that the Realty Specialist 4 coordinate with the project manager for the project to also request demolition of the structures. All utilities will need to have been removed from the vacant dwelling.

All asbestos and demolition requests are to be sent to the Manager of the Bureau of Technical Support in Trenton, the Supervisor Property Management Section plus a copy sent to the project manager for the project. All requests for surveys should be grouped together based on the timing of the availability of the buildings. It is not cost effective or efficient to do individual survey requests.

All asbestos requested for buildings shall include the following information:

- Route & Section
- The type of Funding: Federal or State
- Job number
- Parcel numbers
- Street addressed for each parcel
- The date each parcel will be available for the asbestos inspection
- The type of dwelling, such as whether residential, commercial or industrial, the number of stories high, the construction type, such as masonry block, wood, metal, on a slap foundation or with a basement

For non-building structures, the request should include the above and also describe the item to be inspected and indicate in red on the appropriate Right of Way plan sheets the location of the suspected asbestos.

Both types of asbestos requests will require that 2 copies of the General Property Parcel Maps are included with the subject parcels and the buildings or structures on the parcels outlined in RED on the maps.

All Advanced Building Demolition Requests shall occur at or after an asbestos request has been made.

All demolition requests shall include the information as required for the Asbestos requests for buildings and include the following information as to whether there is a:

- A basement, crawl space or slab foundation
- A septic and well or city water and sewer or a combination
- An underground storage tank with the approximate size in gallons
- Any specific items besides the dwelling, such as a garage, barn, out buildings or shed that should be included in the demolition
- Any additional information pertaining to the demolition

If possible, the location of the well, septic, underground fuel tanks should be noted on the two (2) General Property Parcel Maps. The request will also have one Entire Track Map.

The Realty Specialist 4 will coordinate with the Project Manager all demolition requests.

4.22.5 Eviction

If eviction is necessary in accordance with the eviction policy outlined in Section 4.20.11, the following procedure will also be adhered to. A residential or commercial occupant cannot be evicted from the occupied premises until the occupant has been provided with a 90 day written notice to vacate the premises and a 30 day notice to vacate the premises, which cannot have a date that ends before the date in the 90 day notice. The 30 day notice to vacate is not sent until the State has ownership of the property. In the case of a residential occupant, the 90 day notice cannot be sent until comparable replacement housing has been provided to the occupant. The transmittal of the 90 day notice to the occupant is not a sufficient basis for the initiation of the eviction process. It is therefore imperative that we secure new leases with the current owner/tenant

occupants prior to accepting an agreement from the owner. (See Acquisition, Section 3.14C for further discussion).

90/30 Day Notices to Lessees (See Section 4.6.6) - If any occupant doesn't surrender possession of the premises by the date prescribed in the 90/30 day letters, the District Manager shall immediately request the Chief, Division of Law Transportation Section to initiate an eviction action. The request for eviction must include all letters/memoranda in the case file to support our case for eviction and the District must be able to show that the occupant was provided with information regarding their relocation benefits, such as the notification of any eligibility for relocation benefits, the amount if eligible for moving their personal property, for residential occupants, the amount, if any, of their housing supplement and at least one available comparable replacement dwelling and other related relocation assistance.

4.22.6 Retention of Realty

Owners may be offered the opportunity to retain realty, for an appropriate price deduction. If an owner wishes to retain an item(s), the realty specialist shall prepare Form RE-5. A retained item(s) is not eligible for moving cost reimbursement. The realty specialist will have the same monetary limit on retention estimates as on administrative settlements and the call data will document the basis for the estimate. Estimates in excess of the agent's limit, should be reviewed by a supervisor who shall make a written endorsement on the retention estimate.

4.23 Public Auctions and Excess Land

Buildings and other improvements may be offered for sale, but not subsequent to the authorization date for advertising a construction contract. Retention estimates may serve as a basis for establishing the minimum bid.

4.23.1 Auction Requirements

A. For Buildings and Other Improvements

All buildings shall be posted with a sign informing the public that the building and or improvements are for sale and the Department is having an auction on a stated specific date. The posting shall contain a telephone number that may be called to obtain information regarding the sale. The notice of the auction, the terms and conditions of the sale, and the process to inspect the building and or improvements shall be presented to the Clerk of the municipality where the building or improvements are located for posting on the town's public notice board, as well as with the county sheriff's department where the property is located for posting where their sale notices are posted (N.J.S.A. 2A:61-1). A Publication of a legal notice shall appear in 2 newspapers of general circulation in the county where the building or improvement is located and shall be accomplished at least "ten days" prior to auction. The notice shall identify the building and or improvements, list the terms and conditions of the sale and the process to be followed to inspect the building and or improvements. No Auction shall occur until proof of advertising has been secured by the Department from the papers. The advertising notice is submitted to the Department Secretary, who is responsible for advertising the auction in the newspapers.

B. For Land

All excess land that is declared as surplus property and that is required to be sold at auction must be posted with a sign informing the public that the land is available for sale and the Department is having an auction to sell the land on a stated specific date. The posting shall contain a telephone number that may be called to obtain information regarding the sale. A notice of the auction shall also be presented to the Clerk of the municipality where the land is located for posting on the town's public notice board, as well as with the county sheriff's department where the property is located for posting where their sale notices are posted (N.J.S.A. 2A:61-1). In addition a Publication of a legal notice of the auction shall appear in 2 newspapers of general circulation in the county where the land is located and shall be accomplished at least "ten days" prior to auction. The notice shall identify the location of the land, a description of the land being auctioned for sale, the terms and conditions of the sale, the date, time and place of the auction. The advertising notice is submitted to the Department Secretary, who is responsible for advertising the auction in the newspapers.

To ensure that the posting in the newspapers occurs 10 days before the Date of the Auction for land, buildings or improvements, the appropriate unit within the Department shall prepare and submit a Department Action requesting the publication of the notice of the auction 45 days before the date set for the auction. The posting of the property and the deliverance of the auction information to the municipal clerk and county sheriff's office shall occur no less than 30 days before the auction date.

All inquiries into an auction will be noted on an auction inquiry log and all relevant information regarding the auction will be sent to the interested party.

Excess Land declared as surplus property must have gone through the excess land clearance process. In disposing of surplus property, the Property Management Section must adhere to the requirements as set forth in the State Statutes and where required State House Commission approval must have been obtained.

State House Commission Approval is needed for the sale, lease or the conveyance of all or any part of the State's interest in any real property and the improvements with the following exceptions:

1. Conveyance of property to a municipality for a public purpose (N.J.S.A. 27:12-1.3a) that is not intended for redevelopment;
2. Conveyance of a property to a municipal subdivision (e.g., a utilities authority- notice to municipality should indicate a finding of public purpose - N.J.S.A. 27:12-1.3a);
3. Conveyances of property in exchange for property we require for transportation purposes (notice to municipality shall cite N.J.S.A. 27:12-4);
4. Conveyances of property for environmental, farmland preservation, recreation and conservation, or any other public purpose. (notice to municipality shall indicate a finding of public purpose).

The State House Commission may authorize a direct conveyance of a property to a private entity if the value of the property is less than $100,000.00 for an easement, and less than $500,000.00 for the conveyance of a fee interest.

All surplus property disposals will be accomplished in accordance with 23 CFR 710 Subpart D, including FHWA approval when required.

4.23.2 Departmental Clearance of Excess Lands Process

The Department owns land and improvements that may not be needed for present or future highway needs. Since the Department's needs are always changing, a determination regarding Department owned lands and improvements must constantly be updated.

A. The excess land process begins when the Relocation & Property Management Section of the Bureau of Technical Support receives a request regarding the availability of land or improvements owned by the Department for the purpose of being made available for sale or lease. The request is logged in the "Excess Land Received" book according to the month the request was received and the requestor is notified that the request was received and is waiting processing. The Supervisor for the Relocation & Property Management Section will be responsible for assigning the request to a realty specialist of the unit. Once the request has been assigned, the area that the requestor is interested in will be verified by the realty specialist. If needed the realty specialist will send a copy of the General Property Parcel Map with the area to be circulated to the requestor with a request to confirm that the area mark for circulation is indeed the area being requested. Once verified, the realty specialist will confirm that the Department purchased the property and that the property wasn't sold. The realty specialist will also determine how much the department paid for the property. If the Department is still the owner, then the realty specialist will circulate the area to see if the property can be declared as excess and available for sale as surplus property or if it can be leased. At this time the realty specialist will notify the requestor that the Department does or doesn't own the property and if it is owned that a circulation will be started to determine if the property being requested can be made available for sale or lease.

   Each circulation will contain the following:

   1. A transmittal memorandum requesting review of the property
   2. A tax map of the area being requested highlighted
   3. A straight line diagram with the location of the area being requested marked
   4. A copy of General Parcel Property Map of how the Department acquired the area with the area being requested outlined in red
   5. A copy of the most recent construction map for the area being requested
   6. A copy of the requestor letter

B. The transmittal memorandum includes the Route, Section, Parcel designation of how we acquired the parcel, as well as the current highway designation, the approximate mile post, the size of the property being requested, the municipality and county with the block and lot designation, if available, of where it is located. If the lot is not available, use the adjoining lot and note that it is adjoining. The circulation transmittal memorandum should also stipulate what the intended use is for the property as well as the name of the requestor and should request that the reviewing units stipulate any concerns or restrictions, if any, for release of the property for sale or lease.

   Each request must be circulated to the following review units at the Department:

   1. Statewide Planning

2. Environmental Program Resources
3. Project Planning & Development (Scoping)
4. Major Access
5. Jurisdictional
6. Landscape
7. Drainage
8. Environmental Program Resources (E-team)
9. NJIT (Park & Ride) if over an acre in size
10. Facilities Planning & Engineering if over two acres in size
11. CPM's Program Manager
12. Regional Maintenance Manager

C. At times it may be necessary to circulate the request directly to New Jersey Transit or to another State Agency. With regard to Transit, if the property is near a rail line or existing Transit property or if the property is an acre or more in size, then Transit will be given an opportunity to respond.

D. Any of the reviewing units may determine that there is a current or possible future need for the property and recommend that the Department retain the property. Any of the reviewing units may okay the release of the property as excess and available for sale as surplus property but with restrictions that must be adhered to with the sale. All the restrictions must be in any eventual agreement of sale and on the deed. For those sales that are for a public use, the agreement of sale and deed must have a reversionary clause, which state that if the property is not used for the stated public use, the land reverts back to the State, except for those sales that are intended for public use that is redevelopment.

E. The Supervisor of the Relocation & Property Management Section oversees the circulation of all requests for Department owned lands to be made available for sale or lease.

Once the Relocation & Property Management Section receives clearance from all the appropriate reviewing units in the Department, the realty specialist will need to request from the Project Funding Section of the Bureau of Technical Support as to how the property was acquired with regard to whether State, Federal or another State Agency's, funding was used. This information is needed for any eventual Department Actions and deposits of proceeds from any eventual sale or lease. If the funding use to acquire the Right of Way was used with Federal Funding, then the following applies:

F. FHWA approval shall be secured prior to disposal when Federal funds participated in either the right of way acquisition or physical construction of an Interstate project. (Disposal of lands which are not on an Interstate roadway does not require FHWA review or concurrence. FHWA approval is not required for the disposal of property which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property).

G. After the funding has been determined, the realty specialist will request that ROW Engineering prepare a description and have a map drawn with a VX designation for

the property that has been declared as surplus. ROW Engineering shall be provided with the request memo, a copy of the GPPM of how the property was acquired, the latest GPPM, an aerial overview and any additional information that may be available. Once the realty specialist receives the VX map and description, the realty specialist is to send by certified return receipt requested, a letter with the map showing the available VX parcel to the municipality and county of where the property is located, to inform each that the Department is in the process of conveying its interest in the property and is asking if the municipality (or county) would be interested in purchasing the property for the purpose of only a public use or if there are any concerns regarding the potential transaction. In instances where the Department is only proposing to lease the property, they will be no legal description or VX designation requested from ROW engineering and the letters to the county and municipality will state that the area marked on the attached General Property Parcel Map is being considered to be leased by the Department and is either the county or municipality interested in leasing the property for a public use.

H. If the realty specialist receives interest from the municipality or county that there is an interest in purchasing the property for a public use, the realty specialist will then coordinate with the Appraisal Section to determine the amount of the acquisition price paid for the parcel attributed to the portion of that parcel not used for a roadway and that is available to be conveyed for public use. In cases where the public use is intended for redevelopment, then the Appraisal Section will be requested to have an appraisal done to determine the Fair Market Value of the property to be conveyed. For those instances where the Department is only able to lease the property and the county or municipality is interested in leasing the property for a public use other than for redevelopment, the rental value may be a nominal amount, as approved by the Director. Once the value has been determined and reviewed by the Appraisal Section as accurate, 3 copies of the agreement of sale contract or lease will be prepared and sent to the municipality or county. The municipality will provide the Department with a copy of the ordinance and resolution, the county will only need a resolution, authorizing the sale or lease. In cases of the public use being intended as redevelopment, the municipality or county will need to provide an approved redevelopment plan. The Property Management Unit will provide the Department of Community Affairs (DCA) with a copy of the Redevelopment Plan if one has not been previously provided to DCA. If there are no objections or comments by DCA, then the Property Management Unit will prepare a Department Action to have the sale presented to the State House Commission for its approval. In addition the Property Management Unit will need a resolution from the governing body agreeing to the purchase price of the property, which is based on Fair Market Value, and which will be part of the packet presented to the State House Commission.

Once the realty specialist receives the signed contracts, resolution, and ordinance, if needed, a department action will be prepared to have the contracts of sale executed, and a deed prepared and sent for recording upon receipt of the payment in full of the purchase price. In cases of sales where the public use is for redevelopment, the Department Action will need to state the date that the State House Commission Approval was granted for the transaction. The purchase price, the name of the purchaser and the size of the property should be noted on the Department action. A copy of the approved department action will be kept in the case file and one in the supervisor surplus property sold file. Two copies of the executed contracts and the approved department action will be kept in the case file for the property. A copy of

the executed agreement of sale contract will be sent to the municipality or county with a request for a check to cover the purchase price. Upon receipt of the certified check, the realty specialist will prepare a deposit slip and take the check to the NJDOT cashier. A copy of the deposit slip and deposit receipt from the cashier will be kept in the case file and the Supervisor surplus property sold file. No State House Commission Approval is needed for sales or leases to the municipality, county or other governmental body for public use, except in cases where the public use is intended for redevelopment that State House Commission Approval is required.

If after 30 days the county and municipality do not respond or respond that they are not interested, then the realty specialist can work with the Appraisal Section to have an appraisal obtained. This appraisal will, when completed, be reviewed by one of the NJDOT reviewers. If the reviewer determines that the report is inaccurate or incomplete, they will work with the appraiser to have the report deficiencies addressed. In cases where the reviewer and the appraiser cannot resolve their differences, the reviewer can stipulate its findings and register an amount that differs from the appraiser's amount. In cases where the reviewer finds no faults with the appraisal submitted, it will register that value.

I. If the property is to be sold, then the appraisal of the property will be for the fair market value of the land. The land is to be appraised as standalone and or as assemblage. If the land is not a buildable lot, then only assemblage value will be sought. The assemblage will be to that of the adjoining lot of the requestor. If the land area is considered as build able, then both a standalone value and an assemblage value will be sought, with the Department going with the higher value. All appraisals will be reviewed and registered by the Appraisal Section of the Bureau of Technical Support. The cost of any appraisal will be added to the fair market value as determined in the appraisal when determining the final sale price for a direct sale. For land that will be sold at auction, the appraisal cost as well as the advertisement cost associated with the auction of the property will be added to the fair market value and will be the starting minimum bid price at the auction.

If the property is only to be leased, a fair market rental value will be determined by an appraiser. The Appraisal Section of the Bureau of Technical Support will review all rental amounts.

An "Enhancement Value or Assemblage Value" is defined as the amount by which the value of a property is increased (if at all) through assemblage of another property into the same ownership. This is accomplished by valuing the Departments excess surplus land and the adjoining property as if they were assembled together and then valuing the adjoining property alone. The difference between the two is the enhancement value (assemblage value) of the excess surplus land.

J. For those excess lands declared as surplus property but owned by the Department for last than 10 years, the Reality Specialist will need to contact the owner that the Department acquired the property to offer the opportunity to purchase the property at today's fair market value through a direct sale. In cases where the Department is conveying the property to another government agency, municipality or county for a public use, the previous owner is not contacted or afforded the opportunity to acquire the property declared as surplus excess property. The Reality Specialist working with the Supervisor of the Relocation & Property Management Section will follow the requirements in N.J.S.A 52:31-1.4 in attempting to contact the previous owner.

If the previous owner has no interest or the Department has not received a response from the previous owner within the period of time established by the State treasurer, the previous owner's right to repurchase the interest before it is disposed of shall expire.

When the previous owner expresses an interest to repurchase the surplus property, an Agreement of sale contract will be drafted and three copies sent to the previous owner. All three copies of contract will need to be signed and returned to the Property Management Section. This sale will be subject to the State House Commission Approval.

K. If the surplus property has been owned by the Department for 10 years or more, is not a build able lot and the requestor property is the only adjoining property, the Reality Specialist can contact the requestor with the purchase price, but only after the municipality and county have been contacted and provided an opportunity to purchase the excess surplus land for a public use. If neither the county nor the municipality is interested in purchasing the property for a public use, then the realty specialist can contact the requestor with the purchase price. If the requestor is still interested, then 3 copies of the Agreement of sale contract will be drafted for a direct sale to the requestor and sent by certified mail to the requestor. The requestor will need to return all three contracts signed, to the Property Management Section as well as a copy of a resolution for cases where the adjoining owner is a corporation and the operating agreement for an LLC. This sale will be subject to the State House Commission approval.

If there are more than the requestor's property adjoining the surplus property, but the property is not build able, a direct sale to the requestor may be possible but the other adjoining property owners will need to sign a letter of no interest. If the Property Management Section doesn't receive the letter of no interest, then the surplus property will need to be sold at auction. The sale at auction will require State House Commission Approval. If the surplus property has only one adjoining owner, or only one interested adjoining owner and is not buildable, a public auction is not required and a direct sale can proceed after State House Commission Approval has been received.

For those surplus properties that are buildable, or have more than one adjoining property owner interested in acquiring the property, an auction will be required and the sale at auction will require State House Commission approval before an auction date is set. A Department Action is required to be prepared and executed to have a item put before the State House Commission.

L. For situations where the surplus property sales do not require an auction, the Reality Specialist will prepare and obtain a signed agreement of sale contract from the requestor.

M. Once State House Commission Approval has been received for the Department to proceed with a direct sale, the realty specialist will prepare a department action to have the contracts of sale executed and a deed prepared and sent for recording after receipt by the Department of the consideration. The purchase price, the purchaser name, the date the State House Commission approval was given and the size of the property should be noted in the Department action. Once the contracts have been executed, one copy of the executed contract of sale will be sent to the requestor with a request for the consideration and direction that the check shall be made out to the

NJDOT. Upon receipt of the full consideration, the realty specialist will prepare a deposit slip for depositing the consideration with the NJDOT Cashier. A copy of the deposit slip, check and cashier receipt will be kept in the case file and in the Supervisor's surplus property sold file, as well as a copy provided to the Project Funding Section. After the Department Action is approved and full consideration of the purchase price has been received by the Property Management Unit, the Realty Specialist Supervisor will prepare a memo to have the deed prepared and recorded and will submit the memo along with the file to the Closing Bureau's Title section. The Title Section Unit will prepare a deed as well as a request to have the deed executed and will send the deed for recording.

In some cases the requestor for a direct sale may request a closing, in those cases a deed will be prepared and executed but not recorded. The deed will be brought to the closing and exchanged for the consideration and a transmittal letter from the buyer/requestor to the county where the property is located, requesting that the deed be recorded. The buyer is requested to send a copy of the recorded deed to the Property Management Unit upon receipt of the recorded deed. The memo to the Title Unit will state that there is a closing and that consideration has not been received, but to prepare and execute the deed, but not to send the deed for recording.

N. For the surplus property sales that do require an auction, the Reality Specialist will follow the procedures outlined in Section 4.23.5 (Public Auction Process) and in accordance with Section 4.23.1 (Auction Requirements).

O. For those sales requiring State House Commission Approval, the Reality Specialist will prepare the packet for the State House Commission review. The packet will be given to the Supervisor who will be responsible for preparing a transmittal memorandum to the office of Real Property Management of the Department of Treasury listing all those packets being presented for State House Commission review and approval.

State House Commission review packets must contain the following information:

1. State of New Jersey Asset Disposition Form
2. Case Memorandum
3. Approved Department Action requesting the conveyance of the State's interest
4. Certification of value letter and the Property Description section of the Appraisal
5. Appraisal Review Memorandum
6. General Property Parcel Map (GPPM) with the property in question highlighted
7. Description of the Property, where applicable
8. A copy of the tax map and aerial view of the property, if available
9. The requestor letter with the intended use for the property stipulated by the requestor, including the current activity of the requestor on the adjoining property as well as the city and State where the individuals live who are the Buyer or Lessee, where applicable
10. A State House Commission Disclosure form from each member of the Buyer or Lessee, where applicable

Each case submitted for State House Commission Review shall have 16 collated packets with all documents in the packet having a three hole punched along the side.

P. The Supervisor of the Relocation & Property Management Section of Bureau of Technical Support shall establish and maintain an inventory of parcels of properties declared excess and available for sale, known as surplus properties. A list of properties declared as excess but not available for sale as surplus property will also be maintained. Property owned by the Department is either excess land or surplus property, which is excess land that has been declared as excess and available for sale.

For surplus excess land needed for active projects that will be used as an exchange, a request will be made by Project Management or by Major Access. A circulation packet will be prepared and circulated for review and comment. If there are no objections or comments, the excess surplus property will be cleared for use by Project Management or Major Access. State House Commission Approval will not be sought. The exchange will need to be verified that it is needed to resolve a change in access and that the exchange results in the Department receiving the value of the surplus excess land.

4.23.3 Excess Land that is Not Surplus Property

Includes property that has never been circulated, property that has been circulated but was determined to be retained for possible future use by the Department, property that was approved to be leased but not sold as surplus, and property that was approved as surplus but now is required to be reviewed again. Any surplus property that was circulated and declared as excess and available for sale but was done over two years ago, will need to be reviewed again and circulated to determine that the property is still available for sale.

Upon completion of a construction project, an inventory will be made of all potentially excess parcels and the information shall be entered into a database, and where possible the Block and Lot shall be noted. The project managers shall notify the Supervisor of the Relocation & Property Management Section that the construction project is complete and shall confirm those parcels that weren't or are no longer needed. P.L. 1997, c.4 requires the Department to annually prepare an inventory of lands owned by the State and held for transportation projects which are not under construction. The inventory is to be submitted to the Governor and Legislature yearly.

An excess land database will be maintained for each excess land request. Each realty specialist assigned an excess land request will be required to maintain a file and to update the excess land database on each parcel requested.

In exchanges of land as part consideration for a parcel under negotiations, the appraisal report shall reflect any enhancement to the owner's remaining property and consider any compensable severance damages which may be mitigated. Current fair market value or rent shall be charged for the use or disposal of real property interests, including access control, if the property interests were obtained with Title 23 USC funding. Exceptions to the general requirement for charging fair market value may be approved when the Department shows that an exception is in the overall public interest for social, environmental, or economic purposes.

4.23.4 Excess Land File

Each excess land request file shall contain the original request, the acknowledgement of the receipt of the request and the acknowledgement that the request review process has started, the review circulation packet with copies of the transmittal memorandums to

each review unit, the review circulation responses (kept in a separate folder in the file), the appraisal and review (if any), all correspondences with the requestor, the letters to the municipality and county with the certified return receipt notices, the State House Packet (if it was needed), the approved department actions, a copy of any signed contract of sale or lease, a copy of any payments and the deposit slip and receipt, as well as call data which shall track the interactions that occurred on the case.

4.23.5 Statutes Related to the Disposal of Excess Land or Property Declared as Surplus Property

There are a number of State statutes that pertain to the sale, lease or conveyance of any or all of the State's interest in real property, land and or improvements by the Department. The following are a list of the most relevant ones:

A. N.J.S.A. 27:12-1 Disposition of property not needed for public use – When real estate or any right or interest therein has or shall come into the possession or control of the Commissioner, or when he has or shall have taken real estate or any right or interest therein, in the name of the State for the use of the State in the improvement, betterment, reconstruction or maintenance of a State Highway, and the Commissioner has or shall have determined that the property so acquired is no longer required for such use, he may:

1. Sell at private sale, for not less than the amount paid therefore by the State, to any municipality corporation or to any public board or commission, for public use only; provided, however, that the State Highway Commission is empowered to convey upon such terms as he may deem proper to any municipal corporation or to any public board or commission for road and bridge purposes only any lands acquired by the State of New Jersey for road and bridge purposes:
2. Lease to any municipal corporation or to any public board or commission, for public use only:
3. Sell at public sale to the highest bidder: and
4. Exchange for other lands

All or any portion of such real estate or any interest therein, with or without improvements thereon, including the hereditaments, appurtenances, easements and right of way, and make the necessary conveyance of the same.

B. N.J.S.A. 27:12-1.1 Sale of State Highway Property, first offer – Notwithstanding the provisions of N.J.S.A 27:12-1 or any other law to the contrary, if the Commissioner of Transportation determines, pursuant to R.S. 27:12-1, that real property acquired for the use of the State in the improvement, betterment, or maintenance of a State highway is no longer required for such use, the Commissioner shall first offer to sell such property (known by the Department as surplus property) or any right or interest therein at private sale (also known as a direct sale) to the owner of the real property whose frontage is contiguous to the real property being sold; provided that the property being sold is less than the minimum size required for development under the municipal zoning ordinance of the municipality in which the property is located and is without any capital improvement thereon; except that when there is more than one owner with real property whose frontage is contiguous thereto, the property shall be sold to the highest bidder from among all such owners. Any such sale shall be for not less than fair market value of the real property.

C. N.J.S.A. 27:12-1.2 Conditions of sale – The sale of real property permitted by N.J.S.A 27:12-1.1 may only occur after the owner of record at the time of the acquisition has been notified and provided the right to repurchase their interest pursuant to N.J.S.A. 52:31-1.4 (Right of first refusal for when the Department owns the land and or improvements for less than 10 years).

D. N.J.S.A. 27:12-2 Disposition of slopes or easements – The Commissioner may also, when he (she) shall determine that certain slope, drainage or easement rights or any or all of them, or parts thereof, are no longer required or necessary for the use of the State highway with which they are connected, convey, grant, bargain, sell and release to the owners of the fee, any slope, drainage, or easement rights, or any or all of them, or parts thereof, including without limitation those easement rights or parts thereof which give the State the right to enter upon lands adjoining any State highway for the purpose of cleaning, straightening, widening, deepening and maintaining existing ditches and streams and the right to discharge water and maintain a flow of water over such lands adjoining the right of way of a state highway

E. N.J.S.A. 27:12-4 Sale or Exchange of unused lands (for the purpose of acquiring other lands required for highway purposes). - When the Commissioner shall determine that land, the fee to which he has acquired or shall acquire in the name of the State, are no longer required for highway purposes, he may exchange or sell at private sale and convey said highway lands for the purpose of acquiring other lands required for highway purposes.

F. N.J.S.A. 27:7-21.4. Leasing property acquired for transportation purposes; provision for termination of lease - Any real or personal property heretofore or hereafter acquired by the Department of Transportation for a transportation or transportation related program or project may be leased by the Commissioner of Transportation to any person or public body or agency on a temporary basis. The commissioner shall include a provision in the lease which would allow the termination of the lease upon written notice thereof to the lessee prior to the conclusion of the term of the lease in accordance with a minimum period of time for that notice, such provision having been the subject of negotiation between the commissioner and the prospective lessee, so as to ensure that the occupancy of the property does not in any manner interfere with or delay the transportation program or project for which the property is needed. No person, public body or agency shall remain in possession of premises beyond the conclusion of the term of the lease or, in the case of a notice of termination, the date fixed by the commissioner in the notice. If the lessee remains past conclusion of the term of the lease or beyond the date fixed in the notice of termination, the department may institute a summary proceeding in the Superior Court, for an order to show cause as to why the department should not be granted immediate possession of the leased property and the property be vacated of its occupants.

G. N.J.S.A. 52:31-1.1 Sale, conveyance of State's interest; terms; conditions; public hearings; proceeds – The head or principal executive of any State Department, with written approval of the Governor, is hereby authorized to sell and convey all or any part of the State's interest in any real property and the improvements thereon held by the department or to grant an easement in or across such property if he shall find that his department does not require such property or interest for any public purpose and that such sale is in the best interests of the State or that a grant of such easement is in the best interest of the State.

The sale or grant shall be upon such terms and conditions as the State House Commission determine to be in the best interests of the State and shall be by public auction to the highest bidder unless the commission shall otherwise direct.

In the case of lands subject to the provisions of P.L.1993, c.38 (C.13:1D-51 et al.), the State House Commission shall conduct a public hearing at least 90 days in advance of determining the terms and conditions of the sale or conveyance. In addition to any other applicable requirements of law, rule, or regulation concerning notice for public hearings, the State House Commission shall provide notice of the public hearing at least 30 days in advance of the date of the hearing in the same manner and according to the same procedures prescribed for the Department of Environmental Protection pursuant to sections 3 and 4 of P.L.1993, c.38 (C.13:1D-53 and C.13:1D-54). Any meeting at which the State House Commission is to determine the terms and conditions of the sale or conveyance or to decide to approve or disapprove a conveyance of lands subject to provisions of P.L.1993, c.38 (C.13:1D-51 et al.) shall be open to the public, and the commission shall provide public notice of any such meeting at least 30 days prior thereto.

The proceeds from the sale of any property or interest in property sold pursuant to the provisions of this section or from the grant or an easement shall be paid into the General Treasury of the State, except, in the cases of land subject to the provisions of P.L.1993, c.38 (C.13:1D-51 et al.), the proceeds shall be deposited, appropriated, and utilized as prescribed pursuant to section 7 of P.L.1993, c.38 (C.13:1D-57).

H. N.J.S.A. 52:31-1.3 Application, Construction of Act – The provisions of this act shall apply to real property or interests therein that have a value of $500,000 or less and to easements that have a value of $100,000 or less. The provisions of this act shall be deemed to be additional and supplemental to any existing authority to sell property of the State and shall not be deemed to be in derogation of such existing authority. Nothing in this act, P.L. 1962, c.220 (.52:31-1.1 et seq.) as amended and supplemented, shall be construed to affect, amend, alter or repeal any provision of any other law relating to the disposition of public lands for recreation and conservation, farmland preservation, or any other public purpose.

I. N.J.S.A. 52:31-1.3a Approval of State House Commission required for sale, conveyance of real property and exceptions - … the sale or conveyance by the head or principal executive of any State department of all or any part of the State's interest in any real property and the improvements thereon or the grant of an easement in or across such property shall require the approval of the State House Commission without regard to value of the property or easement or to the means by which the property was acquired by the State, unless the sale or conveyance or grant is a disposition of public lands for recreation and conservation, farmland preservation, or any other public purpose.

J. N.J.S.A. 52:31-1.4 Right of First Refusal – In instances where the State wishes to dispose of a parcel of land or improvement which has been declared as excess and available for sale or any interest therein, but the State has not yet owned the property for ten years, the Department must notify and provide the owners of record of the property at the time of the acquisition the right to repurchase their interest at the current fair market value of that interest, as assembled to the formers owner's property (if any). The State shall notify the previous owner of record by certified mail to the most current address of record of that owner and by public notice in two newspaper of general circulation in the area wherein the land is located. The State

Treasurer shall have the authority, through rules and regulations, to establish the period of time by which the previous owner of record must respond, following receipt of notice to the most current address of record for that owner. If the previous owner of record does not respond within the period of time established by the State Treasurer, the previous owner's right to repurchase the interest before it is disposed of at public auction shall expire. A record of all efforts to locate the previous owner will be documented by the Property Management Realty Specialist and kept in the excess land file.

The owner of record shall not include the heirs or devisees of the owner of record.

K. N.J.S.A. 52:31-1.8 Notification to the Municipality of State's Determination to Sell or Convey interest in Real Property - requires that the Department provide a certified mail notification, (return receipt requested) to the Clerk of the Municipality informing them of our intention to sell a property owned by the Department. The written notice shall be sent, by Relocation & Property Management Section of the Bureau of Technical Support, at least 14 days prior to any further action by the Department in order to permit a municipal review and formulation of a response.

The Relocation & Property Management Section will also notify the county clerk via certified mail (return receipt requested) to inform the county of the Department's intention to sell the excess property, subject to the State House Commission Approval. In the letter to the county and municipality of where the property being sold is located, both will be asked if they have any interest in acquiring the property for public use or if they have any objections to the State going ahead with seeking the State House Commission approval for the sale. In instances where either the municipality or county express an interest to purchase the property for public use (N.J.S.A. 27:12-1.a) the Department may sell at private and direct sale, for not less than the amount paid there for by the State, to any municipal corporation or to any public board or commission, for public use only and State House Commission Approval is not needed.

The Department will also "NOTIFY" the municipality the date of the State House Commission meeting for those parcels located in the municipality that the Department is seeking approval to sell or lease.

Department of Treasury Real Property Bureau - The Bureau of Technical Support Manager or designee shall notify the Real Property Bureau of the Department of Treasury of our intent to dispose of any tract in excess of one acre in size. Thirty (30) days shall generally be allowed for an expression of interest prior to scheduling a public auction sale.

4.23.6 Public Auction Process

Sales of buildings or excess land shall be accomplished by means of public auction except for sales to governmental agencies for public use. Auctions shall normally be conducted in a designated conference room of the E & O Building of the New Jersey Department of Transportation located at 1035 Parkway Avenue in Ewing, New Jersey or when necessary a building maintained by the Transportation Department. If the sale is conducted elsewhere, prior concurrence of the Manager of the Bureau of Technical Support will be required. The Manager of the Bureau of Technical Support, or designee, shall be the Presiding Officer and members of Technical Support shall serve as auctioneer, registrar and cashier. The Office of the Inspector General shall be notified at

least 24 hours in advance of the auction, in cases where a State employee intends to bid on a surplus excess land property.

The Registrar shall secure the name and signatures of all persons admitted to the auction, as well as a separate sign in for each potential bidder. Each bidder will be required to show identification, such as a driver license. The Registrar shall furnish each prospective bidder with a copy of the public advertisement and the supplements, which include the conditions of sale, copy of the standard agreement or lease, a bidder number and an acknowledgement letter, which each bidder must sign and return to the Registrar. Any person bidding on behalf of a Corporation will need a signed corporate resolution giving the bidder the authorization to bid and identifying which surplus excess land he is allowed to bid on, or for LLC's the operating agreement. These documents must be verified by the Registrar prior to bidding. A comparison of names of those in attendance shall be made against the names and addresses of any person or corporations prohibited from bidding, and bids shall not be accepted from any such persons. No bids shall be accepted from employees of the Department or their immediate families without approval from the Director of Right of Way and the Deputy Attorney General. The State employee must be attending the auction on their own time, have signed a disclosure statement. The disclosure statement shall have been prepared by the DAG's office. Any interested State employee must notify the Relocation & Property Management Section at least 7 days in advance of the auction of the desire to attend the auction so that a DAG can be present at the auction.

4.23.7 Conduct of Auction

The Supervisor for the Relocation & Property Management Section of the Bureau of Technical Support or designee shall open the auction at the hour specified in the public notice and announce the terms and conditions under which the auction will be conducted. A sign in list shall be maintained and each person who arrives for the auction shall be required to sign in. Each person who wishes to participate in the auction will be assigned a bidder number. This number will be written next to their name on the sign in sheet and acknowledged by the potential bidder. Each bidder will also receive a copy of the conditions of the sale, and will be required prior to the start of the bidding to return the form signed, acknowledging that they read the conditions. The Registrar shall read out loud the conditions of the sale prior to the start of the auction. The bidders will be instructed to show their number to the auctioneer and the recording person when bidding. A description of the property, as well as the map for each property to be auctioned will be posted on a wall in the room where the auction is to occur.

A copy of the winning bid acceptance form shall be posted on the wall of where the auction takes place and copies shall be available for review by the bidders. At the beginning of the Auction, all bidders are to be made aware of the contract that they will be required to sign if they are the winning bidder and to the fact that the winning bidder must have either money order, certified check or cash in the amount of 25% of the winning bid.

At the start of the auction the auctioneer, a member of the Relocation & Property Management Section shall request bids and the recorder shall tabulate the bids made until no more bids are received. The auctioneer shall repeat the final bid three times, given the bidders each time a final opportunity to bid. Failing to receive any additional bids, the auctioneer will announce the number of the high bidder and the amount of the winning bid. The winning bidder will be required to provide a deposit in cash or by

certified check or money order in the amount of at least 25% of the bid price, and to sign three copies of the Bid Acceptance Forms and three copies of the contract of sale or lease for the winning bid. The bidder will need to sign a successful bidder information sheet. This will indicate how the name should appear on the deed and what address the deed work should be sent to, as well as a contact phone number for the high bidder. If the high bidder wishes to put the name in a name other than that of the bidder, documentation may be requested from the bidder showing that the bidder has the authorization to do so.

The winning bidder will receive a copy of the bid acceptance form, contract of sale or lease, copy of the consideration left as the deposit and a receipt that the Property Management Unit will prepare showing that it has received the deposit. The consideration, certified check or money order will be kept in the Project Funding safe until the Director or his designee signs the contract of sale or lease. In cases of cash left as a deposit, the deposit will be made at the time the Property Management Unit receives it. The Project Funding Section will be provided a copy of the consideration prior to it being taken to the cashier, as well as a copy of the deposit slip, and eventual receipt of payment from the cashier.

Copies of the winning bid acceptance form (contract of sale), the bidder information sheet, sales deposit receipt and the receipt of payment from the cashier will be made and kept in the file for the excess land parcel, now known as a surplus property, which was auctioned. In addition a copy of the excess land deposit, receipt from cashier and executed contract of sale will be kept in the Relocation & Property Management Section Supervisor’s folder for excess land sold for that calendar year.

Within three working days of the receipt of bids, a Department Action for the sale shall be prepared and routed to the Manager of the Bureau of Technical Support, Project Funding Section and then to the Director of Right of Way. A contract of sale shall not be assignable without prior written consent of the Commissioner.

4.23.8 Forfeiture of Deposits on Excess Land Contracts

When a high bidder fails to comply with the auction terms, the Bureau of Technical Support Manager shall have a member of the unit prepare a Department Action recommending the steps to be taken including forfeiture of a sufficient amount of the deposit to cover the costs of the auction, any reductions from the high bidder amount that the Department finally obtains and any costs incurred in re-auctioning the property.

When a contract purchaser for excess land, not the result of an auction but through a direct sale, fails to follow through on the purchase for reasons other than just cause as spelled out in the contract, the purchaser will forfeit their deposit, if any was received. The purchaser will be notified via certified mail after the Relocation & Property Management Section has made reasonable attempts, which shall include notification by mail to remit the balance of the outstanding purchase price, that the purchaser will forfeit their deposit if the balance outstanding is not received within 10 days of receipt of the letter. If the Relocation & Property Management Section fails to receive the balance of contract price, a Department Action will be prepared recommending steps to have the deposit forfeited as a result of the breach of contract.

4.23.9 Handling of Cash

Departmental Operating Procedure, No.4-501H, Cash Receipts Invoicing, defines the procedures for handling cash. "Cash" refers to any currency, coins, checks, drafts, money or other cash equivalent. The Secretary of the DOT is designated as the Cashier and all receipts shall be delivered to the Cashier the day of the sale or the day that a rental payment is received, unless receipt of that payment is after 3 pm and then the payment will be locked in the safe for deposit the next business day.

The Manager of the Bureau of Technical Support will maintain appropriate internal operating records and the Department Actions establish a double entry records system whereby Accounting is notified of all receipts, balances due and performance deposits, establishing an accounting record and the basis of the audit process.

4.24 Air Space

Airspace is that space located above, at, or below the established grade line of the highway and lying within the approved right of way limits. Where the State has acquired sufficient title rights in the right of way of a Federally assisted highway to permit the use of specified air space for non-highway purposes and where the air space is not required presently or in the foreseeable future for the operation and maintenance of a transportation facility, the right to temporary or permanent occupancy or use of such air space may be granted. Such use is subject to the approval of the Manager, Technical Support. Federal approval for use of airspace is only required on projects on the Interstate system. Any use of airspace must assure that such occupancy, use, or reservation is in the public interest and does not impair the highway or interfere with the free and safe flow of traffic. FHWA's Air Space Guidelines can be found at http://www.fhwa.dot.gov/realestate/airguide.htm.

The Manager of the Bureau of Technical Support shall prepare and maintain an inventory of authorized uses of air space. A parcel file shall be maintained which shall include the parcel's location by project, survey station, or other appropriate method; identification of the authorized user of the air space; a three dimensional description or a metes and bounds description of the air space; as-built construction plans of the facility showing the location of the air space; construction plans showing the facility authorized to occupy the air space; and a copy of the executed air space agreement.

Income derived from an air space lease does not require a credit to Federal funds. However, the income must be utilized for projects (Title 23 USC) that would typically be eligible for Federal-aid participation.

4.25 Functional Replacement of Real

This section prescribes the procedures to be followed when the Department acquires publicly owned facilities , or specific public use buildings which provide essential public services (e.g., schools, fire houses), which the owning agency would rather have replaced in kind, in lieu of payment for the property and the Department agrees to accommodate. "Functional replacement" is defined as the replacement of real property (land, facilities or both) acquired for a transportation improvement, which will provide the owning agency with a facility of equivalent utility.

4.25.1 Planning Process

During the project scoping phase, the Project Manager will provide plans to the Director, Right of Way on projects requiring the acquisition of a publicly owned facility. The District Manager will contact the owning agency regarding functional replacement and the results of the discussions will be provided to the Bureau of Environmental Services for inclusion in any environmental documents required for the project.

4.25.2 Acquisition Phase

Upon authorization to acquire right of way, the property will be appraised and the agency advised of the fair market value. The owning agency may waive its right to have an estimate of compensation established by the appraisal process. If the owning agency desires functional replacement, it should initiate a formal request to the Department, fully explaining why it would be in the public interest.

If the Department agrees that functional replacement is necessary and in the public interest, the Director, Right of Way and Access Management shall, on Federally funded projects, submit a specific request for concurrence to the Federal Highway Administration (FHWA). The request must include:

1. An explanation of the basis for the request
2. Cost estimate data relative to the contemplated solutions
3. Information regarding agreements reached at meetings between the Department and the owning agency
4. A statement that the replacement property will be acquired in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and applicable FHWA regulations (23 CFR 710.509)
5. After concurrence by the FHWA that functional replacement is in the public interest, a functional replacement agreement will be prepared and executed by the Department and the owning agency. The agreement shall set forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The agreement shall also set forth how the costs of the new facility are to be shared between the parties. The agreement must state a final figure for the overall construction costs as well as a clause stating the owning agency must not exceed this cost without prior written approval by the Department.

After execution of the functional replacement agreement and the identification of a substitute site, the Office of Capital Programming will request FHWA approval to proceed with the acquisition of a substitute site and the development of plans, specifications and estimates. The request will include:

1. A copy of the executed functional replacement agreement;
2. An estimate of the cost to acquire the substitute site;
3. An estimate of the cost of preparing the necessary plans, specifications and estimates;
4. The appropriate environmental clearance documentation; and
5. Documentation to support that the necessary funding has been included in the State Transportation Improvement Plan (STIP).

4.25.3 Architectural Plans

The District Manager will notify the agency to request proposals from New Jersey licensed architects for the construction of the replacement facility and to provide the Manager with an unsigned copy of the proposal submitted by the architect selected by the agency. The Project Manager will be provided with the proposal for comments. Technical Support will inform the agency of any modifications to be incorporated into the final contract document and authorize the agency to contract with the architect for the preparation of the plans, specifications and estimates. The agency will provide two copies of the executed contract.

Upon receipt of the preliminary plans, specifications and estimate from the agency, the documents will be provided to the Project Manager for review by the appropriate units. Comments will be provided to Technical Support. If necessary, a meeting may be scheduled with the agency, FHWA and concerned Department units. The Office of Capital Programming will request FHWA authorization for the agency to advertise for bids and provide Technical Support with a copy of the Federal authorization. Included in the request to the FHWA will be the Department's itemization and cost estimate of betterments included in the replacement and provisions as to how the Department will monitor and inspect the construction of the replacement facility.

The agency will be requested to provide the final plans, specifications and estimate for Departmental review, prior to advertising, to ensure that any comments generated during the review process are incorporated into the bid documents. Technical Support will notify the agency to advertise for bids. Upon receipt of the bid documents from the agency, they will be provided to the Project Manager for review. Copies of the final construction plans and specifications will be provided to the Project Manager and the Division of Construction, with a request to monitor construction of the replacement facility. Upon receipt of comments, the Office of Capital Programming will request the FHWA to concur in the award. Upon receipt of the FHWA's concurrence in the award, Technical Support will notify the agency to award the construction contract.

4.25.4 Construction Phase

The Division of Construction will assign a Resident Engineer to monitor the construction and administer the contract. Any change orders and invoices for payment are to be processed in accordance with standard Departmental procedure. Technical Support will maintain liaison with the Resident Engineer as to the contractor's conformance with the project schedule.

Upon completion of construction, a final inspection will be accomplished by the agency, FHWA and other concerned Departmental units. The Division of Construction will be prepare a statement to be executed by the agency and the Department stating that: (a) a final inspection was accomplished and that the Department is released from any further obligations regarding the facility; and (b) the cost of the replacement facility has actually been incurred in accordance with the functional replacement agreement. The Division of Construction will provide an executed copy to the Office of Capital Programming in support of that office's request to the FHWA for final payment.

4.25.5 Functional Replacement Building Replacement Standards

A. Building Costs: The original building is inspected to determine the square footage, layout, quality and type of construction. The construction type and quality will be

defined using the Marshall Valuation Service cost estimation manual or an equivalent service chosen by the State. The building costs obtained from the selected cost estimating service represent a base payment and can be increased for cause, such as where the price of steel has increased radically or the cost of construction materials has increased due to unforeseen circumstances. The State will also reimburse architects fees, planning costs, site preparation and other reasonable, necessary and appropriate expenses.

B. Replacement Size: The replacement is to contain the same square footage except when:

1. The owner designs a larger structure by using a less expensive construction method
2. Additional space is required by statute or government regulation. Example: Facilities subject to ADA which require a larger bathroom than the original building had to accommodate handicapped users would be reimbursable.
3. The owner requests a smaller replacement facility.
4. The owner can show that a larger building could be constructed more economically than a building of a smaller size. This could be the case when a complex structure such as a police or fire station is involved.

Proposed additions to the original building are not part of the cost to be paid for a functional replacement because they are not present in the original building.

C. Replacement Building Style: Under most circumstances the replacement structure will be constructed in a similar fashion using the same construction style.

Functional replacements are replacements and not reproductions of the original structure. Inefficiencies in construction method found in older styles that would increase building costs will not be reproduced in the replacement. Super adequacies such as gold plated faucets, marble toilet stalls, solid mahogany paneling, etc., will not be replaced in kind. The functional replacement will use materials and methods consistent with good building practices and typical for the type of building in question. The State will also not participate in the additional costs for upgrades such as changing from tile floors to marble floors, turning storage space into conference rooms, etc.

Where a cost savings would result, the State may require the use of a different class of replacement building provided that the substitution does not impact the functional utility of the building or result in a building that would not normally be built by this type of user.

D. Replacement Building Layout: The replacement building does not need to have the same layout as the original building. For example, a fire house where the bays are separated by the administrative area and crew quarters, the new fire station can be redesigned so that the bays are to one side. The State will not provide additional funding for layout changes that change the State approved square footage or increase costs over what the original design would cost. The State will not participate in adding new space, upgrades in building class (industrial to office) or uses which did not exist in the original building. The facility owner may design the structure to better suit expansion but the actual building costs for that design which exceed the costs required for the functional replacement of the existing building will be borne by the facility owner.

E. Relocating Existing Structures: The State may elect to provide a functional replacement by relocating an existing structure to a new site where such an action is feasible. The State would bear the costs required to return the building to its normal function including purchase of land, costs for planning, site preparation, etc.

4.25.6 Functional Replacement Site Replacement Standards

Replacement Land: Where a new site is required, the existing land conditions are reviewed. The replacement land should be a functional replacement and relatively close in value to the land acquired. Where the replacement site exceeds the value of the original site by an unreasonable amount the State may require a different site or where that is not possible, the State will determine to what extent it will participate in the overage value of the replacement site. Where a larger site is required as a result of current zoning or storm water regulations which did not exist when the original site was built a larger site will be considered to meet the comparable value test to the extent that it does not significantly exceed the requirements that necessitated the increase in size.

4.25.7 Functional Replacement Equipment Replacement Standards

Equipment Replacement and Relocation: Specialty equipment attached to the site shall be relocated wherever possible. Where relocation is not feasible such costs may be considered for replacement as long as such replacements are necessary, functional replacements that do not create a windfall. Equipment replacement does not extend to vehicles or other equipment that is not permanently attached to the site. Moveable equipment may be eligible for relocation reimbursement.

4.25.8 Contracting

All costs incurred by the owner must be reasonable and must be reviewed and approved by the State prior to the facility owner making any commitments. The State will reimburse the owner or pay the contractors directly in installments which reflect payment for work accomplished.

4.26 Quality Control

Quality control in the relocation advisory assistance and payment processes is primarily the responsibility of the District Office realty specialist who is assigned responsibility for the particular case. The realty specialist is responsible for the provision of relocation advisory assistance, proper preparation of owner/tenant housing supplements and providing assistance to displaced persons in the preparation of moving cost estimates and invoices for payment. The Realty Specialist 4 is responsible for the audit of the realty specialist’s case file to determine the sufficiency of the relocation assistance provided. Particulars involving the District Office quality control process are contained in the District Operations Quality Assurance Plan. It is the responsibility of the District Manager to implement and actively comply with the Plan and to ensure that relocation activities are accomplished in accordance with State and Federal Law and Regulation.

4.27 Processing of Relocation

All relocation packets from the Districts are to be sent to the Project Funding Section of the Bureau of Technical Support. The following is a series of steps that shall be taken before any invoice for a relocation payment can be processed:

A. The relocation package is stamped and logged in that packet has been received.

B. The relocation package is reviewed for completeness and accuracy, with particular attention given to job number and function codes and funding information. The most recent job number must be used. The funding information must match on the department action, invoice and expense distribution sheet. Particular attention should be given to the "Payee Reference" section of the invoice, where no more than 30 characters can be used to describe the Route, Section and parcel that the payment is associated with. If there are errors on the Department Action or invoice, a corrected action or invoice must be submitted from the Districts before the relocation packet can be processed, particularly with regard to monetary amounts on the action.

   If the relocation package is for expenses, such as sewer, water charges, and emergency repairs, to maintain property that is now owned by the State and there is a lease, the payment will be made out of the rental account and no Department Action will be required. The expense distribution sheet must reference the job number 2889401 and the function code Y305 if Federal and Y306 if State.

C. Once the relocation packet is checked for accuracy the Treasury database is searched to determine if the Federal tax ID number or social security number is in the system and has the same name and address as that which is being submitted on the invoice. If the Federal tax ID number or social security number is not in the system, then the W-9 is faxed to Treasury for data entry of the Federal tax ID number or social security number. If the information regarding the name of the payee and or the address is different in the Treasury system for the social security number or Federal ID number then that which is on the invoice, the District will be notified to request a change of address or name letter from the relocatee. With regard to a change of name, documentation will need to be provided from the relocatee to show that the name was legally changed. The relocation packet cannot be processed until the payee name and address match what is in the Treasury system for that social security number or Federal Tax ID number that a payment is being requested for. If a change of address or name is required, it can take up to four weeks for the change after the requested documentation has been submitted to Treasury.

   For instances where a relocation packet is being submitted to a relocatee who has moved, it is possible to use their old address that is in the Treasury system if the check is going to be hand delivered. The invoice should have "04" noted in the "CHECK CAT." The invoice should state the old address in the payee section and in the body of the invoice the new address should be noted. This can be particularly helpful for those instances where a relocation payment is needed for a relocatee quickly and the District doesn't have the time to wait for a change to be processed. A change of address letter shall be submitted whenever time permits.

   The Treasury system is monitored daily to determine when the payee information from the W-9 has been put into the system.

D. Once the W-9 information for the payee is in the Treasury tax system, the department action is submitted for the Director approval. The action, if approved, is then forwarded to Project Funding and then to the Secretary for the Department of Transportation. After the Secretary notarizes the action, it is sent back to the Project Funding Section.

E. Once the approved department action is received by the Project Funding Section, the Payment Voucher, Expense Distribution, and Department Action is sent to Accounting

with a copy of the payment voucher to the Closing Section of ROW Titles. The Project Funding Section also records the date when the payment documents were sent to Accounting. The payment of the invoice will be coordinated with Treasury by Accounting. A copy of the entire relocation packet is kept by the Project Funding Section.

F. Once Treasury has processed the request for payment, checks will be mailed directly to the payee or will be returned to the Project Funding Section for pick up by the appropriate unit so that the check can be mailed or hand delivered to the payee. To determine that a check has been mailed by Treasury, the Property Section will have to check the Accounts Payable Status form for the date that the check has been sent. Once confirmed that the check has been mailed, the realty specialist will be notified and a copy of the account payable status report will be printed and kept in the relocation file with the entire relocation packet received and the information that the check has been mailed is recorded in the invoice received log. A copy of the Frap and invoice will be made and kept in yearly Frap report file for the Frap report that must be filed yearly. Reporting period will run from July 1st to June 30th.

   If the check is to be hand delivered, it comes from Treasury to NJDOT Accounting to the Project Funding Section to the Titles Section. The Project Funding Section will be notified that the check is in by the Titles Section, and the District realty specialist will subsequently be notified by the Project Funding Section that the check is in and can be picked up. The realty specialist will be required to sign for the check before it can be logged out from the Titles Section. Once the check has been signed out, a copy of the receipt signed by the realty specialist for the check will be kept with the relocation packet that will be filed. The realty specialist will note in the invoice received log that the check has been picked up. A copy of the Frap and invoice will be made and kept in the Frap report file for the Frap report which must be filed yearly and will be filed by the Project Funding Section. The relocation packet will be filed.

Note: Fraps shall be submitted on State and Federal jobs and for all relocation payments, but are not needed for payments for estimates, or utility charges such as water or sewer or for tax payments.

4.28 Assistance

Questions regarding any part of the relocation manual should be directed to the Relocation & Property Management Section in Headquarters, only after consulting with the District management.

Section 5 Title Closing

5.1 General

5.1.1 Introduction

To assure that the Department of Transportation is acquiring good, sufficient, and unencumbered title to properties needed for highway and transportation purposes, there is established in the Division Right of Way & Access Management's Closing Bureau, the Title Section.

The validity of titles searched and examined in preparation for expenditure of highway and transportation monies is dependent on the performance and quality of Title Section activities.

5.1.2 Purpose

The purpose of these guidelines is to outline the standards and procedures which are to be followed in complying with State requirements concerning Title Searching, Title Examining, Deed Preparation, Title Conveyancing, Final Closings and Settlements with property owners, Reimbursement of Real Estate Taxes and Incidental Closing Costs for all property acquired for highway and transportation purposes.

5.1.3 Requirements

It is an established requirement of the New Jersey Department of Transportation that title to all property and rights therein to be acquired for highway and transportation purposes be established prior to the acceptance of a Deed of Conveyance or the institution of condemnation proceedings. Title is to be established by qualified State Title personnel or Title Insurance Companies registered to do business in this State in the office of the Commissioner of Insurance.

The chain of title is to be made from a search of the records in the Office of the County Clerk or Register of Deeds, as the case may be, in the County wherein the property to be acquired is located.

In addition to a search of the County records, a search in the Superior Court of New Jersey and The United States District Court for the District of New Jersey (commonly known as Upper Court Searches) shall be made against all owners appearing in the chain of title. An official tax search shall be obtained from the Municipality wherein the parcel being acquired is located in order to ascertain any and all municipal tax liens affecting the said property. Also, depending upon the subject Municipality, a water and sewer search shall be obtained.

A search shall be requested from the New Jersey Corporation Franchise Tax Bureau against all corporations, both domestic and foreign, which the chain of title discloses held title.

5.1.4 Section Responsibilities

Under the auspices of the Director of Right of Way & Access Management, the Closing Bureau Manager, the Title Officers and staff have the responsibility of complying with all State and Federal procedures concerning the acquisition of property and the vesting of title in the State of New Jersey.

The Manager of the Closing Bureau is the head of the Title Section and in conjunction with the Title Officers, acts as advisor and consultant on matters relating to title to property being acquired; establishes general procedures and policies governing the operation of the Section; supervises the personnel and functions of the Section as may be necessary to vest good and unencumbered title in the State of New Jersey; and supervises the critical examination all title papers and final approvals of all certificates of title and invoices. Invoices are then transmitted to the Division of Accounting and Auditing for transmission to the Department of the Treasury for the issuance of checks for payment.

In the absence of the Closing Bureau Manager, the designated Title Officer II becomes the Acting Title Section Supervisor.

5.1.5 Section Organization

The Title Section consists of three main areas of responsibility:

1. Title Processing

    Field Searching

    Title Examining

    Condemnation

2. Agreement Processing:

    Agreement Processing and Settlements

3. Special Projects:

    Title Company Liaison

    Special Assignments and Office Administration

    Reimbursement of Taxes

    Excess Lands

    Dedications

The three areas are supervised by two Title Officers II that report directly to the Closing Bureau Manager.

The operations and procedures for each of these functions are fully set forth in subsequent sections.

5.2 Title Processing

5.2.1 Procedures

Upon receipt from the Director of Right of Way & Access Management of the General Property Parcel Maps or tax maps showing parcels authorized by the Commissioner of Transportation to be acquired, the Manager and Title Officers will make the decision to assign the project to either the Field Searching personnel or to the Title Company Liaison personnel. The Supervisor of Field Searching or of Title Company Liaison areas, in accordance with the assignment, shall thereupon proceed with the work, having due regard for the completion date of the project.

The decision to use title companies to supplement the staff forces shall be based on available forces in relation to assigned project and parcel and project target dates as well as those unique circumstances where Title Company "back titles" can most economically provide the services and/or where their local offices can better provide local closing services to owners and their attorneys.

5.3 Field Searching

During the Scoping Process the Closing Bureau will make a determination as to who will provide the Preliminary Title investigation, either the In-house Closing Bureau staff, or a Consultant Designer. This determination will be made within five business days of the request.

During the Preliminary Design process the Closing Bureau/Title Section or The Designer conducts a title search and prepares a Preliminary Report. A Title Summary document will accompany all ROW submissions. If the title search is to be performed by the NJDOT Right of Way Title Unit, the Title Unit will provide a Preliminary Report to the requestor at the time of the initiation of the ROW Plan development. If the Title Search is to be performed by a consultant designer, the requestor will contact the Title Unit to obtain a list of approved Title Companies. The Designer will be accountable for hiring, accuracy, and timeliness of the Title Company’s performance.

5.3.1 Requirements

In order to determine the ownership of title to property being acquired for highway and transportation purposes, it is required that a chain of title be prepared by searching and abstracting the records of the County Clerk's Office, the Register of Deeds Office and the Surrogate's Office.

On staff assigned projects, these chains of title are to be prepared by qualified state title personnel assigned to Title Processing.

5.3.2 Responsibility

Under the supervision of the Manager and/or the appropriate Title Officer, the Supervisor of Field Searching has the responsibility of complying with all State requirements concerning the preparation and completion of chains of title.

The Supervisor of Field Searching shall exercise general supervision over and assign the work to those employees who are direct reports. The Supervisor shall maintain the proper performance of work with respect to both quality and quantity, instruct direct report employees in their work as may be necessary, and assist them in their problems incident to such work.

The Supervisor shall approve time records for all employees working under his/her supervision.

5.3.3 Procedures

Upon receipt of a project, together with the Right of Way & Access Management Division master project and parcel target date charts for completion, the Supervisor of Field Searching shall make a parcel-by-parcel record of the project and assign the searching work to the Field Personnel of the area in which the parcels are located. The Field Personnel will be provided the necessary General Property Parcel Maps and descriptions

of the parcels to be searched or tax maps together with the target date for completion of the search work.

The Supervisor of Field Searching will also allocate the number of the field people necessary to complete the project and reassign searchers accordingly, providing completion dates dictated by the project target dates.

5.3.4 Minimum Search Requirements

Type	Minimum Requirement
Temporary and permanent easements	Last record owner search
Minor acquisitions	5 year search
Partial acquisition valued between $10,000 and $50,000	10 year search
Major entire takings $50,000 or more	20 year search
Condemnation cases	30 year search
Donations	Developer provides title certificate
Green Acres cases	60 year search

The estimates of value will be used to determine length of searches.

It should be understood that these are minimum standards and that anyone involved in the process, for good reason, may request or perform additional search work to lessen the risk inherent in performing abbreviated searches.

5.3.5 Creating a Chain of Title

In searching titles, it is important to know that all land titles in the State of New Jersey; except for those areas which now or formerly were subject to tide flow, emanate from the Board of Proprietors of either East Jersey or West Jersey.

In some instances, it may be necessary to trace a title back to the Board of Proprietors in order to determine ownership such as when Deed overlaps are found or where there is no owner found of record. The West Jersey Board of Proprietors is still in existence today and will execute conveyances for property still found to be owned by the Board. In July 1998, the Department of Environmental Protection acquired the remaining property interests of the Eastern Board of Proprietors.

The first act of the searcher in constructing a chain of title is to find the Deed into the present owner. This is done by consulting the Grantee index or computer indices under the name of the present owner and ascertaining the book and page number where the Deed is recorded.

The deed is carefully examined to make certain that the description covers the parcel being searched. If it is found to cover the parcel, an abstract of the Deed shall be made. If it is found not to cover the parcel being searched, the searcher shall again consult the Grantee index until the correct Deed is found.

The deed is abstracted by hand or typed. The abstract will be uploaded in the Department’s database system. The Grantors and the Grantees are noted exactly as set

forth in the deed. The date of the instrument, consideration, the recording date, the book and page or the instrument number, the acknowledgment, signatures and seals are also set forth. The deed abstract also sets forth the Granting Clause and the Habendum together with the covenants and warranties.

The description of the premises contained in the Deed shall be abstracted by hand or typed together with any and all clauses pertaining to easements, rights of way, conditions or reservations. If the Deed contains a recital, this should also be abstracted. The abstract will be uploaded in the Department’s database system.

When photocopies are made in place of abstracts, it is the searcher's responsibility to be certain that all necessary information has been copied and that all extraneous information has been noted. (As in the situation where one or more tracts or parcels do not affect the property being searched.)

When the searcher has completed abstracting the deed, he/she shall then go to the Deed Book and page or the instrument number as recited in the Deed first abstracted. After carefully examining this instrument, if it is found to cover the parcel being searched, a complete abstract of the deed shall be made by hand or typed. The abstract will be uploaded in the Department’s database system.

The searcher will continue to repeat this process until the appropriate period of time has been covered.

In the event the Deed does not contain a recital or if the recital in the Deed is in error, the searcher must consult the Grantee index or the computer indices under the name of the person set forth as the Grantor in the Deed last abstracted in order to find the correct Deed Book and page.

If it is found that a party in title died or if the recital in the Deed sets forth that the Grantor acquired title by descent or devise, the searcher shall then consult the records of the Office of the Surrogate.

If the records of the Surrogate indicate that the party died testate, the searcher shall abstract the Complaint for Probate, the Will and Codicils, if any, the issuance of Letters Testamentary, together with any other proceedings filed in connection with the Probate of the Will. In the event the party died intestate, the searcher shall abstract the Complaint for Administration and the issuance of Letters of Administration, together with any other proceedings filed therewith.

In the event the Surrogate's Office does not contain a record of the party being searched, the searcher shall so note it and make it a part of the chain of title.

5.3.6 Riparian Parcels

Riparian lands are those lands lying below the mean high water mark along waters in which the tide ebbs and flows. Title to these lands is vested in the State of New Jersey unless the State has divested itself of its title by a conveyance commonly called a Riparian Grant.

5.3.7 Plotting

In order that the searcher may at all times be able to identify the parcel of land being searched, it may be necessary for the searcher to make a plotting of the description contained in the Deeds in order to prove that the Deeds cover the parcel in question.

This may be necessary where the parcel of land is included in the description of a larger tract or forms part of several tracts. The plotting will also prove useful to the searcher when making eliminations. In those instances where there are filed maps covering the parcel in question, the searcher shall make a tracing of the filed map.

5.3.8 Searching the Indices

When the searcher has completed abstracting, by hand or by typing, the deeds covering the required period of time, he/she shall then prepare index work for searching the indices in Deeds, Mortgages and Lis Pendens.

The index work is set up by listing the names of each Grantee and owner appearing in the chain of title and the dates they are to be searched, which is the day before they acquired title to a day after they were divested of title. In the case of the present owner, they are searched to date. The searcher shall then consult the appropriate Grantor, Mortgagor and Lis Pendens indices and search the names for the period of time they were in title. Every instrument found under these names shall be listed.

When this has been completed, the searcher shall then locate and carefully examine every instrument listed to see if it affects the parcel being searched. If the instrument does not affect, the searcher shall mark the index work accordingly, usually by making a check mark. If the instrument does affect, he/she shall circle same on the index work and then abstract the instrument. If the instrument is a mortgage that affects but is cancelled of record, the mortgage is not to be abstracted but the searcher shall circle same on the index work, give the date of cancellation and the amount.

By doing this, the searcher shall ascertain every instrument of record affecting the title and shall make an abstract of same, such as but not limited to, conveyances, easements, agreements of sale, leases, mortgages, tax sales, powers of attorney, Lis pendens and final judgments. It then may be necessary for the searcher to run additional names in the indices, such as but not limited to, those parties holding easements, leases and contracts of sale in order to determine the present day holder of these interests.

In abstracting open mortgages, the searcher shall also show any marginal notations, such as assignments, releases, discharges, lis pendens and subordination agreements.

If the mortgagee is an individual, the searcher shall show that the Surrogate's records were consulted versus said party and abstract any proceedings found. This is necessary in order to determine the present day holder of the mortgage.

5.3.9 Searching for Liens

When the searcher has completed the chain of title, a judgment search index shall be prepared, setting forth the names of all persons having held title to the parcel from a date 20 years last past to the day after they were divested of title. In the case of the present owner, they are searched to date. This is done in order to search the County records for liens against said parties.

The liens to be searched in the appropriate County records are:

- Judgments
- Attachments
- Bonds to Sheriff

- Recognizances
- Building Contracts
- Stop Notices
- Mechanics Notice of Intention
- Mechanics Liens
- Federal Liens
- Institutional Liens
- Agreements to Reimburse
- Secured Transactions
- Condominium Liens
- Homeowners' No Notice Lien
- Environmental Liens
- Construction Liens

The searcher shall abstract by hand or by typing, any of these liens found open of record against the parties and/or affecting the parcel in question. The abstract will be uploaded in the Department's database system.

5.3.10 Searcher's Title Report

When the searcher has completed abstracting every instrument found of record affecting the parcel in question and has completed searching all the parties who have held title in all the required indices, he/she shall then prepare the searcher's title report by hand or typing. The searcher's Title Report will be uploaded in the Department's database system.

The report shall set forth the Route, Section, and Parcel or Block and Lot that was searched and the County wherein the parcel is located. It shall set forth the owner of record, the owner's Deed Book and page or the instrument number and if there are Surrogate's records versus the present owner. He/she shall also set forth all open mortgages, tax sales, judgments and liens together with any lis pendens, leases, agreement of sales, etc. The searcher shall state the date the records were covered to and shall sign the report. In the event a back title was used, the searcher shall state which one was used and shall certify that he/she personally examined and checked the abstracts and index work.

5.3.11 Assemblage of the Chain of Title

In assembling the chain of title, the searcher's title report will be the first page, followed by the description of the parcel. Then will come the plottings and tracings of filed maps. Next shall be the abstract of the earliest Deed and following in chronological order shall be all the abstracts of the instruments found of record up to the latest recorded instrument. Following this shall be abstracts of all judgments and liens found open of record. Next shall be the searcher's index work with the earliest names first followed by the judgment search index. The searcher shall number each page of the chain of title in consecutive order starting with the searcher's title report as Page No. 1. This will prove useful when the examiner reads the title referring to defects, liens, etc. found in the

examination and also whether a page has been added or removed from the chain of title. The Supervisor shall review same and if found properly completed, will properly make the necessary entries in the database.

5.3.12 Continuations

The searcher, at times, will be given a request either hand written, typed, via email or by other transmission for a continuation of title for a chain of title previously completed. The request will state the owner of record, the Deed Book and page or instrument number, together with any open liens, and the date from which the continuation is to be run. The current job number and the block and lot will also be shown. The continuation of title will be uploaded in the Department’s database system.

The searcher shall make the continuation from the date given by following the same procedures required for making a chain of title, searching the indices and searching for liens. In the event a new owner is found, the searcher shall run the new owner for 20 years last past on the judgment search index and shall also check the Surrogate's records versus the new owner. The searcher shall check the status of any open liens set forth on the continuation request and state to what date the records were covered.

5.4 Title Examining

5.4.1 Requirements

All chains of title submitted by the Field Searching personnel are required to be carefully examined and a Report of Title prepared showing the ownership of the property, the liens and encumbrances affecting the property, and the defects in title, if any. The Report of Title shall be prepared and uploaded in the Department’s database system and manually modified as required based on prior entries of the Examining Section which delineated all parties of interest.

Reports of Title are to be prepared by qualified State Title personnel assigned to the Title Processing Unit.

5.4.2 Responsibility

Under the supervision of the Manager and/or Assistants, the Supervisor in charge of Title Examining has the responsibility of complying with all State procedures concerning the examination of title.

The Supervisor in charge of the Title Examining shall exercise general supervision over and assign the work to those employees who are direct reports. The Supervisor shall maintain the proper performance of work with respect to both quality and quantity, instruct direct reports in their work as may be necessary, and assist them in their problems incident to such work.

Time records for all direct reports will be approved.

5.4.3 Procedures

Upon receipt of the chain of title (title search) together with any other documents comprising a case from the Bureau of Technical Support, the Title Examining Personnel makes all the entries in the Department’s database.

5.4.4 Reading a Title

At this point, the case is ready to be examined, commonly known as reading the title. The Supervisor of Title Examining shall then assign the case to an examiner.

The examiner shall then carefully examine and scrutinize each instrument in the chain of title noting the accuracy and legal effect the instrument has on the title in question.

In examining Deeds, the examiner should note the following: the parties to the Deed and the marital status; if the grantors are all of the parties who held an interest and if their spouses have joined in the Deed; the date of the Deed, the date of the acknowledgment and the recording date; if the searcher has indicated any difference between the signatures in the Deed and the names of the grantors; the interest being conveyed and whether the Deed conveys the full fee.

In examining instruments made as a result of court proceedings, the examiner should note if all parties holding an interest were made a party to the proceedings. The pleadings or an abstract shall be examined for regularity and any possible defects.

In Deeds made by a corporation, the examiner will access the New Jersey Secretary of State’s office to obtain Incorporation records and the standing of the corporation at the time it became divested of title, when necessary.

In examining Wills, the examiner shall determine the devisee of the parcel in question and who has power to sell same. He/she should also note the heirs and next of kin and their ages to determine if there are any after born children and also if there is a surviving spouse.

When the chain of title shows a party in interest who died intestate, the examiner should note the heirs and next of kin to determine who is entitled to the parcel under the Statute of Descent. In the event the searcher has noted in the chain of title that the Surrogate's Office did not contain a record of the party who died, the examiner should note from the abstract the address of the said party to determine if he was a resident of another County or State, and if so, the examiner should request a search of the Surrogate's records from that County or State. He/she should also request from the Vital Statistics Bureau a search of for any record of death.

If any owners of record died within 15 years last past, in the absence of an Inheritance Tax Waiver, an exception shall be raised except Class “A” beneficiaries.

In examining mortgages, the examiner should: note the parties, the amount, the terms, all marginal entries and determine the present holder of the mortgage.

Also noted will be leases, easements and rights of way affecting the parcel and a determination made of the present holders of these rights.

The examiner shall also note all open judgments and liens set forth in the chain of title.

The examiner shall review the Right of Way Case Summary/Price Approval Sheet as prepared by the District Office to determine what their physical inspection of the parcel discloses, such as encroachments, tenants, occupants and lessees.

When the examiner has completed this, he/she shall review the notes made of the defects in title and shall determine if any have been cured by Statute and/or Validating Acts. If they have been, the examiner shall make the proper notations on the abstract. At this time, an order will be placed requesting an official Tax Search from the

Department's tax vendor. Also, depending upon the subject municipality, a Water and Sewer Search shall be requested.

5.4.5 Preparing the Report of Title

The examiner shall then prepare a Report of Title. On the front page of the Report of Title, the following shall be set forth:

- The name of the person making the examination.
- The date examined.
- The route, section and parcel number and block and lot or other identity of the property being examined.
- The project and code number.
- The date of the condition of title.
- The period of time the examination covers.
- The kind of Deed to be given to the State, such as Bargain and Sale, Executor's Deed or Easement.
- The names of the grantors with the owners of record underlined. As an example, the owner of record is John Smith. He is married and his wife's name is Mary. The grantors would then be John Smith and Mary Smith, his wife.
- However, pursuant to Chapter 485, Laws of 1979 effective May 28, 1980, all rights of dower and curtesy in property acquired after May 27, 1980 are abolished, except as to such real property occupied jointly by the owner and spouse as their principal matrimonial residence. Therefore, the spouse need not be shown as a grantor if it is determined the property is not the principal matrimonial residence, occupied jointly by the owner and spouse, and acquired subsequent to May 27, 1980.
- The amount of consideration being paid by the State except when the Report of Title is being prepared for institution of condemnation proceedings.
- The county and municipality where the parcel is located.
- The examiner shall set forth the names of all parties having held title to the date they were divested of title. This will show the parties to be searched in the Upper Court Searches. The examiner shall then make a request to have these parties searched in the Upper Court Searches.
- The examiner shall set forth all corporations which have held title within the past 10 years from the date they acquired title to the date they were divested of title. This will show the corporations to be searched for Corporation Franchise Taxes. The examiner shall make a request to have these corporations searched in the Corporation Franchise Tax Bureau. Upon receipt of the additional searches they are uploaded to the Department's database system.
- On the reverse side of the Report of Title, the examiner shall set forth the names that the title of record is vested in and the instrument by which title was acquired.
- From the notes the examiner made when reading the title, he/she shall then set forth the exceptions to title, defects of title, proofs being required, liens, judgments, leases, tenants, easements and all encumbrances affecting the title. In numbering

the exceptions, the examiner shall also set forth the page number of the abstract where the exception is on as an aid in readily referring to same.

- When the Title Report has been completed or generated by the Department's database system, the case is reviewed by the Supervisor of Title Examining and verified as to accuracy.
- If in the event the title work discloses a dominant estate, change of ownership or the need for an addition parcel as a result of a recent conveyance the supervisor of Title Examining will provide the vesting instrument(s) to and immediately notify the District Program Manager and the Project Manager that a "SP" and "DE" parcel must be added if a dominant estate is revealed or an addition parcel is required due to a subdivision or ownership change.

The case shall then be given to the Title Officer in charge of Agreement Processing if it is an approved agreement or the Title Officer in charge of Title Processing if condemnation proceedings are to be instituted. In the event the case is a non-action case, it shall then be filed.

5.5 Condemnation

5.5.1 Requirements

In the condemnation of a parcel of property to be acquired for Highway or Public Transportation purposes, it is required that a Condemnation Memorandum of Title be prepared setting forth the owner and all parties who have an interest in and to the parcel being condemned.

The Condemnation Memorandum is to be prepared by qualified State Title Section personnel assigned to the Condemnation Unit. It shall be based on a title search covering a period of at least 30 years last past, which said title search shall have been completed by either qualified State Title Section personnel or by an approved Title Company. The Condemnation Memorandum is prepared. The final copy of the Condemnation Memorandum is uploaded to the Department's database system. It shall be manually modified as needed based on prior entries of the Examining Section which delineated all parties of interest.

The Title Memorandum is to be used by the Legal Processing Section in the preparation and filing of the Condemnation Complaint, Notice of Lis Pendens and Declaration of Taking.

5.5.2 Responsibility

Under the supervision of the Manager or designee, Title Processing has the responsibility of complying with all State requirements concerning the preparation and completion of Condemnation Memoranda of Title.

The Title Officer in charge of Title Processing shall exercise general supervision over and assign the work to those employees designated to complete that function who are direct reports. The supervisor shall maintain the proper performance of work with respect to both quality and quantity, instruct direct reports in their work, as may be necessary, and assist them in their problems incident to such work.

The Supervisor is responsible for reviewing and approving time records for all direct reports.

5.5.3 Procedures

Upon receipt of a request from the Bureau of Technical Support, Acquisition Section for a Condemnation Memorandum, the Title Officer II shall properly enter the appropriate information in the Department's database and assign the case appropriately.

The Report of Title shall be carefully reviewed to determine the owners of record and also the parties who hold any liens, mortgages, judgments, outstanding interests, rights of way, easements, leases, etc. that affect the parcel.

The Upper Court Search and Corporation Franchise Tax Searches shall be carefully examined to determine if there are any outstanding judgments or liens, and the names of the parties who hold said judgments or liens.

The Case Summary Sheet must be carefully reviewed to determine the names of the parties who are lessees, tenants or occupants and any other facts that may affect the parcel.

Upon determining the correct names of the parties in interest, it is then essential to obtain the present addresses of same. In the case of a corporation, it will be necessary to obtain the present name and address of the registered agent from the Secretary of State's Office.

5.5.4 Preparing the Condemnation Memorandum

The correct present names and addresses of all parties in interest will be determined by a comprehensive second review of the Case Summary sheet, Report of Title, upper court judgment searches and the tax search including an exhaustive investigation through the Secretary of State's corporate records, internet sources and other available resources for the correct present names and addresses of agents of any corporations, limited liability companies and or partnerships that have been investigated in order to ascertain the proper address to service process. The Condemnation Memorandum shall then be prepared. The Condemnation Memorandum will be updated as required prior to the filing of the complaint.

The Condemnation Memorandum shall set forth the following facts and information:

- The date of the condition of title;
- The route, section and parcel number and block and lot or other identity of the property being condemned;
- The name of the owner or owners of record. If the owner is a corporation, the State in which it was incorporated;
- The date and recording data of the Deed by which the owner acquired title;
- The name of the owner's spouse, if any, will always be shown when the property was acquired prior to May 28, 1980. However, pursuant to Chapter 485, Laws of 1979, effective May 28, 1980, all rights of dower and curtsey are abolished except as to such real property occupied jointly by the owner and spouse as their principal matrimonial residence. The spouse, therefore, need not be named if it is determined the property is not the principal matrimonial residence occupied jointly by the owner and spouse and the property was acquired after May 27, 1980.

- The present address of the owner. If the owner is a corporation, the name and address of the registered agent; If the owner is a general partnership, the name and address of the general partner.
- All open mortgages affecting the property, setting forth the date and recording data of the mortgage and the name and present address of the mortgagee;
- If the mortgage was assigned, the date and recording data of the last assignment, the name and present address of the last assignee;
- The County and Municipality in which the property being condemned is located;
- The names and addresses of any other parties in interest together with a statement as to the interest they hold.

When the Condemnation Memorandum is completed, the Acquisition Section will be notified that the Condemnation Memorandum is available on the Department's database system. A hard copy shall be retained in the title file. The date the Condemnation Memorandum is forwarded to the Acquisition Section shall be properly entered in the Department's database.

5.5.5 Updating Title to Cover Lis Pendens – Declaration of Taking

Upon receipt of a request from the Legal Processing Section to have the title updated to cover the recording of a Notice of Lis Pendens, a request shall be made to have the County records continued to cover the recording of the Lis pendens and/or Declaration of Taking. The Upper Court Searches shall be continued to cover the date the Lis pendens was recorded.

Upon receipt of the County and Upper Court Searches, they shall be carefully reviewed and, if found clear, a statement shall be affixed to the Condemnation Memorandum setting forth the date title was continued to, the date the Lis pendens and/or Declaration of Taking was recorded and the book and page or instrument number of the Lis pendens.

If, however, a review of the continuation discloses any additional parties in interest, a statement shall be affixed to the Condemnation Memorandum setting forth the date title was continued to, the date the Lis pendens and/or Declaration of Taking was recorded and the book and page of same, together with the names and addresses of the additional parties in interest and the reason they hold an interest.

If a continuation indicates that the parcel needs to be subdivided because of ownership, the appropriate offices will be notified.

The vesting of title by the recording of the Declaration of Taking will be determined by Title Processing.

5.5.6 Processing Awards and Judgments

Upon receipt of a case containing an Award or Judgment approved by the Department together with the title file, the Title Officer in charge of the Title Processing function will make the appropriate data entry in the Department's database and assign the case.

The Condemnation Complaint, any amendments thereto, and the Condemnation Memorandum shall be carefully reviewed to determine all the parties in interest, such as the owners of record, their spouses, mortgagees, lessees, tenants, judgment holders, etc. The necessary instruments to release and dispose of these interests shall be

prepared using the description as contained in the Condemnation Complaint or any amendment thereto.

A tax search or update will be ordered, if necessary.

These prepared instruments, together with a letter setting forth the liens, encumbrances and any defects in title that must be cured, shall be forwarded to the owner or their legal representative for execution together with an invoice for payment representing the balance owed and a form W-9 if needed. The transmittal letter shall also set forth that the invoice and W-9 must be signed and returned within seven days, and that any other instruments to clear the title need not be delivered until the State's check is issued and a final closing arranged by the processor handling the case.

A Cost Incidental to Closing letter (CIC letter) shall also be included and forwarded to the owner or legal representative advising that the Department of Transportation will reimburse the owner for expenses incidental to conveying title to the State, if paid by the owner, as well as penalty costs for prepayment of a mortgage entered into in good faith encumbering the property conveyed, provided, however, that the mortgage was on record as of the date of final approval by the State of the project location.
In order to prepare the invoice and W-9, the case and the Department's database and records must be carefully examined to determine what monies, if any, have been deposited or are awaiting deposit into Superior Court under a Declaration of Taking and any amendments thereto. This will enable the person handling the Judgment or Award to know the exact total of monies paid and determine the exact balance due. If, after this examination, the amounts do not correspond with the Award, Judgment, or Department Commission Action, the case may be referred to the Legal Division for entry of an Amended Award or Amended Judgment or corrected Department Action Slip, as the case may be.

In calculating interest on an Award or Judgment, the interest shall only be paid in accordance with existing statutes and case law and/or an official Court Order approved by the Legal Division and the Commissioner of Transportation via Department Action.

The following steps shall be taken:

- The case shall be reviewed for authority to pay interest.
- The Award or Judgment shall be reviewed for correct dates and calculations of interest.
- If the Award or Judgment does not set forth the interest, the interest shall be computed at the legal rate on the full amount from Date of Complaint to first deposit and on the balance due from the date of deposit under a Declaration of Taking or the date of possession, whichever occurred first.
- If possession has not been taken nor has a deposit under a Declaration of Taking been made, no interest shall be paid unless so ordered under the terms of the Award or Judgment.
- If the Award or Judgment is entered inclusive of all interest, no interest is to be paid.
- When the proper balance due has been determined, together with the proper amounts of interest, the invoice and W-9 shall be prepared. It shall be drawn to the order of the owners of record or as provided by the court and shall set forth the total amount of the Award or Judgment less the amount of any monies deposited into Court and show the balance due. The rate of interest together with the dates on

which interest was calculated and the amount of interest shall be set forth. The balance due and the amount of interest shall be totaled giving the exact amount to be paid.

- Owners and/or their attorneys shall be notified that the proceeds of the settlement check, as available at the closing, may be used to pay the mortgage or other encumbrances.

Under the Eminent Domain Act of 1971, the State becomes vested with title as of the earliest date of the happening of any of the following events:

- Filing and recording a Declaration of Taking and depositing the funds into Superior Court.
- Filing and recording in the recording office the Report of Commissioners and payment of the Award.
- Filing in the action and recording in the recording office, an agreement between the State and the owner fixing the date as of which title shall vest.
- Paying and satisfying of record a final Judgment fixing the compensation.
- If the invoice and W-9 is not returned within three (3) weeks, a follow-up letter shall immediately be sent requesting the signed invoice W-9 be returned. If both the invoice and W-9 are not received within two (2) weeks the case may be processed for payment into Superior Court to stop the running of interest.
- Upon receipt of the invoice and W-9 and any other instruments, they are to be carefully reviewed and, if found in order, the case is to be immediately assembled for preparation of a Certificate of Title.
- The invoice is to be properly coded by the employee assigned the case. In Federal participating projects, the amount of any interest being paid, (a) for the period between the filing of the Complaint and the first deposit; and (b) the period beyond 45 days after the entry of the Award of Judgment, shall be coded as non participating (100% State) unless the file is so documented as to make the interest payments eligible for Federal reimbursement.
- The case shall be assembled the same as set forth under agreement cases except in place of the agreement, the Condemnation Complaint and any amendments thereto together with the Award or Judgment shall be inserted.
- The appropriate Certificate of Title shall then be prepared. The Certificate of Title shall set forth, among other things, the County, the Municipality, the route, section and parcel number, the date the Condemnation Complaint was filed, the owner of record, and whether it is a Judgment or Award. It shall also set forth any exceptions to title that are to be satisfactorily disposed of when actual payment is made, such as taxes, Satisfaction of Judgment, Release or Cancellation of Mortgage, etc.
- A continuation search shall be requested at this time to confirm the recording of the Declaration of Taking and to reveal any assignment of funds.
- An original and copy of the certification shall be made. It shall be noted who is to be contacted to arrange the final closing and payment.
- The properly coded invoice is to be signed by the employee handling the case. The original invoice shall then be attached to the original Certificate of Title. This,

together with the copies, shall be attached to the assembled case and presented to the Title Officer II.

5.5.7 Processing Awards or Judgments to be Paid Into Court

In processing those cases where the Award or Judgment is to be paid into the Superior Court of New Jersey because of an involved "unmarketable" title, or where the owner refuses to deliver the necessary instruments to clear title and to stop the running of interest, an invoice shall be prepared drawn to the order of the Superior Court of New Jersey.

The invoice shall be prepared and coded in accordance with the procedures as previously set forth under Awards or Judgments.

The entire case shall be assembled in accordance with the procedures as previously set forth, and the appropriate Certificate of Title shall be prepared setting forth the reason the case is being paid into the Superior Court of New Jersey. The entire assembled case, together with the invoice and Certificate of Title shall be presented to the Title Officer II.

5.5.8 Award or Judgments that are the same as the Deposit Under a Declaration of Taking

In those cases where the amount of the Award or Judgment is the same as the deposit under a Declaration of Taking or any amendments thereto, the case shall be properly assembled as aforementioned, and an appropriate Certificate of Title shall be prepared stating that the Award or Judgment equals the amount deposited into the Superior Court of New Jersey under a Declaration of Taking or any amendments thereto. The case shall then be presented to the Title Officer II.

In all Award and Judgment cases, a continuation search in deeds only will be sent to confirm recording of the Declaration of Taking and/or any assignment of funds.

5.6 Agreement Processing and Settlements

5.6.0 Requirements

In the acquisition of every parcel of property acquired for Highway or Public Transportation purposes, it is required that the necessary instruments of conveyance be prepared and submitted to the property owner or their legal representative for execution and that such owner or legal representative be advised of all liens and encumbrances that must be satisfied or released and of any defects in title that must be cured before settlement can be made.

At the time of such notice, the owner or their legal representative shall also be notified that, as is customary in any title closing, the proceeds the owner expects to receive from the State, may be used towards satisfying any mortgage and/or other liens.

On staff assigned cases, these instruments together with the notification as concerns the title, are to be prepared by qualified State Title personnel assigned to Agreement Processing.

5.6.1 Responsibility

Under the supervision of the Manager and/or Title Officer II, the Agreement Processing Unit has the responsibility of complying with all State requirements concerning title processing procedures.

The Title Officer II in charge of Agreement Processing shall exercise general supervision over and assign the work to direct reports that are assigned. The supervisor(s) shall maintain the proper performance of work with respect to both quality and quantity, instruct direct reports in their work as may be necessary, and assist them in their problems incident to such work.

They are responsible for approving time records for all direct reports.

5.6.2 Incidental Closing Costs

All requests for reimbursement of incidental closing costs are reviewed under the supervision of a Title Officer II.

5.6.3 Procedures for Processing Agreement Cases

Upon receipt of a case containing an agreement approved by the Director of Right of Way & Access Management , via a Department Action, together with the title file containing the Report of Title, the Title Officer in charge of Agreement Processing shall properly log the case and assign same. Notification of the assignment will be entered in the Department's database.

The agreement shall be carefully reviewed to determine the terms and conditions regarding the conveyance to the State and or third party. The names of the owners shall be compared with the names of the owners as set forth on the Report of Title.

The Report of Title shall also be carefully reviewed to determine what liens, mortgages, judgments, outstanding interests, rights of way, easements, leases, etc. affect the parcel, and to determine which interests must be released or disposed of.

If necessary, the Report of Title shall be updated at the discretion of the Title Officer or Title Processor if older than six months.

The General Property Parcel Map should be checked for easements, rights of way, underground storage tanks, etc., which are not set forth on either the report or title or the Case Summary sheet.

Exceptions to title, as set forth on the Report of Title, shall only be removed by carefully referring to appropriate statutes, decisions based on case law, or if an instrument is received which disposes of said exception.

The clearing of exceptions can also be waived with the approval of the Manager or a Title Officer II when the risk involved outweighs the cost in time and effort consumed in disposing of the exception in the customary manner.

The Upper Court Search and Corporation Franchise Tax Searches shall be examined to determine if there are any outstanding judgments or liens which must be released or satisfied.

The names and dates, as set forth on the Report of Title under judgment searches and Corporation Franchise Tax Searches shall be compared against the actual search

received to be absolutely certain that the proper parties have been run for the proper periods of time.

The Case Summary Sheet shall be reviewed to determine any facts set forth on same that may affect the title, such as leases, tenants, encroachments, etc.

The appropriate Deed shall then be prepared in accordance with the terms of the agreement such as, Bargain and Sale Deed with covenant against Grantor's Acts, Deed by Attorney in Fact, etc., using the description as set forth in the agreement. When the deed is prepared it is forwarded to the Division of Law together with the certification of title signed by the Title Officer for DAG approval and signature.

The Certification of Title is a document that details the general property information such as; owner, county, municipality, route, section and parcel. Also included is the period of years searched, what indices where searched and other ancillary searches ordered and reviewed. It shall also set forth any exceptions to title that are to be satisfactorily disposed of when actual payment is made, such as taxes, Satisfaction of Judgment, Release or Cancellation of Mortgage, etc. The document further certifies the grantors are vested with title and the signatory/signatories is/are lawfully authorized and empowered to convey their interest to the Department. The certification states the deed will be in full compliance with and includes all supplementary forms properly completed as required by N.J.S.A. 46:15-1.1. et seq. It is attested that when consideration is tendered the Department will be in possession of a good estate in fee simple for the premises (other than an easement acquisition) and that the premises will be free, clear and discharged of all encumbrances; excluding any encumbrances passed at the discretion of the Title Officer II.

If the agreement provides for the conveyance of the parcel together with a remnant, a request shall be forwarded to the Department's engineers to prepare a description to be used in the Deed of Conveyance to the State, if not already requested.

At this time, all other instruments needed to clear title shall be prepared, such as Partial Release of Mortgage (fee acquisitions), Subordination Agreement (easement acquisitions), Deed of Release of Easement or Right of Way, Deed of Release of Lease, Waiver of Lease or any other such required instrument.

A proper Affidavit of Title to be executed by the owners setting forth the conditions of title will be prepared.

The W-9 and invoice drawn to the order of the owners of record is checked for accuracy and completeness. The invoice in the amount due the owners under the terms of the agreement shall be processed in accordance with the instructions and procedures set forth by the Department of the Treasury as amended from time to time. If the W-9 and invoice were not completed previously, both will be prepared. When conformed, the W-9 is given to personnel in the Closing Bureau for transmission to Treasury.

These prepared instruments, together with a letter setting forth the liens and encumbrances and any defects in title that must be cured, shall be forwarded to the owner or legal representative for execution. It shall also contain a letter of instructions for execution of the instruments and information that the Deed of Conveyance and Affidavit of Title must be executed and returned in order for the case to be processed for approval and issuance of the State's check. It should set forth that any other instruments to clear the title need not be delivered until the State's check is issued and a final closing arranged.

The specific intention of this notice is to make it clear to the owner that at the title closing he/she may utilize the proceeds of the State check to clear a mortgage and other liens in accordance with Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, P.L. 91-646 and that the property does not have to be vacated until such funds are available.

When the instruments are forwarded to the owner or legal representative, the appropriate data entry will be made in the Department's database.

A follow-up letter shall be forwarded to the owner or legal representative in the event the executed Deed is not returned within three weeks. If the executed Deed to the State is not returned when requested, the case may be referred to the Acquisition Section for institution of appropriate legal action.

Upon receipt of the executed instruments from the owner or legal representative, the appropriate data entry will be made in the Department's database. The instruments shall be carefully reviewed to determine if they are properly completed. The executed deed and any other recordable instruments together with an invoice for payment representing recording fees will then forwarded to the appropriate recording office. In the event the specific recording office requires payment upon presenting instruments for recording invoices will be processed for the recording fees when the instruments are drawn to allow time for check processing. Deeds containing other than standard language are subject to approval by the Division of Law, Transportation Section prior to acceptance.

A request for a continuation of title of the county records and a continuation of the Upper Court Searches shall be made to cover the recording of the Deed to the State. Upon receipt of these various continuations and searches, they shall be reviewed by the person who shall settle the case.

5.6.4 Notice to Tax Assessor

Pursuant to N.J.S.A. 54:4-3.3b, when a deed vesting title into the State is recorded, a notice by authorized delivery service shall be forwarded to the Tax Assessor of the municipality wherein the property is located advising of the States ownership.

5.6.5 Preparing the Assembly Package for Final Review

The case shall then be properly assembled for certification of title. The assemblage shall include the chain of title, continuations of title, a photo copy of the Deed to the State, Partial Releases of mortgages, Subordination Agreements, affidavits, all other pertinent documents, the Report of Title, a copy of the Certification of Title, the agreement and the approved Department Action Slip.

It shall be properly indicated on the Report of Title the disposition of all liens, encumbrances and exceptions to title and signed by the employee removing same.

When cases were formerly in condemnation, the Report of Title, Condemnation Memorandum, Title Search and its Continuation Searches should be compared for any additional encumbrances of title.

It shall be noted on the Certification of Title who is to be contacted to arrange the final closing and payment to the owner.

When the invoice has been properly coded, signed by the employee handling the case, and attached to the original Certificate of Title, this package shall be attached to the assembled case. The certification package is now complete. The person presenting the

package should then check the database and map to make certain nothing has been overlooked. Once this is done, the certification package is presented to the Title Officer II for final approval.

5.5.6 Agreements Providing For Exchange Of Excess Lands As Part Consideration

In those cases wherein the approved agreement provides that, as part consideration, the State is to convey an "X" (excess land) parcel in addition to the aforementioned procedures for processing an agreement case, a request shall be made to the Department's engineers for a description covering the "X" parcel to be used in the Deed out of the State, if not previously requested.

Upon receipt of the description, the appropriate Deed, in accordance with the terms, conditions and restrictions as set forth in the agreement, shall then be prepared out of the State to be executed by the Commissioner of Transportation or the Commissioner's designee. This prepared Deed shall then be held in the case file pending delivery, recording, and receipt of the county continuation covering the recording of the deed into the state vesting clear title.

Upon receipt of the executed instruments from the owner, the case shall be processed as aforementioned. When the assembled case, together with the Certificate of Title, is presented to the Title Officer II, the Deed to be executed by the Commissioner or the Commissioner's designee shall also be included.

5.6.7 Down Payment Checks

Upon receipt of a case from the Acquisition Section wherein both the agreement and the approved Department Action provide for a down payment, a Title Officer shall carefully review the entire case to determine if the balance due the owner under the agreement is sufficient to satisfy any liens and encumbrances affecting title to the property.

Specifically, he/she will determine if, as per the executed contract terms; the check does not exceed 75% of the owner's apparent free and clear equity in the property. In the event the down payment can safely be made, the invoice for the down payment, as prepared by the District Office, is to be reviewed by a Title Officer, and if found correct and proper, it shall be logged and coded. It is then approved and forwarded to the Division of Accounting and Auditing for issuance of the down payment check. Upon receipt of the down payment check from the Division of Accounting and Auditing, the appropriate data entry will be made in the Department's database and the check is forwarded to the owner or legal representative by authorized delivery service.

In the event that it is found that the amounts due on any liens and encumbrances exceed the balance due the owner, the Title Officer shall not authorize the down payment check but shall instruct the Title Processor to advise the owner or legal representative of this fact. However, these funds can be made available to the owner at final closing in order to fully pay and satisfy the liens and encumbrances.

5.7 Settling Cases

5.7.1 Requirements

Upon the acquisition of a parcel of property for Highway or Public Transportation purposes, it is required that a final settlement and payment be made with the property owner.

The final settlement and payment on staff assigned projects is to be accomplished by qualified State personnel assigned the case.

5.7.2 Responsibility

Under the supervision of the Title Officer II, the Title Processors have the responsibility of complying with all State requirements concerning final settlements and payments to property owners on staff assigned projects.

5.7.3 Procedures

Upon receipt of the State's check for final payment, together with a conformed copy of the Certificate of Title, record of such receipt shall be entered in the Department's database.

The processor shall carefully review the names of the payees on the check and the amount of the check with the names and the amount set forth on the Certificate of Title. If there are any errors, the check is to be immediately returned to the Division of Accounting and Auditing for correction. If the check is correct, the Certificate of Title is to be carefully reviewed for any exceptions or encumbrances to be disposed of before final payment is made.

It is the responsibility of the processor, under supervision of the Title Officer, to verify that title is vested in the State of New Jersey, Department of Transportation or it's designee before payment is made in all staff Award, Judgment and Agreement cases.

If there are no exceptions or encumbrances, the check shall be forwarded by authorized delivery service to the owner or their legal representative with a request that a receipt for the check be signed and returned. The signed receipt shall be made a permanent part of the file. A copy of the transmittal letter is given to the Closing Bureau personnel for the proper entries in the Department's databases.

If the Certificate of Title discloses exceptions or encumbrances to be disposed of, the processor shall review the files to ascertain if any additional instruments, tax searches, continuations, etc. that would dispose of the exceptions or encumbrances have been received. If so, the exception or encumbrance will be removed and the appropriate reason for removal noted. The original Certification of Title will then be forwarded to the Division of Law (DAG) for retention.

If all the exceptions or encumbrances cannot be removed, the processor shall forward a letter to the owner or legal representative advising that the State's check is available and listing any encumbrances that must be disposed. The owner or legal representative shall also be advised that arrangements for a final closing and payment can be made and that a representative from the Title Section will meet with them to accomplish this.

Copies of the above letter shall be distributed to the appropriate District Office.

This procedure permits the owner or his/her/their attorney, as in any "private" title closing, to utilize the payment check to release or satisfy the mortgage or other liens.

Upon being notified by the owner or legal representative of the time and place they desire to have the closing, the Processor shall schedule a formal closing. A receipt for the check, to be signed by the owner or legal representative, shall also be prepared.

In all cases: when final payment is made, the owner or legal representative is to be notified that the payment will generate the issuance of a Form 1099 by the State Treasurer' office.

When the final payment and closing has been completed, entry of same shall be made in the Department's database.

When final payment is made, the District Office will be notified. If final payment is being made of a Judgment, Award, or an Agreement case which was previously in condemnation, the Legal Division shall also be notified and an entry shall be made in the database setting forth the date payment was made and to whom the payment was delivered.

The case file and a copy of the database page will then be stamped "SETTLED". A serial number shall be entered on the case file, the database copy and the conformed copy of the Certificate of Title.

The closed case file shall then be transmitted to the , Project Coordination / Funding* for their action. Upon the return of the closed case from the Bureau of Technical Support, the conformed copy of the Certificate of Title shall then be placed in the permanent file for same in numerical order according to its serial number.

Permanent entry of the settled case is then made in the Acquisition log and appropriate indices.

When an exchange deed is delivered to a property owner or legal representative, entry of the conveyance shall be made in the conveyance log book. Notice of the conveyance is to be sent to the tax assessor of the appropriate municipality.

In cases where the Department has acquired property in the name of New Jersey Transit, after closing, the original recorded deed and a copy of the General Property Parcel Map are to be sent to the Real Estate Department of New Jersey Transit.

When closed cases are returned from billing, they are then sent to Special Projects for review for any tax liability and will be sent to the Bureau of Technical Support, Project Coordination / Funding Section for billing.

5.7.4 Invoicing/Check Process

Steps involved in securing a check or checks to satisfy the State of New Jersey, Department of Transportation Division of Right of Way and Access Management's obligations such as: recording fees, tax adjustments, cost incidental to closing, vendor fees and payment of consideration under agreement and Eminent Domain acquisitions are as follows:

1. The check requisition packet is received by Closing Bureau personnel, reviewed for the necessary documentation and correct format on the payment voucher and W9. The New Jersey Comprehensive Financial System or (NJCFS) screen is accessed to ensure the owner's W9 has not been previously submitted and if so, that it conforms with the newly received document. If any discrepancies are disclosed the owner is contacted and the appropriate measures are taken to remedy the inconsistencies. If no prior W9 is on record, the newly received form is submitted to Treasury. The NJCFS screen is re-checked to confirm the owner's federal ID and address was properly entered by Treasury on the system prior to processing the invoice. Entries are made into the R.O.W. Check Audit database to catalog and track the request.

2. The invoice documentation is then given to the Bureau of Technical Support, Project Coordination/Funding area for another review of the mandatory information and assignment of the appropriate Requisition Account or FMIS: Requisition Account number (FRA/RA).

A copy of the invoice request (packet) is utilized to input pertinent information {case number (if applicable)- certification date –amount - route – section – parcel – request date – payee} in the databases by the Head Clerk.

3. When checks are received from Treasury; Technical Support /Funding notifies the Closing Bureau that checks are available and are placed in the Head Clerk's folder in the Division's safe. (2) copies of the log sheet(s) along with (2) copies of the checks received are then given to the Head Clerk who makes additional database entries and documents receipt of the negotiables.

4. The Head Clerk sorts and places the checks in the processor's / requestor's individual folder that is kept and remains in the Division's safe. One copy of the check is given to the requestor, which serves notice that the remittance is received Treasury. The processor / requestor is able to prepare the transmittal letter or check receipt from the information on the photo-copy; the check always remains in the safe until it is actually forwarded to the payee or legal representative. At this juncture the requestor is responsible for the check and will remit the same at the appropriate time.

5. The Head Clerk retains the remaining copy and will input the check number & date received in the tracking database as well as in the appropriate region's database from the copy.

6. When the check is removed from the safe and sent to the payee by Closing Bureau personnel using an authorized delivery service, the check is officially signed out in a "check log" located in the Head Clerk's office by the responsible individual. In addition to the "check log" the Head Clerk is given a copy of the check transmittal letter and the appropriate database entries are made.

The State's check is valid for a period of 180 days. If a closing is to be held after the expiration of 180 days, it will be necessary to return the check to the Department of Treasury for reissue.

5.7.5 Follow-Ups and Cancellation of Checks

A follow-up shall be made on all cases wherein the owner or legal representative do not respond or come to a closing after being notified that the State's check in payment is available, and the State is ready to close at a time and place convenient to the owner or his/her/their attorney.

After six months from the date of the check, and if the case can be closed under the agreement, the negotiable will be returned to Treasury for reissue when the owner is able to clear all the outstanding encumbrances to title. However, in the event the owner cannot clear title and condemnation is the only alternative to acquire the parcel(s) the expired check will be forwarded to Treasury for reissue with the intent to be re-deposited in the appropriate funding account. The reissued check is forwarded to Support Services and accepted by the Department's Cashier for disposition. Copies of all correspondence are forwarded to the Funding Unit.

5.8 Local Aid Projects/Developer Agreements

5.8.1 Requirements

For many years, the Department has acted as the acquiring agency for Sponsors of Local Aid projects. For our purposes, the procedure established required acceptance by the Department of the completed construction project, after which title to the project would be conveyed to the Sponsor. The Department is now moving toward acquiring each individual parcel in the Sponsor's name.

5.8.2 Responsibility

Under the supervision of the Manager, a Title Officer has the responsibility of determining that all parcels required for the project of the Closing Bureau have been acquired and of preparation, processing, and delivery of the appropriate deed to the Sponsor.

Upon receipt of an approved Department Action, accepting as complete the construction of a Local Aid project and directing a conveyance to the Sponsor of the necessary right of way, the following steps will be taken:

A. Properties Acquired in the Name of the State

After it is determined that all necessary acquisitions have been completed, a deed, conveying all parcels acquired for the project, will be prepared from the State of New Jersey, Department of Transportation to the Sponsor.

A Department Action will then be prepared authorizing execution and delivery of the deed to the Sponsor.

When the executed deed is delivered to the Sponsor, copies of the transmittal are sent to Technical Support Bureau's Programming Section and to the Right of Way Engineering unit.

B. Properties Acquired in the Name of the Sponsor

When it is determined that all necessary acquisitions have been completed, a written list of all parcels, together with the recording date for each deed, is sent to the Sponsor.

A copy of the transmittal letter is also sent to the Programming Section and to the Right of Way Engineering unit.

5.9 Title Company Liaison

5.9.1 Introduction

On occasion due to work load or priorities, it may be in the public interest to supplement the staff with use of a title company's services.

The following procedure is subject to the Supreme Court's determination of the practice of law as it pertains to various functions performed by title companies which follow "South Jersey Practice".

In instances judged appropriate, the Manager of the Closing Bureau will notify the Director of Right of Way & Access Management the circumstances and the supporting reasons as to the need for title company services. Upon the Director of Right of Way & Access Management's concurrence of a recommendation, the Title Officer or designee,

under the direction Manager will secure competitive proposals from available title companies licensed with the State and known to be competent and reliable.

The Closing Bureau has obtained the approval of the Consultant Selection Committee for all title companies licensed to do business in New Jersey.

The competitive proposals secured by the Title Officer II or designee will be carefully reviewed as to accuracy, completeness, agreement to meet the State's schedules, and all other relevant data. Subject to overriding cogent circumstances clearly in the public interest, the proposal recommended for acceptance and approval by the Commissioner via an official Department Action shall be the best qualified for the total required services as detailed in the Division of Right of Way and Access Management's Request for Proposals to do the Title work.

5.9.2 Requirements

Upon approval by the Commissioner of a competitive proposal from a title company to complete all title work on a project as evidenced by Department Action, all title searching, title examining, deed preparations, title conveyancing and final settlements and closings with property owners must be completed by the title company and its attorney in strict compliance with the approved proposal.

The title work performed by a title company and its attorney on behalf of the Department of Transportation shall be under the supervision of qualified State Title personnel assigned to Special Project.

5.9.3 Responsibility

Under the supervision of the Title Officer, Special Project personnel have the responsibility of ensuring that all title work performed by a title company and its attorney on behalf of the Department of Transportation is in compliance with all State requirements.

The Title Officer in charge of the Special Projects will exercise general supervision over and assign the work to direct reports assigned to the Section. The Title Officer shall maintain the proper performance of work with respect to both quality and quantity, instruct direct reports in their work, as may be necessary, and assist them in their problems incident to such work.

Time records for all direct reports will be approved.

5.9.4 Title Company Outsourcing Process

There are three separate practices presently being utilized to outsource title work the Department requires:

A. Practice "A" or Proposal "A"

Practice "A" or Proposal "A" is used when the Closing Bureau makes the decision to outsource or initiates the contact with prospective title companies. Practice "a" requires the Closing Bureau to solicit interest from various title agencies. Contact is established with four or five title vendors and the parameters of the project are provided; location, number of parcels and the total estimated cost of the purchase.

Upon receiving at least three positive responses each interested company is afforded the opportunity to submit a proposal or bid to complete the title work from searching the

title through final settlement. Descriptions, General Property Parcel Maps (GPPMs) and an Estimate of Right of Way Cost are provided the title vendors in an effort to assist in generating an accurate proposal. When the proposals have been submitted and received each proposal shall be carefully reviewed by the Title Officer and Manager of the Closing Bureau for specific criterion. The proposals are examined as to cost of each itemized item, experience of the title vendor and date which the title commitments will be delivered. The proposal which is selected will be formally presented to the Director of Right of Way & Access Management for signature together with the Department Action officially authorizing the project.

At this time a Title Order which confirms and agrees that all parties will perform in accordance with the terms is given to the Director for signature. Two copies of the fully executed proposal are forwarded to the title company along with the Title Order which requires execution by the title vendor. Upon return and receipt of the fully executed title order the commencement of work is authorized. An initial meeting is held to discuss policy and procedures. At this juncture the title vendor will be given any additional maps, descriptions and document templates to be utilized in the clearing of tile.

As the work progresses on the projects subsequent meetings are conducted to assure adherence to Department policies and procedures.

B. Practice "A" + "B" or Proposal "A" + "B"

Practice "A" + "B" or Proposal "A" + "B" is utilized when the engineering designer/consultant is charged with the responsibility of contracting the title vendor in order to prepare the General Property Parcel Maps using an official title search to disclose easements, rights of ingress & egress and other encumbrances which will impact the design of the parcels to be acquired. This is an attempt to eliminate need for many revisions due to the deficiency of proper title history.

When a project is designated to be completed by an outsourced design engineering firm, the firm contacts the Director of Right of Way & Access Management or the Closing Bureau directly, specifically the Title Officer for a blank form of Proposal, if needed for a list of approved title vendors. The Title Officer shall provide the blank form of proposal and list of preferred or potential title vendors.

The engineering firm solicits interest from various title agencies on the list provided by the Closing Bureau. The parameters of the project are provided such as location, number of parcels and the total estimated cost of the purchase. Upon receiving at least three positive responses each interested title company is afforded the opportunity to submit a proposal or bid to complete the title work from searching the title through final settlement. When the proposals are received by the consultant each proposal is submitted to the Closing Bureau for review. The proposals shall be carefully reviewed by the Title Officer and Manager of the Closing Bureau for specific criterion. The proposals are examined as to cost of each itemized item, experience of the title vendor and date which the title commitments will be delivered.

The Title Officer will then notify the engineering firm of its recommendations and/or concurrence. Upon the engineering firm acknowledging receipt of concurrence the proposal will be formally presented to the Director of Right of Way & Access Management for signature together with the Department Action officially authorizing the project. At this time a Title Order which confirms and agrees that all parties will perform in accordance with the terms is given to the Director for signature. Two copies of the fully executed proposal are forwarded to the consultant along with the Title Order which

requires both the engineer firm's execution as well as the title vendor's. Upon return and receipt of the fully executed title order the commencement of work is authorized.

An initial meeting is held to discuss policy and procedures. The title vendor will be given any additional maps, descriptions and document templates to be utilized in the clearing of tile.

As the work progresses on the projects subsequent meetings are conducted to assure adherence to Department policies and procedures.

Part "A" of the proposal is binding between the consultant and the title vendor and includes all the search work with the accompanying searches and evidence of title (commitment) with exceptions. The Consultant assumes all financial responsibility to remit fees stipulated under Part "A' of the proposal. Part "B" of the proposal is binding between the title vendor and the Department and includes processing of the agreement package and final settlement. The Department assumes all financial responsibility to remit fees stipulated under Part "B' of the proposal. The selected proposal (signed by the design consultant and title vendor) is presented to the Director of Right of Way & Access Management for concurrence and signature together with the Department Action formally authorizing the project and a Title Order which confirms and agrees all parties will perform in accordance with the terms. The fully executed proposal is forwarded to the design consultant and the commencement of work is authorized.

C. Full Service Provider

The third process is utilized when the Department is under contract with at which is responsible for the preparation of the General Property Parcel Maps, description, appraisals, negotiations and final settlement of all agreement cases. The contracts with the full service provider is managed and under the auspices of Bureau of Administration.

When a project is designated to be completed by a full service provider, the firm contacts the manager of the Bureau of Technical Support or the Closing Bureau directly, specifically the Title Officer for a blank form of Proposal and if needed a list of approved title vendors. The Title Officer shall provide the blank form of proposal and list of preferred or potential title vendors. The full service consultant will contact the prospective title vendors soliciting interest in the Department's work.

When the proposals are received by the full service consultant each proposal is submitted to the Closing Bureau for review. The proposals shall be carefully reviewed by the Title Officer and Manager of the Closing Bureau for specific criterion. The proposals are examined as to cost of each itemized item, experience of the title vendor and date which the title commitments will be delivered. The Title Officer will then notify the consultant of its recommendations and/or concurrence.

An initial meeting is held to discuss policy and procedures. The title vendor will be given any additional maps, descriptions and document templates to be utilized in the clearing of tile.

As the work progresses on the projects subsequent meetings are conducted to assure adherence to Department policies and procedures.

5.9.5 Procedures

Upon approved title company proposal, the Title Officer of Special Projects or designee shall advise / instruct the title company to have all Reports of Title completed and

delivered on or before the completion date as set forth in the proposal, together with any other required information.

A datasheet will be prepared setting forth the route and section, the project, the County, the title company, the Department approval data of the proposal and shall list each parcel and all benchmark activities which must be tracked.

An index card shall be prepared setting forth the owner's name and the route, section and parcel number. This shall be filed alphabetically in the open case index.

5.9.6 Agreement Cases

Upon receipt from the Acquisition Section of a case containing an agreement approved by the Department, an entry of same shall be made in the Department's database.

The title company shall then be forwarded a copy of the approved agreement and instructed to have its attorney prepare the necessary instruments for closing and to forward these instruments to the owner or legal representative for execution with all copies of their correspondence submitted to the Closing Bureau. The title company shall also be given any information that their Report of Title does not reveal, such as tenants or lessees as shown on the Case Summary, the date of possession and the date to which taxes are to be paid.

A follow-up letter shall be forwarded to the title company in the event the title package is not forwarded to the owners/agents within ten days of receipt. . If the executed Deed to the State is not returned within one month, an inquiry will be made as to any difficulties the title company may be experiencing in an effort to offer possible assistance which may prove helpful in settling the case.

A letter shall then be sent to the owner or attorney advising that legal action will be taken to acquire.

Upon receipt of copies of all correspondence and instruments in addition with copies of all executed instruments from the title company, they are to be entered in the Department's databases. All instruments are to be carefully reviewed to determine if they adhere to Department standards and policy. Deeds containing other than standard language are subject to approval by the Division of Law, Transportation Section prior to acceptance.

Executed instruments shall then be sent to the appropriate County Recording Officer for recording by the title company as soon as possible after receipt. Copies of all transmittals shall also be forwarded by the title company and entered in the Department's database.

5.9.7 Notice to Tax Assessor

Pursuant to N.J.S.A. 54:4-3.3B, when a Deed vesting title into the State is recorded by the title vendor and the vendor notifies the Closing Bureau of such occurrence, a notice by authorized delivery service shall be forwarded to the Tax Assessor of the municipality wherein the property is located advising of the State's ownership by Special Projects personnel.

5.9.8 Preparing the Certificate of Title

The case shall then be properly assembled for certification of title. The assemblage shall include the Report of Title, a photo copy of the Deed to the State, releases of mortgages, and all other pertinent documents, the agreement and the approved Department Action slip.

An appropriate Certificate of Title shall be prepared when the Title Policy is received from the title company. The Certificate of Title shall set forth, among other things, the number of years title was searched, the County, the Municipality, the route, section and parcel number, block and lot, case ID and the date of the Deed to the State, and the owner of record. It shall also set forth acquisition type (easement versus fee), consideration, date consideration was forwarded to owner and other pertinent information which is considered benchmark.

An original and one copy of the certification shall be made. On the copy, it shall be noted the name of the title company handling the case.

If the agreement provides for a down payment, entry of same shall be made in the database and the procedures regarding down payments, as set forth in this Manual, will be followed.

5.9.9 Check Coding Procedures and Settling Cases

The invoice shall be properly coded and signed by the employee handling the case. The invoice for payment shall be presented to the Title Officer and approved. The approved invoice is given to the Bureau of Technical Support for further processing and an entry in the Department database is made.

The invoice shall then be processed to the Division of Accounting and Auditing for issuance of the check.

Upon receipt of the check an entry of same is made in the Department's database. The processor assigned the case shall carefully review the names of the payees on the check and the amount with the names and the amount set forth on the Report of Title and Agreement of Sale.

If there are any errors which would hinder payment, the check is to be immediately returned to the Division of Accounting and Auditing for correction. If the check is correct, it shall be forwarded to the title company by authorized delivery service with instructions for closing with the owner. Entry of same shall be made in the database.

The title company is, at this point, to arrange with the owner or attorney for a personal closing, if the owner desires same. At the closing, the owner shall be permitted to utilize the proceeds of the payment check to satisfy the mortgage or other liens.
The title company shall advise the owner or attorney that at the appropriate time arrangements shall be made for a closing at a time and place convenient to the owner. Specifically, the owner or attorney shall be advised that at the closing, as in a "private." transaction, the proceeds of the payment check may be utilized to satisfy the mortgage or other liens.

Owners are to be notified that payment will generate a Form 1099.

Upon final closing and payment to the property owner, the title company shall forward a copy of the closing statement to be followed by the Certificate of Title (Title Policy) showing title vested in the State. Entries of these shall be made in the Department's

database. When final closing has been accomplished, a certification is prepared in accordance as previously described in Section 6.5. The case file shall be stamped "settled" and a closing serial number assigned and given to the Supervisor of the Settlements for entry of the final closing serial number.

Notice of all closings is to be given to the appropriate District Office.

The open file index card shall be removed and the date of closing inserted. The index card together with notice of final closing shall be entered in the Acquisition Log and index.

At this time, closed cases may be sent to Bureau of Technical Support, Project Coordination / Funding Section for final billing.

The processor shall maintain a follow-up on all cases wherein the check has been forwarded to the title company for closing. On those cases wherein the owner does not come to closing after the check has been issued for six months, the check shall be returned by the title company for cancellation. The owner and his legal representative shall be notified that the check is being cancelled, but it will be reissued when the owner is ready to have final payment.

5.9.10 Agreements Providing for Exchange of Excess Lands as Part Consideration

In those cases wherein the approved agreement or judgment provides that, as part consideration, the State is to convey an "X" (excess land) parcel, in addition to the aforementioned procedures for processing agreement cases, a request shall be made to the Department's engineers for a description covering the "X" parcel to be used in the Deed out of the State. At this juncture the title company is informed that the Department will prepare and record the deed out of the State.

Upon receipt of the description, the appropriate Deed in accordance with the terms, conditions and restrictions, as set forth in the agreement or judgment, shall then be prepared out of the State to be executed by the Commissioner of Transportation or the Commissioner’s designee.

When the deed is presented to the Director of Right of Way & Access Management for execution the Department Action will be included to confirm authority to convey.

Upon receipt of the executed Deed, conformed copies shall be made, and the Deed shall be forwarded to the county recording office for recording. The title company will also be notified that the deed is being sent for proper recording. The Title Officer also has the discretion to alter this procedure if deemed necessary.

When final closing has been accomplished, an entry is made in the permanent "excess" conveyance database or log. The copies of the Deed shall be appropriately filed.

5.9.11 Processing Awards or Judgments

Upon receipt of a case containing an Award or Judgment approved by the Department, entry of same shall be made in the Department’s database and the file is processed as previously set forth in the condemnation area.

5.9.12 Notice for Reimbursement of Incidental Costs

In all cases, upon transmittal of the Title package to the owner/legal representative by the title vendor, a letter shall be included advising that the Department of Transportation

will reimburse the owner for recording fees, transfer taxes and similar expenses incidental to conveying title to the State, if paid by the owner, as well as penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the property conveyed.

If the adjustment of real estate taxes has been negotiated and reimbursement made as part of the final payment, no further tax adjustment is necessary.

5.9.13 Title Company Payments

The title company is entitled to receive payment in the amount of the fees set forth in the approved proposal.

Upon receipt of an invoice payable to the title company for these fees, it shall be carefully reviewed against the fees set forth in their proposal. If found correct, the invoice shall be approved and processed for payment. Entry of same shall be made in the Department's database.

5.10 Records And Control

5.10.1 Requirements

It is required that permanent records, complete files and indices for all parcels of property acquired or to be acquired for Highway or Public Transportation purposes be maintained, together with complete records and files for all parcels of property conveyed out by the Department of Transportation.

It is also required that complete control of the work flow be maintained to ensure the completion of projects within the established target dates. This essential record and control function is to be performed by qualified State Title personnel assigned to the Title Section.

5.10.2 Responsibility

Under the supervision of the Title Officer II, the Title Section of the Closing Bureau has the responsibility of complying with all State and Federal requirements regarding permanent records and complete files for all parcels of property acquired or conveyed by the Department of Transportation.

A Title Officer II shall exercise general supervision over and assign the work to direct reports assigned to the Section. The Title Officer II shall maintain proper performance of work with respect to both quality and quantity, instruct direct reports in their work, as may be necessary, and assist them in their problems incident to such work.

Time records for all direct reports will be approved.

5.10.3 Procedures

Upon receipt of General Property Parcel Maps and agreement forms or Tax Maps for new projects assigned to staff personnel, or for additional parcels on staff assigned projects, the following steps shall be performed for each parcel:

An index card shall be prepared setting forth the name of the owner (last name first) and the route, section and parcel number, and the County.

The agreement forms, a set of the General Property Parcel Maps or Tax Maps are transmitted to the field personnel to begin the search work as described in previous sections. A set of the General Property Parcel Maps or Tax Maps shall be retained by the Closing Bureau.

5.10.4 Database Entries

Upon completion of each benchmark activity the following entries shall be entered in the database by the employee performing the individual tasks:

- The date the Title Search is completed;
- The date the Title Search is assigned to be examined (read) and the name of the examiner;
- The date the examination is completed and the Report of Title prepared;
- The date the approved agreement is received from the Acquisition Section;
- The amount of the consideration to be paid;
- The date a down payment invoice is processed to the Division of Accounting and Auditing and the amount;
- The date the Condemnation Memorandum of Title is submitted to Acquisitions;
- The Date the W-9 was forwarded to Treasury
- The date an approved Award of Commissioners or Judgment is received and the amount to be paid;
- The name of the employee assigned to prepare and process the necessary instruments;
- The date the prepared instruments are forwarded to the owner or legal representative for execution;
- The date the executed instruments are received from the owner or legal representative;
- The date the Deed to the State is (approved by the Legal Division) sent for recording;
- The date the Deed to the State is recorded and the Book and Page;
- Any other instruments sent for recording and the recording date;
- The date a tax search is requested
- The date the Certificate of Title is approved and processed to the Division of Accounting and Auditing for issuance of the final payment check;
- Any revision, subdivision, elimination or hold placed on a parcel; (When any of these events occur after an approved action, the Manager or Title Officer will be alerted.)
- The date of possession;
- All checks received are to be entered, such as down payment, declaration of taking, final payment and additional interest, setting forth the check number, the date of the check, the amount, and the disposition of the check.

These entries are made in the database so that the case status can be immediately determined.

5.10.5 Recording Instruments

A record of all instruments sent to County Recording Offices shall be maintained by Special Projects.

All instruments should be carefully reviewed before being sent for recording. When any instrument has been found to be acceptable, it is ready to be sent for recording in the Recording Office of the County where the property is located.

A request for recording shall be prepared in triplicate. The original shall be forwarded to the County Recording Office together with the instruments to be recorded inclusive with an invoice or check. One copy shall be returned to the employee processing the case and one copy shall be retained by Special Projects which is to verify recording fees when the billing for same is received from the County Recording Office.

Upon receipt of the recorded instruments from the County Recording Office, the recording data of same shall be entered in the Department database and vendor account sheet. The original deed then becomes a part of the Title Sections permanent file.

5.10.6 Notice to Tax Assessor

Pursuant to N.J.S.A. 54:4-3.3B, when a Deed vesting title into the State is sent for recording, a notice prepared by the processor handling the case and shall be forwarded by authorized delivery service to the Tax Assessor of the municipality wherein the property is located advising of the State's ownership. As a courtesy to the tax assessor, a cutout of the General Property Parcel Map is also enclosed.

5.10.7 Tax Search Requests

A record of all requests for official tax searches, water and sewer searches covering property being acquired by the Department shall be maintained by the Head Clerk.

The request for a tax search will be ordered via the internet by Examining through the Department’s tax vendor. When the search is ordered two copies of the confirmation will be secured. One copy to be included in the case file and the other is to be given to the Head Clerk in order to reconcile / maintain the vendor account. A note will be made on the Report of Title that the tax search has been ordered.

5.10.8 Records of State Departments

To facilitate the work function of the various functions of the Title Section, Title Processing shall, upon request, search the records of various State Departments for status of corporations, partnerships, trade names, birth records, death records, divorce decrees, etc. The Title Section is now able to access the Secretary of State’s records via computer network.

Title Processing shall also be responsible for obtaining abstracts of court Chancery proceedings regarding tax foreclosures, mortgage foreclosures, partition proceedings.

5.10.9 Acquisition Log

A permanent record log shall be maintained by Special Projects for all property acquired by the Department of Transportation.

Upon receipt of a notice of final settlement from the processor assigned to the case the following details shall be permanently entered for each parcel of property acquired under the heading of route and section:

1. The parcel number;
2. The name of the owner of record from whom the property was acquired;
3. The recording data of the Deed or a notation of an Award or Judgment;
4. Date of final settlement;
5. Dates of all checks and check numbers used in making payment;
6. The amount of each check.

In addition to the permanent database record for all acquired property, a permanent index shall be maintained setting forth the name of the owner from whom the property was acquired together with the route, section and parcel number and the date of final settlement. This index shall be maintained alphabetically.

5.10.10 Excess Parcel Conveyance Log

Special Projects shall maintain a permanent log of all parcels of property conveyed by the Department of Transportation.

Upon receipt of a notice that a Deed has been executed by the Commissioner of Transportation or designee conveying excess lands and that the deed has been recorded, the following details shall be entered in the excess parcel conveyance log.

The log shall set forth the county, the route, section and parcel number, the date of the deed, the name of the grantee and reference to the case under which the parcel was originally acquired.

5.10.11 Filing Case Folders

The Title Section personnel have the responsibility of maintaining accurate filing of case folders.

The folders shall be filed in file cabinets located in the file room. All papers, correspondence, etc. received shall be filed daily in the appropriate case folder.

5.10.12 Active Files

Upon request for a case folder, an "out-card" shall be prepared setting forth the date and the person taking the folder, and the "out-card" shall then be inserted in place of the folder. An entry shall also be made in a charge-out log.

5.10.13 Storage Files

The charge-out log shall be reviewed monthly and a listing shall be made of all folders not returned. A follow-up shall then be made to the party having the folder in order that it may be returned. When a case folder is returned, it shall be so noted in the charge-out log and shall be promptly filed and the "out-card" removed.

5.10.14 Processing Cases for Storage

A case folder is eligible to be sent to storage when five (5) years have elapsed since final closing and payment. A list of such cases shall be obtained on a monthly basis from the duplicate certification of titles showing the cases closed three years last past.

Before a case can be placed in storage, it must be culled and stripped of duplicate papers. Any paper that is a duplicate of another that is in the file shall be stripped from the file. The remaining papers shall be neatly fastened together. After the case has been stripped, it shall be placed in a storage box. A storage box number shall be obtained from the Bureau of Records and Services in the Division of Central Services. This storage number shall be affixed to the box.

A record storage index shall be prepared setting forth each case being sent to storage together with the storage box number in which the case will be found. This information shall also be set forth in a record storage log.

When a box is sent to storage, a receipt shall be obtained from the Bureau of Records and Services setting forth each case received for storage. This receipt shall be permanently retained by the Closing Bureau, Title Section.

5.11 Reimbursement of Taxes

5.11.1 Requirements

Under Federal and State laws, it is required that, on all parcels of property acquired by the Department, owners be reimbursed for real estate taxes paid in advance and also, as appropriate, that payment be made to municipalities for real estate taxes for the remainder of the year in which the property is acquired.

It is also required that for any excess lands sold at public auction an appropriate Deed be prepared conveying said lands.

The adjustment, calculation, reimbursement and payment of these real estate taxes and incidental closing costs and the preparation of the appropriate Deed conveying excess lands sold at public auction are to be accomplished by qualified State Title personnel assigned to Special Projects.

5.11.2 Responsibility

Under the supervision of the Title Officer, Special Projects has the responsibility of complying with all State and Federal laws and procedures regarding real estate tax payments, incidental closing cost payments and public sale conveyances.

The Title Officer shall exercise general supervision over and assign the work to direct reports assigned. The Supervisor shall maintain proper performance of work with respect to both quality and quantity, instruct direct reports in their work, as may be necessary, and assist them in their problems incident to such work.

Time records for all direct reports will be approved.

5.11.3 Procedures for Tax Payments

In all cases, except those where the district office has offered and the property owner has accepted an anticipated property tax rebate in lieu of the procedure described below, the anticipated property tax rebate is included as part of the agreement of sale.

In all other cases wherein final closing has been accomplished, the file shall be forwarded to Special Projects. The cases shall include both staff assigned and those settled by the Department’s outsourced title vendor.

Upon receipt of the case, it shall be entered in a permanent tax reimbursement and payment log. The log shall set forth the route, section and parcel number, the owner's name, the municipality, the type of taking, the tax lot and block, date of possession or vesting of title, the taxes paid by the owner, the amount of reimbursement made to the owner and the date paid, the amount paid to the municipality and the date paid.

All taxes shall be adjusted in accordance with N.J.S.A. 20:3-1 et seq. (Eminent Domain Act of 1971) unless there is an agreement entered into between the owner and the State which provides otherwise.

The case shall be carefully reviewed for all tax information such as tax searches, tax receipts or statements from the title companies. If additional tax information is needed, the Processor of Special Projects shall obtain same from the concerned tax office.

The case shall be further examined to determine the date to which payment of taxes was the owner's obligation, the actual date to which the owner paid the taxes, the amount of taxes paid by the owner and the amount of taxes assessed by the municipality.

All this information shall then be set forth on the tax reimbursement calculation sheet. Using the tax calculation sheet, it can then be determined the amount of taxes actually paid by the owner. If the owner made an overpayment covering any part of the taxable year after the State took title and/or possession, he/she shall be reimbursed for the amount overpaid, unless it is determined that the taking has no effect on the assessed value of the property, in which case no adjustment is offered. However, if the property owner requests reimbursement of an amount which is considered nominal ($25.00 or less) the reimbursement will be paid. Thus, all property owners do not receive tax adjustments.

An invoice and W-9 if necessary will be drawn to the order of the owner in the amount to be reimbursed and shall be forwarded to the owner or legal representative for execution, together with a letter explaining the State's calculation for the tax reimbursement. Upon receipt of the executed invoice, the control section and function code numbers are affixed to said invoice to charge the costs to the projects involved, thereby insuring the State that reimbursement will be forthcoming if other agencies are participating the project costs. The invoice is then processed to the Division of Accounting and Auditing for issuance of the check. Upon receipt of the check, it shall be forwarded to the owner or legal representative.

Pursuant to N. J. S. A. 54:4-3.3A - 3.3F, the State is required to pay the municipality the remaining taxes due for the year of the State's acquisition. Using the tax calculation sheet one can determine the amount of taxes due the municipality from the State.

An invoice drawn to the order of the municipality in the amount of the taxes due shall be prepared and forwarded to the Tax Collector for execution. Upon receipt of the executed invoice, it shall be properly coded and processed to the Division of Accounting and Auditing for issuance of the check. Upon receipt of the check, it shall be forwarded to the Tax Collector.

The tax calculation sheet shall be made a permanent part of the case file.

Partial Takings

In partial takings, the tax calculation sheet shall be prepared as before stated except the owner shall be requested to pay the taxes for the remainder of the year unless the taxes are apportioned by the municipality.

The preferred method of determining the amount of reimbursement in partial takings is to use the old and new assessment figures determined by the local tax assessor. This information is requested in November of the tax year since the assessor is required to have the succeeding year's assessment figures completed on October 1.

If an acquisition occurs between October 1 and December 31, additional time is required for the local assessor to furnish any new figures.

The reimbursement is determined by developing the ratio of the taking, using the old and new assessment figures. When this ratio has been established, the amount of taxes to be reimbursed shall be calculated on the tax reimbursement calculation sheet.

An invoice and W-9 (if necessary) drawn to the order of the owner shall be prepared in the amount to be reimbursed and shall be forwarded to the owner or legal representative for execution, together with a letter explaining the State's calculation for the tax reimbursement.

Upon receipt of the executed invoice, the control section and function code numbers are affixed to said invoice to charge the costs to the projects involved, thereby ensuring the State that reimbursement will be forthcoming if other agencies are participating in the project costs. The invoice is then processed to the Division of Accounting and Auditing for issuance of the check. Upon receipt of the check, it shall be forwarded to the owner or legal representative.

The tax reimbursement calculation sheet shall be made a permanent part of the case file.

5.11.4 Payment or Reimbursement for Incidental Closing Costs

The owner or legal representative is notified by letter, either by Agreement Processing or the Title Company Liaison personnel, as concerns the reimbursement of costs incidental to closing of title with the State and that statements of such costs, together with proof of payment of same, must be submitted. Upon receipt of such items, the Title Officer shall carefully review same to determine if the costs are eligible to be reimbursed in accordance with N.J.S.A. 27:7-58 et seq.

If the Reimbursement is deemed appropriate, an invoice shall be prepared drawn to the order of the owner in the amount to be reimbursed and shall be forwarded to the owner or legal representative for execution, together with a letter setting forth the items eligible for reimbursement and those items found not to be eligible. An entry shall be made in the Department's database reflecting the request, the reimbursement and the date the invoice was sent to the owner, the date the check was requested, and the date payment was made.

Upon receipt of the executed invoice, the control section and function code numbers are affixed to said invoice to charge the costs to the projects involved, thereby insuring the State that reimbursement will be forthcoming if other agencies are participating in the project costs. The invoice is then processed to the Division of Accounting and Auditing for issuance of the check. Upon receipt of the check, it shall be forwarded to the owner or legal representative and the appropriate entries are made in the database. The reimbursement of closing cost sheet shall be made a permanent part of the case file.

Where the owner is unable or requests that the department make direct payment of an eligible incidental closing cost, such payment shall be made.

5.12 Excess Land Sales

The Bureau of Technical Support, Property Management Section requests the conveyance of Excess lands. Upon receipt from the Property Management Section of a Department Action approving the sale of excess lands in accordance with N.J.S.A. 27:12-1, and if accompanied with all the ancillary documentation such as proof of payment from the purchaser and any resolutions or entity information, the Special Projects staff shall prepare the appropriate deed. When the proposed deed is prepared, it shall be given together with the Department Action to the Title Officer for review and then forwarded to the Director of Right of Way & Access Management for signature in accordance with the current delegation of authority. Upon receipt of the fully executed instrument it is forwarded to the county recording office. The purchaser is notified and a copy of the deed is promptly forwarded to the new owner. Additionally, the Tax Assessor in the municipality where the parcel is located shall be notified as to the conveyance by authorized delivery service advising of the State's sale. As a courtesy to the tax assessor, a cutout of the General Property Parcel Map is also enclosed, if available. If full payment or any documentation has not been not been received, the executed deed will be held until such time when the requested information is obtained.

A copy of the Deed shall be filed in the case file under which the property was acquired and the conveyance shall be entered in the Department’s database.

All deeds for public use now contain a reverter clause.

The description to be used in the Deed out of the State shall be obtained from the Department's Engineers. Any conditions or restrictions set forth under the terms of the sale shall be included in the deed.

5.13 Dedications

For many years, the Department has accepted land dedications at no cost to the State in order to augment local traffic flow and safety in and around commercial zones.

5.13.1 Responsibility

Under the supervision of the Manager and/or Title Officer II, Special Projects has the responsibility of complying with all State requirements concerning the acceptance processing procedures for land dedications.

The Title Officer II in charge of Special Projects shall exercise general supervision over and assign the dedication processing work to direct reports assigned to staff. The Title Officer supervisor(s) shall maintain the proper performance of work with respect to both quality and quantity, instruct direct reports in their work as may be necessary, and assist them in their problems incident to such work. The Title Officer II is responsible for approving time records for all direct reports.

5.13.2 Procedures

The Dedication Process:

- Upon receipt of an approved dedication file from the Bureau of Technical Support, Project Coordination/Funding, the appropriate database entries are made and the

case is carefully reviewed and examined to ensure all the necessary components are complete and included. The following are the items required to process dedications:

- Signed Department Action authorizing the acceptance of the land dedication.
- Mylar of the Right of Way Plans, (map must include state's reference to Property Parcel Map).
- Metes and Bounds descriptions
- Letter from owner waiving compensation
- Title Report for clear title from a title company, (may be prepared by the Closing Bureau in cases of non-developer related dedications only).
- Copy of the proposed deed conveying the property to the state.
- A letter from Environmental Services, Hazardous Waste Section, stating that the property has been checked for Environmental Contamination.

Also refer to the New Jersey Department of Transportation State Highway Access Management Code N.J.A.C. 16:47-4.20.

If all components are in order the Title Commitment/Report of Title is examined to determine what encumbrances must be eliminated or "removed" to guarantee the State of New Jersey, Department of Transportation is receiving clear title, or title which is free and clear of all encumbrances with the exception of Public Utility Easements.

The proposed deed is examined to ascertain if the instrument is in compliance and adheres to Department standards as approved through the Division of Law, Transportation Section.

If the deed is found to be acceptable, the dedicating party or legal representative is informed to record the deed of conveyance and similarly is instructed to address or eliminate any encumbrance other than Public Utility Easements. On verification of compliance, the dedicating party or legal representative is also instructed to have the issuing agent of the Title Report produce the Certificate of Title (Title Policy) showing clear and fee title vested in the State of New Jersey, Department of Transportation.

In the event the dedication file does not include all of the essential components or the deed of conveyance does not meet Department standards the dedicating party or legal representative is informed to submit an amended deed and/or the documentation which was previously omitted.

On receipt of the omitted documentation the file is re-examined for compliance and the dedicating party is informed accordingly.

On completion of the dedication the appropriate database entries are made and the Bureau of Major Access is notified of the completion and authorized to release the performance bond.

5.14 Deed Notices

Upon request to prepare a Deed Notice, a permanent file is created and the Title Officer or designee prepares two (2) original Deed Notices from the information provided by the requestor. A Department Action is also prepared authorizing the preparation, execution and recording of the Notice in the appropriate county recording office. Both the Notices and the Department Action are presented to the Director of the Division of Right Way for

execution. Upon return and receipt of the executed documents a copy of the executed Deed Notice is made.

The executed Deed Notice is forwarded to the County Recording Office for proper recordation and returned to the Closing Bureau. When the recorded Deed Notice is returned to the Closing Bureau a copy of the same is provided to the requestor.

Section 6 Right Of Way Administration

6.1 General

The purpose is to set forth the procedures to be followed in programming and funding of projects and final vouchering of closed projects, which is handled by the Bureau of Technical Support. The Bureau includes the Project Coordination and Funding Sections, which handle many of these responsibilities.

This manual contains the necessary procedures to ensure compliance with Federal and State law and regulation. The manual will be updated periodically to reflect changes in operations and the Department will submit the updated materials for approval by the FHWA.

6.2 Preliminary Engineering Activities

During the preparation of the environmental documents the Preliminary Engineering phase, the Bureau of Landscape Architecture & Environmental Solutions (BLAES) identifies environmentally sensitive properties (ESP).

The BLAES initiates a final screening at the preliminary plan phase and prepares an environmental summary memorandum (ESM) for each parcel. These memoranda are transmitted to the Project Coordination Section within the Technical Support Bureau and are subsequently sent on to the District Program Manager. These memoranda contain the results of the final environmental evaluation of each parcel prior to initiating the acquisition process.

Those properties on which contamination and/or solid waste was detected will require the preparation of a report describing the contamination and/or solid waste that was detected, the proposed remediation and the estimated remediation costs. The report should be provided to Right of Way with the ESM. The report should be provided to the property owner either by BLAES or by Right of Way when the offer and appraisal are provided.

The ESM forms the basis for the selection of the type of offer letter to be used and information from the ESM is included in the offer letter.

The General Parcel Maps and the Individual Parcel Maps should not include the designation of ESP. The NJDOT values properties as if remediated and the issue of contamination is not raised in the condemnation proceeding, but in a separate cost recovery proceeding so the inclusion of any information of this nature on the maps would be inappropriate.

6.3 Right of Way Project Programming Process

The Funding Section of the Bureau of Technical Support handle the programming and funding of all right of way projects.

The Capital Program Project Manager transmits the right of way plans and documents package to the Project Coordination and Funding Sections in the Technical Support Bureau. On in-house design projects, NJDOT design staff prepares right of way plans and documents package.

The Project Coordination Section initiates a review utilizing the right of way plans documents. Concurrently, the right of way plans and documents are sent to the District

Office, which conducts a field check, prepares a right of way cost estimate and makes recommendations regarding design changes to mitigate or nullify impacts to remaining properties. Concurrently, one set of plans is provided to the BLAES, thereby enabling that unit to initiate the final environmental screenings on the project. The BLAES will prepare and transmit the Environmental Summary Memorandum and remediation cost report (as applicable), to the District Office. One set of plans is also provided to the Title Section so that title searches can be reviewed and changes in ownership and parcel parameters can be provided to the CPM Project Manager.

6.3.1 Access Modification/Revocation

Prior to, during, and sometimes after the preparation of the right of way plans and documents package, plans showing the proposed alterations of existing access points (access cutouts) are prepared under the supervision of the Office of Access Design, Division of Right of Way and Access Management (OAD). OAD conducts an access review and sends letters to property owners regarding proposed alterations of access. During the review of the Access plans, OAD will look for any encroachments into the DOT ROW, such as signs or illegal use of the DOT ROW for parking. These encroachments will be shown to be removed on the access plan sent to the property owner, so that the DOT can reclaim our ROW. The owner can contest the action, in which case OAD attempts to address the owner's concerns. Unresolved access issues go to the Director of the Division of Right of Way and Access Management (for a modification of access) or to an Administrative Law Judge at the Office of Administrative Law (for a revocation of access) for resolution. If the lot owner does not contest the proposed access alteration, OAD asks the lot owner to sign a Lot Owner Access Concurrence (LOAC) form and Lot Owner Lease Agreement (LOLA) if appropriate to allow the Department to construct the necessary improvements to provide the alternative access. Ideally, all access issues are addressed and resolved prior to the completion of the final ROW documents.

OAD will maintain a file of all Access cases both open and closed on a project until the project is constructed. Upon the receipt of a transmittal and confirmation of the availability of funding, the Project Coordination section will request an access package from OAD and make that part of the package to be transmitted to the District. Any open Access cases will be noted and upon completion these packages will be sent to Project Coordination. The package will contain a copy of the Final Access Cutout, the final determination letter or last correspondence with the owner, any agreements as well as other data needed for the ROW file.

6.3.2 Right of Way Plans and Documents Package

The CPM Project Manager transmits the Individual Parcel Maps (IPM's), General Property Parcel Maps (GPPM's) and Entire Tract Maps (ETM's) and descriptions to the Bureau of Right of Way Engineering and Access Design for review. Subsequent to this review, the right of way plans and documents package is sent to the Project Coordination Section. The Project Coordination Section will distribute the various ROW package elements in accordance with the project needs, typically as set forth in Attachment N of the Right of Way Engineering Manual.

6.4 Phase Review

Upon receipt of the right of way plans and documents submission, the Project Coordination Section transmits the plans to the District office. The transmittal should

include the project name, design job number and a copy of the request from the Project Manager. The District Office reviews the right of way plans and documents submission and electronically submits any comments to the Project Coordination Section. The District Office Engineering Witness should play a major role in the review.

The Project Coordination Section will compile the individual comment messages into a single electronic file, which will be forwarded to the Right of Way Engineering (ROWE) Section. The headers from each individual email should remain in place to identify the originator of the comments. The Project Manager will not be copied on this e-mail, but should be notified, by a separate email, that Right of Way's review is complete. ROWE will review all comments (resolving any conflicts) and consolidate them, along with their own comments, into a single submission to the CPM Project Manager. Upon receipt of the pre-final right of way plans, ROWE will conduct a follow-up review to make certain that the comments were addressed. ROWE should submit a copy of the comment resolution memo from the designer to the Project Coordination Section for inclusion in the final package. Only ROWE will receive a copy of the pre-final submission.

Upon receipt of the right of way plans and documents submission, the District Office will also prepare and submit a "firm and sound" cost estimate, including acquisition and relocation costs, to the Project Coordination and Funding Sections.

6.5 Data Entry

The Project Coordination Section enters all parcels/owners into the Right of Way database. This data is not provided to the District office until the funding is authorized and the project is formally transmitted to the district office. A project file is also created by the Funding Section, which includes the project cost report, indicating the parcels to be acquired. A project cost summary is prepared which lists the acquisition costs.

6.6 Project Funding

6.6.1 Funding

The Funding Section is responsible for all project funding activities. Funding is accomplished via Department Action (RE-27). The Action is processed after conferring with the Office of Capital Programming. That office will advise if funding is available and will provide the funding sources (Federal or 100% State), as well as supply the item number and construction year. A job number is created by processing a form T-AC-1643 to the Office of Capital Programming. The job number will be linked with a FMIS number and Federal project number, if the project is federally funded. If funding is not available, then a discussion with the Project Manager is necessary and appropriate action is taken.

The Department Action (RE-27) contains the right of way route and section number; construction section, county and federal project number or 100% State identification. Authorization is requested to set up funding and begin the acquisition process.

A. (100% State Projects)

The Department Action (RE-27) must include the job number along with a parcel cost estimate, a relocation estimate and a summary of costs.

B. (Federal Projects)

The Federal Aid Section in Capital Programming must be contacted to determine the Federal Project Number. The NEPA process as described in 23 CFR Part 771 normally

must be conducted and concluded with a record of decision or equivalent before Federal funds can be placed under agreement for the acquisition of right of way. The Department must prepare a project agreement in accordance with 23 CFR Part 630, Subpart C. At the time of processing an environmental document, the Department may request reimbursement of costs incurred for early acquisition, provided conditions prescribed in 23 U.S.C. 108(c) and 23 CFR 710.501 are satisfied.

The Department Action (RE-27) must include a job number and a parcel cost estimate, relocation estimate and summary of costs. The package must also include a set of right of way plans (preliminary or final) with each sheet stamped with the project number; a project identification summary form, which is supplied by the Project Manager; and a Firm and Sound Letter addressed to the Federal Highway Administration, advising them of the total expenditure, by capital and incidental (salary) costs.

6.6.2 Authorization Process

The Department Action (RE-27) is reviewed by Capital Programming and sent to the Federal Aid coordinator, who uses the action and accompanying documents, to prepare authorization forms for the FHWA. After FHWA authorization, the Department Action (RE-27) is submitted to Division of Accounting to set up the funds and then sent to the Assistant Commissioner for signatory approval.

The FHWA will authorize the project using an authorization transmittal, which will indicate if there are any parcels that will not be eligible for federal funding. The Funding Section compares this determination to the project cost report and notes the parcels that have been designated “NP” – non-participating, to ensure that only approved costs are billed to the FHWA.

6.7 Transmittal of Project to District Office

6.7.1 Process

Subsequent to the approval of the department action, federal authorization (if applicable) and the receipt of the final right of way package; the project is transmitted to the District office. The FMIS Agreement Number, Federal project and Job numbers are obtained from the approved Department Action.

In general, the District Office begins acquisition only after all funding approvals have been received and the final plans are in hand. If final plans have not been received, the district may be authorized to begin acquisition of entire takings using preliminary plans and/or tax maps. If Federal authorization is received, but the department action is not yet approved, the district may be authorized to begin the acquisition process, based upon the assumption that the accounting process involved in the project funding will be accomplished quickly.

6.7.2 Content of Transmittal

The transmittal contains the parcel number, owner’s name and parcel identification number and requests the District Program Manager to establish the due date for right of way availability.

6.8 Final Right of Way Package Distribution

The Project Coordination Section will distribute the various ROW package elements in accordance with the project needs, typically as set forth in Attachment N of the Right of Way Engineering Manual.

6.9 Holds / Revisions / Eliminations

6.9.1 Revisions to Parcel Design

Parcel holds occur when revisions may be required to parcels. The holds may be initiated by the Capital Program Project Manager or the District Program Manager.

Design initiated changes are processed throughout the acquisition phase. The Project Manager sends a memorandum to the Project Coordination Section and a copy to the District Program Manager. A check of the parcel database is made to ensure that the parcel has not already been acquired. If the parcel has been acquired, the project manager must be notified. Parcel holds, revisions or eliminations are entered into the database and a written notice is transmitted to the concerned district office. The Project Coordination Section retains a copy of the transmittal memorandum to track holds, revisions and eliminations.

Prior to any hold or revision being implemented, it will be evaluated by the District Program Manager in consultation with the Capital Program Project Manager for impact on the right of way availability date. If the impact results in a change to the right of way availability date the District Program Manager shall notify the Capital Program Project Manager of the required change in the right of way availability date.

6.9.2 Distribution of Revised Plans / Agreement Forms

Revised submissions should consist of revised: ETM's, GPPM's, IPM's, and descriptions (in both print and electronic formats on CD). Revised descriptions and revised IPM's will be entered into the ROW Database system. It is not necessary to resubmit documents that have not changed. The distribution should be the same for those items revised as the Final Right of Way Package Distribution described in Section 6.8.

6.10 Advance Acquisition of Rights of Way

Under limited circumstances, advanced acquisitions may be required where the public benefits from the acquisition of a parcel earlier in the project development phase to avoid future costs, or to relieve a hardship to a property owner where the property is subject to a future project need but is not ready to be acquired at this point in time under the normal project timing.

6.10.1 Regulations

23 CFR Section 710.503 makes provision for hardship acquisition and protective buying in certain cases. The Department may request Federal participation in the acquisition of a particular parcel(s) within the limits of a proposed highway corridor prior to obtaining final environmental approval, provided that:

1. The project is included in the currently approved STIP;
2. The Department has complied with applicable public involvement requirements in 23 CFR parts 450 and 771;

3. A determination has been completed for any property subject to the provisions of Title 23 USC 138, concerning the preservation of parklands; and
4. Procedures of the Advisory Council on Historic Preservation are completed for historic properties.

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

- Supports the hardship acquisition on the basis of health, safety or financial reasons, that remaining in the property poses an undue hardship as compared to others; and
- Documents an inability to sell the property at fair market value because of the impending project.

Justification must be provided for protective buying; demonstrating that development of the property is imminent and would limit future transportation choices. A significant increase in cost may be considered as an element justifying a protective purchase.

Acquisition of property under these provisions shall not influence the environmental assessment of a project, including the decision relative to the need to construct the project or the selection of a specific location.

6.10.2 Advance Acquisition Process

Periodically, the Department will receive inquiries from property owners requesting that it consider the acquisition of their property prior to Federal Highway Administration authorization to initiate acquisition on a project.

The Project Coordination Section is responsible for initiating advance acquisition of rights of way. Upon receipt of a request, the concerned CPM Project Manager is provided with available information as to the location of the subject property and is requested to provide an indication as to whether the property will eventually be required for the construction of the project. The owner has usually attempted to market the property and public knowledge of the impending project has impaired the owner's ability to market the property, resulting in a hardship to the owner.

If the property will be required, the Project Coordination Section requests an acquisition cost estimate from the District office. Upon receipt of the cost estimate, the Funding Section determines if there are sufficient Advance Acquisition funds available in order to proceed with the process. If there are competing requests for a limited supply of advance acquisition dollars, the Director Division of Right of Way and Access Management will prioritize the applications analyzing evident hardship and any other factors, which may be appropriate as criteria for prioritization. If funding is available, the Funding Section prepares a submission to the FHWA for approval to proceed with the advance acquisition.

A. Components of the submission to the Federal Highway Administration

- The communication from the owner/agent delineating the reasons for the request that the State proceed with an advance acquisition. Typically, the property owner can document based on health, safety, or financial reasons that remaining in the property poses an undue hardship.
- A parcel plan or sketch of the proposed advance acquisition showing the parcel's relationship to the proposed project and the approximate right of way limits.

- A cost estimate of the proposed acquisition.
- A Categorical Exclusion Document (CED), accompanied by the Department's affirmative statement that the acquisition will not influence the environmental document, including consideration of the "no build" alternative.
- A statement that the Department has given official notice to the public that it has selected a particular location to be the preferred or recommended alignment for the proposed highway, or a public hearing has been held or an opportunity for such hearing has been afforded to the public.

B. The FHWA Division Right of Way Officer reviews the request and if approval is given, the Department can initiate the advance acquisition.

6.11 Right of Way Statements, Certifications and Clearances

When a right of way clearance letter is requested for a Department project or a Local Public Agency project, an initial determination must be made as to whether right of way acquisition was necessary. If no right of way was required, the Project Manager may make that certification. If right of way was required, but is not yet completely available, the availability letter must list all parcels not yet acquired, providing the current status of each parcel and its anticipated availability date. Upon final acquisition and clearance of all parcels, a certification letter will be prepared stating all ROW has been acquired and all Relocation completed.

On Federal-aid highway construction projects, prior to advertising for construction, the Department shall develop right of way availability statements and certifications related to project acquisition as required by 23 CFR 635.309 and as described in the Acquisition Section.

The Manager, Bureau of Technical Support will approve the availability/clearance letter prior to submission to Director, Division of Right of Way for signature.

6.12 Dedications/ Donations

A. The Bureau of Major Access Permits transmits dedications required as part of Developer Agreements to ROWE, for review. They assure that the following documents have been received and are on file:

1. BLAES environmental summary memorandum
2. Property owners letter of agreement (waiver letter)

B. After the review has been completed and the documents are found acceptable, ROWE transmits the package to the Project Coordination Section. The Project Coordination Section reviews the package to ensure that the following components are included:

- Right-of-Way plans and Mylars;
- Descriptions;
- Deed;
- Department action (prepared by Major Access Permits)

The following steps are then followed to finalize the dedication:

1. Project Coordination maintains a record of the dedication and transmits the complete package to the Title Section.

2. Title Section examines the documents and if in order, returns the package to Project Coordination which then transmits package to the Director, Division of Right of Way and Access Management to review and sign.
3. The Director in turn transmits the package to the Assistant Commissioner of Capital Program Management to review and sign.
4. The Assistant Commissioner transmits the package to the Department Secretary to review and sign.
5. The package is then returned to Project Coordination and it is then given to the Title Section for final processing.

C. Parcels that are "donated" on standard ROW projects, that is, parcels that are given by the owner at a minimal cost, usually $1.00, are set up like other parcels, except they are labeled "Donated." Donated parcels have an IPM and description prepared. The owner must be informed in writing that they are entitled to an appraisal and must confirm that they voluntarily relinquish their rights to compensation.

6.13 Final Vouchering A Project

The Funding Section reviews the database to determine if all cases on the project are closed. If all cases are closed, then the project may proceed to final voucher. If the project contains a few small value cases still not closed, final vouchering can still be considered. If the project is 100% State, the project can be final vouchered. If the project is federally funded, it can be final vouchered subject to securing FHWA permission for a funding adjustment against an open project of similar funding. Also, state funds from "miscellaneous costs on closed right of way projects" can be used for this purpose.

If a decision is made to commence final vouchering, a department action (Form RE-27) is prepared and circulated, authorizing closure of the project.

Subsequent to the approval of the department action, if the project is 100% State, General Accounting is requested to close the job number. If the project is Federally funded, Agreement Accounting is requested to close the job number and advised that we are final vouchering the project.

The agreement history is reviewed and any salary costs that are ineligible for Federal reimbursement are marked NP (Non participating).

Accounting will then complete the final voucher process.

6.14 Suspense

The Funding Section reviews a weekly suspense (Type D-"ROW Unsettled Parcels") which shows those parcels not yet billed, on all purchases of right of way. The Section informs Accounting as to which parcels can be released and billed to the FHWA during the month. Notices of declarations of taking and deposits into court (provided by Legal Processing Section); agreements; judgments and awards (provided by the Title Section when the case has been settled); and canceled checks provide input to this suspense report. The Funding Section prepares the Right of Way Certificates, which detail the billing history for each settled case.

All incidental costs are automatically billed to the FHWA. The project cost report is checked to ensure that the FHWA billing is proper. When items are released by

Accounting into the billing system, a summary is sent to the Funding Section at which time certificates are attached and filed. Files are then stamped "reviewed for r/w billing" and returned to Title Section.

The Funding Section will review the project cost report on a bi-weekly basis. Any project reaching a level of 75% of the projects funding being used must be reviewed for possible suspense issues. The Supervisor, Funding Section will determine the amount of funds left, the amount of potential additional costs (both Capital and Incidental) as well as the chance of unforeseen additional costs. The Supervisor will then prepare a Suspense form which will describe the present state of the project funds as well as justification for additional funds. This form is submitted along with an RE-27 requesting additional funds. All projects that reach 75% funding obligation must go through this review process.

6.15 Local Public Agency Projects

Under the guidance of the FHWA, the NJDOT distributes funds to Local Public Agencies (LPA) via its Local Aid Program. The Local Aid Program is administered by the Division of Local Aid & Economic Development under the Assistant Commissioner of Capital Investment Planning and Grant Administration. This program is solely under the control of the Local Government Services Unit and the Right of Way and Access Management (ROWA) Division does not participate in the selection of the projects. However, ROWA has an oversight responsibility to ensure that individual property rights in accordance with federal regulations as found in CFR 49 part 24 were adhered to when purchasing right of way, providing relocation advisory services, and making payments to impacted property owners.

The procedure for properly certifying the purchase of right of way by an LPA using federal funds for the project is as follows:

1. The LPA will contact ROWA, through the Division of Local Aid & Economic Development, for guidance prior to commencement of any activity related to the acquisition of right of way using federal funds.
2. The LPA, with advice from ROWA, will submit to ROWA a list of their processes used for the acquisition of ROW. The list must be as comprehensive as possible but at a minimum include the following processes and/or statements:
   a. The statement that every land owner will be given the opportunity to have their property appraised.
   b. What steps will be taken to ensure that all appraisals will be done according to the requirements of 49 CFR part 24.
   c. Assurances that all appraisals will be reviewed by a competent review appraiser.
   d. The processes in place to provide each owner a written offer of compensation as well as a copy of all appraisals used to determine value.
   e. Confirmation that each owner will be given the right to review and consider the offer. In addition, no coercion of any kind will be used to either seek an agreement or to expedite the process.
   f. A statement that all relocations will be processed according to 49 CFR part 24
   g. Certification that the LPA will follow all regulations of the 49 CFR part 24 and the corresponding State Statutes.

h. Upon completion of the acquisition/relocation process, the LPA will provide a certification to the NJDOT ROWA that they have acquired all needed property and that the federal and state regulations were followed.

i. A statement that the LPA shall allow the NJDOT or FHWA to audit the project files at any time.

3. The ROWA will respond to the Local Aid representative in writing confirming the approval of the LPA's processes. Once approved the approval will remain in effect for all projects done by the LPA for a period of 3 years. After 3 years a new list of processes must be submitted.

4. Upon completion of the acquisition and relocations for the project, the LPA will submit a statement certifying that the property was acquired in compliance with federal and state laws. This statement is to be sent to the Local Government Services representative in charge of the project. The representative will then forward this certification to ROWA for review and comment or approval.

5. If the review of the certification is satisfactory, the Director, ROWA will issue and sign a ROW availability letter. Copies of this letter are to be sent to Local Government Services representative, the FHWA and the Bureau of Technical Support.

6. If the review is not approved, the Manager, Technical Support, ROWA will meet with the Local Government Services representative to determine corrective steps. Once these steps are completed, the certification may be re-submitted.

The Manager, Technical Support, shall conduct periodic reviews of the LPA process as well as conduct audits of the LPA as may be deemed necessary.

Section 7 Legal Processing

7.1 Organization/Purpose

Under the supervision of the Manager 2, Closing Bureau, the duties and responsibilities of the Legal Processing Section are to prepare condemnation pleadings and process cases to final judgment within prescribed time frames and in accordance with the New Jersey Eminent Domain Act and the New Jersey Court Rules. The Section is staffed with a Manager /Supervisor and Right of Way Research Analysts who have expertise in Eminent Domain. They supervise a staff of Legal Secretaries in the preparation of pleadings and orders, and the processing of cases to final judgment and possession of properties.

The condemnation pleadings and orders are the legal instruments by which the Department of Transportation, through assigned Deputy Attorneys General (DAG) appearing before the Superior Court, acquires title to property and establishes just compensation under condemnation law.

7.2 Case Assignment

A. DAG Case Assignments and Comments

All condemnation cases are reviewed by the Division of Law, Transportation Section and assigned to a DAG.

B. DOT Case Assignment

After a case is approved for condemnation, the Acquisition Section, will transmit a completed condemnation case to the Manager of the Closing Bureau. The case will consist of the following items:

- Department action
- Case summary
- Intent to condemn letter
- Condemnation memorandum
- Individual parcel (complaint) map (IPM)
- Parcel description
- Offer letter
- Comparable sales / lease exhibit
- Environmental summary memorandum

Upon receipt of a case, the Manager of the Closing Bureau/supervising Research Analyst will conduct a case review for errors and omissions which shall include a complete review of the case file to assure that bonafide negotiations have occurred, all owners and other parties of interest have been named and that all exhibits to the pleadings are correct. If a deficiency is found, corrective measures shall be taken which may include sending the case back to the District for further negotiations and/or documentation.

If found complete, the Manager/supervisor will assign the case to a Research Analyst who will complete a file review and verify that all required documentation has been provided. The Research Analyst will file a complaint, declaration of taking, lis pendens,

amendments to pleadings, orders to the court, as well as make deposits with the Superior Court, etc.

7.3 Tracking Progress And Status Of Cases Via The Right Of Way Database

The progress and status of each new case, amendment, withdrawal and/or additional deposit will be tracked via the Right of Way Database. The Research Analysts will be responsible for entering all data in a timely manner in the appropriate fields in the database. Proper, timely maintenance of the database will facilitate the generation of reports to management which will detail the Section's progress in processing the cases to final judgment ensuring that the Department will acquire property through the condemnation process by established Right of Way availability dates.

7.4 Case Processing

7.4.1 Upon Receipt of a Case Assignment, the Research Analyst shall:

A. Compare the Individual Parcel Map (IPM) against the property description to be certain that the proposed taking is properly described. It is also important to ensure that the parcel numbers and areas shown on the map and description are the same.

B. Review the case documentation and forms and where necessary, follow-up the status of each case with the appropriate ROW staff member, DAG, Court Clerk, or other appropriate person.

C. Review the Condemnation Memorandum for accuracy and verify the number of defendants set forth in the Condemnation Memorandum to determine if there are a sufficient number of IPM's and descriptions to prepare all the pleadings and serve all defendants and their attorneys. If additional maps or descriptions are required, the Research Analyst will be responsible for obtaining them. The Condemnation Memorandum shall be updated prior to the filing of the complaint.

7.4.2 Caption and Complaint Paragraphs 9 & 10

After the Research Analyst is satisfied that the file is complete, he/she will prepare a draft of "paragraphs 9 & 10" of the Complaint as well as the Complaint caption, which indicates the appropriate County in the area designated for the venue. The draft will be given to the Legal Secretary who is assigned to prepare the pleadings. Copies of all signed and filed pleadings will be scanned into and permanently maintained in the database in addition to a hard copy file.

7.5 Pleadings

All pleadings in the condemnation case shall be reviewed by the DAG assigned prior to being sent to the Superior Court for entry and filing. The DAG shall sign the Complaint, Notice of Lis Pendens and Civil Case Information Statement (CIS).

The Research Analyst shall enter the date of transmittal to the Division of Law, Transportation Section in the database.

If applicable, the Research Analyst shall make any revisions to the pleadings requested by the DAG and then return them for final review and signature.

A Civil Case Information Statement (CIS) which has been signed by the DAG is to be attached to pleadings as required by Rule 4:5-1.

The Research Analyst shall make the appropriate entry in the database upon receipt of the pleadings from the Division of Law, Transportation Section.

If an issue arises as to the appropriate manner in which to draw a pleading, or as to the proper method of practice, the Research Analyst will prepare a draft of the pleading and electronically transmit the draft to the assigned DAG for review and approval. The e-mail transmitting the attached draft of the pleading will clearly explain the issue of concern. The DAG shall make any changes to the attachment and electronically return the final draft to the Research Analyst for the final preparation of the pleading.

7.5.1 Forms of Pleadings

A. Verified Complaint

The Complaint initiates the condemnation action and contains the following:

- Page 1 is the caption page that contains the name of the DAG who will represent the Department in the action, the names of the Plaintiff and Defendant(s), the name of the Court where the action will be heard and the name of the County and the docket number assigned to the case;
- Page 1 or page 2 references the statutes that give the State the right to condemn and how we exercise that right;
- Paragraph 4 references the map and description, designated as Exhibits A & B to the Complaint;
- Paragraph 6 presents the amount of compensation offered to the owner and references Exhibit C, the offer letter to the owner offering just compensation. It is accompanied by a comparable sales/lease exhibit;
- Paragraphs 7&8 deal with environmental concerns and reservations. Several different clauses are inserted depending upon whether no contamination is suspected, the property is contaminated or possibly contaminated.
- Paragraph 9 recites the name and address of the property owner(s);
- Paragraph 10 lists all of the other defendants who have an interest in the property and describes exactly what their respective interests are. This information is abstracted from the title sheet or condemnation memoranda. The municipality is routinely made a party by reason of taxes and assessments;
- Following Paragraph 10 is the Demand for Judgment, which is signed by the DAG assigned the case. This pleading demands judgment against the defendants and asks the court to declare that the Department has properly exercised its authority to condemn the property and asks that commissioners be appointed to fix the compensation to be paid for the property.
- Following the Demand for Judgment is a certification signed by the Director, Division of Right of Way and Access Management:
- Exhibit A - The description of property to be acquired;
- Exhibit B - The individual Parcel Map;
- Exhibit C - The offer letter (which incorporates the environmental status of the property) and the comparable sales/lease attachment. If more than one offer letter

was sent to the property owner, all offer letters should be attached as Exhibit C1, C2, C3 and so on.

B. Estoppel Complaint

In the event that an approved Agreement of Sale cannot be closed due to unresolved title issues which may include, but are not limited to, encumbrances on title that cannot be removed, failure of the owner to cooperate with the signing of the Deed and title documents, or other title issues, an Estoppel Complaint shall be prepared. The Estoppel Complaint seeks enforcement of the terms of the Agreement with the amount to be paid for the property being the amount as stated in the executed Agreement. A proposed Final Order for Judgment is submitted requesting that the Court enter a final judgment confirming that the Department of Transportation is authorized to and has duly exercised its power of eminent domain, and entering a final judgment as to the amount stated in the Agreement. The result is that the property owner is estopped or precluded from obtaining more than the amount stated in the Agreement.

C. Declaration of Taking

This is the legal instrument that passes title from the property owner to the State and it functions like a deed. The Declaration of Taking sets forth the statute relied upon to vest title in the State. Like the Complaint, the Declaration of Taking contains a map and description, a statement regarding the fair market value, and a listing of the names and addresses of all defendants and their respective interests in the property being acquired.

D. Notice of Lis Pendens

The lis pendens places the public on notice that there is a lawsuit pending with regard to the property being acquired. If notice by a person of an interest in the property has not been recorded prior to the date of the recording of the lis pendens, that person is prevented from claiming any interest in the property. The lis pendens states the objective of the State in acquiring the property and contains the names and addresses of all interested parties and a description of the land and premises in question.

E. Order for Payment into Court

This legal document permits the State to deposit the just compensation for the property interest to be taken with the Trust Fund Unit of the Superior Court. It contains the date of the Complaint and the amount of the just compensation to be paid, and it permits the making of additional deposits without further order of the Court.

F. Order to Show Cause

This Order is similar to a Summons in that it notifies the defendant(s) that a suit has been instituted and provides the defendant(s) the opportunity to appear and be heard. This is part of the due process afforded to owners whose property is being acquired for public use.

The Order tells the defendants when and where to appear to voice any objections to the proposed acquisition. The Order states that service is to be made according to the New Jersey Court Rules. The Order also requests that the environmental rights presented in paragraphs 7 & 8 of the Complaint be preserved. The Order sets forth three different dates, first, the return date or hearing date itself; second, the last date when a defendant may file and serve a responsive pleading and third, the last date when the plaintiff may file and serve a written reply to the defendant’s opposition.

G. Order for Final Judgment and Appointing Commissioners

This is the Order in which the Judge renders a final judgment that the State has duly exercised its power of eminent domain and appoints three commissioners to hear testimony as to the fair market value of the property acquired and fix the just compensation to be paid to the owner. It establishes the date by which the commissioners must file their report. This Order also includes a statement preserving the environmental rights outlined in paragraphs 7 & 8 of the Complaint.

7.5.2 Filing Pleadings – The Process

An updated title search should be conducted before the complaint is filed. Once the pleadings are prepared and signed by the appropriate persons, the processing of the case may begin. The Complaint, in triplicate, is sent to the Superior Court for filing with a request that the clerk return two copies to the Legal Processing Section, each bearing the docket number and the date of the filing of the Complaint. The Order for Payment, the Order to Show Cause and Order for Final Judgment and Appointing Commissioners along with a copy of the complaint is included with the package forwarded to the Superior Court with a request to forward the Orders to the Judge.

The Clerk returns the filed copies of the Complaint to the Legal Processing Section with the Docket No. The Lis Pendens is then sent for recording and the condemnation memorandum is sent for updating.

The Judge signs the Order for Payment and Order to Show Cause, inserts a return date in the Order to Show Cause and returns two copies of each Order to the Legal Processing Section. The Order for Judgment and Appointing Commissioners is retained by the Judge for signature on the return date of the Order to Show Cause.

Upon receipt of the Order for Payment, the check is requested from the Title Section and deposited with the Trust Fund Unit of the Superior Court. Concurrently, the Declaration of Taking is sent for recording with the County Clerk or Registrar of Deeds and to the Superior Court for filing with a courtesy copy forwarded to the Judge, with a copy going to the Tax Assessor of the Municipality where the land and premises are situated.

The personal service request is then prepared, containing two cover memoranda, one bearing the list of defendants names and addresses who have to be served and one bearing the date by which the defendants must be served. The personal service package contains a Complaint, a Declaration of Taking with notice of the filing thereof, an Order to Show Cause and a proposed copy of the Order for Judgment and Appointing Commissioners. Each defendant is served in the manner prescribed by the Court Rules (see Section 1).

Concurrently with personal service, the updated title search is being performed. After all parties to a condemnation matter have been properly served, the Proofs of Service must be prepared and submitted to the Court no later than three days prior to the return date on the Order to Show Cause. The complete case file is to be transmitted to the Division of Law, Transportation Section no less than one week prior to the return date. The DAG assigned to the case should be notified in the event that the Legal Processing Section receives any written opposition to the condemnation case or an Answer to the Verified Complaint. If the Division of Law, Transportation Section receives any written opposition to the case or an Answer to the Verified Complaint they shall submit notice of such opposition to the Legal Processing Section. If there is no opposition on the return date, and no court appearance is necessary the Judge signs the Order for Judgment and

Appointing Commissioners. However, if opposing papers have been filed with the court, then the DAG must appear on the return date.

7.5.3 Complaint: Direct Filing

The Division of Law, Transportation Section will be sent a photocopy of the front page of a Complaint that has been filed, bearing the case docket number and the filing date. This will enable the Division of Law, Transportation Section to create its files on newly instituted condemnation cases. A copy of the Order to Show Cause bearing the return date will be sent to the Division of Law, Transportation Section.

7.6 Amendments

Any changes made to the parcel to be acquired, such as designation, area, ownership or identification of additional parties, require that the Complaint and Declaration of Taking be amended to reflect the change. If applicable, the description and/or parcel map must be amended to reflect the changes.

Amendments may be filed without leave of court. However, a motion for leave to amend is required by the Court Rules (to which a copy of the proposed amended pleading is attached, as provided in R. 4:9-1) if responsive pleadings have been filed by any of the defendants, or if any attorneys have entered their appearance on behalf of the property owner.

The assignment from the Manager/Supervisor, to the Research Analyst will include an updated title sheet, revised maps and descriptions, a new offer letter (if the taking has been revised) incorporating the environmental status of the property, along with any new comparable sales or leases.

7.6.1 Complaint

If, at any time prior to the filing of a Complaint, it becomes apparent that an amendment may be required, steps shall be taken to avoid the filing of the Complaint. If such knowledge is obtained after the filing of the Complaint, no effort should be made to obtain a return date for an Order to Show Cause; or where an Order to Show Cause does exist, an order of Continuance shall be secured if required and the Complaint amended.

Amendments to any pleading shall be prepared as though an original pleading is being prepared. The portion of the pleading being amended shall be clearly noted to assist the person preparing the pleading. A certification supporting the motion to amend shall be prepared under the supervision of the Research Analyst and shall set forth the reason for the Amendment. The reason(s) for the amendment are set forth fully in the Certification in Support of the Motion to Amend.

The Motion to Amend includes a caption page addressed to each of the defendants or their counsel and provides notice of the date, time and place where the State will seek an order permitting the State to amend the complaint to reflect the revised acquisition. Failure to file an objection will result in a waiver of oral argument. A Certification in Support of the Motion which states the reason why the Complaint is being amended is also included. The Motion, which is signed by the DAG assigned to the case, includes the proposed Amended Complaint and a proposed form of Order permitting the State to file the amendment.

On the return date of the Motion, after service has been made on all parties and no objections have been filed, the Judge signs the Order which is returned to Legal Processing. Legal Processing then files the Amended Complaint and service of the Order and Amended Complaint is made on all parties.

7.6.2 Declaration of Taking

After the court grants the motion for leave to amend the complaint, an Amended Declaration of Taking may be filed with the Court and recorded with the County Clerk's Office. The Tax Assessor shall be given a copy of the Amended Declaration of Taking. The previous Declaration of Taking shall be cross-referenced in the Amended Declaration of Taking.

7.6.3 Additional Deposits

Parcel revisions may cause a change in the fair market value. If the just compensation increases, an additional deposit is required. An Amended Declaration of Taking is filed and recorded and the additional funds are deposited. Additional deposits are routinely made in cases where the fair market value increases as the result of an updated appraisal report.

7.6.4 Withdrawals

If a parcel revision causes a decrease in the fair market value and the amount of estimated fair market value has already been deposited in the Superior Court Trust Fund, then at NJDOT's discretion, a motion may be filed to withdraw that portion of the funds on deposit which are in excess of the new estimate of fair market value.

7.7 Service of Process

In every condemnation case, the owner and all party defendants must be served with notice of the pending action. Service of process must be in accordance with New Jersey Court Rules. A service package would include a copy of the Verified Complaint, Order to Show Cause and Declaration of Taking (see Section 7.7.1.K). The Research Analyst shall direct the legal secretary to assemble the service packages and send to the District Office that first originated the request for condemnation, with directions advising the District Manager as to the date by which the service of process must be accomplished. A personal service request form indicating the names and addresses of parties to be served is included with the service package.

In the event a defendant in a condemnation action is to be served in a part of the State substantially distant from the District office which is assigned to make personal service, then the Research Analyst may request the District office in the area of the "distant" defendant to make the necessary service, after first conferring with that District Manager.

The District office is to complete the service by the due dates established by the Research Analyst or Supervisor in accordance with the Court Order. If service cannot be made during normal working hours, then it will be accomplished at any other time before/after working hours, or on weekends. This will ensure that service is accomplished within the proper time prior to the return date of the Order to Show Cause. The District Office process servers are to complete the Personal Service Request form with the required information and are to fax the form to the Legal Processing Section.

Legal Processing prepares certifications to be emailed to the process servers. The process servers are to print and sign the certifications, and then return to Legal Processing either by hand carrying or by interoffice mail so that original certifications can be filed with the Court. District process servers should consult with Legal Processing Research Analysts on any issues relating to proper service of a defendant.

7.7.1 Types of Personal Service

A. Individual - Shall be served by leaving the Complaint, Order to Show Cause and Declaration of Taking with the individual, or by leaving a copy at his/her dwelling or usual place of abode with a competent member of the household who is 14 years age or older and who resides in the dwelling. Service may also be made by delivering a copy to a person authorized by appointment or by law to receive service of process on the individual's behalf.

B. Minor - Service shall be made by delivering a copy of the Complaint, Order to Show Cause and Declaration of Taking personally to the minor's parents or guardian or a competent adult member of the household in which the minor resides.

C. Incompetent Person - Service shall be made by delivering a copy of the Complaint, Order to Show Cause and Declaration of Taking personally to the guardian of the person or a competent adult member of the household in which the incompetent person resides. The incompetent must have been declared so by a Court.

D. Corporation - Service shall be made by serving an officer, director, trustee, managing or general agent, or any person authorized by appointment or by law to receive service of process on behalf of the corporation, or a person at the registered office of the corporation in charge thereof. If service cannot be made in this manner, then it may be made upon a person at the principal place of business of the corporation in charge thereof, or if there is no place of business in New Jersey, then upon any employee of the corporation within New Jersey, acting in the discharge of his/her duties.

E. Association or Partnership - Service shall be made by serving an officer, a managing or general agent, or in the case of a partnership, a partner.

F. Individual Doing Business Within the State - Service shall be made on the individual or managing or general agent of the individual employed in such business, or if service cannot be made upon any of the foregoing, by serving any employee of the individual within the State, who is acting in the discharge of his/her duties in connection with the business.

G. Individual Owning or Having an Interest in Real Property - Serving the individual or managing or general agent of the individual employed in the management of such property.

H. State of New Jersey - Service shall be made by delivering a copy of the Complaint, Order to Show Cause and Declaration of Taking to the Attorney General or to any person in her/his office designated to receive service.

I. Public Body - Service shall be made upon any County, Municipality or other public body by delivering a copy of the Complaint, Order to Show Cause and Declaration of Taking personally to the presiding officer or the Clerk or Secretary thereof.

J. If the United States of America or an agency of the United States of America is named as a defendant, service of process is governed by federal law, specifically Section

2410 of Title 28 U.S.C. Service of the Complaint, Order to Show Cause, Declaration of Taking with notice of the filing thereof, and proposed Order for Judgment and Appointing Commissioners shall be made by certified mail, return receipt requested, upon the Attorney General of the United States, Department of Justice, Civil Division, Judgment Enforcement Unit, 10th and Constitution Avenue, N.W. Washington D.C. 20530. In addition, service of the above documents must be personally made upon the United States Attorney's office locally in New Jersey. Service upon the United States of America or an agency thereof must be made at least sixty (60) days prior to the return date of the Order to Show Cause.

K. The personal service package includes a copy of the Verified Complaint, Declaration of Taking with notice of the filing thereof, the Order to Show Cause and the form of the proposed Order for Judgment and Appointing Commissioners which preserves the environmental reservations contained in paragraphs 7 & 8 of the Complaint. Once the defendants have been properly served, the Certification of Service is prepared by the Legal Processing Section, signed by the process server and subsequently sent to the Court for filing.

7.7.2 Substitute Service Methods

If the defendants cannot be served as described above, then the Court Rules provide for various modes of substitute service, such as publication, certifications of inquiry and certified or registered mail.

A. Service by Publication - Whenever a defendant cannot be located after due diligence, or is not a resident of the State and cannot be personally served, the service shall be accomplished by the publication of a notice of the action in a newspaper in the county in which the property is located. A copy of the publication is to be mailed to the defendant's last known address and should be posted on the property we are acquiring. Posting may be necessary when there is an unknown owner and claimant, R. 4:26-5, or when the property owner cannot be located.

B. Certification of Inquiry - Immediately upon it becoming known that any defendant cannot be located, the appropriate District Office shall use due diligence to ascertain the address of the defendant. When a defendant cannot be located and personally served a Certification of Inquiry must be prepared and filed with the Court. No service by publication is acceptable by the Court without Certification of Inquiry. The search for a party in interest may include the telephone information service and directory, internet people search, talking to neighbors, the local police department, Post Office, Motor Vehicle Division, New Jersey Treasury Department, Division of Taxation, and in the case of a corporation, the Secretary of State.

7.7.3 Lead Time

A. Publication - The Research Analyst will determine the amount of "lead time" that will be required when service must be accomplished by Publication and will advise the Legal Secretary assigned to the case as to the appropriate return date for the Order to Show Cause. The Research Analysts will maintain contact with the newspaper in order to avoid delay in the publication. Service by publication must be made at least 10 days prior to the return date on the Order to Show Cause.

B. Service on the United States Government - The Research Analyst will determine the amount of "lead time" required in a service on the United States of America and then

advise the assigned Legal Secretary as to the appropriate return date of the Order to Show Cause. With regard to service on the United States Government, it is required that all service be made 60 days prior to the return date of the Order to Show Cause.

7.7.4 Publication-Invoice

A copy of the publication will be attached to the newspaper's invoice, processed by the Closing Bureau, and then sent to the Supervisor, Programming & Funding Section for payment.

7.8 Litigation Support

After a complaint has been filed and the appraisal/non real estate reports have been updated to the date of complaint, the assigned Deputy Attorney General (DAG) is to be provided with two copies of the registered appraisal report and the non real estate report. The DAG will review the reports and make further transmittals to the owner in accordance with the court rules.