

# Right-of-Way Manual



*August 2013*



**Right-of-Way Manual**  
**2013 Edition**  
**Table of revisions**

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# 1 INTRODUCTION AND PURPOSE OF THE MANUAL

This Chapter of the Manual will introduce the Right-of-Way Section Mission Statement, Vision, and the purpose of this Manual. We will provide a short introduction of our Unit and explain what we do for the Department and public. This section also contains a graphical explanation of the Right-of-Way process at the Idaho Transportation Department.

## 1.1 VISION

To be recognized as the leader in right-of-way services by setting the standard of quality in our industry.

## 1.2 MISSION STATEMENT

To continuously improve the Right-of-Way Section's value to our customers, citizens and communities by:

- Treating landowners fairly while fulfilling our responsibility to the taxpayer
- Implementing creative and innovative processes
- Providing professional and timely customer service

## 1.3 INTRODUCTION

The Right-of-Way section of the Idaho Transportation Department is solely responsible for the administration of the Department's eminent domain program and policies in compliance with the Federal Highway Administration (FHWA). In addition, the Right-of-Way Section implements [Public Law 91-646](#), the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended.

The Right-of-Way Section applies the Department's [2011 Strategic Plan](#) to improve upon the safety, mobility, and economic opportunity for the citizens of Idaho, and those that travel Idaho's highways.

We take pride in honoring our transparency, accountability, and timely delivery of our final product. We continually look for ways to be more efficient, minimize cost, and provide excellent customer service.

We ensure compliance with federal and state laws and regulations. Our section also provides direct project support to the six district offices located in Idaho.

### *PROGRAM OVERSIGHT*

ITD shall have overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility shall include assuring that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations ([23 CFR 710.201\(b\)](#)).

## 1.4 PURPOSE OF THE RIGHT-OF-WAY MANUAL

This manual serves as the guiding document for the relationship between the Federal Highway Administration (FHWA) and the Idaho Transportation Department (ITD). The Right-of-Way Section is responsible for complying with current FHWA requirements whether or not they are reflected in this Right-of-Way Manual.

This manual is designed to guide right-of-way employees in the performance of their assigned duties and to assist them in complying with all applicable laws, regulations, and directives. This manual also serves as a guide to internal and external customers who desire information about the right-of-way process at the Idaho Transportation Department.

This Right-of-Way Manual is a compilation of procedures designed to streamline the right-of-way process and delivery. The manual has descriptive chapters which direct the reader to the appropriate procedures for each of the right-of-way disciplines.

This manual complies with the Idaho Statutes, Federal laws and Federal regulations that control the process for acquiring private property rights for public purposes. In addition, this manual serves as a beneficial and informational source for Local Public Agencies (LPAs) involved in federal aid projects, resulting in greater accuracy and efficiency.

This Right-of-Way Manual is a living document that will continually change as applicable laws and regulations change. At least every five years, the Right of Way Manual shall be reviewed, updated as necessary, and certified that it conforms to existing practices and contains necessary procedures to ensure compliance with Federal and State real estate laws and regulations.

### *APPROVAL ACTIONS*

Except for the Interstate system, ITD and the FHWA will agree on the scope of property related oversight and approval actions that the FHWA will be responsible for under this part. The content of the most recent oversight agreement shall be reflected in this right-of-way operations manual. The oversight agreement, and thus the manual, will indicate for which non-Interstate Federal-aid project submission of materials for review and approval are required ([23 CFR 710.201\(i\)](#)).

## 1.5 DEFINITIONS

**Act:** A term used in Chapter 11 of this Manual that means Section 131 of Title 23, United States Code commonly referred to as Title 1 of the Highway Beautification Act of 1965

**Control Records:** Original records

**Department:** The Idaho Transportation Department

**District:** Any one of the 6 Districts of the Idaho Transportation Department

**FHWA:** The Federal Highway Administration

**Fixtures:** Items that are purchased as realty and associated with the use of the property. They may consist of, but shall not be limited to, machinery, furnishings, built-in appliances, water and heating systems, carpet, drapes, water certificates and trade fixtures.

In order to determine whether or not an item might be classified as a fixture, it should be kept in mind that it may have been personal property prior to affixation. The determining factors are:

- Would the item, if separated, detract from the value of the property?
- Is the item considered as a normal item of realty customary to the area?
- What was the intent for which the item was installed?

**Junkyard:** An establishment or place of business which is maintained, operated, or use for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

**Just Compensation:** Payment required by law for the loss sustained by the owner as a result of taking or damaging private real property for public purposes.

**LHTAC:** The Local Highway Technical Assistance Council

**LPA:** Local Public Agencies, i.e., City, County and Highway Districts

**Market Value:** The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale. In a fair sale, the buyer and seller are each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated.
- Both parties are well informed or well advised and acting in what they consider their best interests.
- A reasonable time is allowed for exposure in the open market.
- Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

**Negotiations:** The process by which an acquiring agency makes every reasonable effort to acquire real property through a voluntary transfer of such property and by payment of just compensation to the owner.

**Negotiator/Fee Negotiator:** An employee of ITD or LPA who negotiates the purchase of land and improvements for right-of-way.

**Owner:** Any individual, family, business, corporation, partnership, association, or farm operation having any right, title or interest in property which is acquired, condemned, or sought to be acquired or condemned ITD or agency.

**Outdoor Advertising:** Anything that is designed or intended or used to advertise or inform.

**Personal Property:** (from [Idaho Code, Title 55, Chapter 1, Section 102](#)): Every kind of property that is not real property.

**Real Property:** Real Property (from [Idaho Code, Title 55, Chapter 1, Section 101](#)): Real property or real estate shall be considered to consist of:

- Lands, possessory rights to land, ditch and water rights and mining claims, both lode and placer.
- That which is affixed to land.
- That which is appurtenant to land.

**Relinquishment:** (from [23CFR 710.105](#)): The conveyance of a portion of a highway right-of-way or facility by the Idaho Transportation Department to another government agency for continued transportation use.

## 1.6 SCOPE OF APPLICATION

This manual is applicable to all State and Federal right of way actions including the following:

1. All Federal projects including:
  - ITD
  - LPA, State Administered
  - LPA, LHTAC Administered
  - LPA, ACHD Administered
2. All property acquisitions for the above projects including:
  - Fee title acquisitions
  - Temporary and permanent easements
  - Rights of entry
  - Property use agreements
  - Access control
  - Relocations
  - Damage compensations
  - Functional replacement
  - Air rights
3. Scenic enhancements
  - Scenic easements
  - Outdoor advertising control
  - Junk yard control

## 2 RIGHT-OF-WAY ORGANIZATION

Chapter 2 of the Right-of-Way Manual explains how the Right-of-Way Section is organized at the Idaho Transportation Department. This chapter explains the function of the Section at Headquarters in Boise, and the function of the Property Managers in each District.

The Right-of-Way Section is a component of the Division of Highways, Resource Center and ITD. It is a Headquarters staff section directed by the Right-of-Way Manager.

The Right-of-Way Section is staffed to perform all acquisition, relocation, highway beautification, and property management functions for the Department. No other state or local government agencies are used for these purposes. Most appraisal, acquisition, property management, and relocation services are performed by headquarters staff employees. However, these services may be supplemented by fee appraisers, negotiators, relocation agents, and property management firms in accordance with Chapter 6 of this manual.

### 2.1 RIGHT-OF-WAY MANAGER

The Right-of-Way Manager oversees the Right-of-Way Section at Headquarters in Boise. The Right-of-Way Manager performs the following tasks:

- Manages a major statewide program
- Administers program regulations
- Oversees regulatory activities and approving actions taken by other sections
- Establishes program goals and objectives for various regulatory programs based on the department's mission and goals
- Provides program consultation and coordinates program activities with other department units as well as other agencies and contractors to insure program effectiveness
- Confers with state, federal and department staff about state and federal requirements;
- Is responsible for program compliance with all mandated requirements
- Maximizes the use of program and department resources to support program quality and innovative business practices
- Establishes measurement processes/methods for assessing program outcomes or progress toward goals
- Hires and trains staff and subordinate supervisors
- Assigns work and evaluates performance
- Develops and controls the program budget

### 2.2 TITLES UNIT

The Titles Unit resides in the Headquarters Right-of-Way Section. The Titles Unit provides important information at the beginning and end of a project.

When a project begins, the Titles Unit provides:

- Procedural and compliance reviews;
- Input to and/or prepares legal documentation;
- Legal documents to obtain clear title;

- Title reports and last deed of record for title transfer;
- Review of Right-of-Way plans and recommendation of approval

### *COMPETITIVE SOLICITATION*

When procuring title reports for project parcels, the Titles Unit shall determine whether to solicit bids or select a Title company based on the following criteria:

- Number of parcels
- Types of acquisitions (Urban vs. rural, temporary vs. permanent, commercial vs. agricultural, etc.)
- Preliminary Right-of-Way cost estimate
- Specifics (Turnaround time, reputation)
- Availability and number of local companies
- Project location based on county or counties

Competitive solicitation can be used if the following criteria are met:

- Proposals are solicited from at least three qualified sources to ensure reasonable competition consistent with the nature and requirements of the procurement.
- Requests for proposal must identify all significant evaluation factors and their relative importance, including costs and time of completion.
- Bid proposals shall be transmitted to Headquarters Right-of-Way, utilizing a "Sealed Bid" system.
- Awards will be made to the qualified source whose proposal will be most advantageous to ITD.

Factors that better or worsen the firm's qualifications are:

- Completion in time frame called for in ITD's bid solicitation or the earliest date bid, if no specific date is established
- The lowest cost bid to complete the work
- The professional qualifications of the fee consultant and work experience of the type required by the solicitation
- Past experience of ITD working with the consultant relative to completing projects in a timely manner, completing projects within bid cost, quality of work product and cooperative working relationship
- Both historically and as bid, the personal involvement of the consultant in producing the final work product
- ITD's desire to distribute contracts among equally well-qualified consultants
- ITD's need to expedite a project by contracting with a consultant whose main work place is in close geographic proximity to the subject project
- Limiting the work of the consultant based on current contracts with ITD
- Qualified minority status, as defined and determined by the ITD Office of Civil Rights, Disadvantaged Business Enterprise (DBE) committee
- Avoidance of possible and actual conflicts of interest based on the consultant having been retained by individuals or entities on a project other than by ITD (Disqualification)

When a project is near the end of completion, the Titles Unit provides:

- Approves payment for title insurance premiums;
- Escrow closing fees;
- Deeds

## 2.3 APPRAISAL UNIT

The Appraisal Unit employs Certified General Appraisers licensed in the State of Idaho.

In order to streamline the Appraisal Process, one Appraiser in the Unit acts as the Appraisal Coordinator. The Appraisal Coordinator:

- Reviews and coordinates real property appraisals for highway projects, surplus ITD properties, and State Aeronautical properties
- Provides procedural and compliance review for appraisal activities
- Determines the appraisal complexities of each parcel on every project and determines the appropriate type of appraisal for the parcel
- Either assigns appraisals to his/herself or staff, or prepares a solicitation for bids by fee appraisers
- Awards contracts to fee appraisers
- Assists, advises, and educates fee appraisers
- Authorizes and makes payment to the fee appraisers
- Provides the appraisal process on a contract basis for counties and cities using federal funding

The staff appraisers:

- Appraise property desired for acquisition by ITD per the [Uniform Standards of Professional Appraisal Practice](#) (USPAP) and the [Uniform Standards for Federal Land Acquisition](#) (UASFLA, commonly called the “Yellow Book”).
- Visit with and educate the property owner about appraisal and the appraisal process

The Appraisal Unit also performs appraisal reviews. An appraisal review is performed to ensure that the appraisal for the property was performed correctly, in conformance with all applicable laws and regulations, and acts as a quality assurance check to ensure that the property was appraised correctly.

The Appraisal Reviewer:

- Performs reviews and coordinates real property appraisals for:
  - Highway projects
  - Surplus ITD properties
  - State Aeronautical properties
- Provides procedural and compliance review for appraisal activities
- Inspects the subject property
- Reviews appraisal report for correctness of cost, sales, and income information and for compliance with all State and Federal guidelines
- Evaluates the report
- Approves or denies the Just Compensation to be paid to the property owner

## 2.4 ACQUISITION AND NEGOTIATION

The Acquisition Unit is responsible for negotiating the offer of compensation with the property owner.

The Acquisition/Negotiation Unit:

- Researches public records and other sources to obtain data

- Prepares legal documents, contracts, agreements, exhibits, and reports
- Verifies platting of ownership limits on plans
- Reviews project alignments and determines extent and quality of titles
- Reviews final title reports for land parcels
- Determines legal instruments required to release property and obtain clear title
- Verifies completeness of legal instruments, exhibits, plans, and papers for land acquisition
- Obtains market data
- Analyzes area economic conditions, lending practices and real estate trends
- Assembles comparables and correlates factors affecting property values and prepares estimate of fair market value
- Meets with property owners to review project plans, explain appraisal process and negotiate purchase agreements
- Oversees contract administration for independent contractors
- Provides input to and/or prepares legal documentation
- Authorizes acquisition of property when necessary criteria are met
- Negotiates with landowners for the acquisition of real property
- Hires and manages consultants who acquire real property on behalf of ITD
- Determines the appropriate types of acquisitions to be secured for each project and determines the corresponding procedures to be followed and supporting documentation to be prepared and saved.

## 2.5 ACQUISITION/CONDEMNATION

The Condemnation Unit has the ability to act as a negotiator and can perform acquisition activities, but often specializes in the final attempts to negotiate with property owners. He or she provides coordination and support between the Idaho Transportation Department and the Office of the Deputy Attorney Generals.

When negotiations are unsuccessful, and all attempts to reach agreement have failed, a parcel shall be transmitted to the Right-of-Way Manager for condemnation using an [ITD-1440](#). Condemnation is coordinated with the Office of the Deputy Attorney Generals.

The Condemnation Unit is responsible for:

- Ordering and preparing all appropriate court exhibits and copies of the entire parcel file
- The execution of the condemnation, including coordination with the Office of the Deputy Attorney Generals
- The final attempt to negotiate with property owners for the purchase of property prior to transmitting for condemnation
- Acting as a liaison between the Office of the Deputy Attorney Generals and the Department to coordinate the pursuit and condemnation actions
- Serving as research and trial assistant to the Office of the Deputy Attorney Generals in condemnation cases

## 2.6 PROCEDURAL REVIEW

The Procedural Review Unit ensures that all Right-of-Way activities adhere to FHWA and Idaho code, law and regulation. This Unit also verifies the documentation supporting all right-of-way



payments to confirm compliance with state and federal laws, rules, and regulations, and ITD policies and procedures.

The Procedural Review Unit:

- Ensures no direct payments are processed prior to FHWA's approval of the ITD 2101 (Project Authorization and Agreement)
- Provides procedural and compliance review for appraisal activities
- Oversees contract administration for independent contractors
- Provides input to and/or prepare legal documentation
- Arranges for Federal Highway Administration approval to proceed with projects
- Reviews acquisition and relocation documents for compliance
- Monitors post acquisition activities
- Prepares certifications of Right-of-Way for projects going to construction

### *RIGHT-OF-WAY CERTIFICATION*

The Procedural Review Unit verifies that the required land (right-of-way) is available for a proposed construction project. This is done in conjunction with an analysis of the utility and railroad involvements, material source requirements, and the status of dwelling replacements so that a certificate to FHWA in the form of a right-of-way certificate shall be made by the Right-of-Way manager.

## 2.7 RELOCATION

The Department's Relocation Assistance Program implements the applicable provisions of the [\*Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended \(Uniform Act\)\*](#), and the associated regulations in the [\*Code of Federal Regulations \(49 CFR 24\)\*](#).

The Relocation Unit ensures that ITD provides fair and equitable treatment of persons displaced by a project. Relocation is performed by applying and complying with established Relocation rules, regulations, policies and procedures of the [\*Code of Federal Regulations\*](#). ITD can advise property owners and provide financial assistance for individuals, businesses, or farm operations that must be relocated as a result of the public acquisition of real property.

The Relocation Unit is responsible for:

- Performing preliminary relocation studies to determine the number of displacements and the availability of suitable replacement housing or business locations
- Attending public meetings on projects where there are displacements
- Reviewing ownership data forms, identifying problems and determining relocation needs
- Providing advisory services to internal and external customers
- Searching the real estate market for available sale and rental properties and developing comparable property lists
- Meeting with displacees to explain the relocation program
- Preparing required written notices in a timely manner
- Ensuring that the persons receive affordable, comparable replacement housing
- Ensuring that the displacees receive appropriate notice to vacate the property
- Computing housing additives, rent supplements, mortgage interest differential payments, and moving payments

- Inspecting replacement properties to ensure they meet decent safe and sanitary conditions.
- Verifying vacancy of replacement properties
- Assisting displacees in claiming their relocation payments
- Advising on relocation appeals
- Performing relocation on property improvements such as signage

The Relocation Unit also prepares housing payment determinations and accompanying entitlement letters. These are transmitted under separate cover to the property owner.

The District, at the request of the Headquarters Right of Way Section, may verify vacancy and complete the Decent, Safe and Sanitary (DSS) inspection on replacement properties.

## 2.8 PROPERTY MANAGEMENT

The Property Management Unit of Right-of-Way determines ownership of properties and coordinates all leases, rentals, sales, donations or trades of property. The Property Management Unit:

- Provides procedural and compliance advice and reviews for sale of all surplus property and purchases of property for material source or maintenance yard purposes;
- Orders, technically reviews, updates and manages title reports for properties to be purchased;
- Prepares purchases and sales for closing and acts as liaison with title company for all escrow matters;
- After purchases of property, obtains standard Owner's Policy of Title Insurance and confirms accuracy of title matters;
- Maintains a complete and current database inventory of (i) existing surplus property, (ii) annual sales of surplus property, (iii) existing material sources and maintenance yards, and (iv) existing leases and rentals;
- Prepares annual reports to Financial Services regarding all existing surplus property, sold surplus property, purchases of material sources and maintenance yards, and all leases and rentals in conjunction with each District's annual report;
- Determines the retention value of improvements;
- Processes property trades and exchanges in the same manner as sales and purchases;
- Prepares rental agreements, legal notices for disposing of surplus property, advertisements for notices of sales, conveyance deeds, memorandums of sale, and facilitates the financial arrangements for sales, including obtaining and handling cash/checks from purchasers and arranging for term conditions for purchases in accordance with Financial Services guidelines;
- Requests and reviews appraisals when required to confirm fair market value and utilizes such value in preparation of documents for sale and leasing of properties;
- Provides assistance to the Districts for all aspects of Property Management functions;
- Provides scope of work details when requesting legal descriptions of in-house and outside surveyors and monitors, confirms and confers with surveyors on the final product;
- Schedules, attends and facilitates all aspects of public auctions for the sale of surplus property.

## 2.9 DISTRICT PROPERTY MANAGERS

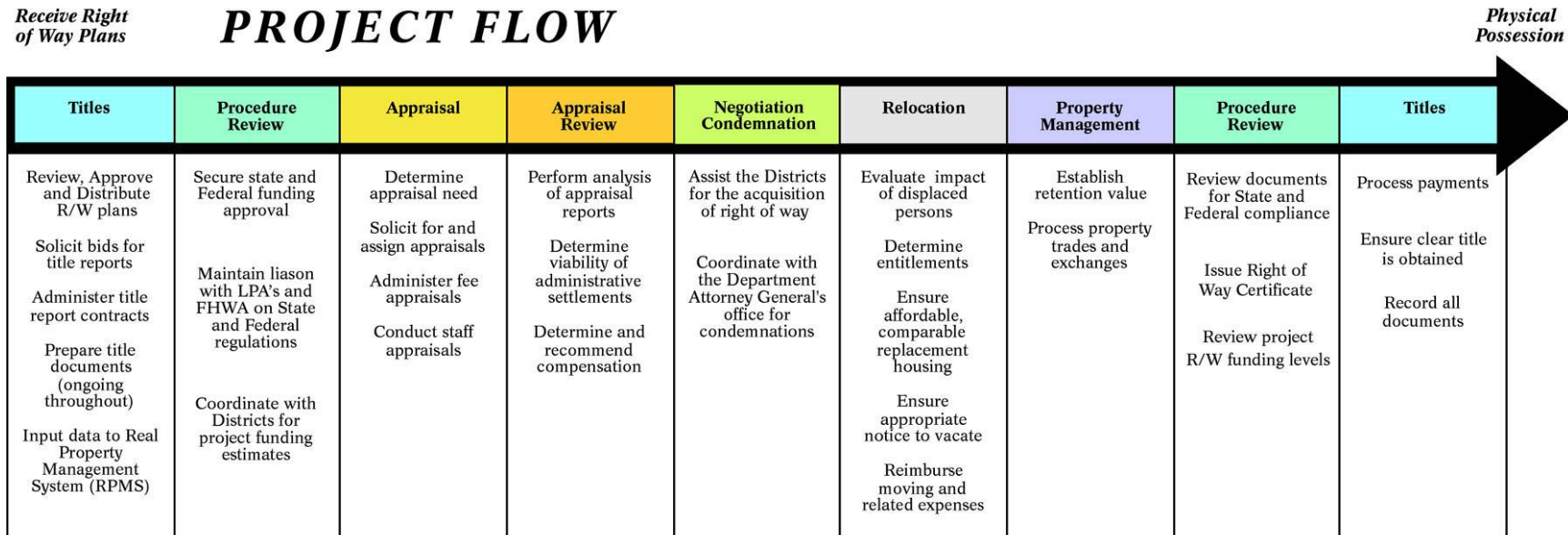
Each of the 6 Districts has a Property Manager who reports to the District Engineer or delegate. In addition to tasks assigned by the District, each Property Manager performs these duties for right-of-way:

- Coordinates surplus land sales, scenic enhancement, outdoor advertising and property management projects with Headquarters Right-of-Way programs
- Inventories all outdoor advertising and all junk yards on all applicable routes and manages permitting, billing, applications, etc.
- Manages and preserves all District right-of-way legal documents, plans, deeds, files and pertinent and/or critical information relative to each parcel of property or project in accordance with the retention policy;
- Provides Headquarters Right-of-Way Property Management Unit with all recorded conveyance documents for maintenance of statewide database;
- Acts as liaison with the public for questions regarding properties, responds to the public with answers and assistance, which may include research of properties with city/county/state agencies; location and identification of properties on project plans; attendance at permit and project design review meetings as requested by Headquarters Right-of-Way or the District, and preparation of information related to surplus property sales;
- Requests title commitments from title companies, in coordination with the Property Management Unit, for ownership research, identification of easements, liens and other encumbrances to title, and processes payments to the title company;
- Manages, inventories, administers and oversees all scenic enhancement and outdoor advertising, including applications, permitting, inventory and billing;
- Identifies the need for disposition of surplus properties by researching title, preparing the ITD-2828 form [Request and Authorization for Disposal, Release, or Sale of Real Property] and ensuring submittal to Headquarters with complete documentation ready for approval and appropriate action;
- Reviews, confirms and processes for payment all property tax bills;
- Works directly with the District surveyor to provide an accurate scope of work for the preparation of a record of survey and/or legal description as needed for the sale of surplus properties;
- Requests the District Environmental Unit prepare a form/report indicating the categorical exclusion status of the property or project to facilitate the disposal of properties, and includes such form with the ITD-2828 packet to the Property Management Unit;
- Reviews and confirms all Local Public Agency billings and submits to the Procedure Unit for payment processing;
- Requests approval to purchase property for material sources or maintenance yards using the ITD-2544 form [Request for Approval to Purchase Real Property], works with Materials to coordinate the purchase, negotiate a sales price, and submits to the Property Management Unit for approval and purchase;
- Prepares rental and lease agreements for submittal to the Property Management Unit for review, approval and database maintenance;
- Maintains an inventory of all surplus property, purchases of material sources and maintenance yards, and all leases and rentals;
- Submits an inventory report annually to the Property Management Unit for the statewide report (usually by June 30<sup>th</sup>);

- Coordinates with the District sign crew to post notice signs on surplus property to be sold at auction;
- Assists the District staff in the review of right-of-way plans before submittal to Headquarters;
- Assists in providing acquisition services when requested by Right-of-Way and approved by District staff;
- Assists when requested by the Appraisal Coordinator in the research, preparation and delivery of short form appraisals [form 1466];
- Provides research and assistance for condemnation actions;
- Assists when requested by Headquarters Right-of-Way Section in verifying vacancy of properties and completing Decent, Safe and Sanitary inspections on replacement properties.

## 2.10 RIGHT-OF-WAY PROJECT FLOW DIAGRAM

After the HQ Right-of-Way Section receives environmental clearance, adequate funding, and approved right-of-way plans, the following diagram depicts the typical right-of-way project flow:



### Other Right of Way Areas

Scenic Enhancements	Administration
Monitor outdoor advertising and junkyard control and removal program	Maintenance of R/W file systems
	Word Processing
	Document Processing
	Assistance in R/W budget
	Office Reception
	Inventory and supplies
	Make arrangements for travel & classes

### Other Non-Project Related Activities

Titles	Procedure Review	Property Management
Identify and record all ITD Board approved highway relinquishments	Monitor and review LPA projects, including field reviews	Coordinate identification and disposition of surplus property
		Review leasing program
		Maintains database for non-operating property
		Reimburse FHWA for disposed property

### 3 RIGHT-OF-WAY PLAN DEVELOPMENT

This chapter explains the process by which ITD designs and creates right-of-way plans. Right-of-way plans serve the Districts, the Right-of-Way Section, and the property owners by clearly depicting each parcel of a project, the project impacts to each parcel, and the overall design of the project.

#### 3.1 INITIAL DESIGN PHASE

District Engineers are responsible for overall project development. Project development includes all of the required activities to advance a project from its conceptual stage to eventual advertisement for construction.

The Environmental Section and the Right-of-Way Section should both be notified, and the processes begun as early as possible in a project design phase. It is important for the Department to identify and initiate right-of-way activities as early as possible to improve efficiency and avoid delays. The environmental process is started early in the project development to identify all possible areas of concern. In most cases, the process of acquiring right-of-way cannot begin until a project is given environmental clearance (refer to [23 CFR §710.203, Funding and Reimbursement](#).)

If the proposed improvements will be within the existing right-of-way (property already owned by ITD), no right-of-way plans are required. If the proposed improvements require new right-of-way (including permanent or temporary easements), the Districts or their consultants prepare right-of-way plans.

Right-of-way plans shall be prepared following Right-of-Way Plan Preparation Flowchart in Appendix A.

The District shall determine the appropriate level of public involvement for the scope of the project. Some projects may need a Public Information Meeting and or Public Hearings to establish the approved alignment.

The District shall consult with the Right-of-Way Section in Headquarters when the preliminary project plans are completed, so the engineers, designers, and right-of-way experts can confer on the project choices. Often, right-of-way staff can suggest minimal changes to the design which save the Districts money and time in the right-of-way process.

#### 3.2 RIGHT-OF-WAY PLAN DESIGN

The purpose of this section is to be instructive, and to promote uniformity and continuity among the Idaho Transportation Department's six district offices. In addition, this section of the manual serves as a beneficial and informational source for acquisition agents, appraisers and Local Public Agencies.

Members from Headquarters Right-of-Way should join the project engineers and designers in the initial property owner contacts to answer right-of-way questions.

**The District representatives shall not negotiate with the property owner in any fashion during the initial property owner contact. Any questions about price, exchange, donation, value, or other acquisition issues shall be deferred until the official negotiations begin later in the process.**

Official Right-of-Way plans are required when any new right-of-way, including permanent or temporary easements, is acquired. Right-of-Entry acquisitions do not require Right-of-Way plans.

### 3.3 RIGHT-OF-WAY PLAN CHECKLIST

The [ITD 0131, Plans Essential Requirements Checklist](#) is a guiding document for use by anyone preparing right-of-way plans. This list will accompany the plans throughout the development and submittal process.

### 3.4 RIGHT-OF-WAY COST ESTIMATE

A revised [ITD 2839 Right-of-Way Cost Estimate](#) will be provided with the right-of-way plans, to ensure adequate funding is programmed. If funding adjustments are required, they will be completed prior to submission of the complete package to the Right-of-Way Section.

### 3.5 ACCESS PURCHASE DETERMINATION

An [ITD Form 606, Current Access Purchase Determination](#), will be completed by the District or design consultant and given to the Right-of-Way Section in conjunction with right-of-way plans. This form assists the Right-of-Way Section to determine which properties require the purchase of rights of access.

### 3.6 REQUEST FOR PARCEL IDENTIFICATION

The District shall request a block of Parcel Identification Numbers from the Right-of-Way Titles Unit for each parcel in the design, including permanent easements.

### 3.7 TITLE REPORTS

The Titles Unit will document the decision and obtain title reports for the parcels in the project. These reports will be shared with the Districts.

### 3.8 RIGHT-OF-WAY PLANS FORMAT

The right-of-way plans will be submitted to Right-of-Way by the District. The plans can either be combined with the construction plans (usually useful for small projects), or they can be separate from the construction plans and included as an addendum to the construction plans.

### 3.9 FINAL RIGHT-OF-WAY PLANS

The final right-of-way plans will be submitted to the Right-of-Way Unit for review. The Right-of-Way Unit will provide review and comments, and return to the District for correction and approval.

### 3.10 PERMANENT EASEMENTS, TEMPORARY EASEMENTS, AND PROPERTY USE AGREEMENTS

This section explains how the permanent easements and temporary easements should be marked on the plans, and when a Property Use Agreement (PUA) is appropriate. The right-of-way plans shall reflect the location and size of all permanent easements and their purpose.

An easement is a right to use property for a designated and limited purpose. Easements are typically acquired for purposes such as:

- Drainage
- Slope maintenance
- Sidewalks
- Landscaping/irrigation
- Construction staging areas

Because permanent and temporary easements are considered a “damage” to the property, they are compensable. The use of a PUA is not a damage and thus there is no compensation to the land owner.

#### *PERMANENT EASEMENTS*

Permanent easements are required where there is a permanent transportation improvement or continuing need for maintenance. This instrument should be prepared with great care, as it will be recorded without change.

#### *TEMPORARY EASEMENTS*

Temporary easements are effective for the duration of the construction project and normally terminate upon completion of construction (if not sooner). Temporary easements that are of a shorter or longer duration should be identified on the plans.

Temporary easements should never be used if there is any possibility that ITD will have to return to the property covered by the easement in the future. If a temporary easement is used, the property owner has the right, after expiration of the easement, to go back on the property.

#### *PROPERTY USE AGREEMENTS*

A property use agreement (PUA) clarifies the rights of the parties involved in the acquisition. PUAs should **not** be marked on the right-of-way plans. The PUA should clearly explain:

- The subject of the agreement (identification of the property, usually by legal description)
- The type of use
- The estimated duration of the agreement
- Any conditions of the agreement

**A property use agreement can only be used when the proposed ITD activity is temporary, and benefits both ITD and the property owner.**

A typical example of a PUA would be when the ITD activity consists of reconstructing an approach and adding fill or removing excess material to match the elevation of the highway.

The mandatory criteria for a PUA is that ITD could still construct the project without property owner consent and **without trespass on the land owner’s property**.

In the absence of the property owner’s consent (i.e., the property owner refused to sign the PUA), all ITD activity must stay within the right-of-way boundaries and without trespass on the land owner’s property.



## 4 APPRAISAL AND APPRAISAL REVIEW

This section details how we appraise property, and how we review the appraisals of property for acquisition.

The function of the appraisal process shall be to arrive at:

- An estimate of the fair market value for all real property interests to be acquired by ITD and damages, if any, to the remaining ownership(s).
- An estimate of the fair market value of all real properties to be disposed of by ITD with a value exceeding \$10,000.

[The Uniform Relocation Assistance and Real Property Acquisition Policies Act](#) of 1970 expand upon the basic rights of property owners, requiring a public agency to appraise real property prior to its acquisition as a basis for determining just compensation. The Uniform Act, as amended, along with current federal regulation, provides a framework for the appraisal process. The Right-of-Way Section complies with all applicable laws and regulations in the appraising of real property for acquisition.

Under direction of the Right-of-Way Manager, the Appraisal Unit is responsible for managing the procurement of all appraisals of real property acquired or sold by the Idaho Transportation Department (ITD), statewide, including but not limited to:

- Highway projects
- Surplus properties
- Condemnations
- Local highway districts
- Division of Aeronautics

Material sources and stockpile sites shall be valued by the Districts and do not require a formal appraisal. Material source valuation shall be done by following Section 270 in the Materials Manual.

### 4.1 THE APPRAISAL UNIT

The Appraisal Unit of the Right-of-Way Section is comprised of Idaho Certified General Appraisers (CGAs). These appraisers coordinate, appraise and review appraisals of property for the Department.

**In no event shall the appraisal, appraisal review, and negotiation functions all be performed by the same individual.**

The only exception to this is [49 CFR 24.102\(n\)](#), which allows for the appraisal (or value estimate-ITD 1466) and negotiation to be conducted by the same individual where the appraised or estimated value is less than \$10k.

Staff appraisers are employees of ITD and shall be under the direct supervision of the Right-of-Way Manager. All appraisal assignments, including any Fee Appraisal Contracts and any Supplemental Contracts, will originate out of the HQ Right-of-Way Section.

One member of the Appraisal Unit serves as the Appraisal Coordinator. A coordinator is necessary to serve as a point of contact for the Districts, and to track and delegate the workload for the Appraisal Unit. Along with his or her duties of appraising and reviewing appraisals, the Appraisal Coordinator performs these duties:

- Contracting with fee appraisers when necessary.
- Evaluating each appraisal for compliance to the [Uniform Standards of Professional Appraisal Practice \(USPAP\)](#), the [Uniform Standards for Federal Land Acquisition \(UASFLA\)](#) and the ITD Appraisal Guide, also known as a Phase I Review.
- Determine the type of appraisal required for each parcel.
- Initiate all fee appraisal assignments, including the preparation of any [ITD-1445 Fee Appraisal Contracts](#) and any [ITD-1446 Supplemental Contracts](#).

Staff and Fee Appraisers shall include a determination of real property versus personal property, including ownership, as part of the appraisal report. This determination is required to assist the Relocation Unit. When applicable, an on-site meeting of the appraiser and relocation staff may be required.

Except in routine matters, the Appraisal Unit shall not attempt to interpret the law(s) as it applies to the appraisal function. Legal interpretation(s) shall be requested from the Legal Section through the Right-of-Way Manager.

## 4.2 THE APPRAISAL PROCESS

Once the preliminary right-of-way plans are approved and provided by the District, the Titles Unit will ensure that the plans contain the information necessary to appraise the properties (ie, legal descriptions, title reports, [ITD-2009 Property Owner Data](#) forms.)

Once that information is complete, the appraiser shall perform a field inspection of the project (accompanied by a District representative if deemed necessary), to identify the types of appraisals required for each parcel and any appraisal issues that could be resolved proactively. Taking video or pictures of the project is recommended. The owner of record or a designated representative shall be given an opportunity to accompany the appraiser during the inspection of the property.

Once the field inspection is complete, and the appropriate type of appraisal is determined, an appraiser from the Appraisal Unit or a fee appraiser can appraise the property.

## 4.3 APPRAISAL GUIDELINES

Real property shall be appraised and determination of just compensation completed prior to initiation of negotiations.

**Negotiations shall not begin until the appraisal is completed  
and Just Compensation determined.**

All appraisals shall meet the criteria and standards set forth in the ITD Appraisal Guide, as well as conform to [Uniform Standards of Professional Appraisal Practice \(USPAP\)](#) and the [Uniform Standards for Federal Land Acquisition \(USFLA\)](#).

Property shall be appraised at market value. Appraisals shall contain sufficient data and analysis to explain, substantiate, and thereby document the conclusions of the report. The property will be appraised as though free and clear of all liens, bond assessments and indebtedness. The property will be appraised to its highest and best use.

The owner shall be given the opportunity to accompany the appraiser on his or her inspection of the property.

Any variance in the market value of real property prior to the date of valuation, due to project influence, other than that due to physical depreciation within the reasonable control of the owner, shall be disregarded in determining the market value for the property, i.e. if the increase or decrease is caused by:

- The public improvement for which such property is required.
- The likelihood that the property would be acquired because of the public improvement.

Appraisers shall not give consideration to, nor include in their appraisals, any allowance for relocation assistance benefits. Relocation is discussed in more detail in Chapter 10.

The appraisal shall include, if warranted, a determination of real property trade fixtures and personal property. This is required to assist the Relocation Unit. When relocation is applicable, the Relocation Unit should meet the Appraiser on site.

#### 4.4 TYPES OF APPRAISAL

The complexity of the project and parcel shall dictate the kind of report, type and depth of the supporting data needed.

**If the established compensation for interest acquired is \$500 or less,  
ITD shall pay \$500 to the property owner.**

After consultation with the Right-of-Way Manager, the Appraisal Coordinator shall make assignments to Staff Appraisers. If Staff Appraisers are not available, the Appraisal Coordinator shall hire a qualified Fee Appraiser.

Staff and Fee Appraisers shall include a determination of real property versus personal property, including ownership, as part of the appraisal report. This determination is required to assist the Relocation Unit.

When applicable, an on-site meeting of the appraiser and relocation staff may be required.

Staff and Fee Appraisers shall be notified of their assignment in writing and shall be provided:

- Right-of-way plans, plats, etc.
- Work authorization number
- Control of access feature(s)
- Title information
- Type of report
- Number of parcels to be appraised
- Expected date of completion
- Specific instruction, i.e., signs, fixtures, retention value and economic rent

In general, one appraisal is sufficient for each parcel. Two appraisals may be required when if the complexities of the appraisal problem would dictate a second appraisal as specified in the [Administrative Policy 4005](#). The types of appraisal reports used by the Appraisal Unit are detailed as following:

VALUE ESTIMATES/APPRaisal WAIVERS ([ITD FORM 1466-IDAHO CODE 54-4105\(5\)](#))

Idaho Code allows value estimates in lieu of appraisals for non-complex property whose estimated value is \$10,000 or less. The objective of the value estimate/appraisal waiver is to provide a method by which a low value, uncomplicated property can avoid the time delays and costs associated with an appraisal.

Idaho Code permits value estimates to be accomplished by an agent or employee of the Idaho Transportation Department or local highway jurisdiction familiar with the appraisal process, or an individual hired by ITD with expertise in the real estate market where property is located, or a licensed or certified appraiser.

**ITD reserves the right to designate an “agent” for these value estimates.  
This shall be done on a case-by-case basis for each project  
by the Right-of-Way Manager.**

The ITD-1466/Value Estimate may only be used by ITD employees or agents designated by ITD. The ITD-1466/Value Estimate may only be assigned by the ITD Appraisal Coordinator, and agents performing the Value Estimate must be approved by ITD. Designation on the ITD List of Approved Certified General Appraisers **does not** automatically qualify someone to be an “agent”. Agent designation is a separate action.

The Appraisal Coordinator shall determine whether property can be valued using this method. All value estimates shall be reviewed and approved by a review appraiser who is an Idaho Certified General Appraiser, as per Idaho State Code Title 54 Chapter 41, [54-4105](#) (5).

If a value estimate/appraisal waiver is desired, the following criteria must be met:

- The valuation is uncomplicated

- The real property is appraised at less than \$10,000
- Comparable properties are given for each parcel which are approved by an Idaho Certified General Appraiser

The following circumstances negate the use of an appraisal waiver/value estimate:

- The parcel has a written commercial lease
- The parcel has an outdoor advertising structure
- The parcel has 2 or more highest or best uses
- There are proximity issues

If an appraisal waiver/valuation estimate is used, and the negotiations are unsuccessful, a formal appraisal is required for the condemnation process.

#### *LIMITED APPRAISAL IN SUMMARY FORMAT ([ITD-2288](#))*

An [ITD-2288, Short Form Appraisal Report](#) (Limited Appraisal in Summary Format), shall be used to appraise uncomplicated partial acquisitions where there are no substantial improvements within the proposed right-of-way. The ITD-2288, Short Form Appraisal Report, shall conform to USPAP requirements.

#### *NARRATIVE APPRAISAL REPORT*

This report shall be used at the request of the Legal Section or for the more complex appraisal of a total acquisition and shall be prepared in narrative format. For an explanation see ITD's Appraisal Guide (Appendix B).

#### *BEFORE AND AFTER APPRAISAL REPORTS*

These Appraisals shall be used at the request of the Legal Section, or for complex appraisals of partial acquisitions and shall be prepared in narrative form. The property is appraised as it exists prior to the proposed acquisition (Before Value), and then valued as if the project has been completed (After Value). An [ITD-0017 Summation of Compensation for Before and After Appraisals](#) must accompany this format. For more information, refer to ITD's Appraisal Guide.

#### *DUAL APPRAISAL REPORTS*

Dual Appraisal reports are performed for complicated appraisals that have the likelihood of condemnation ([Administrative Policy 4005](#)).

#### *RESIDENTIAL APPRAISAL*

A Residential Appraisal Report (current URAR-approved form) may be used in the appraisal of a total acquisition of improved residential properties (single or multi-family). This report depends upon the availability of reasonably comparable market data requiring limited adjustments.

#### *PRE-LITIGATION APPRAISALS*

The Office of Deputy Attorney Generals can request from a Certified General Idaho Appraiser either a Before and After Appraisal (if for a partial taking) or a Narrative Appraisal (if a total acquisition).

If the case is obviously headed to litigation, the Attorney General should be involved in the choice of appraiser.

At the time the condemnation is filed, the Deputy Attorney General shall contact the Appraisal Coordinator to determine whether some or all of the appraisals need to be brought current to the date of filing the Complaint.

The Attorney General shall state in writing any justification for additional appraisals.

#### 4.5 APPRAISAL REVIEW

Appraisers in the Appraisal Unit also perform appraisal reviews. It is the review appraiser's responsibility to determine whether the appraisal complies with recognized appraisal principles and practices. The just compensation established by the review appraiser shall be the basis of negotiations.

The appraisal review is performed in accordance with established standards and guidelines. The review shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP), the Uniform Standards for Federal Land Acquisition (UASFLA), the ITD Appraisal Guide and State Statutes.

Appraisal reports shall be reviewed by a staff appraiser, who shall determine the just compensation of the property to be acquired using a Phase Two Review. When the schedule or staffing does not permit a staff appraiser to perform the review, a qualified Idaho Certified General Appraiser can be contracted by ITD as a Fee Review Appraiser. This review shall be completed prior to the beginning of negotiations.

The appraiser performing the appraisal review shall indicate, in writing, his findings and set out the estimated value of the requirements. The estimated value or just compensation will be reported on an ITD-1922, Statement of Review Appraiser, which will include a Certificate of Review Appraiser.

#### *APPRAISAL REVIEWER DUTIES*

The duties of the appraisal reviewer include:

- If the appraisal is more than 90 days past the effective date of valuation, the review appraiser shall examine the appraisal to determine if the valuation has expired.
- Consults with the appraiser outlining any deficiencies and requests corrections or revisions.
- If warranted, the reviewer may conclude an independent market value for the subject requirement based on additional information.
- May submit a request for an additional appraisal to the Appraisal Coordinator.
- Determine that each approach used in the valuation process is applicable to the subject property and that each approach is procedurally correct and properly supported, and that each approach to value has been correlated correctly with a reasonable conclusion of the value established.
- Establishes if there is sufficient documentation to support conclusions.
- Completes an on-site inspection of the subject and the comparable sales used if needed.

- Verifies the market data with Realtors, buyers and sellers if needed.
- Monitors consistency of values throughout the project.
- Determines the just compensation which includes the property rights to be acquired and any damages if applicable.
- Determines that non compensable items are not included in the estimate of just compensation.
- Completes a Statement of Review Appraiser for each appraisal reviewed. The comment section will indicate if there are fixtures to be acquired, economic rent, salvage values and other applicable items.
- Completes a Certificate of Review Appraiser.
- Notifies the Right-of-Way Manager about relocation and/or property management activities that may be required.
- Complete a review of all appraisals for all LPA (Local Public Agency) projects

#### *TYPES OF APPRAISAL REVIEW*

There are currently four types of Appraisal Reviews performed by ITD staff.

**Phase One Review** is performed by the Appraisal Coordinator on all appraisals to ensure compliance of all administrative and contractual requirements.

**Phase Two Review** is a formal written review of an appraisal performed either by staff or a consultant appraiser, signed by the Appraisal Reviewer, which establishes just compensation. This is performed on most appraisals requested by the Department for a project. This review is performed in order to:

1. Serve as a Quality Assurance check to the Department, Appraiser, and Property Owner that the appraisal follows [USPAP](#) guidelines and is fair and just,
2. Make a fair market value offer to a landowner,
3. Make a fair market value offer to a landowner for appraisals ordered by ITD's Office of Deputy Attorney Generals for condemnation cases where such a formal written review is not requested,
4. Establish the value of surplus property in excess of \$10,000.

Appraisals ordered or obtained by ITD's Office of Deputy Attorney Generals will, based on their instructions, be given either a Phase Two or a Phase Three Review. When a Phase Two Review is requested by ITD's Office of Deputy Attorney Generals and results in a change in the Appraisal Reviewers' opinion of fair market value, it is ITD's Office of Deputy Attorney Generals responsibility to offer any compensation greater than previously made to the property owner in writing.

**Phase Three Review (Pre-Litigation Appraisal Review)** is performed by an Appraisal Reviewer when an appraisal is requested by ITD's Office of Deputy Attorney Generals for a case where a condemnation has been or will be filed and just compensation has previously been established and offered to the landowner, and a formal written review (Phase Two Review) is not requested.

When a Phase Three Review is requested, the Appraisal Reviewer performing the review will examine all appraisals (both the Departments and the landowners) in order to provide information at one or more meetings between the Right-of-Way Section and ITD's Office of Deputy Attorney Generals, as called for in the Memorandum of Understanding between the Sections. The summary should emphasize the strengths and weaknesses of each appraisal and help guide ITD's Office of Deputy Attorney Generals in the preparation of its case. A Phase Three Review is considered work product accomplished on behalf of ITD's Office of Deputy Attorney Generals.

**Phase Four Review (Post-Litigation Appraisal Review)** is a process review by an Appraisal Reviewer of all parcel files on which appraisals are obtained, including legal settlements and condemnation awards, whether acquired by agreement or court order. The purpose of a process review is to determine which items and what amounts are eligible for federal participation based on the standards established by federal statutes and regulations, if not already accomplished as part of the Phase Two Review. This determination shall be set out in writing.

#### *APPRAISAL REVIEW OF LOCAL PUBLIC AGENCY APPRAISALS (LPAS)*

All appraisals performed by a Local Public Agency (LPA) or appraisal work performed on behalf of an LPA shall be given a Phase One and Phase Two appraisal review by an appraisal reviewer at ITD. This serves as a Quality Assurance check to the appraisal work and ensures that the work is acceptable to the Department. The appraisal reviewer must issue a Certificate of Review Appraiser to the LPA in order for the LPA to proceed with negotiating the property.



## 5 ACQUISITION AND NEGOTIATION

This chapter covers the acquisition, negotiation and condemnation activities of the Right-of-Way Section.

The Acquisition Unit must make certain that all interests have been acquired to ensure that we have adequate title for acquisition.

It is ITD's purpose to:

- Ensure uniform acquisition procedures whereby the owners and tenants of real property being acquired for public use will receive consistent and equitable treatment
- Provide policies whereby, to the greatest extent possible, real property is acquired by agreement, thereby avoiding expensive and time-consuming litigation and to relieve congestion in the courts
- Promote public confidence in land acquisition practices by acquiring agencies

### 5.1 ACQUISITION AUTHORITY

The Director, or delegate, is authorized to purchase, sell, exchange, and execute corresponding deeds for real estate parcels. The Chief Engineer, or delegate, with the concurrence of the applicable District Engineer, may authorize an administrative settlement of up to \$200,000 over the reviewed fair market value of the property. In addition, the Chief Engineer, with the concurrence of the applicable District Engineer, may authorize an administrative settlement of up to ten percent (10%) over the reviewed fair market value of property.

The Director is further delegated authority to authorize and execute on behalf of the Board an *Order of Condemnation* for individual parcels of land. The authority to condemn shall be attached at the time projects are approved by the Board, and made part of the ITD Project Development Schedule and shall include projects in the preliminary development schedule.

When advantageous to the Department, purchases or condemnations for right-of-way may include uneconomic remnants, landlocked tracts, or the whole of the real property affected. Remainders that are acquired may be traded for other land needed by the Department, used by the Department, or sold in accordance with applicable laws.

The owner of improvements on land that is being acquired for right-of-way shall be allowed the option of retaining the improvements at retention value predetermined by the Department. Salable improvements that are not retained by the owner may be traded for other needed property, or, if not traded, sold or and disposed in accordance with applicable laws.

When a stipulation for possession of a property is agreed to, with the price to be adjudicated thereafter, the Board authorizes the Department to pay the owner, or deposit into a court fund for the benefit of the owner, the amount of the highest offer made to the owner; but in no event shall the amount be less than 100 percent of the fair market value of the property as established by the Department.

Real property acquisitions for the Department shall be in fee simple title, except in the following instances when the property can be acquired in easement form:

- Rights-of-way across United States Government land by DOT Easement Deed
- Rights-of-way across Indian Reservation or tribal lands by revocable Right-of-Way Permits
- Rights-of-way across State owned lands
- Right-of-way crossing or encroaching upon railroad or other utility or irrigation districts rights-of-way
- Acquisitions for beautification programs
- Aviation easements for airports
- Temporary and permanent easements required by construction

#### *CONFLICT OF INTEREST*

The Right-of-Way Section provides proper and adequate controls for separation of functions so that no Right-of-Way employee is faced with a conflict of interest.

**In no event shall the appraisal, appraisal review, and negotiation functions all be performed by the same individual.**

The only exception to this is [49 CFR 24.102\(n\)](#), which allows for the appraisal (or value estimate-ITD 1466) and negotiation to be conducted by the same individual where the appraised or estimated value is less than \$10k.

No employee may negotiate for a property on which they have performed as the appraiser or review appraiser with the following exception: On properties valued at \$10,000 or less, the appraisal and negotiation functions can be performed by the same individual.

#### *ENVIRONMENTAL CLEARANCE*

For all projects, the environmental documents must be approved prior to acquisition activities. However, in extraordinary cases, such as protective buying or emergency situations, the department can acquire property prior to the project environmental document or the final project plans when federal funds are involved. Additionally, MAP-21 legislation allows for Early Acquisition (the acquiring of right-of-way prior to environmental clearance.) This Early Acquisition requires that the environmental document only address the action of the acquiring property, not the eventual project for which the property is being acquired. MAP-21 Early Acquisition is further discussed in Section 6.9.

In that circumstance, ITD will obtain federal approval and participation in the acquisition of a particular parcel or limited number of particular parcels. ITD must have obtained a Categorical Exclusion (Cat X) covering the acquisition.

## 5.2 AUTHORIZING PARCELS FOR ACQUISITION

Once the appraisals have been reviewed, the Negotiation Unit will notify the Relocation Unit of any properties identified in the Appraisal that contain relocation, and the Property Management Unit of

any properties identified for retention/salvage prior to the property being authorized for acquisition.

### *THE ACQUISITION PACKET*

Upon initiation of negotiations, the acquiring agency shall provide a written statement, and summary of the basis for, the amount established as the just compensation of the proposed acquisition. This shall be provided to the owner of real property to be acquired.

The information for the property owner is assembled into an Acquisition Packet. The packet shall include the following items:

- A copy of the reviewed appraisal
- Title passing documents
- A copy of the Right-of-Way Contract
- A Summary Statement
- Property Owner Advice of Rights Brochure/information

As a minimum, the summary statement shall include:

- The amount established as just compensation.
- Incentive payment explanation (if applicable).
- Identification of the real property to be acquired, including the estate or interest being acquired.
- Identification of improvements and fixtures considered to be part of the real property to be acquired.
- Where appropriate, an amount for damages to remaining real property.
- Where appropriate, identify any separately held ownership interest in the property and indicate that such interest is not covered by the offer.
- The Property Owner Advice of Rights form, in accordance with [Idaho code 7-711A](#) and [54-4105\(5\)](#).

### *RIGHT-OF-WAY CONTRACT*

The acquisition packet will also contain a right-of-way contract. This contract explains the agreement in its entirety and is a legally binding document.

The negotiator is responsible for drafting the right-of-way contract using the template provided by the Right-of-Way Section and approved by ITD's Deputy Attorney Generals.

All right-of-way contracts shall be quality checked by the Acquisition/Condemnation Unit or by a Deputy Attorney General prior to authorization to proceed with the offer.

Negotiators shall perform a peer review on the acquisition packet contents prior to their transmittal to the property owner. The negotiator shall choose an available peer and use the Acquisition Packet Checklist to complete a quality check of the contents.

The negotiator will explain all aspects of the right-of-way contract to the property owner and ensure all questions are answered thoroughly before signing. Once the contract is signed, a color copy will be given to the property owner and the original will be kept at Headquarters in the Right-of-Way Section.

### 5.3 MAKING AN OFFER

Once the appraisal review is complete, and the appraisal has been finalized, the Negotiation Unit will prepare the acquisition packet. [Title 7 Chapter 7 Section 7-711A](#) gives 30 days for the property owner to respond to our initial offer. In the interest of a timely acquisition, ITD negotiators make every attempt to complete negotiations within 90 days.

#### *COERCION*

In no event shall any representative of the acquiring agency take any action coercive in nature in order to compel an agreement on the price to be paid for the property by:

- Advancing the time of condemnation.
- Deferring negotiations.
- Deferring condemnation and the deposit of funds in court for the use of the owner.

If any interest in real property is to be acquired by exercise of the power of eminent domain, the acquiring agency shall institute formal condemnation proceedings. No acquiring agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the real property.

#### *UNECONOMIC REMNANT (INCLUDING LANDLOCKED TRACT)*

A uneconomic remnant is a remaining part of property in which the owner is left with an interest that the agency determines has little or no utility or value to the owner.

When the acquisition of real property would leave the owner with an uneconomic remnant or a landlocked tract of land, the acquiring agency shall offer to acquire the uneconomic remnant or landlocked tract.

### 5.4 ITEMS CONSIDERED IN NEGOTIATIONS

There are items in the state of Idaho that are often appraised and considered during property negotiations. The following is a list of some of those items, and is not inclusive.

#### *IMPROVEMENTS: INTEREST TO BE ACQUIRED*

If the acquiring agency acquires any interest in real property, it shall acquire at least an equal interest in all buildings, structures, or other improvements to be either located upon the real property, removed from the real property or which it determines will be adversely affected by the future use of the property.

#### *IMPROVEMENTS: JUST COMPENSATION*

For the purpose of determining the just compensation to be paid for any building, structure, or other improvement, the building, structure, or other improvement shall be deemed to be a part of

the real property to be acquired. This is notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of the lease.

#### *IMPROVEMENTS: TENANT OWNED*

The tenant who owns a building, structure, or other improvement to be acquired shall be paid the greater market value of either:

1. The value which the building, structure, or improvement contributes to the market value of the real property to be acquired, or
2. The market value of the building, structure, or improvement for relocation from the real property.

Nothing in this section shall be construed to deprive the tenant of any rights to reject payment under these sections and to obtain payment for such property interests under Idaho Eminent Domain procedures.

#### *DUPLICATION OF PAYMENT*

Payments regarding tenant owned property shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant.

In consideration for any such payment, the tenant shall assign, transfer, and release to the acquiring agency all right(s), title, and interest in and to such improvements. A separate summary statement shall be provided to such tenant where improvements are being separately acquired.

#### *INCIDENTAL EXPENSE REIMBURSEMENT*

The acquiring agency, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses necessarily incurred for:

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency.
- Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
- The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency.

#### *WATER RIGHTS*

The values of water rights are established through the appraisal and appraisal review process. Traditionally, water rights are viewed as part of the property and are bought and sold at the same time as the property.

### *WELLS OR SEPTIC ON THE PROPERTY*

The values of wells or septic facilities are established through the appraisal and appraisal review process. If the well or septic is on the property being acquired, the appraiser must determine whether the loss causes any damage to the remainder, and if so, whether a cost-to-cure includes drilling a new well/placing new septic facility (if legally permissible), or connecting the remainder to a public water or sewer system.

If a well or septic facility is disturbed or affected by the proposed acquisition, they are handled as a cost-to-cure damage (assuming the building remains) if:

- The facility can be relocated on the remainder and
- The proposed project does not include the installation of equitable water and septic sewer facilities

If the facility cannot be relocated on the remainder property, the appraiser shall contact the Right-of-Way Manager for instructions.

### *FENCING AND FENCING ALLOWANCES*

The values of fencing are established through the appraisal and appraisal review process. The appraiser values the fencing on the basis of its contributory value to the highest and best use of the land, recognizing functional utility, depreciation, and possible interim value. The appraiser will place a value to replace the fence with a similar type of fencing. The appraiser shall document the replacement costs by obtaining estimates in the local area.

If the property contains livestock, the remainder area should have the fencing restored to prevent animals from entering the operating right-of-way. The appraiser should determine a reasonable amount of money to provide to the owner so the owner or fencing contractor can install the new fencing prior to the removal of the fencing affected by the project.

### *SALVAGE VALUES*

Salvage values are established through the appraisal and appraisal review process. The Property Management Unit prepares the [ITD-1478, Retention Value Form](#), for inclusion in the acquisition package when improvements are located on the real property to be acquired.

No salvage value will be established for signs located on real property to be acquired.

The owner of improvements located on property being acquired by the agency shall be offered the opportunity to retain said improvements at the salvage value established and documented in the Agent's Diary Report.

### *RELOCATION HOUSING PAYMENT DETERMINATIONS*

Replacement housing payment determinations and accompanying entitlement letters are prepared by the Relocation Unit and transmitted under separate cover to the property owner. For more information about Relocation, refer to Chapter 9.

### *TREES IN THE RIGHT-OF-WAY*

Under Idaho law, the abutting property owner is presumed to own the land to the centerline of the highway ([Idaho code section 55-309](#)). Prior to March 4, 1953, the State acquired its right-of-way pursuant to the following statute:

Section 1307 (878) Public acquires only an easement. By taking or accepting land for a highway, the public acquires only the right-of-way and the incidents necessary to enjoying and maintaining it. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land are for the use of the owner or occupant of the land.

The above quoted statute was amended effective March 4, 1953 to provide that anytime a public agency acquires land for a highway it may acquire fee simple title (Chapter 100, 1953 Session Laws.)

Timber on highway right-of-way acquired prior to March 1953 is the property of the abutting property and the abutting property owner has the right to harvest the timber.

If there is highway right-of-way which was acquired after March 4, 1953, which the Department holds less than a fee simple absolute title, then the abutting property owner would have title to the timber.

Timber on right-of-way which the Department has a recorded fee simple title is the property of the Department.

The Department has the right to remove trees or shrubs from the right-of-way for safety reasons, beautification, or other legitimate highway purposes.

## 5.5 REVISING AN OFFER

A revised offer and summary statement of its basis shall be provided in writing to the owner if:

- The extent of the requirement is revised.
- The approved estimate of just compensation is revised by the Review Appraiser.
- An Administrative Settlement has been approved and authorized.

## 5.6 NEGOTIATIONS

All right-of-way acquisitions will be completed within 90 days of the date of authorization to initiate negotiations, either through negotiated settlements or recommendation for eminent domain condemnation action, unless otherwise approved in writing by the Right-of-Way Manager. Also, all right-of-way acquisition agreements shall be supported by a Right-of-Way Contract, and shall reflect all items in such a manner as to be specifically identifiable with the project plans.

In order to ensure that the property owner has received the information about their property, the negotiator shall contact the property owner by phone or email to give notice that the total acquisition packet is available. After initial contact is made, the negotiator can either mail the total acquisition packet under a cover letter via certified mail, return receipt requested, or he/she can

deliver it in person. The cover letter shall state the name and phone number of the negotiator so the property owner has a contact in the Right-of-Way Section.

The property owner shall be given a minimum of thirty (30) days, after the initial offer, to consider the offer and obtain professional advice or assistance if so desired.

#### *RECORDS OF NEGOTIATION*

The Negotiator shall maintain timely adequate records of negotiation on a parcel basis ([Form 1439, Agent Diary of Negotiations](#)). This diary shall be written with clear and concise language and stored in permanent form (i.e., not email) and updated as quickly as possible after each contact with the property owner.

The information for each contact should include, but is not limited to:

- the date and place of all contacts, parties of interest contacted,
- the date and place of all offers made, including dollar amounts,
- the date and place of all counter offers, including dollar amounts,
- the reasons settlement could not be reached, and
- any other pertinent data.

Each page of the report shall be signed and dated by the Negotiator.

#### *SURRENDER OF POSSESSION*

No owner shall be required to surrender possession of real property before the acquiring agency pays the agreed purchase price or deposits with the court, for the use of the owner, an amount not less than the agency's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

#### *NOTICE TO VACATE*

No person lawfully occupying real property at the time of acquisition shall be required to move from a dwelling, or to move a business or farm operation without at least 90 days written notice from the acquiring agency. Currently, the Relocation Unit issues a 90-day Notice to Vacate after securing legal possession of the property. The Federal requirements allow for the 90-day notice to be issued as soon as at least one comparable property has been available to the property owner. To fulfill this condition, the property owner will have to have appropriate information provided on the availability of comparable properties and have funding made available for acquiring the property (deposit of funds). Once these conditions have been met, the State can issue its 90-day notice irrespective of if having legal possession of the property to be acquired.

The notice shall state a specific date at least 90 days in advance by which the occupant may be required to move. An additional 30-day notice will be provided in advance of the specific date by which the person must move. The 30-day notice may, if necessary, occur within the 90-day period. The 90-day notice must also state that the occupant will not have to move earlier than 90 days after a comparable replacement dwelling is made available (as defined in the Code of Federal



Regulations). The 90-day notice shall further state that the occupant will not have to surrender his property until the state has obtained legal possession of the property.

#### *FAIR RENTAL VALUE*

If the acquiring agency permits an owner or tenant to occupy the real property acquired (acquisition is the date the state has legal possession) on a rental basis, the amount of rent required shall not exceed the fair rental value of the property. The rent shall be collectible on the first of the following month subsequent to the acquisition payment being received by the property owner, or after the initial 90 day to vacate notice issued by the Relocation Unit whichever is later.

#### *ADMINISTRATIVE SETTLEMENTS*

The responsible official may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the responsible official must give full consideration to all pertinent information set out in 49 CFR 24.102(i): *“Administrative settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement. All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including review appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.”*

A written justification documenting the reason for an administrative settlement shall be placed in the parcel file. Any administrative settlement which exceeds the reviewed Fair Market Value by \$10,000 shall also require the concurrence of the appropriate District Engineer.

All administrative settlements, including those made by LPA's, shall be in writing and explain the justification for settling any parcel above the established Fair Market Value. The extent of the written explanation should be consistent with the situation, circumstance and amount of money involved. It should utilize, as available, property sales data, owner appraisals and engineer estimates to support why it is in the best interest of the public for ITD or an LPA to settle a parcel in excess of FMV.

Per Board Policy B-4005, the Director or a delegate may authorize an administrative settlement for up to \$200,000 over the reviewed fair market value of properties appraised at up to \$1,000,000. Administrative settlements for appraisals in excess of \$1,000,000 shall not exceed 20% of the reviewed fair market value of the property. Proposed settlements exceeding these thresholds shall come before the Board for approval.

For more information on Administrative Settlements, please refer to Chapter 8.

#### *LEGAL SETTLEMENTS*

A legal settlement is any settlement made by the agency's legal representative which has been authorized by Right-of-Way Manager and which is in excess of the agency's approved just compensation.

The agency's legal representative (Attorney General) may make a legal settlement when it is determined by the agency's responsible official that such action is in the public interest. Legal settlements shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over right-of-way matters, prior to making any settlement. Any legal settlement which exceeds the reviewed Fair Market Value by \$10,000 shall also require the concurrence of the appropriate District Engineer.

The right-of-way file shall be documented by the Attorney General whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. The extent of written explanation should be consistent with the situation, circumstances, and amount of money involved. This document requires the signed concurrence of the responsible Right-of-Way official as well as the District Engineer if the conditions set out above apply.

#### *RESPONSIBLE PARTIES FOR SETTLEMENTS*

The responsible party is dependent on the value of the administrative settlement.

- The Right-of-Way Manager, if the Administrative Settlement is \$10,000 or less.
- The Right-of-Way Manager and the responsible District Engineer for amounts exceeding \$10,000 over the reviewed Fair Market Value.
- The authorized LPA representative for LPA and Enhancement projects.

#### *NONCOMPENSABLE ITEMS IN SETTLEMENTS*

Should the administrative settlement, legal settlement, or court award include an apparent payment for items considered ineligible for federal participation, as set forth in the CFR or the Federal-Aid Policy Guide, the amount paid for such items shall be determined by the agency and excluded from any claim for federal participation in the settlement or award.

### **5.7 COMPLETION OF NEGOTIATIONS**

The acquiring agency, as soon as practicable after the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses necessarily incurred for:

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency.
- Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
- The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency.

The acquiring agency shall pay to the owner of any right, title, or interest in real property such sum as the court, having jurisdiction of a proceeding instituted by the acquiring agency to acquire the real property by condemnation, awards the owner for reimbursement of reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if:

- The final judgment is that the acquiring agency cannot acquire the real property by condemnation.
- The acquiring agency abandons the condemnation action after filing in a court of appropriate jurisdiction.
- The court orders payment.

#### *PAYMENT AND TITLE CERTIFICATION*

It is imperative that those involved in real property acquisition make certain that all interests have been acquired to ensure that adequate title has been obtained, as per Idaho Transportation Board Policy 4005.

The Procedure Review Unit is responsible for inspecting all non-incidental expenditures for compliance with established policies and procedures. Non-incidental expenditures consist of, but are not limited to direct payments to property owners for right-of-way material and maintenance sites, together with relocation payments to displacees.

The Titles Unit is responsible for preparing appropriate payment documents.

## 5.8 BREAKDOWN OF NEGOTIATIONS

When negotiations are unsuccessful and the Negotiator considers further attempts to negotiate to be futile, he or she shall record recommendations for action considered appropriate, including recommendations for administrative or legal settlements.

Prior to closing negotiations, a final owner contact, usually with the Acquisition/Condemnation Unit, should be made to ascertain that every reasonable effort has been made to reach agreement. This process is known as the dual call contact.

If all attempts to reach agreement fail, the parcel will be transmitted to the Right-of-Way Manager with the concurrence by the District Engineer for condemnation, using an [ITD-1440, Request for Condemnation Action](#) and required attachments. The District will prepare appropriate court exhibits for each entire parcel file. HQ Right-of-Way shall transmit a copy of the entire parcel file to Legal.

### *LITIGATION EXPENSES*

In certain circumstances, a court proceeding for condemnation can award to the property owner reimbursement of reasonable costs.

Reasonable costs are defined as disbursements and expenses, attorney fees, appraisal fees, and engineering fees incurred because of the condemnation proceedings.

The acquiring agency shall pay these costs if:

- The final judgment is that the acquiring agency cannot acquire the real property by condemnation.
- The acquiring agency abandons the condemnation action after filing in a court of appropriate jurisdiction.
- The court orders payment.

### *INVERSE CONDEMNATION*

An inverse condemnation is a situation in which the government takes private property but fails to pay the compensation required by the 5th Amendment of Constitution. In order to be compensated, the owner must then sue the acquiring agency. In such cases the owner is the plaintiff and that is why the action is called inverse – the order of parties is reversed, as compared to the usual procedure in direct condemnation where the acquiring agency is the plaintiff who sues a defendant-owner to take his or her property.

In the case of an inverse condemnation, the acquiring agency shall pay the owner, as a part of the judgment or settlement. The payment, as willed in the opinion of the court or the official effecting the settlement, shall reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, incurred because of the proceedings.

### *DONATIONS*

Nothing in this directive shall be construed to prevent a person whose real property is being acquired for a federally aided highway project from making a gift or donation of such property, or any part thereof, or of any of the compensation paid therefor, after such person has been fully informed of the right to receive just compensation and of the right to an appraisal by a qualified appraiser for the acquisition of the property.

If the value of donated right-of-way is to be claimed by the governmental entity as in kind match toward federal project participation, the following criteria must be met:

On projects where ALL of the right-of-way is to be donated there still must be right-of-way funds obligated on the ITD-2101, Project Authorization and Agreement. If only a portion of the right-of-way is to be donated and the remaining right-of-way is to be acquired then the right-of-way funds will have been obligated.

Donated parcels whose value exceeds \$10,000 will be appraised in accordance with USPAP standards. Donated parcels whose value is between \$5000 and \$10,000 will be appraised if the landowner requests an appraisal in order to support a charitable contribution on their state and/or federal tax filing. Donated parcels valued either at less than \$5000 or less than \$10,000 where the land owner did not state their intent to claim a charitable contribution, can have the value of the donated land abstracted from other appraisals or based on assessed value or set by other methods commonly used in the appraisal industry to estimate value.

Upon certification of the right-of-way acquisition, Financial Services will be notified of the parcel and their respective values, via an ITD-500 (Department Memo).

### *FUNCTIONAL REPLACEMENT*

When publicly owned real property, including land and/or facilities, is to be acquired for a federal-aid highway project, in lieu of paying the fair market value, the department may provide compensation by functionally replacing the publicly owned real property and/or facility with another of equivalent utility in accordance with the provisions of federal regulations.

## **5.9 ACQUISITION WITHOUT A FORMAL PROJECT**

ITD may initiate the acquisition of real property at any time it has the legal authority to do so for corridor preservation (provided the project is in the [current ITIP](#)), access management or other purposes. Acquisition costs incurred prior to execution of a project agreement with FHWA are not eligible for federal-aid reimbursement, unless otherwise approved by FHWA. The allowable credit for early acquisitions may be based on either the current fair market value or historic acquisition cost of such land. The allowable credit may be used for the State's share of the costs on a federal-aid project if the following conditions are met:

- The property was lawfully obtained.
- The property is not publicly owned land from a park, recreation area, wildlife or waterfowl refuge, or historic site.

- The acquisition complied with The Uniform Relocation Assistance and Real Property Acquisition Act.
- The acquisition complied with [Title VI of the Civil Rights Act of 1964](#).
- The acquisition did not influence the environmental assessment of the project.
- The property will be incorporated into a federal-aid project.
- The property has been formally appraised.
- The original project agreement was executed on or after June 9, 1998.

The historic acquisition costs will be used as the primary basis for credit purposes and the current fair market value would be used in those instances where:

- There has been significant lapse in time since the property was acquired or
- There had been a significant change in the market (not caused by the project) since the property was acquired.

Material sources do not require a formal appraisal, and the guidelines for purchasing material sources are in Section 270 of the Materials Manual.

## 5.10 ADVANCED ACQUISITIONS OF REAL PROPERTY UNDER MAP-21

Section 1302 of MAP-21 created new flexibilities and options with respect to Federal reimbursement of costs for the acquisition of real property acquired prior to completion of the environmental approval. In certain circumstances, properties can be acquired early in the project process, prior to completion of environmental approval, per MAP-21 regulation ([23 USC 108 \(c\) and \(d\)](#)). Advanced Acquisition of Real Property). More specifically, the significant MAP-21 changes with respect to early acquisition include that States (and locals) may now be eligible for:

- Reimbursement of State-funded early acquisition costs without prior Federal authorization or,
- Participation in Federally-funded early acquisition costs with prior Federal authorization.

The following table provides a side by side comparison of the conditions, requirements, and limitations for Federal participation in “state funded” and “federally funded” early acquisition. This table will assist individuals in determining:

1. Whether early acquisition may be applicable to a specific situation at hand;
2. If so, which approach would best apply; and
3. What documentation and approval actions will be necessary to fulfill the selected approach.

The following is a table of the side by side comparison of 23USC 108 (c) and (d).

*SIDE BY SIDE COMPARISON OF 23 USC 108 (C) AND (D)*

<b>Requirement</b>	<b>State-Funded Early Acquisition [Paragraph (c)]</b>	<b>Federally-Funded Early Acquisition [Paragraph (d)]</b>	<b>Comments</b>
Prior FHWA Authorization	N/A	Yes	
Prior State Certification of Authority to Acquire and That Acquisition Will Not Limit Alternatives, Relocation Benefits, etc.	N/A	Yes	
Acquisition Not Subject to Threat of Condemnation	N/A	Yes	
Prior NEPA Approval (for Acquisition Action)	N/A	Yes	
Programming of Acquisition Action in STIP	N/A	Yes	
Uniform Act Compliance	Yes	Yes	
Title VI Compliance	Yes	Yes	
Governor's Certification of Compliance with State's Comprehensive Land Use, Environmental, and Transportation Plan	Yes	N/A	The State must demonstrate and FHWA determine that, the Governor has certified the acquisition to be consistent with the State's plan.
Costs Incurred for Acquisition of Real Property Interests	Yes (paragraph (c) identifies "costs to acquire" as being eligible)	Yes (Paragraph (d) identifies "acquisition of real property interests" to be eligible and describes these as: "interests in land, rights to acquire an interest in land, and similar actions to acquire or preserve right-of-way"	Costs are eligible but not sure what the scope of costs might be in either paragraph.
Costs Incurred for Acquisition of Land Necessary to Preserve	Yes	Maybe	Paragraph (d) does not address whether eligibility extends to lands

<b>Requirement</b>	<b>State-Funded Early Acquisition [Paragraph (c)]</b>	<b>Federally-Funded Early Acquisition [Paragraph (d)]</b>	<b>Comments</b>
Environmental and Scenic Values			acquired for environmental or scenic values.
Pre-Acquisition ROW Costs (e.g. ROW Plans, Title Search, etc.)	Yes	Yes-requires an “acceptable cost estimate” per 23 CFR 710.307.	Eligibility extends to acquisition costs, not just property value
Relocation Costs	Yes	Yes	Eligibility included relocation costs.
Requires that property be incorporated into a project to be eligible	Yes	Yes	This requirement is applicable to all Federal funding categories, not just to STP funds.
Acquisition Determined in Advance by Governor to be Consistent State’s Transportation Planning Process per 23 USC 135	Yes (Governor or Designee Determination)	Yes (State Certification)	Consider the term “determination” as used in paragraph (c) to be interchangeable with “certification” as used in paragraph (d).
Restriction on development of acquired property (e.g., construction activity) prior to project NEPA approval.	No	Yes	Paragraph (c) does not explicitly restrict construction activities (e.g., demolition and grading) in anticipation of a project and prior to reimbursement.
NEPA Approval of Project a Prerequisite to Federal Reimbursement	Yes	No	Paragraph (d) does not appear to require that project NEPA approval occur prior to reimbursement.
Prior to Reimbursement, FHWA Determination that Acquisition did not Influence the NEPA Assessment Including the Need for the Project or the Project Design and Location	Yes	No	Paragraph (d) does not require determination by FHWA, in part because no requirement for project NEPA to have been completed prior to reimbursement.



General requirements for early acquisition are:

- The acquisition was lawfully obtained.
- The property is not designated parkland ([23 U.S.C. 138](#)).
- The acquisition complied with The Uniform Relocation Assistance and Real Property Acquisition Act.
- The acquisition complied with [Title VI of the Civil Rights Act of 1964](#).
- The acquisition did not influence the environmental assessment of the project.
- The property will be incorporated into a federal-aid project.

### 5.11 PROTECTIVE BUYING AND HARDSHIP ACQUISITION

Under normal circumstances, the acquisition of right-of-way with federal-aid funds cannot proceed until after the environmental approval of the project has been issued. Circumstances may justify an exception to the process by allowing the acquisition of a limited number of properties prior to the completion of the environmental process. The two situations for which FHWA can grant such an exception are:

1. Protective Buying: The early acquisition of a particular parcel of limited number of parcels to prevent imminent development and increased costs on the preferred location
2. Hardship acquisition: the early acquisition of a particular parcel of limited number of parcels to alleviate hardship to a property owner or owners on the preferred location

Prior to obtaining final environmental approval, ITD may request FHWA agreement to provide reimbursement for advance acquisition of a particular parcel or a limited number of parcels, to prevent imminent development and increased costs on the preferred location (Protective Buying), or to alleviate hardship to a property owner or owners on the preferred location (Hardship Acquisition). The general requirements for protective buying and hardship acquisition are:

- Environmental approval has not yet been given for the property.
- FHWA approves the reimbursement.
- There are a limited number of parcels.
- The properties are included in the current approved STIP.
- Compliance with public involvement requirements ([23 CFR 450](#) & [771](#)).
- The property is not designated parkland ([23 U.S.C. 138](#)).
- The properties are not historic properties ([16 U.S.C 470 \(f\)](#)).
- The property acquisition shall not influence the environmental assessment.

In addition to the requirements listed above, protective buying also requires:

- Proof development of the property is imminent.
- Proof that the development would limit future transportation choices.
- Proof that there would be a considerable increase in cost.

In addition to the requirements listed above for protective buying, hardship acquisition also requires that the owners written submission must justify the following:

- Health, safety or financial reasons.
- Remaining in the property poses an undue hardship compared to others inability to timely sell the property at FMV due to the impending project.

Before the FHWA can authorize either protective buying or hardship acquisition, a written request must be provided to the FHWA Division Office which satisfactorily demonstrates that the following conditions have been met:

- 1) The property acquisition is (or will be) programmed in the STIP. This can be accomplished by one or more of the following actions:
  - a) Identification of the specific protective buying of hardship acquisition(s) in the STIP
  - b) Identification of the right-of-way phase of the specific project in the STIP
  - c) Inclusion of the action under a statewide line-item in the STIP for protective and/or hardship acquisition.
- 2) The State has complied with the applicable public involvement of requirements of 23 CFR Parts 450 (planning) and 771 (environment.) The expectation for prior public involvement in conjunction with protective buying and hardship acquisition is that the general public will have had a reasonable opportunity to be aware of the project for which the property is to be acquired, and that sufficient outreach activities have been conducted such that the scope of the project and range of alternatives and preliminary alignment locations to be evaluated through the environmental process have been shared with the public. This can be accomplished by one or more of the following activities:
  - a) Corridor studies
  - b) The metropolitan transportation planning long range plan
  - c) The metropolitan and/or statewide transportation improvement program (STIP)
  - d) A city or county's comprehensive plan
  - e) The ongoing environmental evaluation of the project
- 3) A determination has been completed for any property subject to the provisions of 23 USC 138 (Section 4(f)). This can be accomplished by either of the following:
  - a) Documenting that the property in question does not qualify for protection under Section 4(f)
  - b) Providing a 4(f) determination in which the concluding statement specifies that there is no feasible and prudent alternative to the use of the 4(f) property and that the proposed action includes all possible planning to minimize harm to the 4(f) property resulting from such use.
- 4) Procedures of the Advisory Council on Historic Preservation are completed for properties subject to 16 USC 470(f) (Section 106 historic properties). This can be accomplished by either of the following as applicable:
  - a) Documenting that the property in question does not qualify for protection under Section 106.
  - b) Providing Section 106 process documents which demonstrate that one of the following applies to the proposed acquisition and subsequent use of the property in question:
    - i) No historic properties will be affected.
    - ii) No historic properties will be adversely affected.

- iii) The acquisition and use of the property is consistent with the Section 106 Memorandum of Agreement concerning the proposed action.

#### *PROTECTIVE BUYING*

In addition to the "General Conditions" in this section, a request for protective buying must also include documentation which demonstrates that development of the property is imminent and such development would limit future transportation choices. In this regard, a significant increase in cost may be considered as a factor but not the sole reason for justifying the request. Examples of information and documentation to demonstrate that development of the property in question is imminent and that this development will result in the potential loss of alternatives include:

- Development requests including plat and building permit requests.
- Corridor studies and preliminary environmental documents identifying proposed project alternatives.
- City and County comprehensive plans identifying proposed transportation alignments
- Analyses demonstrating the cost impacts on right-of-way if the property were to be developed beyond its current use.

#### *HARDSHIP ACQUISITION*

In addition to the "General Conditions" in this section, a request for hardship acquisition must be based on a property owner's written submission and must have been accepted and concurred in by the State. The property owner's request must:

- Support the hardship acquisition by providing justification , on the basis of health, safety, or financial reasons, that remaining in the property poses an undue hardship compared with others; and
- Document an inability to sell the property because of the impending project , at fair market value, within a time period that is typical for properties not impacted by the impending project.

#### *ENVIRONMENTAL DOCUMENTATION*

The acquisition of property through protective buying or hardship acquisition can qualify as a categorical exclusion per 23 CFR 771.117(d)(12) provided that the acquisition does 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. Preparation and processing of the environmental approval should be coordinated between the ITD District Environmental Planner and the appropriate FHWA Idaho Division Office Operations Engineer.

#### *REQUESTS AND APPROVAL*

All requests for protective buying and hardship acquisition are to be submitted by ITD to the FHWA Idaho Division Office. The requests should be adequately documented as detailed above and be accompanied by an approved environmental document. An evaluation of the request will be conducted by the Division's Right-of-Way Specialist and written response which will specify:

- Whether or not it is approved.

- If approved, any conditions under which the approval is given.
- If not approved, the basis for which it was not approved.

## 5.12 ACCESS RIGHTS

Effective December 12, 2012, the Idaho Board approved [Board Policy 4005](#) - Management of Department-Owned Property, which incorporated the recently revised [IDAPA Rule 39.03.42](#) - Rules Governing Right-of-Way Encroachments on State Rights of Way. These regulate the way we classify, regulate, purchase and sell access control.

[Board Policy 4005](#) - Management of Department-Owned Property, instructs staff how to manage property, manage access control and access rights, and delegate authority to purchase, lease, acquire, dispose, sell, or exchange Department-owned real and personal property.

When the Department purchases access rights for safety or highway operational reasons, those purchases must be recorded in a deed. Those deeds must have language identifying the access rights purchased and the reservation of any access rights to the property owner, to include location, size and specific purpose of the reserved access right. Any purchased access rights are Department property. The deeds, rather than the regulations set forth in [IDAPA 39.03.42](#), control access to property from which the Department has purchased access rights.

Under the revised [IDAPA Rule 39.03.42](#), all routes on the State Highway System are classified into one of six tiers; Interstate, Freeway, Expressway, Statewide, Regional, and District. Segments of highway are further classified according to whether they are rural, transitional, urban high-speed, or urban low-speed. A map of these classifications is available at: [September 2012 Access Map](#).

### *APPRAISAL OF ACCESS RIGHTS*

The Idaho Transportation Department is authorized to acquire property rights along the State Highway System and control access to the roadway through property purchase (deed restrictions). When the owner of land adjacent to a State Highway requests one or more additional access points or a change in use of an existing access point, the department shall identify:

- The highway's classification in accordance with the provisions of [IDAPA Rule 39.03.42](#)
- If the property rights associated with the land were purchased in a deed
- Whether the value of the benefited land will increase from the additional access or change in use
- If the property is located on the Interstate System. (FHWA must be advised of any access control changes on the Interstate System.)

The Director shall preserve the uniformity of the State Highway System by establishing access and property appraisal requirements.

### *PURCHASING ACCESS RIGHTS*

ITD maintains the ability to purchase access rights to any route on the State Highway System. Access rights are property rights, and therefore need to be deeded. Acquisition of such rights shall

follow ordinary right-of-way acquisition procedures as defined in the Right-of-Way Manual, whether bought separately or in conjunction with other real property acquisitions.

Properties where access is purchased, sold, or condemned will likely require a before and after appraisal to assess the value of the access. The Districts shall consult with the Right-of-Way Manager before making any representation of the conditions under which the Department would buy or sell access rights. The District or project consultant shall fill out an [ITD Form 606, Current Access Purchase Determination](#), and give it to the Right-of-Way Section in conjunction with right-of-way plans. This form assists the Right-of-Way Section to determine which properties require the purchase of rights of access.

Acquisition of access rights through purchase should be requested only where a traffic operations and/or safety analysis determines that it is in the public interest to do so. Such an analysis may come through a highway project action, or through a specific analysis, but should be documented in writing. Where practical, regulatory access controls alone should be relied upon to preserve the safety and operational efficiency of the State Highway System without unnecessarily restricting economic development opportunities.

If the Department purchased access control and the access point is part of a recorded document, the property owner shall compensate the Department for the access control that was previously purchased (mandatory). The District shall either:

- Require an appraisal if the land's estimated value increases as a result of a new access or change in type of use, and the increase in value is greater than the fee shown on the "*Deed Restricted Access With Minimum Value*" table; or
- Waive the appraisal for change requests that minimally enhance the property value, and charge a compensation fee from the "*Deed Restricted Access with Minimum Value*" table; or
- Waive the appraisal for change requests that change a farm/field approach to a single family residence approach.

The Right-of-Way Section shall coordinate all appraisals required by this policy. The Appraisal Coordinator shall select appraisers from the Department's qualified list of Certified General Appraisers.

If the Right-of-Way Manager, with the concurrence of the Right-of-Way Appraisal Coordinator, determines that a new point of access or a change in type of use will add little or no additional value to the property, the appropriate fee schedule may be used to determine the fee in lieu of an appraisal.

If an appraisal is required:

- The landowner making the request must pay the cost of the appraisal and the appraisal review in advance of the appraisal process.
- The appraised value of the benefited property shall be based on the requested future use rather than the present use.

- Any fee shall be paid by the property owner to ITD before access is granted

#### *APPRAISAL AND ENHANCED LAND VALUE FEE SCHEDULES*

Access to the Interstate is determined by regulations, design specifications, and construction standards. Additional access is only considered after a thorough review of the roadway use and a construction project is approved by the Idaho Transportation Board.

**The following fees do not apply to the Interstate, Freeways or Expressways.**

#### **DEED RESTRICTED ACCESS WITH MINIMUM VALUE TABLE**

Approach Type	District Route	Regional Route	Statewide Route
Farm/Field	\$500	\$500	\$1000
Single Family Residential	\$500	\$500	\$1750
Multiple Family Residential	\$2500	\$2500	\$2500
Subdivision	\$3000	\$3000	\$3000
Light Commercial	\$3500	\$3500	\$3500
Heavy Commercial	\$4250	\$4250	\$4250

\* These fees apply only when the department determines that the change in property value is equal to or less than the cost of an appraisal. Fees shall not be charged for a change in use from a Farm/Field approach to a Single Family Residential approach. Appraisal fees represent reimbursement for a change in property value **only**.

#### *SELLING ACCESS RIGHTS*

ITD maintains the ability to sell access rights. Access rights must be designated as surplus property, and their disposal will require determination of Fair Market Value (FMV). In the case that the access rights were purchased with Federal Funding, Headquarters Right-of-Way will work with Financial Services to determine how proceeds of such a sale will be handled.

The disposal of previously purchased access control shall be in accordance with the Idaho Transportation Departments' Access Management, Board and Administrative policies.

ITD shall charge current fair market value for the use or disposal of access control rights if those rights were acquired utilizing federal funds under Title 23 of the United States Code.

ITD may allow the use or dispose of access control rights, acquired utilizing federal funds, at less than fair market value, with the approval of FHWA, if ITD clearly demonstrates that an exception is in the overall public interest for social, environmental or economic purposes; for nonproprietary governmental use; or for use under Title 23 of the United States Code, Public Transportation. ITD shall submit requests for such exceptions to FHWA in writing, including NEPA clearance.

ITD may allow the use or disposal of access control rights, acquired utilizing federal funds, at less than fair market value, without the approval of FHWA, if ITD documents that the property will be utilized for one of the following purposes:

- Use by a public utility
- Use by Railroads
- Use for bikeways and pedestrian walkways
- Use for Title 23 transportation projects

### 5.13 RIGHT-OF-WAY CERTIFICATION

A right-of-way certificate establishes that all of the right-of-way necessary for a proper execution of a project has been acquired, or the right of occupy and use all such right-of-way has been secured. Right-of-way certificates are a necessary prerequisite to authorization of construction by the FHWA ([23 CFR 635.309](#)).

Prior to advertising and construction, a Right-of-Way Certificate shall be prepared by the local ITD District office, certifying that the Right-of-Way necessary for the project has been acquired, relocation is complete and utility agreements are in place. The request shall contain information related to utilities and environmental clearance. The Procedure Review Unit shall review the Certificate and the Right-of-Way Manager shall approve the certificate for state and federal aid projects. The right-of-way certificate certifies that all right-of-way has been correctly purchased (including permanent and temporary easements) in order for the project to be constructed.

#### *INTERSTATE PROJECTS*

On interstate projects, prior to advertising for construction, ITD shall deliver a right-of-way certificate relative to securing of property and improvements, completion of relocation activities, relocation of utilities, and status of hazardous materials and contamination. This is delivered to FHWA for approval.

There are 3 types of Right-of-Way Certificates.

#### *CLEAR RIGHT-OF-WAY CERTIFICATE*

A clear right-of-way certificate requires:

- 1) Right-of-way is acquired by purchase or possession
- 2) Relocations are completed
- 3) Utility agreements are completed
- 4) Interstate projects have provided a letter to the FHWA
- 5) Non-interstate projects have provided a letter to the Chief Engineer of ITD

#### *CONDITIONAL RIGHT-OF-WAY CERTIFICATES*

A [conditional right-of-way certificate](#) identifies the acquisition status of right-of-way that is required to advance a highway project to construction when such property:

- has not yet been acquired,
- the acquiring agency has not yet obtained right-of-occupancy, or
- future displacees are still residing on such property.

Conditional right-of-way certification, which is provided for in [23 CFR 635.309\(c\)\(3\)](#), is sometimes called a “cert 3” or a “work around.” Conditional right-of-way certificates are requested by the Districts and reviewed and approved by the Right-of-Way Manager.

The FHWA will approve all conditional right-of-way certificates for federal aid projects.

On projects where no right-of-way is required, the District Engineer shall issue a statement that the project will be constructed within the existing right-of-way.

A conditional right-of-way certificate can be submitted to the FHWA Idaho Division Office in 2 unique scenarios:

- 1) Conditional Certifications for Authorizing Funding Only: this scenario addresses projects for which the requested action is limited to the obligation of funds only.
- 2) Conditional Certifications for Authorizing Advertising and Construction: This scenario addresses projects for which the requested action includes not only the obligation of funds, but also approval to advertise for bids, and if so requested, to proceed with construction.

The second scenario is reserved for projects that will, upon authorization, be advertised for bid and advanced to construction. This situation arises when unique and compelling reasons justify the advancement of a project to construction prior to ITD having acquired and/or secured the right to occupy and use all necessary right-of-way. FHWA must receive a conditional right-of-way certificate which clearly documents the protections afforded to the affected property owners and the necessity (in terms of public benefit) for advancing the project under such circumstances.

Once the required right-of-way is acquired, Headquarters Right-of-Way (Procedure Review) shall prepare a Revised Conditional Right-of-Way Certificate (Clear) when all conditions are cleared, and submit it to the FHWA.

#### *RIGHT-OF-WAY CERTIFICATE WITH NO RIGHT-OF-WAY*

When all work will be contained within the existing right-of-way, the District Engineer shall issue the Right-of-Way Certificate. This includes Local Public Agency projects. This certificate is submitted to the Chief Engineer.



## 6 RIGHT-OF-WAY ACTIVITIES PERFORMED BY OTHERS UNDER THE SUPERVISION OF THE IDAHO TRANSPORTATION DEPARTMENT

When appropriate, the Headquarters Right-of-Way Section can delegate the authority for right-of-way projects or portions of a project to Local Public Agencies (LPAs) or consultants. The following chapter gives guidelines for those situations.

ITD can perform any or all the duties of right-of-way acquisition for an LPA or LHTAC upon request, by drafting and executing a State-Local Agreement.

### 6.1 LOCAL PUBLIC AGENCIES (LPAS)

The Headquarters Right-of-Way Section is responsible for monitoring the acquisition activities of local agencies using federal funds for highway purposes.

HQ Right-of-Way shall provide guidance and coordination concerning state and federal requirements and also monitor LPA activities during the acquisition phase. Reviews shall be documented on an [ITD-500](#) form.

The Right-of-Way Manager is responsible for coordination and final review of LPA activities. A representative of FHWA may also be a member of the review team.

Reviews may involve actual LPA file reviews or may be limited to the district's documentation. They will be of sufficient depth to clearly demonstrate the quality of the district's coordination and monitoring efforts with an evaluation of the LPA performance in writing.

The Procedure Review Unit is responsible for progress and final reviews of the monitoring activities. Reviews must be of sufficient depth to clearly demonstrate the quality of ITD's coordination and monitoring efforts with an evaluation of the LPA performance in writing.

Local Public Agencies (LPA'S) that acquire property with federal funds shall adhere to the provisions set out in this manual for the rental, leasing, maintenance and disposal of property unless they have developed their own procedure which has been approved by ITD. This requirement shall be made a part of all LPA agreements with ITD in which federal funds participate in any phase of the project.

For more information on LPAs, see Chapter 12.

### 6.2 SELECTION OF PROFESSIONAL SERVICES

When ITD personnel are not available, the Right-of-Way Section may obtain professional services from outside sources. Areas where professional services can be utilized are appraisal, appraisal review, negotiation, relocation, property management and titles. Contracts for such professional services shall be obtained in accordance with [Idaho Transportation Board Policy 4001](#). The contract administrator for the right-of-way phase shall be ACHD, LHTAC or the designated representative in the respective district. For other projects it will be the Right-of-Way Manager or a

designated representative. LPA's will follow the qualification and selection process set out in this section when obtaining professional services from outside sources. LPA's must use approved vendors from ITD's appraisal, negotiator, title, and relocation vendor lists.

In order to establish a list of qualified sources once every three years, a register of qualified area property appraisers, review appraisers, negotiators for property acquisition and relocation specialists will be established by the Right-of-Way Section.

**Vendors chosen to perform right-of-way work on behalf of an LPA or ITD must be licensed in the State of Idaho for that work.**

Bids for specialized services, such as moving costs, sign relocation estimates, and salvage values, may be obtained without competitive bids.

#### *DBE PARTICIPATION:*

The Disadvantaged Business Enterprise (DBE) participation has a statewide annual goal for the current Federal Fiscal Year. For further information regarding DBE participation requirements, call the ITD EEO Office at (208) 334-4442. A directory of DBE companies currently certified by the State of Idaho may be viewed at the following web site: <http://itd.idaho.gov/civil/dbefirms.htm>.

### 6.3 METHODS OF PROCUREMENT

The most common methods of procurement are set forth below. This does not preclude other methods allowed by state law.

Proposals may be sought through solicitation of qualified firms in the following instances:

1. When more than one source of outside professional services exists,
2. Conditions are not appropriate for the use of formal advertising,

This may be accomplished either by the Right-of-Way Section or through ITD's Contract Administration Section as a part of a full service project engineering solicitation. Firms as well as their staff must have experience acquiring real property in compliance with the requirements of Title 23 and Title 49 of the Code of Federal Regulations. When the Right-of-Way Section solicits services, selection will be based on the following criteria:

1. Experience, qualifications and technical competence in the type of work required stating the roles and responsibilities individuals will assume on the project solicited;
2. Ability to meet anticipated schedules;
3. Past performance either with ITD or other state DOT's on similar projects;
4. References and resumes including those for sub-consultants;
5. Resumes including statements of ability and relevant experience of the firms personnel who will be used on the project with particular regard for the Project Manager and key staff;
6. The firm's delivery approach and responsiveness to ITD;
7. Present and projected workload;
8. Cost factors.

Each of the above items will be rated on a scale of 0 (low) to 20 (high) by a right-of-way team of three members designated by the Right-of-Way Manager.

Only firms with the ability to manage and complete each of the necessary elements of the right-of-way project, which may include but is not limited to appraisal, appraisal review, negotiation, relocation, property management and title services, shall be considered. Although sub-consultants may be used to accomplish one or more of the necessary right-of-way elements, the consultant firm must contain qualified key staff with the expertise and experience to undertake and accomplish contract tasks on time, within budget, in accordance with applicable state and federal standards, meeting both technical standards and quality expectations. Sub-consultants shall satisfy the same standards and qualifications as consultant firms.

All appraisals and appraisal reviews must be accomplished by Idaho licensed Certified General Appraisers from a list approved by ITD. Title services must be performed by a title company operating within the county where the real property being acquired is located and licensed by the State of Idaho through the Idaho Department of Insurance.

#### 6.4 NONCOMPETITIVE CONTRACTING

When it is in the best interest of ITD, noncompetitive contracting is an option. Justification for noncompetitive (sole source) contracting will be generated to the file on an [ITD-500](#) by the District or Right-of-Way Section employee and must be dated and approved by the Right-of-Way Manager.

A contract can be awarded when the following circumstances exist:

Small projects (less than five parcels and the total cost of the appraisals is less than \$25,000) when time constraints and cost considerations determine a sole source would best serve the public interest. Documentation with justification must accompany this method.

The services are available only from a single qualified source.

Public exigency or emergency precludes a competitive solicitation process.

#### 6.5 SELECTION COMMITTEE

A committee consisting of the Right-of-Way Manager and two Right-of-Way Section employees will review appraisal and appraisal review contracts and agreements. The Right-of-Way Manager shall have the final approval of all Right-of-Way contracts.

For those routine contracts or agreements exceeding \$200,000 total payment, the evaluation committee will submit recommendations and justification to the Chief Engineer, Development for Idaho Transportation Board consideration. If approved by the Idaho Transportation Board, the contract or agreement can be solicited for and executed by the ITD Director or Chief Engineer. For those contracts or agreements not needing Idaho Transportation Board approval, the Right-of-Way section shall execute the contract.

**Approval must be obtained from Internal Review prior to entering into contracts of \$200,000 or more.**

## 7 PROPERTY MANAGEMENT

This Chapter details the functions of the Property Management Unit in the Right-of-Way Section and describes the various scenarios a property owner can experience in the right-of-way process.

The Property Management Unit of Right-of-Way helps determine ownership of properties and coordinates any leases, rentals, sales, donations or trades of property. They also maintain a statewide inventory of real property.

[Idaho Statute 40-311](#) authorizes the Board to acquire real property for highway purposes.

[Board Policy 4005](#), Management of Department Owned Property, guides the Property Management Unit in delegating authority to purchase, lease, otherwise acquire, dispose, sell or exchange Department-owned real and personal property.

### 7.1 AUTHORITY TO ACQUIRE REAL PROPERTY

The Director or a delegate is authorized to purchase, lease, and exchange real property, to execute deeds, easements, and agreements for all real estate property transactions, and to execute on behalf of the Board an *Order of Condemnation* for individual parcels of land.

All state-funded real property purchases for right-of-way require an appraisal. This appraisal is required to correctly identify the authority thresholds listed in Board Policy 4005.

The Director or a delegate may authorize an administrative settlement for up to \$200,000 over the reviewed fair market value of properties appraised at up to \$1,000,000. Administrative settlements for appraisals in excess of \$1,000,000 shall not exceed 20% of the reviewed fair market value of the property. Proposed settlements exceeding these thresholds shall come before the Board for approval.

Real property acquisitions for the Department shall be in fee simple title, except in those instances when the property can be acquired in easement form per the Right-of-Way Manual. When advantageous, purchases or condemnations may include uneconomic remnants, landlocked tracts, or the whole of the real property affected. Remainders that are acquired may be traded for other land needed by the Department, used by the Department, or disposed of per [Idaho Code 58-335A](#).

### 7.2 DEPARTMENT OWNED PROPERTY

Department employees shall not purchase or procure (either directly or indirectly, through any person acting on his/her behalf, or for his/her benefit) any properties or materials owned, sold, surplus or scrapped by the Department. This includes Department-owned real property (land) that the Department offers for sale to the public as surplus property pursuant to [Idaho Code 58-335A](#), any other real property that is sold or exchanged by the Board and the Department pursuant to [Idaho Code 40-311](#), or personal property (all property belonging to the Department other than real property) offered for sale to the public as surplus.

Department-owned personal property, regardless of the value, shall not be taken, salvaged or used by employees for any personal purpose.

The Department shall recover all readily determinable costs associated with the sale of Department-owned materials, supplies, equipment and services to other government agencies per the Financial Accounting Manual and the Business and Support Management (BSM) Manual.

Department employees may purchase properties or materials offered for sale through public auction by other State agencies where there has been no Department involvement in the disposal. This includes surplus maintenance yard properties under the control of the Board of Land Commissioners or surplus administrative facilities properties under the control of the Department of Administration which, pursuant to [Idaho Code 58-335A](#), may be purchased by a Department employee when the property is offered for competitive bidding and the employee is the successful bidder.

The Right-of-Way Manager, in coordination with the District Engineers, shall maintain a current inventory of all real properties owned by the State of Idaho and controlled by the Department ([Administrative Policy A-03-11](#)).

Disposition of surplus real property shall be a function of the Districts, with the assistance and coordination of the HQ Right-of-Way Property Management Unit.

#### *INVENTORY*

An inventory of all real property improvements shall be developed on each project.

Likewise, an inventory of all significant fixtures shall be developed on a parcel basis at various stages of the Right-of-Way function through the use of the ITD-5204, Fixture/Personal Property Inventory.

- Appraisal - Any significant fixture included as a portion of the acquisition shall be inventoried by the Appraiser inspecting the parcel and this inventory shall be made a part of the appraisal report.
- Possession - At the time of acquisition an inventory shall be prepared jointly by the negotiator and grantor and/or tenant. It shall show all items purchased as per the ITD-363, Right-of-Way Contract and shall be submitted to headquarters with the acquisition documents.
- Lease - Should ITD-owned fixtures become a part of a Lease Agreement or Rental Arrangement, an inventory prepared jointly by the District Property Manager and proposed tenant shall become an addendum to the agreement. The items shall be inventoried in a like manner upon termination of the agreement and any variance of items listed shall be accounted for.
- Update - Periodically, as activities indicate, an update of the inventory may become necessary. An updated inventory shall be submitted following a break-in, theft, fire, other casualty loss, or other appropriate occasion.

#### *DETERMINATION OF VALUE*

In estimating retention value, the Property Management Unit shall be aware of the following:

- For a building or fixture to have value, it must be usable, movable and in good condition.
- It must be economically feasible to remove it from its present site.

### 7.3 POSSESSION OF THE PROPERTY

No owner shall be required to surrender possession of real property before the acquiring agency either:

- pays the agreed purchase price or
- deposits with the court, for the use of the owner, an amount not less than the agency's approved estimate of just compensation, or the amount of the award of compensation in the condemnation proceeding for such property.

### 7.4 NOTICE TO VACATE

The Relocation Unit will provide a 90-day notice to property occupants that are relocating.

No person lawfully occupying real property at the time of acquisition shall be required to move from a dwelling, or to move a business or farm operation without at least 90 days written notice from the acquiring agency. The notice must state a specific date at least 90 days in advance of the required moving date. The 90-day notice must also state that the occupant will not have to move earlier than 90 days after a comparable replacement dwelling is made available (as defined in the [Code of Federal Regulations](#)). The 90-day notice shall further state that the occupant will not have to surrender his property until the state has obtained legal possession of the property.

### 7.5 CONTINUING TO OCCUPY THE PROPERTY

If the acquiring agency permits an owner or tenant to occupy the real property acquired (defining acquisition as the date the state has legal possession) on a rental basis, the amount of rent required shall not exceed the fair rental value of the property. The rent shall be collectible on the first of the following month subsequent to the acquisition payment being received by the property owner, or after the initial 90 day to vacate notice issued by the Relocation Unit: whichever is later. For more information about Relocation, please reference Section 2.7.

The district shall be responsible for taking physical possession of properties acquired by ITD. Extensions shall be granted only under extenuating circumstances by the District Engineer with notification to the Relocation Unit for documentation.

Any occupancy beyond ITD's date of physical possession shall be subject to a rental arrangement and payment shall be received. The district shall establish a fair rental value (from market data) for the short-term period and administer the rental.

## 7.6 IMPROVEMENTS ON THE PROPERTY

The acquiring agency shall treat all improvements on the property with equal interest. For the purpose of determining the just compensation to be paid for any building, structure, or other improvement, the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired. The owner of improvements located on property being acquired shall be offered the opportunity to retain said improvements at the established salvage value.

Improvements with any significant value, scheduled for sale, shall be protected and preserved. Promptly after obtaining possession, District Property Managers shall inspect the property and make arrangements to harden the property to protect it against vandalism, theft, fire and other hazards.

The nature of each property shall be the indicator of what action should be taken regarding the disconnection of utilities, winterizing, fastening or boarding up of doors and windows, or surveillance by ITD personnel as well as local law enforcement authorities. All related costs shall be chargeable to the acquisition costs.

A tenant who owns a building, structure, or other improvement required to be acquired shall be paid either:

- the market value which the building, structure, or improvement contributes to the market value of the real property to be acquired,
- or the market value of the building, structure, or improvement for relocation from the real property, whichever is greater.

### *PAYMENT FOR TENANT OWNED IMPROVEMENTS*

The acquiring agency shall not pay both the tenant and the property owner for the cost of the building, structure, or improvement on the property. The tenant can only be paid for a building, structure, or improvement on the property if the owner of the land involved disclaims all interest in the improvements of the tenant.

In consideration for any such payment, the tenant shall assign, transfer, and release to the acquiring agency all right(s), title, and interest in and to such improvements. A separate summary statement shall be provided to such tenant where improvements are being separately acquired.

No information in this manual shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests under Idaho Eminent Domain procedures.

### *REIMBURSEMENT FOR INCIDENTAL EXPENSES*

Reimbursement for incidental expenses shall be given to the owner as soon as practicable. Practicable is defined as either:

- the date of payment of the purchase price or
- the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property,

whichever is greater.

Incidental expenses are defined as:

- Recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency.
- Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
- The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency.

### *FUNCTIONAL REPLACEMENT*

When publicly owned real property, including land and/or facilities, is to be acquired for a federal-aid highway project, a functional replacement can be given as compensation. The property can be replaced in lieu of paying the fair market value.

## **7.7 DONATIONS**

This subchapter explains the process of property donation. We shall fully inform property owners wishing to donate property of their right to receive just compensation and the right to an appraisal by a qualified appraiser for acquisition of the property.

If the value of donated right-of-way is to be claimed by the governmental entity as in kind match toward federal project participation, the following criteria must be met:

On projects where **ALL** of the right-of-way is to be donated, there still must be right-of-way funds obligated by the District on the [ITD-2101, Project Authorization and Agreement](#). If only a portion of the right-of-way is to be donated and the remaining right-of-way is to be acquired, then the right-of-way funds for acquisition must be obligated.

If the landowner donating a parcel wishes to have an appraisal of the donation, it shall be done in accordance with USPAP standards.

- Donated parcels whose value is between \$5,000 and \$10,000 will be appraised if the landowner requests an appraisal in order to support a charitable contribution on their state and/or federal tax filing.
- Donated parcels valued either at less than \$5,000 or less than \$10,000 where the land owner did not state their intent to claim a charitable contribution, can have the value of the donated land:
  - abstracted from other appraisals or
  - based on assessed value or set by other methods commonly used in the appraisal industry to estimate value.

### **Donated properties must have clean title.**

Upon certification of the right-of-way acquisition, Financial Services will be notified of the parcel and their respective values, via an [ITD-500](#).



## 7.8 PROPERTY DISPOSAL

Surplus property is land declared no longer useful or usable for any current or future ITD purpose.

The Director or a delegate is authorized to sell, exchange, or dispose of surplus real property per [Idaho Code 40-311](#) and [Idaho Code 58-335A](#). Surplus real property must be sold or exchanged at a value that is not less than the fair market value of the property as established.

The Department cannot directly dispose of surplus real property which is an administrative facility or a maintenance yard site per [Idaho Code 58-335A](#). Such surplus property must be transferred to the State Board of Land Commissioners for disposal.

Further 23 CFR 710.409(b) has special requirements for property that was purchased with federal aid funding:

*Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the STD shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the States' disposal notification listing.*

Prompt disposal of improvements minimizes any liabilities or expenses. The district shall anticipate the possession of properties and recommend the disposal to the Property Management Unit. As a general rule, disposal shall be accomplished promptly following possession.

In no event shall improvements be disposed of, regardless of the method employed, prior to being vacated by the occupant(s).

The Property Management Unit, or designated representative, shall be the auctioneer responsible for conducting the auction and shall always be assisted by a cashier who shall receive all proceeds. An employee of ITD not involved in Right-of-Way activities shall be provided by the district to serve as cashier.

ITD shall charge current fair market value for the disposal of surplus real property if the property was acquired utilizing federal funds under Title 23 of the United States Code.

ITD may be allowed to dispose of surplus real property, acquired utilizing federal funds, at less than fair market value, with the approval of FHWA, if ITD clearly demonstrates that an exception is in the overall public interest for social, environmental or economic purposes; for nonproprietary governmental use; or for use under Title 23 of the United States Code, Public Transportation. ITD shall submit requests for such exceptions to FHWA in writing, including NEPA clearance.

ITD is allowed to dispose of surplus real property, acquired utilizing federal funds, at less than fair market value, without the approval of FHWA, if ITD documents that the property will be utilized for one of the following purposes:

- Use by a public utility

- Use by Railroads
- Use for bikeways and pedestrian walkways
- Use for Title 23 transportation projects

All surplus property will first be offered in the following order to state agencies, county, city and highway districts, in which the land is located, at the appraised value. If there is no interest from any of the public agencies, then negotiations can begin with public agencies at below the appraised value. If a sale is to occur the property must be used for a public purpose in perpetuity or ownership of the property will revert back to ITD. An ITD-0152, Statement of Public Interest, must be utilized for the negotiations.

Properties valued under \$10,000:

If no public agency expresses an interest in purchasing the surplus property, the adjoining landowners will be given an opportunity to purchase it. If no adjoining landowner exercises the option, ITD may offer the lands to the general public by a public auction.

For properties valued over \$10,000:

If no public agency expresses an interest in purchasing the surplus property, then it will be offered to the general public by either a sealed bid or public auction.

Earnest money may be collected by ITD when a private party requests sale of property. All administrative costs must be recouped in the sale of all surplus property (i.e. appraisals, surveys, etc.) regardless of the value.

#### *RELINQUISHMENT OF OPERATING RIGHT-OF-WAY*

The relinquishment of any right-of-way is the responsibility of Headquarters' Transportation Planning Section, who will obtain FHWA approval.

Prior to disposing of operating right-of-way, the district must provide a written explanation as to why:

- The land will not be needed for highway purposes in the foreseeable future.
- The right-of-way retained is adequate under present day standards for the facility involved.
- The disposal won't adversely affect the highway facility.
- The property being disposed isn't suitable for retention to restore, preserve, or improve scenic beauty.

In addition, the district must provide a plan that identifies the right-of-way proposed for disposal in relation to construction features and to the remaining right-of-way.

#### *SURPLUS PROPERTY IMPROVEMENT FUND*

The Surplus Property Improvement Fund (SPIF) is established to assist the districts in the disposal of surplus properties. This fund is to be used only in situations that substantially increase the value

of the surplus property after considering the improvement cost and the district does not have the funds or the resources.

Some examples of eligible expenditures are acquiring access or improving the access to the surplus property, fencing, earthwork or surveying.

The written request to use the SPIF must be submitted to the Property Management Unit including a description and estimated value of the surplus property prior to the improvement, the proposed improvement and estimated improvement cost and the estimated value of the surplus property after the improvement.

The Property Management Unit will review the request and with the concurrence of the Right-of-Way Manager will respond with a written approval or denial. There will be no expenditure of the Surplus Property Improvement Fund without prior written approval.

## 7.9 PROPERTY TRADES

Per [Idaho Code 40-311](#), the Idaho Transportation Board is authorized to exchange any real property, either in fee or in any lesser estate or interest, rights-of-way, easements and other rights and rights of direct access from the property abutting highways with controlled access, deemed necessary by the board for present or future state highway purposes.

Further, Idaho Code 58-335 gives the Idaho Transportation Department authority to sell or exchange any ITD-owned property to any tax-supported agency or political subdivision of the State of Idaho (excluding the State of Idaho or its agencies). Properties organized for exchange must be appraised prior to sale.

The Board has delegated the responsibility outlined in 7.9 to the Director of the Transportation Department via Board Policy 4005.

Exchange property is land acquired or owned by ITD which has been declared as having value for purposes of trade due to its monetary equivalency. Property owned by ITD may be traded as full or partial payment for other properties needed by ITD.

The Idaho Transportation Board is empowered to exchange real property. Lands that are no longer needed by ITD may be traded for lands that are needed. All lands involved shall be appraised and trades shall normally be at or near market value.

Differences in value may be paid or received in cash. If a net payment is due ITD, the transaction shall constitute a sale.

## 7.10 ITD RETENTION OF PROPERTY

Should either the district or headquarters desire to obtain any improvements or fixtures for operations purposes, the following must be accomplished:

District budget capabilities and management approval must be acquired, and

Acquisition authority funds must be appropriately credited, with a Journal Voucher, by the amount so established by the Property Management Unit.

If it is consistent with Highway Design, any portion of right-of-way may be used for green strips, small parks, play areas, parking, or other highway-related public use. Normally ITD should retain supervision and jurisdiction over such lands, but it can enter into agreements with local political subdivisions and non-profit organizations concerning such property.

## 7.11 DEMOLITION

When a sufficient quantity of demolition work is available to attract competitive bidding, the District Property Manager shall request the initiation of a contract. A request shall be in written form to the District Engineer with a copy to the Property Management Unit listing the items to be included.

Demolition contracts shall be processed by the district in the same manner as a construction contract, except that expenses and/or payments shall be chargeable to the acquisition cost.

If a formal contract cannot be justified or is not feasible because of safety or aesthetics, improvements may be demolished by ITD forces. Costs shall be chargeable to the acquisition costs.

## 7.12 MAINTENANCE AND ADMINISTRATION OF ITD-OWNED PROPERTY

The physical inspection and maintenance of any ITD-owned real property shall be the responsibility of the District. The headquarters building and site shall be an exception and shall be the responsibility of the Division of Administrative Services, Division Administrator, who shall be responsible for maintenance and administrative control.

The district shall be charged with the responsibility of maintaining its offices, sheds, their related sites and all operating property. It shall also be the district's responsibility to pay any charges incurred during this maintenance. Repair or maintenance on non-operating real property or property within the right-of-way of pending construction may be required. The District Engineer may authorize such work with the concurrence of the Right-of-Way Manager. In such cases, the district shall inspect the work to verify that it was performed satisfactorily and forward the billing statement to the Right-of-Way Manager for payment. Any utility charges, including irrigation water and drainage assessment, for these properties shall also be processed by the districts.

All property and casualty insurance coverage carried by ITD shall be administered through the Bureau of Risk Management, Department of Administration.

The Division of Administrative Services, Division Administrator, shall be responsible for the ITD insurance program and shall delegate the Financial Services Section to act as coordinator between ITD and the Bureau of Risk Management.

All ITD-owned buildings shall be fully insured except those purchased for Right-of-Way or non-operating purposes. These structures may be added to the policy at any time by Financial Services, providing they are specifically requested to do so by the Property Management Unit. Should insurance be desired, the Property Management Unit shall report to Financial Services the

structure's type, location and the insured value necessary. The insured value shall be representative of the acquisition costs, except in those situations which indicate a need to insure the structure for replacement cost.

### 7.13 AIRSPACE MANAGEMENT AND LEASING

Airspace leases cover the range of leases for highway air rights describing that area at, above or below the plane of the transportation facility and located within the right-of-way boundaries. The right to use this area by public entities or private parties for interim non-highway uses may be granted in an airspace lease, as long as such uses will not interfere with the construction, operation or maintenance of the facility or anticipated future transportation needs. Private or public uses of airspace may occur, but the preservation of the highway capacity is essential.

An airspace lease may range from a short-term use with few or no tenant improvements to a long-term use with substantial structures.

Airspace may be located on a federal highway or state system.

This section shall apply only to airspace which is improved and utilized for, or in conjunction with, a commercial, for-profit activity whose annual fair-market rental value as established by ITD is \$120 a year or greater.

This section shall apply only to:

- leases entered into after adoption of this section and
- otherwise qualifying properties presently occupying airspace under encroachment permits at the time of permit renewal.

This section shall not apply to railroads and public utilities which cross or occupy highway rights-of-way, bikeways, pedestrian surface cross walks, access accommodations (except on full control of access facilities) and land owned by a government agency (unless used in a proprietary manner).

Any proposed airspace lease must receive environmental approval from ITD's Design Section as to the lease's impact on the transportation facility and surrounding area.

Prior approval must be obtained from FHWA on all air space leases on the Interstate System.

ITD and FHWA must approve any changes in use, which are on the Interstate System. Further, no lease can be transferred, assigned, or conveyed without prior approval of ITD.

Proposals may involve coordination with multiple offices within ITD such as Planning, Environmental, Traffic Operations and Maintenance. Details of required approvals should be incorporated into the airspace agreement as appropriate.

#### *APPLICATION FOR AIRSPACE LEASING*

Application for airspace use requires a letter addressed to the District Engineer, with a copy to the Right-of-Way Manager, requesting a lease of specified property. The actual draft lease depends on the complexity and improvements on the parcel. Utilization of an ITD-2702, Airspace Lease, is

required. Terms and conditions unknown at the time of application may be omitted from the lease agreement at the time of initial application. The following items must be addressed in the application and proposed lease:

- 1) Identification of the party responsible for developing and operating the airspace
- 2) A general statement of the proposed use
- 3) The proposed design for the use of the space, including any facilities to be constructed.
- 4) Maps, plans, or sketches to adequately demonstrate the relationship of the proposed project to the highway facility.
- 5) Provision for vertical and horizontal access for maintenance purposes.
- 6) Other general requirements as term of use, insurance requirements, design limitations, safety mandates, accessibility and maintenance as outlined further in this section.
- 7) Provision to prohibit the transfer, assignment, or conveyance of the airspace rights to another party without prior approval with FHWA concurrence on Interstates.
- 8) Provision to revoke the agreement in the event that the airspace facility ceases to be used, is abandoned, or becomes necessary for highway purposes.
- 9) Provision to revoke the agreement if the terms of the lease are breached and such breach is not corrected within a reasonable length of time after written notice of noncompliance has been given. In the event the agreement is revoked, ITD may request the removal of the facility occupying the airspace. The removal shall be accomplished by the responsible party in a manner prescribed and at no cost to the FHWA. An exception to facility removal is permitted when the improvements revert to the state upon termination of the agreement and the state chooses to accept them.
- 10) Provision to allow ITD and authorized FHWA representatives to enter the airspace facility for the purpose of inspection, maintenance, or reconstruction of the highway facility when necessary. The manner of when and how these inspections are to be made should be specified in the airspace agreement.
- 11) Provision that the facility to occupy the airspace will be maintained so as to assure that the structures and the area within the highway Right-of-Way boundaries will protect the highway's safety and appearance and that such maintenance will cause no unreasonable interference with highway use.
- 12) Provisions assuring that the airspace user will be responsible for any resulting hazardous waste contamination without liability to ITD and FHWA.
- 13) Provisions to assure full understanding that the airspace user will not qualify for relocation benefits under the Uniform Act.

#### *CONDITIONS OF AIRSPACE USE*

Use of airspace beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation and safety of the highway facility. ITD and FHWA personnel shall be allowed access for inspection purposes.

The proposed use of airspace above the established gradeline of the highway shall not, at any location between two points established 2 feet beyond the two outer edges of the shoulder, extend below the horizontal plane which is at least 16 feet 6 inches above the grade line of the highway, or

the minimum vertical clearance plus 6 inches as approved by ITD, except as necessary for columns, foundations or other support structures.

Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the grade line of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above, may be considered.

Piers, columns, or any other portion of the airspace structure shall not be erected in a location that will interfere with visibility, reduce sight distance, or in any other way interfere materially with the safety and free flow of traffic on the highway facility.

The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by ITD. Supports shall be clear of the shoulder or safety walks of the outer roadway. However, supports may be located in the median or outer separation when ITD determines that such medians or outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to ITD. No supports shall be located in the ramp gores or in a position that would interfere with the signing necessary for the proper use of the ramp.

The use of airspace shall not result in either highway or non-highway users being unduly exposed to hazardous conditions because of highway location, design, maintenance and operation features.

Consideration shall be given to seismic design criteria to assure the future safety of the highway facility and of the airspace use.

Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway or accidents resulting from non-highway uses shall be provided. Airspace facilities shall not be approved for construction over or under the highways unless the plans therefor contain adequate provisions for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

Any airspace facility shall be fire-resistant in accordance with the provisions of the applicable local building codes. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation that is a hazard to highway or nonhighway users. Proposals involving the construction of improvements in airspace should be approved by the state authority responsible for fire protection standards. In cases where ITD questions the acceptability of the existing code, conformance with a nationally accepted model building code will be required.

No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section of the highway for the conditions at the location, assuming a volume of traffic equal to capacity. Each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation. ITD shall determine such lengths for each particular case. Exceptions may be

considered when complete tunnel ventilation is provided. Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end, the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by ITD.

The design, occupancy and use of any structure over or under a highway facility shall be such that the use, safety, appearance, or enjoyment of the highway will not be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind.

On-premise signs, displays, or devices may be erected on structures occupying highway airspace but shall be restricted to those indicating ownership and type of on-premise activities and shall be subject to regulation by ITD with respect to number, size, location and design.

Construction of any structure above or below a highway facility shall not require any temporary or permanent change in alignment or profile of an existing high-way without prior approval by ITD.

Where ITD is of the opinion that the proposed use of airspace requires changes in or additions to the existing highway facilities for the proper operation and maintenance of highways, such facilities shall be provided without cost to federal funds. There may be an exception to this policy when the proposed use is for highway-related or other public or quasi-public use which would assist in integrating the highway into the local environment and enhance other publicly supported programs.

Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance and reconstruction, when necessary.

Permission shall not be granted for any use of airspace that does not conform with the provisions of current, appropriate Federal Aviation Administration regulations.

Approval for the use and occupancy of highway Right-of-Way for the parking of motor vehicles shall be granted only if proper consideration has been given to the need for the following:

- Parking design or arrangement to ensure orderly and functional parking.
- Plantings or other screening measures to improve the esthetics and appearance of the area.
- Surfacing, lighting, fencing, striping, curbing, wheel stops, pier protection devices, etc.
- Access for fire protection and fire-fighting equipment.

#### *AIRSPACE INVENTORY*

ITD shall maintain an inventory of all authorized uses of airspace. This inventory, which shall be available for review by appropriate federal and state agencies, shall include, but not be limited to, the following items for each authorized use of airspace:

- Location by project, survey location, or other appropriate method.



- Identification of the authorized user of the airspace.
- A three-dimensional or metes-and-bounds description.
- As-built construction plans of the highway facility at the location where the use of airspace was authorized.
- Pertinent construction plans of the facility authorized to occupy the airspace.
- A copy of the executed airspace agreement.

## 8 ADMINISTRATIVE SETTLEMENTS

This chapter describes policies relating to the settlement of acquisition through administrative means and legal processes.

An administrative settlement is a settlement, authorized by the responsible official, in excess of the approved just compensation.

### 8.1 RESPONSIBILITIES

All administrative settlements shall be in writing and explain the justification for settling any parcel above the established Fair Market Value (FMV). The extent of the written explanation should be consistent with the situation, circumstance and amount of money involved. It should utilize, as available, property sales data, owner appraisals and engineer estimates to support why it is in the best interest of the public for ITD to settle a parcel in excess of FMV.

The District Engineer is responsible for and shall approve any administrative settlements \$25,000 or less.

The District Engineer and the Right-of-Way Manager are responsible for and shall approve any administrative settlements over \$25,000.

The authorized LPA representative for LPA and Enhancement projects are responsible for and shall approve any administrative settlements up to \$25,000 in value. Any administrative settlement above \$25,000 shall be approved by the Right-of-Way Manager.

Per Board Policy B-4005, the Director or a delegate may authorize an administrative settlement for up to \$200,000 over the reviewed fair market value of properties appraised at up to \$1,000,000. Administrative settlements for appraisals in excess of \$1,000,000 shall not exceed 20% of the reviewed fair market value of the property. Proposed settlements exceeding these thresholds shall come before the Board for approval.

The responsible official may approve an administrative settlement when he or she determines that such action is in the public interest. When he or she decides to approve the settlement, the responsible official must give full consideration to all pertinent information set out in the CFR and FAPG. A written justification documenting the reason for an administrative settlement shall be placed in the parcel file.

### 8.2 LEGAL SETTLEMENTS

The agency's legal representative (Attorney General) may make a legal settlement when it is determined by the agency's responsible official that such action is in the public interest. Legal settlements shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over right-of-way matters. Any legal settlement which exceeds the reviewed Fair Market Value by \$25,000 shall also require the concurrence of the appropriate District Engineer and Right-of-Way Manager.

The Attorney General shall update the right-of-way file whenever he or she makes a legal settlement in excess of the amount established as just compensation. The rationale for the settlement shall be in writing. The extent of written explanation will be governed by the situation, circumstances, and amount of money involved. This document requires the signature of the responsible Right-of-Way official as well as the District Engineer.

If the administrative settlement, legal settlement, or court award includes a payment for items considered ineligible for federal participation, the amount paid for such items shall be determined by the agency and excluded from any claim for federal participation in the settlement or award. This shall concur with the CFR or the Federal-Aid Policy Guide.

### 8.3 INCENTIVE PAYMENTS

When a project is fast tracked, and the right-of-way process has to be expedited, ITD has the option to offer incentive payments to property owners. The District Engineer determines if an incentive payment is a viable option for the project properties.

Incentive payments shall be offered by the project, not by the property. Thus, if a project has 13 properties that require acquisition, the same incentive payment shall be offered to each property owner. If he or she determines there is just cause, the District Engineer must justify in writing why a property in a project does not receive the same incentive payment as the rest of the properties.

## 9 RELOCATION

We strive to provide for the fair and equitable treatment of persons displaced. The Relocation Unit provides a reasonable period of time for property owners who may be required to move from property acquired by ITD for highway projects or other transportation-related programs, without causing disproportionate injury as a result of those programs designed for the benefit of the public as a whole.

Titles I and II of the "[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#)" (Public Law 91-646) and amendments thereto, together with [49 CFR Part 24](#) and Chapters 1 and 20, Title 40, and [Chapter 11, Title 58, Idaho Code](#), and [IDAPA No. 39.03.44](#), authorize ITD to perform relocations.

### 9.1 RELOCATION POLICY

While ITD strives to minimize the occupied properties affected by a project, occasionally we must relocate property owners for public projects. The Relocation Unit always tries to act quickly in the beginning of a project to identify properties that may require relocation, and address those properties early in the process.

Relocation of persons displaced as a result of a federally assisted project will be in accordance with:

- Assurances made by ITD to the FHWA.
- Rules and regulations as promulgated by authority of [49 CFR Part 24](#).
- Procedures established by the Relocation Unit

Staff and Fee Appraisers shall include a determination of real property versus personal property, including ownership, as part of the appraisal report. This determination is required to assist the Relocation Unit. When applicable, the appraiser and relocation staff may visit the property together.

The Relocation Unit shall provide advisory services, early relocation planning, and estimate the available business and residential sites. Preliminary planning should identify relocation problems and develop solutions.

There is no waiver of relocation assistance or benefits from displacees. A displaced person may refuse the benefits on his or her own initiative.

All relocation additive determinations will be provided by ITD on all federal-aid projects.

### 9.2 RECORD KEEPING

ITD shall maintain adequate records of its displacement activities to demonstrate compliance with FHWA regulations. These records shall be retained for a minimum of three years after each person displaced from the property receives the final payment to which he or she was entitled.

ITD's records will be kept confidential regarding their use as public information, unless applicable state or federal law would provide otherwise.

ITD shall submit a report of its displacement activities to FHWA no more frequently than every three years or as the Uniform Act otherwise indicates.

### 9.3 RELOCATION UNIT RESPONSIBILITIES

All determinations, notifications and payments shall bear the signature of the Relocation Unit.

Relocation services shall be provided by the HQ Right-of-Way Section personnel, except when qualified and experienced district personnel or contract personnel are made available.

All 90-day notices shall be issued by the HQ Right-of-Way Section subsequent to obtaining legal possession through legal means by ITD's Legal Section.

A qualified department employee will provide required relocation advice, estimates, and studies as required to project development personnel at various times in project development phases up to the initiation of negotiations for the acquisition of right-of-way. This may include, but is not limited to, appropriate studies and estimates for environmental assessments, project hearing, inquiries from the public sector and providing the Headquarters Right-of-Way Section with ownership data forms and available comparable data for notification and determination purposes.

### 9.4 NOTICE TO VACATE

The acquiring agency will provide a 90-day notice to property occupants that are relocating.

No person lawfully occupying real property at the time of acquisition shall be required to move from a dwelling, or to move a business or farm operation without at least 90 days written notice from the acquiring agency. The notice must state a specific date at least 90 days in advance of the required moving date. The 90-day notice must also state that the occupant will not have to move earlier than 90 days after a comparable replacement dwelling is made available (as defined in the [\*Code of Federal Regulations\*](#)). The 90-day notice shall further state that the occupant will not have to surrender his or her property until the state has obtained legal possession of the property.

## 10 SCENIC ENHANCEMENT

ITD ensures that there is effective state control of outdoor advertising and junkyards in areas adjacent to interstate, primary highway, and the NHS (National Highway System) roads in order to:

- Promote the maximum safety, convenience, and enjoyment of public travel and the free flow of interstate commerce.
- Protect the public investment in the National System of Interstate and Defense Highways, hereinafter called the Interstate System.
- Control the use of and to preserve natural beauty and improve areas adjacent to that system.
- Prohibit, restrict or limit the erection of unauthorized signs, billboards or structures within the right-of-way of any state highway, and to remove any unauthorized signs.

### 10.1 APPLICABLE LAWS

Outdoor Advertising and junkyards adjacent to interstates and primary highways are regulated by:

- The [Highway Beautification Act](#) signed on October 22, 1965,
- [Public Law 89-285](#) including amendments thereto,
- [23 USC 131](#) and [23 CFR 750](#),
- the [Federal & State Agreement of June 2, 1971](#),
- FHWA Memorandums,
- Regulations promulgated by the Idaho Transportation Department Board of Directors,
- *Idaho Code, Title 40, Chapters 1, 3 and 19*,
- IDAPA Rules Nos. [39.03.60](#), [39.03.61](#) and [39.03.40](#)

ITD is responsible for outdoor advertising and junkyards on areas adjacent to interstate, primary highway, and the NHS (National Highway System) roads.

### 10.2 RECORD KEEPING

ITD shall maintain adequate records of its outdoor advertising program activities and junkyard control in sufficient detail to demonstrate compliance with FHWA regulations and [ITD Administrative Policy A-06-25 Records and Forms Management](#). These records shall be retained for the life of the junkyard and each sign maintained on the state's inventory along with records of illegal signs for a minimum of three years after removal. This shall be performed by the District Real Property Specialists with supervision and guidance from the Scenic Enhancement Coordinator of the Right-of-Way Section.

ITD's records will be maintained in such a manner to demonstrate compliance with FHWA regulations and to be available for use by the FHWA, ITD and for public information [ITD 0013, Request for Public Record](#), except that confidential information pursuant to laws, rules and procedures, in, but not limited to, the following:

- The Idaho Transportation Department *Public Records Handbook*,
- [Administrative Policy A-01-15](#),

- [Board Policy 4009](#),
- *Idaho Code* § [9-337](#) through [9-350](#) and
- [Idaho Public Records Law Manual](#).

ITD will submit a report of its sign and junkyard activity to FHWA every three years.

### 10.3 OUTDOOR ADVERTISING

This segment of the Right-of-Way Manual contains general information governing the Outdoor Advertising portion of the Scenic Enhancement Section of the Right-of-Way Manual.

#### *FUNCTION OF THE SCENIC ENHANCEMENT COORDINATOR*

The Right-of-Way Section has a Scenic Enhancement Coordinator. This person:

- Manages the Statewide Highway Beautification program
- Checks State and Federal regulations concerning the Outdoor Advertising applications
- Monitors, advises and assists districts in outdoor advertising issues and hearings.
- Coordinates and consults with the districts on legal issues and liaison with ITD's legal counsel.
- Enters sign information into the computer system and keeps the inventory up to date.
- Creates the sign status report annually for Board review.
- Provides requested information (FOIA) for sign companies.
- Issues Outdoor Advertising Business Licenses to sign companies each year.

All final determinations, permits and licenses shall bear the signature and approval/denial of the Scenic Enhancement Coordinator.

#### *FUNCTION OF THE DISTRICT PROPERTY MANAGER*

Each District has a Property Manager. This person:

- Maintains current inventory through surveillance and inspections.
- Initiates action to eliminate illegal signs.
- Determines the legal status of signs.
- Accepts applications for signs, checks applications for completeness along with the field review, makes a district determination and sends the application to the Scenic Enhancement Coordinator for final processing to include approvals and denials.
- Enters digital images and edits sign information into the computer system and keeps the inventory up to date.
- As required, submits a periodic report to the Scenic Enhancement Coordinator on the status of sign removals.
- Accepts applications for signs, checks applications for thoroughness and returns to applicant if more information is required.
- Completes a field review of each sign application. Extensibility
- Makes a "district determination" for each sign application and compiles documents for transmittal to Scenic Enhancement Coordinator for final review and determination.

- Makes a complete inspection of interstate and primary highways (including new MAP-21 routes as per 2012 legislation) in the district twice a year, spring and fall.

#### *REMOVAL OF ILLEGAL SIGNS*

Any sign without a current permit can be considered illegal and is subject to removal under the state's police power. This is accomplished by a two-phase program of postings by the district and legal action carried out by ITD's Legal Counsel.

After all attempts have failed to encourage the interested parties to remove an illegal sign, the following procedures will be initiated:

1. An [ITD-2311](#), Notice to Remove Outdoor Advertising Display, will be appropriately completed and signed by the District Engineer or an authorized representative.
2. A copy of the order will be posted upon the illegal sign and the certificate of posting and mailing will sent via certified mail with a receipt by the District Engineer or an authorized representative.
3. Copies will be sent by certified mail to the owner or owners of both the offending sign and the sign site's land owner. A copy of the ITD-2311 will be sent to the Scenic Enhancement Coordinator. The original shall be retained in the district records as proof the procedures were followed.

Subsequent to expiration of the appropriate time limitation for an appeal by the interested legal parties to the Board, the District may remove the illegal sign in accordance with the terms of the order and hold the signage materials at the site so designated.

The district will hold the signage material at the site so designated by the order for a minimum of 30 days.

## 10.4 JUNKYARDS

Junkyards within 1000 feet of the applicable highways are controlled by ITD per [IDAPA 39.03.40](#). The Scenic Enhancement Coordinator is responsible to:

- Monitor, advise and assist districts in junkyard issues and hearings.
- Coordinate and consult with the districts on legal issues and liaison with ITD's legal counsel.
- Enter junkyard information into the computer system and keeps the inventory up to date.
- Issues a Junkyard Business license and renewals each year.

All final determinations, notifications and licenses shall bear the signature and approval/denial of the Scenic Enhancement Coordinator.

The District Property Manager:

- Maintains a current inventory through surveillance and inspections.
- Recommends projects for screening or removal.
- Negotiates agreements for screening or removal.
- Monitors compliance with agreements.



- Maintains a contact database for junkyard owners with current information.

During the annual inspections of outdoor advertising, the district Real Property Specialist will also update and maintain the accuracy of the junkyards and dumps inventory, and will report all changes, corrections and current compliance to the Scenic Enhancement Coordinator.

#### *JUNKYARD SCREENING OR FENCING*

Junkyard screening is ruled out only by topography or economic unfeasibility. The status of the operation of the junkyard is not a determining factor for whether or not it must comply (junkyards whose owners have quit, or if is a non-functioning junkyard, must still make it look clean). Where a junkyard is relatively inactive and only marginally profitable, elimination of the junkyard may be possible. Each District Property Manager and the Scenic Enhancement Coordinator would need to work with cities and counties to eliminate a non-functioning junkyard.

#### *RELOCATING JUNKYARDS DUE TO CONSTRUCTION PROJECTS*

Suitable sites for relocation are usually difficult to find. Transferring a nuisance is not a good solution, even though the new location may be legal. Every effort should be made to find replacement sites where adverse effects will be minimal.

Upon approval of a project by the Right-of-Way Section, the District will contact the owner and explain the fencing proposal. If a fencing project is proposed and the owner is in agreement, specifications are recommended by the District.

After approval of the specifications by the Right-of-Way Section, the District will obtain at least two bids from local fencing contractors. The bids, along with a land description and title report, are submitted to the Right-of-Way Section. The Right-of-Way Section will prepare an easement agreement, a Right-of-Way contract, and a claim for payment.

Upon completion of the fencing, the District will submit the verification to the Right-of-Way Section that the work has been completed in accordance with specifications, and the District will indicate its recommendation for payment.

The verification will be accomplished by personnel outside of Right-of-Way, preferably by a person performing in the records inspection process.

## 11 DESIGN-BUILD PROJECTS

The Federal Guidelines that regulate Design-Build are [23 CFR 710](#) (Right-of-Way and Real Estate).

The Idaho State guidelines that regulate Design-Build are:

- [Idaho Code Section 40-902](#) (describes the contracting process for Design-Bid-Build (DBB) projects)
- Idaho Code Section [40-904](#) and [40-905](#) (allows the Department to use Design-Build (DB) and Construction Manager/General Contractor (CMGC) contracting methods under certain circumstances.)

This chapter outlines the right-of-way process for design build projects. The Right-of-Way Section shall work closely with the Innovating Contracting Unit on all design build projects.

### 11.1 EXPLANATION OF THE DESIGN-BUILD PROCESS

Design-build is a project delivery system used in the construction industry. It is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design-builder or design-build contractor. Design-build relies on a single point of responsibility contract and can minimize risks for the project owner and reduce the delivery schedule by overlapping the design phase and construction phase of a project.

When done correctly, the design-build process can accelerate project delivery.

### 11.2 DESIGN-BUILD AND RIGHT-OF-WAY

In a typical design-build project, the right-of-way process is not the responsibility of the design-build contractor, although in certain circumstances it can be done. For most projects, the Right-of-Way Section shall perform the right-of-way process as part of the contract on behalf of the Department, and shall follow the procedures outlined in this Right-of-Way Manual.

#### *IF RIGHT-OF-WAY ACQUISITION IS INCLUDED IN THE DESIGN-BUILD CONTRACT*

If the Innovative Contracting Unit and the Right-of-Way Section agree, and at the approval of the appropriate District Engineer, the right-of-way acquisition and clearance services may be incorporated into the design-build contract. The contract shall include language that either:

- provides that construction will not commence until all property is acquired and relocations have been completed; or
- the construction could be phased or segmented to allow right-of-way activities to be completed on individual properties or a group of properties, thereby allowing certification in a manner satisfactory to ITD's Right-of-Way Section for each phase or segment.

The contractor shall discuss the right-of-way to be purchased with the Right-of-Way Section, ensuring that he/she purchases right-of-way on behalf of the Department **only for the project purpose**. Land or easement purchases for material sources, construction staging, and temporary needs shall be purchased by the contractor with contractor's funds.

If ITD elects to include right-of-way services in the design-build contract, the provisions outlined in [710.313\(d\)](#) must be addressed in the request for proposals document.

The contractor is required to prepare a right-of-way acquisition plan for the project for review and approval by the Project Manager, Innovative Contracting Manager, and Right-of-Way Manager. This shall include:

- A relocation plan in accordance with Chapter 10 of this Manual, which shall include
  - Time estimates for relocation based on individual displace needs
  - Housing availability
  - Regulatory notice to move requirements
- Identification of buildable segments of right-of-way that may proceed to construction when right-of-way acquisition and relocation are complete and independent of right-of-way status on other project segments
- A complete set of right-of-way plans in accordance with Chapter 4 of this manual
- A proposed time schedule that prioritizes activities and the performance of acquisition and relocation
- A cost estimate for each proposed phase of right-of-way acquisition for which the contractor is responsible
- A right-of-way tracking system to provide ongoing status on appraisals, acquisitions, and relocations
- A quality control system to assess the services and payments to owners and occupants
- A plan showing how breakdowns in negotiations will be handled (such as, given to the Right-of-Way Section for condemnation, to follow the guidelines in Section 6.7 of this Manual)

The Right-of-Way Section shall purchase the right-of-way as the project progresses (prior, during or after letting of the project.) The Right-of-Way Section shall also approval all appraised values, just compensation amounts, contracts, administrative settlement amounts, relocation benefit amounts, and proposed use of Last Resort Housing for displacees.

The design-build contractor shall clearly outline the responsibilities of the right-of-way purchase in their bid, and ITD shall clearly define the scope of the right-of-way process in the Request for Proposal (RFP).

The Right-of-Way Manager shall designate a member of the Right-of-Way Section to serve as the internal project manager/contact for each project.

#### *SEGMENTING A PROJECT*

In order to expedite the right-of-way process for Design-Build contracts, a project can be segmented and approached piece by piece. The segments will be assigned by the design-build contractor or the innovative contracting unit, with input from the Right-of-Way Section. If the project is federally funded, the segments must be approved by the FHWA.

Construction cannot begin on a segment until all of the right-of-way for that segment is purchased ([23 CFR 710.313](#)).

**While the individual segments can be authorized to advance to construction, certification cannot be granted until the right-of-way for such sections is in possession and the relocations have been completed.**

#### *RIGHT-OF-WAY PLANS FOR DESIGN BUILD*

Right of way plans shall follow all of the requirements outlined in Chapter 4. Plans for a design build project can be provided by segment for approval by the Right-of-Way Section at the request of the Innovative Contracting Unit and approval of the Right-of-Way Manager.

#### *RIGHT-OF-WAY CERTIFICATION*

Right of way certification is regulated by [23 CFR 635.309](#). For a design-build project, with FHWA approval, the right-of-way certificate can be issued if there is NEPA clearance either:

- at the beginning of a project
- for segments of the project

In order for the FHWA to authorize right-of-way certification for federally funded projects, they must have:

- A cost estimate
- The project is listed in the STIP
- The NEPA is complete
- Complete right-of-way plans

The initial authorization of a design-build project is typically under a conditional right-of-way certificate. However, before construction can be authorized, there shall be amended right-of-way certifications to show that the right-of-way has since been acquired (or at least in possession) and that the relocations have been completed (or at least reasonably accommodated).

#### *ENVIRONMENTAL CONCERNS*

The design-build contractor can begin the project “at risk” prior to obtaining NEPA clearance with approval from the Innovative Contracting Unit and the Right-of-Way Manager and FHWA.

[23 CFR 636.109](#) provides information on the risks associated with proceeding with the project prior to NEPA clearance, and the guidelines that the contractor must comply with in order to proceed.

No parcel can be condemned by legal action without the project having NEPA clearance. If the project is funded with state funds, the design-build contractor must obtain state environmental clearance prior to condemning any parcel on the project.

#### *AFTER THE RIGHT-OF-WAY IS PURCHASED*

The design-build contractor is responsible for clearing the right-of-way purchased by his/her company unless otherwise specified in the contract.

*PREMIUM RIGHT-OF-WAY PAYMENTS*

If a negotiation with a property owner results in the need for payment higher than the Just Compensation established by the appraisal and appraisal review process, the Right-of-Way Section shall take over the negotiations and give the offer of a premium right-of-way payment. This removes the contractor from being responsible for unknown negotiation payments when estimating his or her bid for the project. The premium right-of-way payment shall come from the State or Federal funding for the project, not from the contractor's funds.

*RELOCATION*

The design-build contractor is responsible for providing a written relocation plan with reasonable timing. This plan must be approved by the Right-of-Way Section, Relocation Unit.

## 12 LOCAL PUBLIC AGENCIES (LPAS)

ITD's Right-of-Way section often works with Local Public Agencies on their projects, assisting upon request and lending expertise when needed.

A state-local agreement between ITD and the LPA outlines the responsibilities of the parties, including the purpose of the project and the financial responsibilities.

The Right-of-Way Manager (or his/her designee) shall coordinate and brief the LPA with right-of-way requirements. The Guidelines for Local Federal Aid Right-of-Way Acquisitions is provided here as a resource.

### 12.1 RIGHT-OF-WAY PLAN APPROVAL

There are 2 categories under which right-of-way plans can be approved by agencies other than ITD:

- 1) Right-of-Way Plans can be approved by the LPA if the LPA has sufficient engineering and right-of-way staff.
- 2) LHTAC (Local Highway Technical Assistance Council) has the authority to approve right-of-way plans for a project the agency is overseeing.

If those 2 scenarios do not apply, the agency shall submit right-of-way plans to the Headquarters Right-of-Way Section. Plans that are deemed adequate shall be approved. Plans that are inadequate or require revision shall be marked up with comments and returned to the LPA. The Right-of-Way Plan checklist (Appendix A) is an excellent guide on how to provide adequate plans.

### 12.2 LPA REVIEW REQUIREMENTS

After the completion of the right-of-way phase, prior to the request of the final reimbursement, Headquarters Right-of-Way Procedure Review will review LPA's compliance with Federal Regulations. The Local Public Agency Review Workbook is designed to be completed for all parcels in a project. If the project is very large (more than 15 parcels), a sampling of parcels can be performed (with Procedure Review approval.) A written summary of the review shall be submitted to the Right-of-Way Manager.

### 12.3 LPA CLAIM FOR PRO-RATA REIMBURSEMENT OF FEDERAL FUNDS

In order to be reimbursed, the LPA submits a reimbursement packet to Headquarters Right-of-Way (Procedure Review) which includes:

- 1) Copies of the Right-of-Way Contract
- 2) Invoices
- 3) Warrant

Progress reimbursements may be made on very large projects at the discretion of the Right-of-Way Manager.

## 12.4 LPA FINAL REPORT REQUIREMENTS

When the Right-of-Way acquisition is complete, the LPA submits an ITD-1983 (Local Public Agency Certificate of Completion of Right-of-Way Activities) to Procedure Review.

## 12.5 GUIDELINES FOR LOCAL PUBLIC AGENCIES

These are general guidelines for LPA's when working with right-of-way.

### *PROJECT DEVELOPMENT*

In order to being project development, the LPA shall have:

- An LPA – ITD agreement which identifies responsibilities of LPA and ITD
- Creation and approval of Right-of-Way Plans.

### *RELOCATION AND PROPERTY MANAGEMENT*

- Relocation will be handled by ITD or contracted from ITD's approved list of relocation contractors
- Donations: The value of private property donated for project purposes may be used to offset the LPA match, when the donation is obligated.
- Application for federal lands shall be processed through ITD.

### *CONSULTANT*

- Competitive bidding is recommended. If the LPA chooses to sole source, it must be justified in writing. File documentation is required.
- The appraisal firm must be selected from the ITD approved list of appraisers.
- Negotiators or firms must be approved by ITD.
- A monthly status report is required from LPA to the respective District to assist in the coordination of the project.

### *APPRAISAL*

- ITD formats and certification are recommended.
- The appraiser must offer to the property owner the option of accompanying the appraiser on the property evaluation.
- Just compensation must be approved in writing by the acquiring agency and then transmitted to the negotiator.
- Typically, ITD will perform the appraisal review function. However, if staff availability is low, the LPA may hire an appraisal reviewer from ITD's approved list.
- The LPA must have a policy identifying their minimum nominal payments.

### *NEGOTIATIONS*

- There must be a prompt offer (within 90 day of the reviewed FMV) in writing that shows the just compensation being offered.
- The LPA shall provide the owner with notice of property owner rights per state statute.
- The LPA shall provide owner with a copy of the reviewed appraisal.
- There can be no coercion in negotiations and the owner is not required to respond to the initial offer until 30 days has passed.
- The appraiser may also perform the negotiations for parcels valued \$10,000.00 or less.
- If the property owner wishes to donate the property, the LPA must document the Waiver of Just Compensation Requirements and Value Determination.
- The negotiator's diary must be complete, accurate, in ink or typed and each page signed by negotiator.
- The LPA must establish an administrative settlement approval process and have it in writing.
- Administrative settlements must contain sound written justification.

### *PROPERTY MANAGEMENT*

- If any real property is acquired outside the right-of-way requirements using Federal funds, the LPA must follow ITD property management guidelines (See Chapter 8 of this Manual.)

### *FILE DOCUMENTATION REQUIREMENTS*

- The LPA must maintain copies of all general correspondence.
- The LPA must maintain copies of consultant hiring process and contracts.
- The LPA must maintain a copy of appraisal and appraisal review for each parcel.
- The LPA must maintain a copy of offer letters, the negotiator diary, Right-of-Way contract, any administrative settlement justification, any title transferring documents and all verification of payment.
- The LPA must submit the LPA Certificate of Right-of-Way and requests for reimbursement after completion of all right-of-way acquisitions through the Right-of-Way Section.
- The LPA must retain all records of right-of-way activities for a minimum of three years.



## APPENDICES

Appendix A: Right-of-Way Plan Preparation Checklist

Appendix B: Appraisal Guide

## APPENDIX A: RIGHT-OF-WAY PLAN PREPARATION CHECKLIST

Project Number	Project Name	Key Number
Parcel Number	Parcel ID Number	Date

### Legal Descriptions – One required for each description

Initial each item that has been reviewed. Mark N/A for items that are not applicable.

	1 <sup>st</sup> Dist. Reviewer	2 <sup>nd</sup> Dist. Reviewer	
1.			Heading: Project Number, Key Number, Parcel Number, Parcel ID Number and date prepared (not an autofill date.) Titled fee acquisition or permanent easement, etc.
2.			Preamble: State, County name, Township and Range, ¼ ¼ sections or government lots designated, section, subdivision name, lots, blocks, and tracks
3.			Points of commencement and beginning shown on plans (must be a found Public Land Survey System (PLSS) corner or a found Corner Perpetuation & Filing (CP&F) recorded point)
4.			Multiple requirement areas within a parcel use the same point of commencement
5.			Curve data contains: radius, arc length, delta/central angle, curve direction (right or left) long chord (bearing and distance)
6.			Centerline stations for beginning and end of parcel
7.			Closing tolerance within State Standard (minimum 1:5,000)
8.			All calls and acreage match the plans exactly
9.			Bearing expressed in degrees, minutes, and whole seconds
10.			Acreages carried to four decimal places and rounded to three places
11.			Distances carried to three decimal places and rounded to two places
12.			Parcel requirement legal description lies within the boundaries of the property described within the title report
13.			Existing non-fee title prescriptive highway RW described with separate acreage - can be described separately or encompassed within description of the new RW requirement parcel, with acreage data broken out for both existing RW and new RW
14.			Stamped, dated, and signed by a professional land surveyor registered by the State of Idaho
15.			Electronic and original (not a copy) of legal description, typed in font size 12

I have reviewed and accepted this legal description.

District Property Manager's Signature	Date
---------------------------------------	------

Headquarters Right-of-Way Signature	Date
Printed Name	Title

Distribution: District Property Management

## APPENDIX B: APPRAISAL GUIDE

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.

### PURPOSE

The purpose of this guide is to establish minimum standards for appraisal reports required by the Idaho Transportation Department (ITD). It is intended to be a supplement and to be used as part of Section 03-300 of the Department Right-of-Way Manual, Department Right-of-Way Procedures Manual, and the Uniform Appraisal Standards for Federal Land Acquisitions.

### GENERAL

All appraisal assignments must be prepared in strict accordance with these guidelines and recognized appraisal techniques as spelled out in the current version of the Uniform Standards of Appraisal Practice (USPAP) and the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA). Any deviations from these Guides or from generally accepted appraisal procedures must be approved in writing by an authorized representative of ITD.

The complexity of the appraisal problem will govern the kind of report and extent of supporting data needed. Should the appraiser have any doubt as to the complexity of the appraisal problem, **the appraiser shall consult with the Appraisal Coordinator.**

ITD uses five basic appraisal formats. These include:

- a. Residential Appraisal-(Current URAR approved residential form/FNMA 1004-B (6-93)-FMAC 439 (6-93))
- b. Property Value Compensation Estimate, ITD-1466
- c. Short Form Report, ITD-2288
- d. Self -Contained or Summary (Complete or limited)
- e. Before and After Report, Self -Contained or Summary (Complete or limited)

All appraisal reports must be addressed to the Right-of-Way Appraisal Coordinator, P.O. Box 7129, Boise, Idaho 83707-1129.

**TWO BOUND COLORED** copies of the appraisal report are required, along with one electronic copy on CD (sleeve included). The Idaho Transportation Department will furnish copies of the forms.

### RESIDENTIAL APPRAISAL: CURRENT URAR (1004-B) APPROVED FORM (FNMA-FMAC)

This standard format is designed for total acquisitions of improved residential properties.

### PROPERTY VALUE/COMPENSATION ESTIMATE (ITD-1466)

This form is for the least complex property valuations including small requirements and easements with no damages other than minor cost to cure items such as fencing or landscaping within the requirement areas. The total compensation cannot exceed \$10,000 in value. This is not an appraisal but an estimate of value/compensation. Consequently, items normally required including Letters of

Transmittal, Certificates, Assumptions and Limiting Conditions, and Appraiser Qualifications are not required. (Please see bottom of form for required items.) Employees of ITD or agents hired/designated by ITD are exempt from appraisal laws or rules as allowed by Idaho Code. An individual hired to do these estimates for ITD is considered to be an agent. An administrative review will be performed on all 1466's.

### FORM REPORT (ITD-2288)

This form is designed for the appraisal of properties that are unimproved or improved. The form shall be used where relatively minor damages resulting from the requirement can be measured easily. Damages shall be fully explained and supported. If easements are required, their purpose shall be stated. Cost-to-cure items shall be explained and supported with a cost source and/or attached estimates from reputable contractor(s). This form is designed as part of a Summary Report. ITD does not require valuation of "unaffected improvements" (i.e. houses, bldgs, etc.). The Income and Cost approaches are not typically used in this form. This appraisal must be reviewed by a qualified review appraiser and all supporting data must be in the appraiser's files. The brevity of the forms does not relieve the appraiser of the responsibility of thoroughly researching and analyzing the market. Regardless of the appraisal format used, market data must accompany the report. The appraiser is responsible for gathering and retaining adequate additional information about the subject project that might be essential in the event of subsequent inquiry or condemnation. If more space is needed, additional sheets shall be attached to the forms(s). The ITD-2288 has a list of attachment items that are necessary or to be considered by the appraiser. This form is designed to meet current USPAP, ITD and Federal Highway Administration (UASFLA) requirements as of the date of revision. Any additional information required after said date shall be the responsibility of the appraiser to incorporate into the appraisal.

### APPRAISAL OUTLINE FOR THE "BEFORE" REPORT (OR TOTAL ACQUISITION NARRATIVE REPORT)

The following are required headings of topics to be considered and submitted in the suggested order:

- 1) Transmittal Letter (ITD-1453) The transmittal letter shall be the first page of each appraisal report. The Appraiser may substitute an equivalent Letter of Transmittal.
- 2) Certificate of Appraiser (**Specific to ITD and Federal Land Acquisitions**). The Certificate of Appraiser (ITD-1896) shall be utilized.
- 3) Date of Report
- 4) Effective Date of Value
- 5) Signed by Certified General Appraiser
- 6) Table of Contents
- 7) Property Owner Advice of Rights Form
- 8) Scope of Work Used to Develop the Appraisal
- 9) Reporting Option Taken (Self Contained or Summary Report)
- 10) Identification of Client and Intended Users by Name or Type
- 11) Definition of Market Value (UASFLA Definition)
- 12) Definition of Appraisal and Eminent Domain Terms

- 13) Exposure Time and Marketing Time (not required under UASFLA, Jurisdictional Exception invoked)
- 14) Confidentiality Statement
- 15) Purpose and Intended Use of Appraisal
- 16) Real Property Interest Being Appraised
- 17) Area and Neighborhood Data
- 18) Area Maps (Locate Subject)
- 19) Seven Year Ownership History Minimum (10 yr on Federal projects)
- 20) Legal Description
- 21) Description of and the Use of the Real Estate or Personal Property Involved "Before" the Requirement
- 22) Access Control in the "Before" (Full discussion of existing Access Control and existing access points)
- 23) Statement of Physical Inspection by Appraiser
- 24) Owner Notification Statement to Attend Inspection
- 25) Zoning Discussion
- 26) Flood Hazard Zone Discussion and Maps
- 27) Highest and Best Use of Property "Before" the Requirement, Current Use, Summary of Support and Rationale for the Opinion of the Highest and Best Use as Vacant and Improved.
- 28) Photos of Subject (All Improvements Exterior and Interior if Impacted)
- 29) Photo Location Page
- 30) Sketch of Subject Depicting Improvement Location on Property
- 31) Floor Plan of Improvements
- 32) Discussion of Extent of Process of Collecting, Confirming and Reporting Data
- 33) Discussion of Fixtures and Personal Property and Valuation if Applicable (ITD-5204 Fixture Inventory)
- 34) Photos of Fixtures
- 35) Discussion of Current Agreements of Sale, Options or Listings of Subject
- 36) Market Approach, Income Approach, and Cost Approach and Indicated Value from each (If Applicable)
- 37) Description of Comparables and Adjustments (See Addendum and Special Instructions)
- 38) Photos of Comparables (including bare land sales) are required in each report.
- 39) Comparables Location Map. The location map shall be specific and detailed enough to physically locate the comparables. This applies to all formats of appraisals.
- 40) Description of Information Considered, Appraisal Procedures Followed, and Reasons Supporting Analysis, Opinions and Conclusions
- 41) Reconciliation of Values
- 42) Conclusion of "Before" Value
- 43) Leasehold Interest Description
- 44) Assumptions and Limiting Conditions including Extraordinary and Hypothetical.

## APPRAISAL OUTLINE FOR THE "AFTER" REPORT

- 1) Purpose and Intended Use of Appraisal

- 2) Real Property Interest Being Appraised
- 3) Description of Property "After" the Requirement
- 4) Scope of Work Used to Develop the Appraisal
- 5) Legal Description(s) of Requirement and Easements
- 6) Access Control in the After (Full description of new access control, access points, and effect on remainder property)
- 7) Description of the Requirement and Easements
- 8) Description of the Improvements within Requirement Areas
- 9) Photos with Lines Drawn and labeling depicting the Requirement Area, Permanent Easement and Temporary Easement Areas
- 10) Photo Location Page depicting where photos were taken or description of photo location.
- 11) Sketch of Subject Depicting Improvements within Requirement and Easement Areas. (Show R/W line and/or Easement line impacting improvement)
- 12) Right-of-Way Plan Sheet depicting subject property
- 13) Photos of Interior of Improvements (if impacted)
- 14) Highest and Best Use of Property "After" the Requirement, Summary of Support and Rationale for the Opinion of the Highest and Best Use as Vacant and Improved.
- 15) Discussion of Extent of Process of Collecting, Confirming and Reporting Data
- 16) Market Approach, Income Approach, and Cost Approach Indicated Value from each (If Applicable).
- 17) Description of Comparables and Adjustments
- 18) Photos of Comparables must be contained in each appraisal report.
- 19) Comparables Location Map. The location map shall be specific and detailed enough to physically locate the comparables. This applies to all formats of appraisals.
- 20) Description of Information Considered, Appraisal Procedures Followed, and Reasons Supporting Analysis, Opinions and Conclusions
- 21) Reconciliation of Values
- 22) Conclusion of "After" Value
- 23) Valuation and Explanation of Permanent and Temporary Easements
- 24) Explanation, Description and Summation of Requirement
- 25) Explanation and Summation of Damage or Benefit
- 26) Description and Valuation of Uneconomic Remnants (If Applicable, see Addendum and Special Instructions)
- 27) Indicated Compensation due property owner (After Value less Before Value)
- 28) Summation of Compensation (Required on ALL Before and After Appraisals, See ITD Summation Form)
- 29) Appraiser Qualifications
- 30) Individual market rental and salvage values of "impacted" improvements.
- 31) Assumptions and Limiting Conditions including Extraordinary and Hypothetical.

## DEFINITIONS

1. **Transmittal Letter** (ITD-1453) The transmittal letter shall be the first page of each appraisal report. Appraiser may substitute their individual Letter of Transmittal.
2. **Certificate of Appraiser (Specific Wording to ITD and UASFLA)**. The Certificate of Appraiser (ITD-1896) shall be utilized.
3. **Table of Contents:** The table of contents shall be placed on a separate sheet. Each page of the report shall be numbered and listed in this table, with all of the reports assembled and numbered consecutively.
4. **Reporting Option Taken:** The appraiser must state the reporting option taken, Self-Contained or Summary, Appraisal Report.
5. **Scope of Work Used to Develop the Appraisal.** Use guidelines per USPAP, FHWA and UASFLA
6. **Identification of the Client and Intended Users by Name or Type:** If you are appraising for ITD, ITD would be the client. The users would be ITD, its agents, the property owner, and the property owner agents.
7. **Definition of Market Value:** The Definition from UASFLA (Uniform Appraisal Standards for Federal Land Acquisitions, as follows shall be used: "Market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal."

This definition must be placed in the appraisal report. No other definition of market value for purposes of appraisals made under these Standards is acceptable, unless otherwise required by a specific and cited federal law or regulation or requested by ITD.

8. **Exposure Time and Marketing Time:** Contrary to USPAP Standards Rule 1-2c, the definition of market value under UASFLA does not call for the estimate of value to be linked to a specific exposure time estimate, but merely that the property be exposed on the open market for a reasonable length of time, given the character of the property and its market. Therefore, the appraiser's estimate of market value shall not be linked to a specific exposure time when conducting appraisals for federal land acquisition purposes under these Standards. UASFLA says that some client groups may require appraisers to estimate a marketing time for the property under appraisal. However, such estimates are inappropriate for, and must not be included in appraisal reports prepared for federal land acquisitions under these Standards. Jurisdictional Exception is invoked.
9. **Purpose and Intended Use of the Appraisal:** The purpose of the appraisal is to estimate the market value of the entire ownership before and after the requirement. These estimates shall be based on the property's highest and best or most probable use considering it as one ownership, free and clear of encumbrances, unless otherwise instructed. The intended use



of the appraisal is to provide an estimate of compensation to the property owner as a result of the highway project.

**10. Description of Property “Before” the Requirement:**

- a. Land: Describe size, shape, topographic features, and distance from town, easements, access, site improvements, utilities, drainage and any other features affecting its potential value.
- b. Improvements: Describe each improvement by type, distance from existing right-of-way, construction, condition, size, effective age and if it contributes to the property's highest and best use.
- c. Trade Fixtures. (use form ITD-5204)
- d. Advertising Signs: The appraiser is to identify the location of and photograph signs that are within the requirement area(s) and to include this information in the appraisal report.

**11. Access Control:** The type of ITD access control in the "before" and in the "after" shall be discussed and analyzed for any possible damages. Any compensable loss of value resulting from a change in the access rights (and accesses) that existed in the before as compared with those in the after must be compensated. The appraiser must take care not to compensate a property owner for lost access resulting from the government's authority under police power.

**12. R/W Plans sheet:** (All formats) A copy of the reduced plans sheet should be attached, with the **subject color coded** for identification purposes.

**13. Sketch of subject** showing improvements on property (All formats). The sketch of the subject shall be drawn to scale, large enough to clearly portray the effects of the requirement (in some complicated requirements, separate sketches of the before and after condition may be desirable). As a minimum, the sketch shall include:

- a. The North Arrow
- b. Approximate property line lengths of the entirety and of the requirement, unless drawn to scale
- c. Area of land by type, required, remaining and severed
- d. Approximate locations of all improvements and requirement line impacting improvements.
- e. Arrows indicating the locations and directions of photos taken of the property
- f. The direction of flow of any irrigation and drainage facilities
- g. Existing and proposed points of access and access control

Note: The Right-of-Way Plans may be used for this requirement if they depict the above items clearly.

**14. A sketch of the floor plan** of all affected improvements in the before condition shall include:

- a. The North Arrow
- b. Outside building dimensions
- c. Labeling of rooms (for relocation purposes)
- d. Any special items or fixtures (use Form ITD-5204), which are considered part of the real property

15. **Photos of Subject:** (All Formats). Photos showing all improvements, property lines, photo location page, date taken, and photographer.
16. **Ten Year Ownership History:** (All formats) The name and address of the record owner(s) and contract purchaser(s), if any, shall be stated. All sales of the property during the **ten years preceding** (Federal Projects) the appraisal shall be listed, giving dates, considerations and parties involved.
17. **Inspection Statement:** A statement similar to the following shall be included in the report:

DATE OF INSPECTION AND INVITATION

*I offered \_\_\_\_\_ who is/are the \_\_\_\_\_ (s) an opportunity to accompany me on my inspection of this property by \_\_\_\_ (personal contact) \_\_\_\_ (telephone) \_\_\_\_ (letter) on \_\_\_\_\_ 20\_\_\_\_.*

*This invitation was \_\_\_\_ (accepted) \_\_\_\_ (declined). Telephone Number of owner or representative contacted \_\_\_\_\_.*

*I personally inspected the subject property on \_\_\_\_\_ 20\_\_\_\_.*

18. **Area and Neighborhood Data:** Significant economic and social data shall be described, such as neighborhood trends that affect the value of the subject property. Information of a general nature that has no specific effect on the value of the property does not need to be included.
19. **Highest and Best Use:** The highest and best use represents the premise upon which value is based.
  - a. The highest and best use analysis determines that most probable legal use which is physically possible, financially feasible, appropriately supported and results in the highest value as of the appraisal date. This definition applies to the highest and best use of the land as if vacant and also improved properties.
  - b. In determining highest and best use of the land, the appraiser assumes the land to be vacant and available for its highest and best use even though it may not actually be vacant. The improvements are ignored and the highest and best use is supported. Some parcels require value studies under more than one use assumption in order to support the decision. The reasonable probability of a zoning change may be considered in cases of zoning conflicts.
  - c. If the property is improved, the current highest and best use is stated and explained. If it appears that the land is not developed to its highest and best use because of the improvements thereon, the appraiser bases his decision on highest and best use for the total property on whether the value of the property as improved is greater than the value of the land if vacant. It may, therefore, be necessary to prove highest and best use through appraisal techniques that reflect comparisons of values from alternate use premises.

20. **Estimate of Value:** Consideration shall be given to all appropriate approaches to value, however when there is inadequate data, the appraisal *may be* limited to one or two approaches.

a. *Market Approach:* Current arm's length real property transactions of similar properties in the vicinity of the subject property shall be considered to be the best evidence of market value along with strong consideration given to prior sales of the subject property

- The value of land and improvements shall be estimated by direct comparison with the characteristics of similar properties in the area which have sold within a reasonable time frame. Listings may be used, but greatest reliance shall be placed on recent comparable sales.
- The sales price of each comparable shall be adjusted for its dissimilarities to the property being appraised. There must be individual adjustments, each must be adequately explained and supported.
- In valuing a farm which has more than one class of land (i.e., irrigated, dry graze, etc.) the appraiser must support each allocation of value by actual sales of such classes or other plausible evidence.
- Photographs of comparable sales are required, along with all the relevant sales information set forth on the General Sales Data Form, ITD-1454 or equivalent.
- The comparables and listings shall be adequately identified on a suitable location map. The location map shall be specific and detailed enough to be able to physically locate the comparables. This applies to all formats of appraisals. All sales must be verified by the appraiser or a recognized, reliable source. (Buyer, seller, real estate agent, or a person directly involved in transaction. Name of person must be identified.)

b. *Cost Approach:* The Cost Approach is a combination of site value and replacement cost new of improvements less depreciation.

- Land values shall be based upon comparable sales of unimproved properties whenever possible. Improved sales may be used to value bare land if comparable unimproved sales are not available. The appraiser must justify his use of improved sales when valuing bare land. Each type of depreciation shall be set out and explained. When a cost manual is used, the title of the cost manual, sections, page numbers and the classification of the improvement shall be included. A contractor's estimate is recommended on complicated properties.

c. *Income Approach:* This approach to value applies only to investment properties where a significant income stream exists. The appraiser must first estimate economic rent for the subject by examining rental rates of similar properties. The appraiser then must estimate gross income for the subject by multiplying economic rent times the factor selected (i.e., square feet of the subject). From the result of this computation, the appraiser must deduct vacancy allowance and all allowable

expenses to derive net income. Net income is then capitalized, using a supported rate, into an estimate of market value.

- Gross Rent Multipliers, when used, shall be developed from rentals of comparable properties and included in the Sales Data Book or Addendum.

d. *Reconciliation of Approaches:* If more than one approach to value is used, the appraiser shall reconcile each approach into a final conclusion of value. Averaging is not acceptable.

21. **Purpose of Appraisal After the Requirement:** The purpose shall be to estimate the market value of the total ownership after the requirement. This appraisal shall be an independent estimate of value and shall be supported to the same extent as the before value. The appraiser shall assume that right-of-way and easements have been acquired and the highway has been constructed. It is possible that the highest and best use of the land may have changed as a result of the acquisition.
22. **Description of Property After the Requirement:** Land and improvements shall be described as they will actually exist in the "after" situation.
- a) If improvements are located partially within the requirement, the remainder shall be appraised as though the right-of-way line severed the improvements and only parts thereof remain. If the remaining improvements can be economically restored, the cost-to-cure method shall be considered.
- b) Local (contractors) estimates may be required. Marshall-Swift may be used only if local experts **are not** available. Landscaping estimates from nurseries, landscaping consultants, or arborists are not required. The appraiser's opinion of value of landscaping shall represent contributory value to the property. We will accept reasonable opinions of contributory value from the appraiser. If extensive landscaping is evident that may contribute additional value, the appraiser may elect to receive opinions from landscaping specialists or support from other sources.
- c) When an improvement (house, office, etc.) is severed by the requirement or easements, a determination of how much of the improvement is impacted is needed. This is critical for determination of relocation benefits. Therefore requirement and easement lines shall be clearly depicted on exhibits provided (floor plans drawings, photos, etc.).
23. **Access Control:** The type of ITD access control in the "before" and in the "after" shall be discussed and analyzed for any possible damages. Any compensable loss of value resulting from a change in the access rights (and accesses) that existed in the before as compared with those in the after must be compensated. The appraiser must take care not to compensate a property owner for lost access resulting from the government's authority under police power.
24. **Photos of Subject:** (All Formats) Photos of the area(s) required **SHOWING Requirement and Easement Lines** shall be included along with a description of what the line(s) represents. Photos of all improvements and fixtures that may be affected by the requirement shall also be included. **Interior** photos (all rooms) of structural improvements are required if such improvements are included in the requirement or affected by the requirement. A plat showing photo location is required along with date taken and photographer.

25. **Description of the Requirement and Easements:** The land in the requirement shall be described briefly, along with easement areas. Area of each class of land shall be shown. The total of all land, all the improvements, and all tenant owned improvements shall be listed and identified.
26. **Highest and Best Use:** The same process shall be used in the *after* analysis as in the *before* analysis. If two or more parcels remain, the use or uses of these remainders that will probably result in the greatest overall value shall be determined.
27. **“After” Estimate:** The appraiser shall consider all applicable approaches to value. When there is inadequate data, the appraisal may be limited to one approach. The after appraisal is the estimate of value of that which remains after the requirement, considering its highest and best use. The after value shall not be derived by subtracting the requirement and damage from the before value estimate
  - a. The Market Approach is the most reliable indicator of value in the after situation. It may be difficult and occasionally impossible to find comparable sales if the remainder(s) is severed or unusually small as a result of the acquisition. If comparable sales cannot be found, or if the appraiser must rely heavily upon opinion, he/she must state that a search was made of the market and reliable sales data could not be found.
  - b. Photographs of comparable sales are required, along with all relevant sales information set forth on the General Sales Data Form, ITD-1454 or equivalent.
  - c. Comparable Location Map and Directions: The location map and physical directions shall be specific and detailed enough for reviewers to physically locate the comparables in the field. This applies to all formats of appraisals.
28. **Current Agreements of Sale, Options or Listings of Subject Property:** Any of the aforesaid should be mentioned and discussed in the report in full with copies of such attached if available.
29. **Conclusion of Compensation:** This amount is derived by subtracting the after estimate from the before value estimate. The appraiser shall not round in the final estimate of compensation.
30. **Explanation and Summation of the Damage or Benefit:** The decrease or increase in value of the remainder(s) shall be described. (\*\*State Law requires an acquiring agency to compensate for the portion taken. **Special benefits can only offset damages to the remainder(s)** (Idaho Code, Section 7-711, Para 3.)
31. **Non-Compensable Items:** Appraisals shall be completed in accordance with prevailing Idaho State law and UASFLA. All non-compensable and speculative damages to real property shall be excluded. Some of the damage items **generally** considered non-compensable are:
  - a. Exercise of police power
  - b. Loss of profits
  - c. Frustration of plans for development
  - d. Expenses of moving personal property (may be handled in relocation)
  - e. Inability to find an acceptable substitute location
  - f. Rerouting or diversion of traffic
  - g. Increases or decreases in the amount of traffic

- h. Noise and fumes caused by traffic
- i. Interruption of business during construction of public improvements
- j. Any annoyance or inconvenience generally suffered by the public

One or more of the above items as they affect the fair market value of property may on a case-by-case basis be compensable. If specific items are to be considered they will be noted in the appraisal contract. However, the appraiser should make an independent determination as to whether any item of damages is compensable. Questions of non-compensable items should be directed to the Appraisal Coordinator. If the property owner raises questions of business damages, the appraiser should notify the Right-of-Way Appraisal Coordinator immediately. (See Advice of Rights Form)

**Describe the Scope of Work.** The description of the Scope of Work must include describing the research and analysis that are necessary to develop credible assignment results. In particular, explain any approach which is applicable to the assignment but is not utilized.

#### ADDENDUM ITEMS AND SPECIAL INSTRUCTIONS (APPLIES TO ALL FORMATS OF APPRAISALS)

- 1) Fixture inventory (Use ITD-5204 Form) When substantial tenant-owned improvements or trade fixtures are involved in the property appraised, the appraiser will identify said fixtures and furnish an expert's opinion of value, including source identification. This information shall be considered by the appraiser and made part of the appraisal report. A fixture inventory must accompany a report signed by the tenant regardless of any ownership of fixture items. In place and salvage values are depicted on the Form.

Part of the Federal Requirements are that the appraiser list and value items that may be fixtures. This requirement becomes a relocation item when an improvement is within the requirement area. The appraiser should ask the property owner (and tenant if applicable) if certain fixtures are going to be removed. This comes into play more on tenant occupied properties and more so yet on commercial properties. If the fixture is to be removed, it is the appraiser's responsibility to make sure the item is not valued along with the real property so there is not double compensation. There may be agreements between the tenants and property owners that need to be acquired and considered.

The Federal CFR's were changed and became effective February of 2005. In reference to 24.103(a) (2) (i) "requires the appraiser must identify "personal property," while the appendix adds that "real property" also be identified.

NOTES: From an implementation standpoint, it is critical to achieve responsible allocation of what is realty and what is personal. The allocation will drive what is acquired vs. relocated. An on site meeting of the appraiser and relocation staff is essential to accomplishing this process. The result is then included in the appraisal report and serves as a guide in this area for the balancing of the acquisition process. According to our Relocation staff, this pertains to commercial properties and

not to residential properties. The personal property is to be identified but it does not have to be valued. Check with the relocation staff for further guidance. (208-334-8508)

- 2) The appraiser shall identify and evaluate all leasehold interests in the property appraised and include copies of any such agreements in the addendum of his/her appraisal report. If not attainable, the appraiser shall annotate contacts made and results thereof.
- 3) Specialty Items: These are items typically outside of the appraiser's expertise and usually not well defined or addressed in cost sources such as Marshall-Swift. Examples may be highly ornate-custom fencing, ornate fountains, etc. The appraiser needs to review these estimates and be assured they do not exceed contributory value. Valuation of specialty items on the subject property cited in the report shall be supported by an independent professional estimate. All supporting bid costs shall be the responsibility of the appraiser. Two independent professional estimates may be required by ITD if so instructed.
- 4) Segregated salvage values of **major** improvements affected, such as large outbuildings, houses, etc., shall be supported by individual independent professional estimates. Two independent professional estimates may be required by ITD if so instructed. These estimates are generally provided by house moving companies or individuals that buy and sell these types of items. The property owner is given first right of retaining these items at salvage value.
- 5) Economic rental information of improvements affected. The appraiser shall estimate economic rent and also reflect actual individual rents for all **affected** improvements. (Needed in the event ITD leases improvements after acquisition)
- 6) SIGNS: The appraiser is to identify the location of and photograph signs that are within the requirement area(s) and to include this information in the appraisal report. Two sign bids are required for ON PREMISE signs. Please use the designated ITD sign form available from the Appraisal Coordinator.
- 7) Assessors Valuation (Include Category and Valuation per Category), Assessor's Plats, Tax Data from Treasurer
- 8) Title Report (If Provided)
- 9) Assumptions and Limiting Conditions
- 10) Appraiser's Experience and Qualifications
- 11) Remarks of Assistance, Inspection and Level of Participation in Appraisal Process
- 12) Appraiser shall evaluate remaining property to determine if the remainder is an **economic or non-economic remnant** and address in the report. The Appraiser is to estimate the value of uneconomic remainder(s) and address this value as **"Value of Remainder After the Acquisition."** The owner is given the choice to retain the remainder for this value. Damages suffered by the uneconomic remainder are addressed as "Severance Damages to the Remainder." (Definition: Uneconomic Remainder: 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

acquiring agency has determined has little or no value or utility to the owner.) CFR-49 (24.2) (24-102-k).

NOTE: An uneconomic remnant may have substantial “market” value and still have little or no value or utility to the owner. USDOT/FHA, Appraisal Guide 6-93.

- 13) Verification of Comparables: Recognized sources of sales verification are buyer, seller, or listing/selling broker or agent. This person(s) must be identified by name and extent of participation in sale. M.L.S. and Assessor's Records are not acceptable as adequate sources of verification and must be further verified. Assessor's records are acceptable if verified formally by buyer or seller. Photos of all comparables, including bare land are required. A comparables location map identifying the location of each comparable, with adequate directions to each, shall be included in the report that is adequate for an ITD staff person to locate the property.
- 14) Hazardous Waste: An appraiser is a trained and experienced observer of real estate. Recognizing, detecting or measuring contamination is often beyond the scope of the appraiser's expertise. The appraiser's observations and discussions with the property owner, lessee or other occupants regarding possible waste problems will be immediately reported to the Appraisal Coordinator and forwarded on to the Hazardous Waste Analyst. A discussion of present and prior land uses where hazardous waste problems may exist along with valuation requirements and procedures to follow are listed in the Right-of-Way Procedures Handbook.
- 15) Property Owner Advice of Rights Form. A copy of this form shall be placed in a conspicuous place near the front of each appraisal (all formats, all copies) to advise the property owner's of their rights under Idaho Code 7-711A and 7-711.
- 16) Mixed Use Properties: When appraising a mixed use property that is partially used for a residence by an owner, (EXAMPLES A: duplex with owner occupying one half of the unit, B: motel with owner occupying portion as a residence, or C: any other type of business where the owner occupies a portion as a residence) the **value of the “residence portion”** needs to be identified (broken out) by the appraiser for possible relocation purposes. These are in instances where we have a total buyout of the property or where the residential portion lies within our proposed right-of-way.
- 17) Landscaping: Bids on landscaping from nurseries, landscaping consultants, or arborists are not required. The appraiser's opinion of value of landscaping shall represent contributory value to the property. We will accept reasonable opinions of value from the appraiser. If extensive landscaping is evident that may contribute additional value, the appraiser may elect to receive opinions from landscaping specialists or other reliable sources.